

The Indian Law Reports

FULL BENCH

Before Mehar Singh, C.J., D. K. Mahajan and R. S. Narula, JJ.

SHIROMANI GURDWARAS PARBANDHAK COMMITTEE, AMRITSAR,

AND ANOTHER—*Petitioners*

versus

LACHHMAN SINGH GILL, CHIEF MINISTER, PUNJAB, AND OTHERS,—
Respondents

Civil Writ No. 2847 of 1967

April 2, 1968.

Sikh Gurdwaras Act (VIII of 1925)—S. 19(iv)—Whether ultra vires being violative of Art. 14 of the Constitution—Punjab Reorganisation Act (XXXI of 1966)—Ss. 72, 88 and 89—Punjab State Government alone—Whether can act to interfere with the constitution and functioning of the Judicial Commission—Constitution of India (1950)—Seventh Schedule—Entries in Lists—Interpretation of—Entry 44—Scope of.

Held, that section 79(iv) of the Sikh Gurdwaras Act, 1925, is violative of Art. 14 of the Constitution and is thus invalid and void. The power in clause (iv) of section 79 is arbitrary and unguided without any principle or policy being made available for its exercise. The exercise of the power of removal of a member of the Judicial Commission under section 79 pursuant to clauses (i) to (iii) is obviously exercise of the power in the wake of the object and policy of the Act as in the preamble and the main body of the Act, but that object or policy is not in any way effectuated by the whimsical and capricious exercise of the power under clause (iv) of that section. If there is a reason outside clauses (i) to (iii) of section 79, which justifies removal of a member of such a judicial body, it should be available in the statute as are the reasons given in the first three clauses. The power is undoubtedly discretionary but that is not a complete answer because a discretionary power unrelated to any guiding object or policy is an arbitrary power. No doubt it is vested in the State Government but while that consideration may weigh with regard to matters other than the tenure of a judicial or a quasi-judicial body, it is not a consideration which can be accepted in so far as the tenure of a member of a judicial or a quasi-judicial body is concerned. Protection to such a body is an essential element of the

democratic and constitutional base of the country and, therefore, such a discretionary power unguided by any object or policy of the statute cannot even be left in the hands of the highest authority.

Held, that after the re-organisation of the State of Punjab under the Punjab Reorganisation Act, 1966, the Punjab State Government alone has no power to interfere with the constitution and functioning of the Judicial Commission. No doubt in section 79 of the Sikh Gurdwaras Act the State Government has been given power to remove a member of the Commission, and under section 70 of it, it can appoint a member to it, but one of the four successor State Governments, in this case the Government of the State of Punjab, cannot be accepted to exercise such power in relation to a Judicial Commission which has jurisdiction under the Act not only in that State but also in the remaining three successor States. If this was permitted, the functioning and operation of the Board would be impaired and may come to a stop by this act of the State Government of Punjab, also in the territory under the remaining three successor States, which it has not the power to do under any provision of the Reorganisation Act. More than that, it has not the power to do any act in the shape of removing a member of the Judicial Commission or appointing a new member to the Commission so as to lead to interference with the functioning and operation of the Board, an inter-State body corporate. The jurisdiction and functioning of the Judicial Commission being so intermixed and intermingled with the functioning and operation of the Board that the same cannot be separated, for (a) there are cases in which, where the Board is obstructed in its functioning, the judicial Commission, on its application, has jurisdiction and authority to carry out such functions, (b) there are cases in which the judicial Commission has coordinate power of legislative nature, in the shape of framing schemes of administration and management for Gurdwaras, with the Board, in other words, where the Board in such a case is unable to perform its functions, it is the Judicial Commission which does so, and (c) in one case at least the Judicial Commission is an appellate tribunal of a co-ordinate and concurrent jurisdiction with the Board, so that a function which can be performed by the Board, in its appellate jurisdiction may come to be performed by the Judicial Commission, depending upon whether the approach is made to one or the other. So the Judicial Commission is a judicial body which directly and substantially controls the functioning and operation of the Board and its jurisdiction and functioning cannot be divorced from the operation and functioning of the Board. Any interference with the constitution and powers of the Judicial Commission immediately spells interference and obstruction to the functioning and operation of the Board, an inter-State body corporate, with the functioning and operation of which the Punjab State Government has no power or authority to interfere. On this consideration it is obvious that the Judicial Commission under the Act is not now, in consequence of the provisions of the Reorganisation Act, within the power and authority of the State Government of Punjab.

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

Held, that the entries in the Legislative Lists in the Seventh Schedule to the Constitution are to be so liberally and broadly construed that they are to include within their ambit and scope all ancillary and necessary matters, the inclusion of which renders the legislation under a particular entry the more effective, useful and purposeful. The entries are not to be construed strictly so as to limit their ambit and scope. Consequently entry 44 in List I—Union List—, which obviously covers legislation in regard to an inter-State body corporate such as the Board, also has within its ambit and scope legislation necessary for the operation and functioning of such an inter-State body corporate, in the present case as to the Judicial Commission, which very largely and substantially not only controls the operation and functioning of the Board but may at any moment have to perform the functions of the Board, where the Board cannot do. The jurisdiction and functioning of the Judicial Commission is so integral to the functioning and operation of the Board that in the terms of the Act no separation is practical. So in this approach the provisions of the Act relating to the Judicial Commission are as much within the scope of entry 44 in List I—Union List— as its provisions relating to the Board. On this view not one of the successor States, which of course includes the State of Punjab can interfere with constitution of the Judicial Commission.

Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order of the Punjab Government, dated 6th December, 1967 (removing Shri Sajjan Singh, President of the Judicial Commission and accepting the resignation of Shri Bakhat Singh) and further praying that the provisions of the sub-section 4 of section 79 of the Sikh Gurdwaras Act be declared unconstitutional and ultravires of the Constitution of India.

For the Petitioners :

H. L. SIBAL, SENIOR ADVOCATE with B. S. DHILLON, G. S. AULAKH, B. S. SHANT and R. K. CHHIBBER, ADVOCATES.

C. K. DAPHTARY, ATTORNEY GENERAL OF INDIA, GOPAL SINGH, ADVOCATE GENERAL, PUNJAB, G. R. MAJITHA, DEPUTY ADVOCATE-GENERAL, for Respondent No. 2 and J. N. KAUSHAL, ADVOCATE, for the Respondents Nos. 1 and 2.

ORDER

MEHAR SINGH, C.J.—This judgment will dispose of two petitions Nos. 2847 and 2899 of 1967, under Articles 226 and 227 of the Constitution. In both the petitions Shiromani Gurdwara Parbandhak Committee, Amritsar, is the petitioner, but in petition No. 2847 of 1967 the second petitioner is Mr. Sajjan Singh Giani. To the two petitions the

first three respondents are the same, that is to say, Mr. Lachhman Singh Gill, Chief Minister, Punjab, the State of Punjab, and Mr. Kartar Singh Giani, who is a member of the Judicial Commission; and in petition No. 2899 of 1967 the fourth respondent is Mr. Sardul Singh, who was appointed a member of the Judicial Commission by Punjab Government Notification No. 462-Gurdwaras, of December 12, 1967.

There were three members of the Judicial Commission appointed under section 70 of the Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925)—hereinafter to be referred to as 'the Act'—, namely, Mr. Sajjan Singh Giani, petitioner, who was also its President Mr. Kartar Singh Giani, respondent 3, and Mr. Bakhat Singh. Two of the three members of the Judicial Commission are selected for appointment out of a list of qualified persons prepared and maintained at the instance of the Board (sections 70 (3) and 71 of the Act). Mr. Kartar Singh Giani was appointed by the Punjab State Government and Mr. Sajjan Singh Giani petitioner and Mr. Bakhat Singh were appointed by the same State Government from the list as prepared at the instance of the Board in the terms of section 71 of the Act. The appointment of Mr. Sajjan Singh Giani, petitioner, and Mr. Bakhat Singh as members of the Judicial Commission was made on September 1, 1965.

It is averred in the petitions that Mr. Lachhman Singh Gill, the Chief Minister of Punjab, had been elected to the Punjab Vidhan Sabha in the last General Elections held in February, 1967, on an Akali ticket and he was also elected General Secretary of petitioner 1 in petition No. 2847 of 1967. He defected from the Akali Party and, joining hands with the Congress Party, formed Government in the Punjab State with himself as the Chief Minister on November 25, 1967. On December 2, 1967, the Shiromani Akali Dal expelled him from its membership and asked him to resign from the Legislative Assembly and also from the membership of petitioner 1 and the position of General Secretary to petitioner 1. On December 3, 1967, respondent 1, Mr. Lachhman Singh Gill, is said to have made a statement to the press, which is reproduced in the petitions from the Tribune of December 4, 1967, threatening the expulsion of Sant Fateh Singh from petitioner 1 and welcoming any opposition challenge in the Assembly. It is averred that respondent 1 said that he would forcibly remove Sant Fateh Singh and his followers from petitioner 1. It was in pursuance of such attitude of his that at his instance the Punjab State Government, respondent 2, issued Notification No. 454 Gurdwaras, copy Annexure 'B', on December 6, 1967, removing petitioner 2 in petition No. 2847 of 1967, namely Mr. Sajjan Singh Giani,

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

from the membership of the Judicial Commission with effect from the afternoon of that date. It appears that Mr. Bakhat Singh had on August 9, 1967, tendered resignation from the membership of the Judicial Commission, and by this very Notification No. 454-Gurdwaras, of December 6, 1967, the Punjab Government accepted his resignation with effect from the afternoon of that date. On December 13, 1967, the two petitioners in petition No. 2847 of 1967 filed that petition questioning the constitutional validity and legality of the removal of petitioner 2 in that petition from the membership of the Judicial Commission, pointing out that the grounds on which the removal of petitioner 2 in that petition from the membership of the Judicial Commission was challenged also had application to the acceptance of the resignation of the other member Mr. Bakhat Singh, but Mr. Bakhat Singh has not been made a party to either petition, nor has any prayer been made in regard to the acceptance of his resignation by the Punjab State Government. On December 12, 1967, respondent 2, the Punjab State Government, proceeded by Notification No. 462-Gurdwaras, to appoint Mr. Sardul Singh, respondent 4 in petition No. 2899 of 1967, as a member of the Judicial Commission against one of the existing vacancies, in exercise of the powers conferred by section 78 of the Act. On December 18, 1967, petitioner 1 filed petition No. 2899 of 1967 questioning the constitutionality and legality of the appointment of respondent 4 in this petition as a member of the Judicial Commission. The two petitions are practically copies, one of the other, and the same grounds are urged against the constitutional validity and legality of both the removal of petitioner 2 from and the appointment of respondent 4 to the membership of the Judicial Commission.

The grounds taken in both the petitions are (a) that both the orders have been passed *mala fide* with the ulterior motives of respondent 1 so as to have a member of the Judicial Commission to get orders from it prejudicial to the interests of the president of petitioner 1, the members of the Executive Committee of the Board and the General Body belonging to the Akali Dal Sant Fateh Singh Group, pursuant to his threat as reported by the Press on December 4, 1967, of forcibly ousting the members of that group from petitioner 1, (b) that the provisions of clause (iv) of section 79 of the Act to the effect that the State Government may remove any member of the Judicial Commission, if he has served as a member for more than two years, are *ultra vires* and unconstitutional because (i)

the power given admits of discriminatory classification without any guidance by any principle or policy for the exercise of the discretion, (ii) it is delegation of arbitrary and uncontrolled power, and (iii) the provision is against the principles of natural justice as the members of the Judicial Commission, who are to perform judicial functions, are left to the mercy of the executive Government after they have completed a tenure of two years as such members, (c) that the Judicial Commission has territorial jurisdiction extending over the territories which immediately before November 1, 1966, comprised the State of Punjab and the Punjab State Government after the Punjab Reorganisation Act, 1966 (Act 31 of 1966), has no jurisdiction to remove or to appoint members, including a new member, of the Judicial Commission, and so both the impugned orders are a nullity, and (d) that when on November 22, 1967, Mr. Gurnam Singh, the then Chief Minister as leader of the United Front Party resigned, along with his colleagues, he advised the Governor to dissolve the Punjab Legislative Assembly so that fresh elections could be held to it, but, though the Governor was constitutionally bound to accept such advice, contrary to that he refused to dissolve the Punjab Legislative Assembly, and rather appointed respondent 1, Mr. Lachhman Singh Gill, as Chief Minister, whose appointment is thus illegal and unconstitutional. In so far as the first ground of *mala fide* is concerned, it is further stated in the petitions that between October 13, 1949 and September 1, 1966, there had been five instances in which the removal of a member of the Judicial Commission was made by the State Government after a period varying from six to ten years, but in the case of petitioner 2 the removal has been made after a period of about two years, thus indicating the whimsical and arbitrary exercise of power under clause (iv) of section 79 of the Act by the State Government. The details of the instances are given in paragraph 9 (vii) of petition No. 2847 of 1967, and paragraph 11 (x) of petition No. 2899 of 1967.

In both the petitions one return has been made by respondent 1 and another by respondent 2, but the tenor of returns in both the petitions by those respondents is the same. In the affidavits of respondent 1 the broad facts are not denied, but it is clearly stated that his speech of December 3, 1967, was not correctly reported by the press and his position is that what he said was that "I would not permit Sant Fateh Singh to use the sacred Gurdwaras to malign me and my Government." He says clearly that he never threatened to use force against the members of petitioner 1. The charge of *mala fide* is denied and it is explained that the work of the Judicial Commission under the presidentship of petitioner 2, Mr. Sajjan Singh

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

Giani, was not being done with expedition and cases took inordinately long time for being decided. Efforts made on behalf of the Department concerned to speed up the work of the Judicial Commission unfortunately led to no appreciable progress and petitioner 2 was mainly responsible for the conduct of cases before the Judicial Commission and their early disposal. So it was thought desirable in the public interest to remove him so that the disposal of the cases in the Judicial Commission could be done with expedition in order to avoid bad name which this body was earning because of the inordinate delay which was taken in the disposal of cases. A denial has been entered that the removal of petitioner 2 was with any ulterior motive. In regard to the appointment of respondent 4 in petition No. 2899 of 1967, it has been said that he has been appointed in place of petitioner 2 out of the panel of names suggested by petitioner 1. It is denied that these changes in the personnel of the Judicial Commission have been made with an ulterior motive to have influence with the Judicial Commission. Respondent 1 then takes the position that section 79 (iv) of the Act is constitutionally valid and the Punjab State Government had the jurisdiction and authority to proceed not only to remove petitioner 2 from but to appoint respondent 4 to the membership of the Judicial Commission under sections 70 and 79 of the Act. It is not accepted on his side that his Ministry is not constitutional. A denial has been entered regarding the remaining allegations. The return for and on behalf of respondent 2 is by way of an affidavit by the Secretary to Punjab Government in the Election Department. The instances of removal of members of the Judicial Commission pursuant to section 79 (iv) after the period varying from six to ten years as given in the petitions are not denied, but it is said that the illustrations do not warrant a conclusion that section 79 (iv) of the Act is void or unconstitutional. Otherwise, leaving out the allegations as to *mala fide* against respondent 1 in regard to which reference is invited to the affidavit of respondent 1, it is stated that neither section 79 (iv) of the Act is unconstitutional or void, nor is the exercise of power by the Punjab State Government in removing petitioner 2 from and appointing respondent 4 to the membership of the Judicial Commission without jurisdiction or *ultra vires*. It is said that the Punjab Ministry under the Chief Ministership of respondent 1 is validly and constitutionally formed. There is a replication, in either petition, on the side of petitioner 1, which broadly reiterates the position of petitioner 1 in the petitions, but on the question of the explanation by respondent 1, forming basis of the removal

of petitioner 2 from the membership of the Judicial Commission, it is pointed out that the allegation that the disposal of work under petitioner 2's presidentship of the Judicial Commission was unduly delayed is false and is denied. Then between the years 1962 and 1967, for each year, the number of sittings of the Judicial Commission are given, and, against those numbers of sittings for each year, the number of cases disposed of are given. This is in paragraph 9(i) of the replication. The object is to show that in the years 1965 to 1967, during the period petitioner 2 was president of the Judicial Commission, the disposal of cases was more than during any other year. However, it is accepted that "the disposal could be further increased by the disposal of certain other cases regarding the disposal of which petitioner 2 could not participate as member of the Commission because he was the counsel in those cases before he was appointed as member of the Judicial Commission. Hence, the said cases had to be decided by Giani Kartar Singh (respondent 3) and Shri Bakhat Singh alone. Shri Bakhat Singh was very rarely attending the meetings of the Commission. Therefore, the said cases could not be disposed of."

At the hearing of these petitions the learned counsel for the petitioners has given up the ground that respondent 1's Ministry in the Punjab State has been formed unconstitutionally and illegally. This ground has not been urged on behalf of the petitioners. The counsel appearing on their behalf has confined his arguments to the remaining three grounds (i) that the removal of petitioner 2 from and appointment of respondent 4 to the membership of the Judicial Commission is outside the jurisdiction of the State of Punjab and thus void and illegal, (ii) that section 79(iv) of the Act is *ultra vires* and unconstitutional, and (iii) that both the removal of petitioner 2 from and the appointment of respondent 4 to the membership of the Judicial Commission by the Punjab State Government, at the instance of respondent 1, the Chief Minister, is *mala fide*.

These grounds may be taken in the reverse order. Respondent 1 has stated in his affidavit that the press report of his speech on December 3, 1967, is not correct, that he never said that he was going to remove anybody by force, and that all that he said was that he would not permit Sant Fateh Singh to use the sacred Gurdwaras to malign him and his Government. This has been one basis of allegation of *mala fide* against respondent 1, which allegation, in the circumstances, cannot possibly be accepted. The other matter urged

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

has been that respondent 1 has given a wrong reason for the removal of petitioner 2 from the membership of the Judicial Commission that the latter was responsible for the delay in the disposal of cases before the Commission. Although the affidavit in the shape of replication by petitioner 1 makes out a case that during the term of office of petitioner 2 for the number of sittings the comparative disposal was more than in the earlier years, but in the same affidavit it is admitted that there were a number of cases which could not be disposed of simply because petitioner 2 had been a counsel in those cases and thus could not sit in the Judicial Commission for the hearing of the same. The other member Mr. Bakhat Singh, it has been admitted, did not attend regularly. So delay there was in the disposal of cases. This matter might well have weighed with respondents 1 and 2 in reaching the conclusion that they did, which conclusion may not appeal to others, that it was the presence of petitioner 2 as president of the Judicial Commission which was the cause of the delay. There is no other material in support of the allegation of *mala fide* against respondent 1. It is obvious that on this material a clear and unqualified finding is not possible that the order removing petitioner 2 from the membership of the Judicial Commission was made by respondent 2 at the instance of respondent 1, who was actuated by ulterior motives and thus acted *mala fide*. This ground, therefore, fails.

In section 79 of the Act is the power in the State Government to remove a member of the Judicial Commission and the section reads—

“79. The State Government may remove any member of the Commission—

- (i) if he refuses to act or becomes in the opinion of the State 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 Commission; or
- (iii) if it is satisfied after such enquiry as it may deem necessary that he has flagrantly abused his position as a member; or
- (iv) if he has served as a member for more than two years.”

The second argument on the side of the petitioners is an attack upon the constitutional validity and legality of clause (iv) of this section. There existed originally this clause in the Act with power to the State Government to remove a member of the Judicial Commission after three years, and this clause was deleted by section 18 of the Sikh Gurdwaras (Amendment) Act, 1944 (Punjab Act 11 of 1944). It was re-enacted in the present form by the Sikh Gurdwaras (Amendment) Act, 1954 (Punjab Act 11 of 1954), and the objects and reasons indicate that "As fresh cases are instituted in the Court of the Judicial Commission from time to time, the effect of the existing provision of the Act is that a Commission once constituted is more or less perpetuated. In the interest of the efficient working of the Judicial Commission and in order to remedy a possible awkward situation in which the life of a Tribunal may get very unnecessarily prolonged, it is, therefore, desirable that there should be a provision in the Act empowering the State Government to remove any member of the Commission after he has served on it for a specified period, where circumstances may so require." There is nothing either in the Act or in the Amending Punjab Act 11 of 1954 to give any indication as to the circumstances to be kept in view that may require removal of a member of the Judicial Commission. The argument on the side of the petitioners is that in so far as clause (iv) of this section is concerned, the power of removal is arbitrary, capricious, unguided, and uncontrolled. No principle or policy has been provided for the exercise of this power by the executive. This power has no nexus with the object of the Act. The executive can, after the expiry of two years, be as whimsical and capricious in the exercise of the power as it may choose to do so, and that may be for reasons entirely and utterly extraneous to any object of the Act. The discretion thus given to the State Government admits of arbitrary discrimination and reference has already been made to the instances given in the petitions that over the years the removal of members has been after a period varying from six to ten years, on earlier occasions, but in the case of petitioner 2 the power has been exercised just after completion of two years of office as member of the Judicial Commission by him. The learned counsel has pointed out that to effectuate the object and the policy of the Act the first three clauses of this section have relation to the efficient and proper functioning of the Judicial Commission but, obviously, the fourth clause has nothing to do with the same. The preamble of the Act says that it was being enacted to provide for the better administration of certain Gurdwaras and for inquiries into matters and settlement of disputes

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

connected therewith', and this object of the Act and the policy underlying it are evidently manifest from the main body of the provisions of the Act, both of which are available to the Court to see whether there is any object or policy of the statute from which guidance for the exercise of such power may be available. The learned counsel for the petitioners has, as stated, stressed that while the object and the policy of the Act are served by the first three clauses of this section, the power in the fourth clause, he points out, is uncanalised, unguided, and without any indication on what basis it is to be exercised. In this respect the learned counsel has referred to *Moti Ram Deka v. General Manager, North East Frontier Railway* (1). That was a case in which the constitutional validity of rules 148(3) and 149(3) in the Indian Railway Establishment Code, Volume I, was the subject of challenge. In brief, the rules provided for the termination of the service of a (non-pensionable) railway servant by notice on either side for periods shown in the same. The constitutional validity of the rules was attacked on the ground that the same violated Article 311(2) and Article 14 of the Constitution. The argument in regard to Article 14 proceeded, in the alternative, on grounds (i) that the rules contravened that Article in that certain classes of railway servants were selected for special prejudicial treatment when no such conditions of service were applicable in any other public employment, and (ii) that, in any event, an arbitrary power had been conferred upon the authority competent in that behalf under the rules to terminate employment without any principle to guide it. Of the seven learned Judges, the majority of four accepted the first aspect of the argument in this respect, refraining from expressing any opinion on the second. Subba Rao, J., appears to have agreed with the majority opinion on the first aspect of this argument under Article 14 as appears from paragraph 59 of the report and that is why in the end, the learned Judge observed that, apart from Article 311; the rules were violative of the provisions of Article 14. Das Gupta, J., did not express himself on the first aspect of the argument, but on the second, which is the aspect relevant in the present case, after referring to this passage from *Ram Krishna Dalmia v. Justice Tendolkar* (2),—

“A statute may not make any classification of the persons or things for the purpose of applying its provisions but may

(1) A.I.R. 1964 S. C. 600.

(2) A.I.R. 1958 S.C. 538.

leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification.”—

the learned Judge observed—

“Applying the principle laid down in the above case to the present Rule, I find on scrutiny of the Rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The Rule thus enables the authority concerned to discriminate between two railway servants to both of whom Rule 148(3) equally applied by taking action in one case and not taking it in the other. In the absence of any guiding principle in the exercise of the discretion by the authority the Rule has, therefore, to be struck down as contravening the requirements of Article 14 of the Constitution.”

Shah, J., did not accept either aspect of the argument under Article 14 on the ground that the power to terminate employment under the impugned rules in that case could not be regarded as an arbitrary power exercisable at the sweet will of the authority, when having regard to the nature of the employment and the service to be rendered, the importance of the efficient functioning of the rail transport in the scheme of country's public economy, and the status of the authority invested with the exercise of the power, it may reasonably be assumed that the exercise of the power would appropriately be exercised for the protection of public interest or on grounds of administrative convenience. The learned Judge proceeded to observe :—
“Power to exercise discretion is not necessarily to be assumed to be

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

a power to discriminate unlawfully, and possibility of abuse of power will not invalidate the conferment of power. Conferment of power has necessarily to be coupled with the duty to exercise it *bona fide* and for effectuating the purpose and policy underlying the rules which provide for the exercise of the power. If in the scheme of the rules, a clear policy relating to the circumstances in which the power is to be exercised is discernible, the conferment of power must be regarded as made in furtherance of the scheme and is not open to attack as infringing the equality clause." The learned counsel for the petitioners has placed reliance upon the dictum of Das Gupta, J., and has further pointed out that the dictum of Shah, J., does not run contrary to his argument, because, although the object and policy of the Act as given in the preamble and emerging from its main provisions have a relation to the exercise of power under the first three clauses of section 79, the same have no nexus or connection with the unguided and uncanalised power given by clause (iv) of that section.

The reply of the learned Attorney-General on behalf of the respondents is that under clause (iv) of section 79 of the Act initial appointment is for a fixed term of two years, which cannot be cut short and which may be treated as some sort of a probationary period, but thereafter a member of the Judicial Commission holds the post at the pleasure of the State Government, for the exercise of which the guiding policy and the principle are to be found in the preamble and the main body of the Act, which is the better administration of the Gurdwaras and for inquiries into matters and settlement of disputes connected therewith. The learned Attorney-General has contended that the object and policy of the Act provide clear guidance to the State Government for the exercise of its power under clause (iv) of section 79. The power is discretionary to be exercised by the high authority of the State Government and thus it cannot be described as discriminatory. In this connection reliance is placed on *Pannalal Binjraj v. Union of India* (3), in which their Lordships observed—"It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials." The approach of the learned Attorney-General

(3) A.I.R. 1957 S.C. 397.

that the initial period of two years may be treated as some sort of a probationary period cannot possibly be accepted for, while in ordinary cases of public service after the probationary period the Government servant concerned is confirmed and has security of tenure, in the case of the Judicial Commission after the expiry of the first two years immediately insecurity for the tenure of its members begins and continues at the whim and caprice of the executive until the removal. There is apparently no possible comparison between the two situations.

On the face of it the power in clause (iv) of section 79 of the Act is arbitrary and unguided. The exercise of the power of removal of a member of the Judicial Commission under section 79 pursuant to clauses (i) to (iii) is obviously exercise of the power in the wake of the object and policy of the Act as in the preamble and the main body of the Act, but that object or policy is not in any wise effectuated by the whimsical and capricious exercise of the power under clause (iv) of that section. In fact it has been pointed out on the side of the petitioners that respondent 4 was some time back removed from the membership of the Judicial Commission and he is now being appointed again in place of petitioner 2, thus providing a glaring instance of the arbitrary exercise of the power under this clause. So, for the exercise of power under clause (iv) of section 79 of the Act there is no guidance whatsoever. The object and the policy of the Act are, substantially and in almost the total effect, effectuated by the exercise of its power of removal under section 79 by the State Government in the wake of the first three clauses. If there is a reason outside those clauses which justifies removal of a member of such a judicial body, it should be available in the statute as are the reasons given in the first three clauses. The illustrations from the past cited by the petitioners show that the exercise of the power has been quite whimsical because in a number of cases the removal has been after a term of six to ten years, and in the case of petitioner 2 it has just been after a period of a little over two years. The power is undoubtedly discretionary, but that is not a complete answer because a discretionary power unrelated to any guiding object or policy is an arbitrary power. No doubt again it is vested in the State Government, but while that consideration may weigh with regard to matters other than the tenure of a judicial or a quasi-judicial body, it is not a consideration which can be accepted in so far as the tenure of a member of a judicial or a quasi-judicial body is concerned. Protection to such a body is an essential element of

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

the democratic and constitutional base of the country and, therefore, such a discretionary power unguided by any object or policy of the statute cannot even be left in the hands of the highest authority. The considerations which prevailed with their Lordships of the Supreme Court in *Pannalal-Binjraj's case* have no possible application to a case like this where the tenure of a member of a judicial body can be kept in suspense and put an end to at any time without any basis whatsoever. In the objects and reasons of the Amending Punjab Act 11 of 1954 it has been stated that otherwise the life of the Judicial Commission would remain in perpetuity, probably meaning that the tenure of its members would be life tenure. However, a life tenure is not unknown to law. And if the Legislature intended any limit on the tenure of the members of the Judicial Commission then that limit, in the case of such a judicial body, cannot be held to be otherwise than arbitrary and capricious and thus violative of Article 14 of the Constitution when expressed, as it is, in the form of clause (iv) of section 79; in fact such an object could be achieved in a more effective manner with a certainty of tenure to the members of such a judicial body by providing a tenure for a term of years terminable, though it might be followed by the reappointment of the same member or members again, or a tenure terminable at a certain age of the incumbent. But the power in this clause, as it is, is destructive of the independence of such a judicial body and such a power, therefore, cannot but be held as arbitrary and in contravention of the provisions of Article 14 of the Constitution. The argument of the learned Attorney-General that after the expiry of initial period of two years the tenure of the members of the Judicial Commission is at pleasure, again is untenable, for this brings out a curious contrast with an ordinary Government service, as in the latter case after a short period of probation, during which service is terminable for unsuitability or like reasons, the Government servant concerned, though holding his position in the service at the pleasure of the Governor or the President, as the case may be, has a normal security of tenure in the wake of the rules applicable to his service, but in the case of a member of the Judicial Commission after serving for an initial period of two years he becomes liable to removal immediately or at any moment thereafter. So that the tenure of a member of the Judicial Commission after the expiry of the first two years is entirely at the whim and caprice of the executive Government, who have no guidance given to them in the statute itself in relation to which such power is to be

exercised by them. The object and the policy of the Act as stated in the preamble and also appearing in the main body of the Act are no guide to the executive Government in this respect for the same are effectuated by the exercise of power under the first three clauses of Section 79 of the Act. Thus the power under clause (iv) of section 79 is arbitrary and unguided, without any principle or policy being made available for its exercise, and hence it is violative of Article 14 of the Constitution, and must be struck down as invalid. To this power under clause (iv) of section 79 very aptly apply the observations of Das Gupta, J., as reproduced above from *Moti Ram Deka's case*. The power is not protected even on the dictum of Shah, J., in that case because there is no guiding principle or policy for its exercise, as what is stated in the preamble and in the main body of the statute have no relation to the exercise of this power in this case. So section 79(iv) of the Act is violative of Article 14 of the Constitution and is thus invalid and void.

There remains then the first ground for consideration. The Act obviously applied to the whole of the territory of Punjab State earlier to November 1, 1966, which is the appointed day for the coming into force of the Punjab Reorganisation Act, 1966 (Act 31 of 1966), hereinafter to be referred as 'the Reorganisation Act'. Part II, sections 3 to 8 deal with the division of what is defined in section 2(f) of this Act as the 'existing State of Punjab' into four parts, which are the State of Punjab, the State of Haryana, the Union Territory of Chandigarh, and the transferred territory to the Union Territory of Himachal Pradesh. Each one of these four parts is defined as 'successor State' according to section 2(m) of this Act to the 'existing State of Punjab'. Section 88 of the Reorganisation Act provides—

“88. Territorial extent of laws,—

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

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. *v.* Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

This section applies to all the laws, and thus obviously applies to the Act which then remains in force throughout the four parts, previous to November 1, 1966, of the 'existing State of Punjab'. In Part VII of the Reorganisation Act, sections 67 to 71 deal with Corporations which were functioning throughout the 'existing State of Punjab', that is, before November 1, 1966; continuation of such corporations is provided for, and there is a further provision how those corporations are to come to an end and are then to be started separately in the four reorganised parts. Sub-sections (1) to (3) of section 72 are then relevant for the present purpose. Section 72, sub-sections (1) to (3), provide—

"72. 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 Punjab University constituted under the Punjab University Act, 1947 (East Punjab Act 7 of 1947), the

Punjab Agricultural University constituted under the Punjab Agricultural University Act, 1961 (Punjab Act 32 of 1961), and the Board constituted under the provisions of Part III of the Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925)."

It is apparent that the Board under the Act, because of the division of the 'existing State of Punjab' into four parts, under Part II of the Reorganisation Act, has become an inter-State body corporate, as it has been declared clearly, for removal of doubt, in sub-section (3) of section 72. Unlike the other corporations dealt with in sections 67 to 71 of the Reorganisation Act, there is no provision in section 72, or for that matter in any other section of the Reorganisation Act, for dissolution of the Board as an inter-State body corporate, and its reconstitution 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' after the reorganisation. In List I—Union List—in the Seventh Schedule to the Constitution, entry 44 reads—

"44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities;"

and in List II—State List—of the same Schedule, entry 32 is—

"32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

So incorporation, regulation and winding up of inter-State corporations is within the legislative power of Parliament. The Board under the Act has been expressly declared to be such a body corporate. Obviously only Parliament have legislative powers with regard to the Board under the Act. After section 88 in the Reorganisation Act, section 89 makes provision for adaptation of laws in the four parts of the reorganised 'existing State of Punjab' by the 'appropriate Government' and explanation to this section defines the expression 'appropriate Government' to mean (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

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. *v.* Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

its application to a Union Territory, the Central Government. So the effect of section 89 of the Reorganisation Act is that adaptation of the Act in the States of Punjab and Haryana can be made by the Governments of those States, and in the Union Territories of Chandigarh and Himachal Pradesh by the Central Government, but in regard to Chapter VI of the Act which deals with 'the Board', declared as an inter-State body corporate by section 72 of the Reorganisation Act, only the Central Government has the power of adaptation of the Act, because of entry 44 in the Union List relating to inter-State body corporates and in view of clause (a) of the explanation of section 89 of the same Act. However, the functions and powers of the Board are not only confined to Part IV of the Act but are also spread all over the Act, and as an instance may be cited Chapter X of the Act which specifically deals with the 'power and duties of the Board'. It means that if the Act is to be adapted separately by the Governments, having the power under section 89 of the Reorganisation Act to adapt it, in the four parts of the 'existing State of Punjab', it cannot be done effectively and with any measure of success without the Central Government joining in the adaptation of it. There is another difficulty even when the Central Government thus comes in, for unless the Reorganisation Act is amended to keep the Board no longer an inter-State body corporate, the Act as a whole cannot be effectively and successfully adapted in any one of the four parts of the reorganised 'existing State of Punjab'. So the Act has to continue to apply, after reorganisation, to the whole of the territory of the 'existing State of Punjab' as it applied before that. How and in what manner the question of adaptation is to be solved in these circumstances is not a matter that comes in for consideration in these petitions, although by virtue of section 90 of the Reorganisation Act this Court has power, for the purposes of facilitating the application of the Act in relation to any of the four parts of the reorganised 'existing State of Punjab' to construe it in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before this Court. As I have said, the exercise of power under section 90 of the Reorganisation Act is not necessary for the purposes of decision of these petitions. Reference to these provisions has been made only for the sake of clarity as to the application of the Act, the extent of its application territorially, the position of the Board as an inter-State body corporate, and the authority of the Government which has legislative power in regard to the Board. There is one other provision to which reference may again be made here, though it has

already been reproduced above. The provision is in sub-section (1) of section 72 of the Reorganisation Act where power has been given to the Central Government to issue directions in regard to the functioning and operation of the Board within the whole of the territory that was the 'existing State of Punjab', and sub-section (2) of the same section lays down that any such direction may include a direction that any law by which a body corporate as the Board 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. So the effect of sections 72 and 89 of the Reorganisation Act is (a) that in regard to the functioning and operation of the Board the Central Government can give directions, which directions may include modification of the provisions of the Act in their application to it, and (b) the Act may be adapted (i) by the Central Government so far as the Board is concerned, and (ii) by the Governments of each one of the four parts coming into existence after the reorganisation of the 'existing State of Punjab'. No direction has been issued by the Central Government under sub-sections (1) and (2) of section 72 and no adaptation of the Act has been made either by the Central Government or by the Governments in any of the four parts of the 'existing State of Punjab' after reorganisation. The Act up to the present is left as such and is applicable to the whole of the territory of what was the State of Punjab, or described as the 'existing State of Punjab' in section 2(f) of the Reorganisation Act, and there is no modification of it whatsoever so far. After this it is necessary to go to the relevant provisions of the Act itself, particularly those concerning and relating to the Judicial Commission. It may be stated at once that the stand of the learned Attorney-General on behalf of the respondents has been that while section 72 of the Reorganisation Act declares the Board to be an inter-State body corporate and as such both the power of direction in regard to the application of the Act to its functioning and operation has been left with the Central Government as also the power of adaptation of the Act in this respect, no such power has been left with the Central Government in so far as the Judicial Commission is concerned.

In the Act, Chapter, V in Part III deals with the subject of 'Control of Sikh Gurdwaras'. This Chapter comprises of three sections. The first is section 39 which bars a suit in any Court for relief available under the provisions of the Act. section 40 then provides that "for the purposes of this Act there shall be constituted a Board and for every Notified Sikh Gurdwara a committee of management, and there shall also be constituted from time to time a Judicial

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. *v.* Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

Commission in the manner hereinafter provided," and then section 41 says that "the management of every Notified Sikh Gurdwara shall be administered by the committee constituted thereof, the Board and the Commission in accordance with the provisions of this Part". It is apparent that the management of every Notified Sikh Gurdwara is, in addition to the local committee, the statutory responsibility of the Board and the Judicial Commission. Now, this is not confined to the State of Punjab, but it also continues to apply to the State of Haryana, the Union Territory of Chandigarh, and the transferred territories to the Union Territory of Himachal Pradesh. So that in those four parts not only the Board continues to have authority, power and jurisdiction over the management of Notified Sikh Gurdwaras, but so also the Judicial Commission. Chapter VI, sections 42 to 69, then deals with the name, composition, and constitution of the Board. Chapter VII in Part III, sections 70 to 84, concerns the Judicial Commission. There are to be three members of the Judicial Commission who are to be Sikhs and appointed by the State Government (sub-section (1) of section 70), and the qualifications for appointment as a member of the Judicial Commission are to be found in sub-section (2) of section 70, and then sub-section (3) of this section says that "two of the members of the Commission shall be selected by the State Government out of a list of qualified persons prepared and maintained as described in section 71." So, of the three Sikh members of the Judicial Commission, one is appointed by the State Government of its own and the other two are appointed by it out of a list prepared and maintained at the instance of the Board according to section 71. A list of the names of seven persons nominated by the Board is to be submitted to the State Government for appointment of two members of the Judicial Commission and if the Board fails to do so within ninety days of the constitution of the Board, this power passes to the State Government to complete the list of qualified persons (sub-section (1) of section 71). Removal of a name from such list is dealt with in sub-section (2) of this section and it is to be upon a report of the Board and any enquiries as the State Government may see fit to make on the ground that a particular member has become incapable of acting as a member of the Judicial Commission. Sub-section (3) of this section concerns the removal of a name from the same list on information given by the Board that any person in the list has died or has applied to the Board for removal of his name from the list. Sub-section (4) of this section is important and runs—"The State Government shall on request being made to it for this purpose by

the Board remove from the list the name of any person whose name has been on the list for more than three years, provided that the name of any person shall not be so removed while such person is a member of the Commission." So that for continued membership of the Commission the presence of the name of a member on such a list is a statutory requirement. After removal of a name from the list the nomination to fill the vacancy is in the same manner as in the original list (sub-section (5) of section 71). And again if the Board fails to nominate a person to fill a vacancy in the list according to sub-section (5), the State Government has the power to do so for it under sub-section (6) of this section. So that it is the primary function of the Board to prepare a list of names of seven persons and to supply the same to the State Government from which two members of the Judicial Commission must be appointed by the State Government. The remuneration or daily allowance and travelling expenses of members of the Judicial Commission are to be fixed by the State Government but with consultation of the Board (section 73), so that this again is a function of the Board and the State Government cannot fix the remuneration of the members of the Judicial Commission without consulting the Board. The net expenses of the Judicial Commission are to be defrayed by the State Government and the Board, the State Government paying one-third and the Board the remaining two-thirds, though the whole of the payment is made to the members and other staff of the Judicial Commission in the first instance by the State Government, and the State Government recovers the expense share of two-thirds payable by the Board from it after the close of each financial year (sub-section (1) of section 75), and according to sub-section (2) of this section any sum due to the State Government under the provisions of sub-section (1), shall if not recovered within three months after a demand has been made, be recoverable as if it were an arrear of land revenue. If a vacancy occurs in the Judicial Commission it has to be filled by the appointment by the State Government of some other qualified person in the same manner as in which a person whose seat is to be filled was appointed (section 78), which means that if a vacancy occurs of a member of the Commission appointed from the list submitted by the Board, the new appointment has to be made in the same manner, that is to say from the same list. Then comes section 79, already reproduced above, giving power to the State Government to remove a member of the Commission on the grounds stated in that section. The State Government has been given power under section 83 to dissolve the Judicial Commission, at any time, when

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

there is no proceeding pending before it. This is as far as the constitution, appointments to, and removal of members from the Judicial Commission by the State Government is concerned. It is immediately apparent that the Judicial Commission is a statutory body, not wholly appointed at the discretion of the Government, for two members of it must be appointed from persons nominated by the Board in a list of seven given by it, and the expenses of the Judicial Commission are not borne and defrayed wholly by the State Government but only one-third of it and the remaining two-thirds by the Board. It is thus not a usual type of a statutory body appointed and employed by the State Government entirely at its discretion and of which the total expenses are borne by it. It is a Judicial body of which the functions are strictly confined to the provisions of the Act in regard to the management of the Gurdwaras as will presently appear next.

Section 45 enumerates the disabilities debarring a person from being elected as a member of the Board, and section 46 speaks of disabilities which debar a person from being co-opted to be a member of the Board. If any person having been elected 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 36 as the case may be, he shall cease to be a member thereof (sub-section (1) of section 52), and any person aggrieved by the finding of the Board mentioned in sub-section (1) of section 52 may, within a month of the date of his knowledge of such finding, appeal to the Judicial Commission for setting aside the said finding and the order of the Commission passed in this respect shall be final (sub-section (2) of section 52). So sub-sections (1) and (2) of section 52 make the Judicial Commission an appellate tribunal against the finding of the Board as to any disability suffered by an elected or co-opted member of the Board, which disability brings to an end his membership of the Board. The members of the Board are elected from various constituencies all over the area to which the Act applies (section 44), in so far as they are to be elected; others have either been named *ex-officio* members of the Board, or are co-opted by the elected and *ex-officio* members of the Board (sub-section (1) of section 43-A). So that the elected members come from all over the four parts of the 'existing State of Punjab' to the whole of which the Act applies. The consequence of that is that not only the authority,

power and jurisdiction of the Board extends, within of course the scope of the Act, to the whole of that territory, but so also does the authority, power and jurisdiction of the Judicial Commission. In exercise of its appellate power under sub-section (2) of section 52, the Judicial Commission controls the functioning and operation of the Board inasmuch as it may or may not agree with the Board whether a particular person is under a disability either under section 45 or under section 46 and has thus ceased to be a member of the Board. There is a committee of management for every Notified Sikh Gurdwara, and similar disabilities, as in sections 45 and 46, are to be found in sections 90 and 91 which debar a person to be a member of such a committee. Under sub-section (1) of section 95 the Board has been given the power to find whether any person has incurred any of the disabilities in section 90 or 91, and from such a finding of the Board an appeal lies to the Judicial Commission under sub-section (1) of this section. These are one set of provisions as to the ambit and scope of the judicial functioning, on appeal, of the Judicial Commission being as extensive as the functions of the Board itself having original authority to decide the question of disability having been suffered by a member of it or a member of a committee. Sub-section (1) of section 76 provides that the Judicial Commission "shall have jurisdiction unlimited as regards value throughout Punjab, and shall have no jurisdiction over any proceedings other than is expressly vested in it by this Act". So the jurisdiction of the Judicial Commission extends throughout the territory of what was the State of Punjab before reorganisation, or the 'existing State of Punjab' according to section 2(f) of the Reorganisation Act. This continues to be so upto today, no change either under section 72 or under section 69 of the Reorganisation Act having been made in its provisions. According to sub-section (2) of section 76 of the Act a decree or order of the Judicial Commission is executable or has to be given effect to by the District Court of the District in which the Gurdwara in connection with which the decree or order was passed is situate, or by the District Court to which the Judicial Commission directs that any decree or order shall be sent for this purpose, as if the decree or order had been a decree or order passed by such Court. So that the matter of executability or the giving effect to the decrees and orders of the Commission is not confined to District Court of a particular District but may be by any District Court to which direction in that behalf is given by the Judicial Commission. In this manner the Judicial Commission has jurisdiction in relation to District Courts of all the districts in the States of Punjab and Haryana and in the

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. *v.* Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

Union Territories of Chandigarh and Himachal Pradesh, in other words, in all the four parts coming into existence out of the 'existing State of Punjab' in consequence of its reorganisation under the Reorganisation Act. If a person is a *patit*, he is under a disqualification or disability under sections 45, 46, 90 and 91, and, according to section 84 of the Act, if it is necessary to decide for the purposes of the constitution of the Board or a committee, apparently under the provisions of the Act, whether a person has or has not become a *patit*, the question shall, on an application being made thereto for this purpose, be decided by the Commission. A decision on this matter again affects the operation and the functioning of the Board because a finding by the Commission that a person is or is not a *patit* will mean whether he is or is not to continue to be a member of the Board. In Part III, Chapter IX, deals with the subject of finances so far as Notified Sikh Gurdwaras are concerned. In this Chapter section 106 deals with the funds of the Gurdwaras and how the same may be spent. Sub-section (1) provides for defraying of expenses of management and personnel of the Gurdwaras and other charitable uses referred to therein, which is made first charge on the funds. After defraying those expenses required under sub-section (1), according to sub-section (2), if there is a surplus, a certain specified number of members of the committee of the Gurdwara concerned, by a resolution, with the sanction of the Board, may allocate part or whole of such surplus to a particular religious, educational or charitable purpose or any purpose which promotes social welfare. Then sub-section (3) of section 106 says that, leaving out sub-section (2), if there is a surplus after defraying expenses under sub-section (1) and the committee of the Gurdwara is not willing to devote such surplus to other purpose, the Board may apply to the Judicial Commission for an order allowing the Board to devote the whole or part of such surplus to a particular and specified religious, educational or other charitable purpose or any purpose which promotes social welfare. According to sub-section (4) of this section, the Commission, if satisfied that such an application by the Board is reasonable, has the power and jurisdiction to determine what portion of such surplus shall be retained as a reserve fund for the Gurdwara concerned and may direct the remainder of the surplus to be devoted according to the application made by the Board. It has further power subsequently to rescind or vary any such order. The Board is required to maintain regular accounts (section 114) and such accounts are to be audited once every year by an auditor appointed by the State Government (section 115). Within thirty days of the audit and examination of the

accounts of the Board, the auditor is enjoined to submit a report to the Board upon each account audited and examined and also to forward copies of his reports to the State Government and to the Judicial Commission (sub-section (1) of section 116). The Board has to consider the report according to section 117 of the Act and then within two months of such consideration, it is required to cause the report and abstract of each account to be published in two newspapers one of which must be published daily (sub-section (3) of section 116). If the Board fails to cause the report to be published in accordance with that sub-section, the Judicial Commission or the State Government may get it so published, and the expenses incurred in this behalf shall be paid by the Board, and shall be recoverable as if it were arrear of land revenue. So here the Board is under a statutory duty to publish the auditor's report, failing which it becomes the statutory duty of the Commission or the State Government at the same time, and the expenses for the performance of which duty are to be borne by the Board and are recoverable from it as an arrear of land revenue. This is a function required by the statute to be performed by the Board and when it fails to do so, it is a function which is required to be performed in the same manner either by the Judicial Commission or by the State Government, with liability of the Board to make payment for the expenses thus incurred. Every committee of a Notified Sikh Gurdwara has to submit each year to the Board its budget, and if the Board finds either that the expenditure is not authorised by the Act or that it is not in accordance with the scheme of administration settled for such Gurdwara under the Act, it has power to direct the committee of management to modify and alter the budget accordingly, but if the committee does not comply with the direction of the Board in this respect, the Board has been given the right to apply to the Judicial Commission to pass an order calling upon the committee to make such modification or alteration in the budget, and the Commission has been given power to make or pass any order as may be necessary in its opinion and which it considers just and proper. There is a direct control of the budgets of the managing committees of the Notified Sikh Gurdwaras by the Board and when the latter fails to obtain compliance of its directions so as to bring the budgetary provisions within the scope of the Act or the scheme of administration of a particular Gurdwara, there is the overriding power with the Judicial Commission to compel, through a judicial process, the committee concerned to obey the directions of the Board as accepted and to the extent accepted in the order of the Judicial Commission.

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. *v.* Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

Sub-section (1) of section 107 of the Act provides that every committee shall pay annually to the Board for the purpose of meeting the lawful expenses of the Board a contribution in money out of the income of the Gurdwara or Gurdwaras under its management, and, if after notice to pay the amount [sub-section (1) of section 124], the committee fails to do so, the Judicial Commission is enjoined, on an application by the Board in that behalf, to call upon the committee to show cause why it should not be ordered to pay the same [sub-section (2) of section 124]. So part of the existence, functioning and operation of the Board depends upon the finances available from the Notified Sikh Gurdwara Committees, which funds, if the committees will not pay on their own, they can be compelled to pay through the Judicial Commission. A scheme of administration of a Gurdwara may be settled on an agreement between the Board and the committee of a Notified Sikh Gurdwara [sub-section (1) of section 130], but if both fail to do so, on an application by the Board, after hearing the parties the Judicial Commission has been given jurisdiction to settle such a scheme, and according to sub-section (4) of this section the scheme may subsequently be set aside or resettled, as considered just and proper by the Judicial Commission. It is important to note that, according to sub-section (5) of section 130, "schemes framed under this section shall have force of law". Such law is made (a) in the beginning on an agreement between the Board and a committee of a Notified Sikh Gurdwara to settle a scheme for such a Gurdwara, or (b) in the alternative, where those two do not agree, on an application of the Board, by the Commission. So, that such legislative power in the Board, extensive as it is to all the Notified Sikh Gurdwaras and the committees of management of the same, may, in the event of disagreement between the Board and the committee of a Gurdwara, come to be exercised by the Judicial Commission. Here is thus an instance of a co-ordinate legislative power in so far as the Board and the Judicial Commission are concerned. A committee of a Notified Sikh Gurdwara may suspend or dismiss any office-holder but is not to dismiss a hereditary office-holder of a Sikh Gurdwara except on any one of the findings as enumerated in clauses (a) to (h) of section 134 of the Act. Procedure in regard to the dismissal of a hereditary office-holder or a minister of a Gurdwara is referred to in sub-sections (1) and (2) of section 135, and then sub-section (3) of this section says:—

"135 (3) Any hereditary office-holder who has been suspended or dismissed may, within three months of the date of the

order of suspension or dismissal, as the case may be, appeal either to the Board or to the Commission as he may elect; if he elects to appeal to the Board, the order of the Board shall be final, and if he elects to appeal to the Commission, a further appeal shall lie to the High Court from the order of the Commission, provided that such appeal shall be made within ninety days of the date of the order."

This sub-section of section 135 of the Act gives concurrent appellate jurisdiction to either the Board or the Judicial Commission against the order of suspension or dismissal. In other words, both the Board and the Judicial Commission are appellate authority in so far as a committee of a Notified Sikh Gurdwara making an order suspending or dismissing any hereditary office-holder is concerned. The election to appeal either to the Board or to the Commission lies with the hereditary office-holder. There is thus, as stated, concurrent appellate jurisdiction in the Board and the Judicial Commission under sub-section (3) of section 135. The Board has been given power to move the committee of a Notified Sikh Gurdwara to dismiss a hereditary office-holder or a minister of such a Gurdwara in the terms of the provisions of section 134 and if the committee does not, within one month of its being so moved, dismiss such an office-holder or minister, the Board has been given power to apply to the Judicial Commission to order removal of such an office-holder or minister, or if it finds that such a person ought to be dismissed, then it has the power to dismiss him. There is then section 142 of the Act which gives power and jurisdiction to the Judicial Commission to entertain an application against the Board, the executive committee of the Board or against any member..... of the Board..... or against any employee past or present of the Board.....in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of power or any alleged expenditure on a purpose not authorised by the Act, and on a finding in that respect it may, consistently with the provisions of the Act or of any other law or enactment in force for the time being, direct any specific act to be done or forbore for the purpose of remedying the same and may award damages or costs against the person responsible for the same, and may order the removal of any office-holder or member of the Board.....responsible for the same and may also disqualify any member of the Board, executive committee.....thus removed from such membership for a period not

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

exceeding five years from the date of such removal. This gives complete judicial control over the functioning of the Board to the judicial Commission not only in regard to its day-to-day functioning but also in regard to its continuance as a Board because power to disqualify members of the Board has been given to the Judicial Commission. Such powers can be exercised by the Judicial Commission not only in the final decision of the application, but, as held by my learned brother Narula, J., in *Balbir Singh v. The Sikh Gurdwaras Judicial Commission, Amritsar*, Civil Writ No. 2115 of 1966, decided on November 25, 1966, the Judicial Commission has also authority to pass interim orders in the nature of grant of injunction or appointment of receiver if such power is otherwise conferred on it. Section 142 of the Act does not prohibit the grant of such interim relief. Provisions of Order 39, rules 1 and 2, and Order 40, rule 1 of the Code of Civil Procedure are in no manner inconsistent with section 142 of the Act. On the contrary, those provisions are not only ancillary to section 142 but are necessary to be invoked in suitable cases for effectively exercising the jurisdiction vested in the Judicial Commission under that section. The Judicial Commission has jurisdiction, in suitable cases, to issue temporary injunctions or to make interim arrangements by appointment of a receiver on principles which are well established under the Code of Civil Procedure. This is the enumeration of the judicial functions of the Judicial Commission which cannot be divorced from the functioning and operation of the Board under the statute.

In Part I, Chapter III deals with the constitution of one or more tribunals for the purpose of deciding the claims made in accordance with the provisions of the Act [section 12(1)]. Unlike this provision in section 12(1), section 70 of the Act only refers to the appointment of 'the Judicial Commission', that is to say, there is only appointment of one Judicial Commission under the Act. So long as the Act stands as it is, it does not admit of the appointment of any other Judicial Commission under its provisions.

It has already been shown that removal of a member of the Judicial Commission can result under two provisions of the Act (a) under section 83 by the dissolution of the Judicial Commission, and (b) under section 79 by the State Government.

The consideration of the provisions of the Act, to which somewhat detailed reference has been made above, briefly comes to this—

- (1) The power and authority to administer the management of a Notified Sikh Gurdwara, whether situate in the State

of Punjab or in the State of Haryana or in the Union Territory of Chandigarh or in the transferred territories in the Union Territory of Himachal Pradesh, is statutorily vested in the committee of such a Notified Sikh Gurdwara, the Board, and the Judicial Commission (section 41).

- (2) Appointment of two out of the three members of the Judicial Commission can only be made, and if a vacancy in this respect occurs that can be filled only in the same manner, by the State Government out of a list of seven names nominated by the Board and removal of a name from that list can only be at the instance of the Board, but, if in regard to the bringing of the names on the list, the Board fails to do so within the time given in the statute, the State Government has been given power to complete such a list of qualified persons itself. This is the function of the Board. If it fails to perform it, it can be performed by the State Government. So that this function of an inter-State body corporate is to be performed by the State Government in the Act. How can then the expression 'State Government' in section 71 of the Act in this context be read to be either the State Government of Punjab or the State Government of Haryana or the Government of any one of the two Union Territories of Chandigarh and Himachal Pradesh.
- (3) The expenses of the Judicial Commission are not wholly borne by the State Government, but only to the extent of one-third, while the remaining two-thirds are the liability of the Board, which, if it does not discharge by the time provided in section 75, can be recovered from it as an arrear of land revenue. This is clearly provided in section 75 of the Act.
- (4) The State Government has the power to remove any member of the Commission under section 79 on grounds mentioned in clauses (i) to (iii), and clause (iv) has already been held invalid as violative of Article 14 of the Constitution.
- (5) There is only one Judicial Commission under the Act unlike the provision with regard to tribunals in section

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

12(1), as there can be more tribunals than one under that provision, and the jurisdiction of the Judicial Commission extended throughout the territory of what was the 'existing State of Punjab, before November 1, 1966, and continues to be so because no change or modification has been made in any provision of the Act either by any direction of the Central Government under section 72 or by any adaptation under section 89 of the Reorganisation Act. The Act does not envisage more commissions than one. Its provisions, as the same are at present, do not admit of appointment of four separate judicial Commissions in the four parts of the 'existing State of Punjab' under the Reorganisation Act.

- (6) On the date of the reorganisation and the coming into force of Act 31 of 1966 (the Reorganisation Act) there was only one Judicial Commission in the whole of the territory of the 'existing State of Punjab' and that one Commission has continued under the provisions of the Act after that. It is not denied that its office is located at Amritsar in consequence of notification under section 77 of the Act.
- (7) The Judicial Commission is an appellate tribunal against the findings of the Board that a person has incurred disability under section 45 or section 46 or section 90 or section 91 and thus ceased to be a member either of the Board or of a committee of a Notified Sikh Gurdwara, as the case may be. Further where it is necessary to decide for the purposes of the constitution of the Board whether a person has or has not become a *patit*, which is a disability under sections 45 and 46, the question, on an application being made to it for this purpose, is to be decided by the Judicial Commission. This power of the Judicial Commission directly affects the functioning and operation of the Board as a body corporate inasmuch as it may not accept its finding that a certain member of the Board is under a disability or it may do so and thus affect the membership of the Board.
- (8) Where a committee of a Notified Sikh Gurdwara is not willing to devote surplus income for the purpose suggested by the Board, the latter may obtain an order from the

Accession No. 52116

Date... 19-7-69

v. J
C. 2/1

Judicial Commission against such committee, which brings in the Judicial Commission as regards the functioning and operation of the Board, as where the Board fails to obtain the willingness of a committee of a Notified Sikh Gurdwara to the utilisation of surplus income it may approach the Judicial Commission to compel compliance by the committee. In the same way, according to section 116, the Judicial Commission is to receive a copy of the audit report of the audit of accounts of the Board just the same as the State Government, and, if the Board will not publish the same as required by the statute, the Commission has co-extensive power with the State Government to get the same published. The publication of the audit report is the function of the Board, and, if it fails to do so, the power is given to the Judicial Commission to perform the same function. It makes no difference that the same power has also been given to the State Government. Further, the Board has control over the budgets of the committees of the Notified Sikh Gurdwaras and if the budgets provide for expenditure not authorised by the Act or in accordance with a scheme of administration settled under the provisions of the Act, it is the function of the Board to ask the committee concerned to modify its budget by removing such defects, but if the committee does not comply, the function of the Board is then performed by the Judicial Commission, on an application by the Board, in obviously at the instance and on the application of the Board, where the Board while exercising its functions under the statute fails to obtain compliance with the same. In such a situation the Board approaches the Judicial Commission and obtains compliance with the performance of its duties and functions so that it may continue to operate in the terms of the Statute.

- (9) There is co-ordinate legislative power to frame schemes of management having the force of law with the Board and the Judicial Commission according to section 130 of

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

the Act, so that in this respect where the Board cannot perform the functions because the committee of the Notified Sikh Gurdwara concerned is not prepared to agree with it for a scheme of management, the duty is then performed by the Judicial Commission by framing a scheme of management.

- (10) There is concurrent appellate jurisdiction with the Board and the Judicial Commission under section 135 of the Act, so that in exercise of its appellate power, depending upon who is approached, the same function may be performed either by the Board or by the Judicial Commission.
- (11) And lastly, the Judicial Commission has complete judicial control over the day-to-day functioning and the membership of the Board under section 142 of the Act.

The argument of the learned counsel for the petitioners is that there was and there still continues to be one Judicial Commission under the provisions of the Act even in consequence of the reorganisation of the 'existing State of Punjab' into four parts, and as the Board is an inter-State body corporate with regard to which no legislative power is with either the State of Punjab or the State of Haryana or any one of the two Union Territories of Chandigarh and Himachal Pradesh, so wherever as to the functioning of the Board and the Judicial Commission the expression 'State Government' appears in any section of the Act, that expression must be read as having been substituted by the expression 'Central Government', for, the learned counsel presses, it cannot be either the State Government of Punjab or the State Government of Haryana or the Central Government as representing any one of the two Union Territories of Chandigarh and Himachal Pradesh. The learned counsel points out that there can be no interference with the existing Judicial Commission for it is one Commission for the whole territory to which the Act continues to extend. As the Act does not envisage more than one Judicial Commission there cannot be four Judicial Commissions, and, if so, there cannot be three of the four reorganised parts of the 'existing State of Punjab' without the Judicial Commission to attend such of the functions of the Board which the Board itself cannot carry out, and for the carrying out of which it has to

approach the Judicial Commission to obtain orders from it. This broadly is the argument urged by the learned counsel on the side of the petitioners.

The learned Attorney-General on behalf of the respondents has referred to the provisions of the Reorganisation Act and has contended that it is an Act which deals with all the problems connected with the reorganisation of the 'existing State of Punjab' completely and so solution to every problem or question is to be found within the scope of its provisions. He has referred to *W. W. Joshi v. State of Bombay* (4), in which, with reference to the States Reorganisation Act of 1956, the learned Judges observed that "looking to the aim, scope and the object of the Act, the intention of Parliament clearly appears to be to provide for a solution of all problems arising out of the States Reorganisation. Effect can only be given to this intention of Parliament by liberally construing its provisions so far as the language used should permit". The learned Attorney-General has, therefore, urged that as solution to all problems has to be found within the four corners of the provisions of the Reorganisation Act, at least one thing is clear according to him, that wherever the expression 'State Government' appears in any provision of the Act it cannot be read as 'Central Government'. He has not denied that the Board being an inter-State body corporate, the power to legislate in regard to such a body is with Parliament, but his position is that the Judicial Commission is not such a body. He has pointed out that it has not been the argument on the side of the petitioners that there is an omission or a lacuna in the Reorganisation Act in not having made provision with regard to the Judicial Commission under the Act. Thus, the Reorganisation Act should be so interpreted that it has dealt with even the problem connected with the Judicial Commission under the Act within the scope of its provisions. Human beings are fallible and even the best draftsman may make an omission and that too quite unwittingly and genuinely. So his contention has been (a) that the provisions of section 72 of the Reorganisation Act are limited and confined strictly to the Board as an inter-State body corporate having nothing to do with the Judicial Commission, so that the Central Government does not come in, in any respect, so far as the Judicial Commission is concerned, (b) that thus wherever the expression 'State Government' appears in the Act in reference to or in connection

(4) A.I.R. 1959 Bom. 363.

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. *v.* Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

with the Judicial Commission, it is not the 'Central Government' but the present Punjab State Government, (c) that all the authorities in the present State of Punjab have remained intact, though the other three reorganised parts (State of Haryana and the two Union Territories of Chandigarh and Himachal Pradesh) can make their own laws in the scheme of the Reorganisation Act (section 91) to provide for all sorts of authorities and bodies, even including a Judicial Commission, but he has stressed that the scheme of the Reorganisation Act is that the bodies functioning in the present State of Punjab continue as before the date of reorganisation and in this respect, so far as the Judicial Commission is concerned, the learned Attorney-General has pointed out (i) that the Judicial Commission has existed in the State of Punjab at the commencement of the Reorganisation Act, (ii) that since then its members have been drawing pay from the present State of Punjab, and (iii) it has been exercising jurisdiction within the present State of Punjab, (d) that under section 72 of the Reorganisation Act the power of the Central Government is to give direction with regard to the functioning of the Board and the law applicable to the Board, it cannot issue notifications, it cannot make appointments, and it cannot receive the list of names for appointment to the Judicial Commission from the Board, because if it did, it would thus be exercising functions extra-territorially, of which the result is that in the Act, in no provision, can the expression 'Central Government' be substituted for the expression 'State Government', and further that until the Central Government issues any directions under sub-section (2) of section 72 of the Reorganisation Act, there is no escape from this, that the Government is to give directions with regard to the functioning of the present Punjab State Government, (e) that, in any case, the power with the Central Government is additional to the power with the State Government in the Act which has reference to the present Punjab State Government, and (f) that in view of the provisions of section 83 of the Reorganisation Act the members of the Judicial Commission continue to hold posts in the present State of Punjab and continue to function therein because the Judicial Commission has been located, on the date of the coming into force of the Reorganisation Act, at Amritsar in the present Punjab State, and thus normally its functions have been limited and cut down to the reduced area of that State alone.

In the Reorganisation Act Part IX, sections 81 to 85, concerns the 'Provisions as to Services'. Section 83 appears in this part and

reads—

“83. Provisions as to continuance of officers in the same posts.—Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State shall be deemed, on and from that day, to have ment of, or other appropriate authority in, that successor State:

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office.”

It is this section upon which the learned Attorney-General has placed reliance to urge that the members of the Judicial Commission hold and discharge the duties of their posts or offices as members of the Judicial Commission in the successor State of Punjab *qua* the ‘existing State of Punjab’, and thus the Commission is within the authority and jurisdiction of the new State of Punjab. However, it has already been clearly shown that the jurisdiction of the Judicial Commission extends not only to the new State of Punjab, but also to the State of Haryana, the Union Territory of Chandigarh, and the transferred territory in the Union Territory of Himachal Pradesh. The whole of the Act applies to those parts and, as there is to be only one Judicial Commission under the Act, its authority, power and jurisdiction extends to all those four parts. Section 83 of the Reorganisation Act envisages a person holding or discharging the duties of any post or office in connection with the affairs of the ‘existing State of Punjab’ and, on division of the ‘existing State of Punjab’ into four parts in consequence of reorganisation under the Reorganisation Act, the falling of that post or office in one of the four successor States. It thus provides that such a person shall continue to hold such a post or office in the successor State. It is in terms confined to offices which on division of the ‘existing State of Punjab’ fell within any one of the successor States and thus the

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

jurisdiction or power of the holder of the office or post comes to be limited within the territory of the successor State. This section cannot apply to a judicial like the Commission under the Act which has jurisdiction over the territory of the four parts of the reorganised 'existing State of Punjab'. Undoubtedly before November 1, 1966, the Judicial Commission was having jurisdiction and discharging its duties in the whole of the 'existing State of Punjab' and, even if it is conceded that it was thus having jurisdiction and discharging its duties as Judicial Commission 'in connection with the affairs of the existing State of Punjab' as it does not cease to have jurisdiction over any one of the successor States but has jurisdiction over the territory of all the four successor States, it cannot be taken to be now having jurisdiction and discharging its duties in connection with the affairs of the successor State of Punjab alone. The fact is that under the provisions of the Act it is having jurisdiction and discharging its duties in connection with the affairs of all the four successor States. If the argument of the learned Attorney-General was to prevail that the Judicial Commission has only jurisdiction and power in the successor State of Punjab, then there is no Judicial Commission in the remaining three successor States and none can be appointed as so far no adaptation or modification of the Act has been made. The result of this is patent that the functioning of the Board, on this view, practically comes to a stop in the other three successor States, and is limited to the successor State of Punjab alone. It is obvious that section 83 of the Reorganisation Act has no application to the Judicial Commission under the Act and Parliament did not intend such a consequence as immediately flows from the argument of the learned Attorney-General. Section 83, therefore, does not advance the argument on the side of the respondents. The mere fact that the Judicial Commissions had its existing office in the area that is now the State of Punjab, that does not restrict its jurisdiction, for its jurisdiction arises from the provisions in the Act, which apply it to the whole area of the successor States. It has already been shown that the expenses of the Commission are defrayed one-third by the State Government and the remaining two-thirds by the Board. If after the reorganisation of the 'existing State of Punjab' factually the members of the Board have been drawing their emoluments from the Government of State of Punjab, respondent 2, that will not affect the status and jurisdiction of the Judicial Commission. Even so, the

two-thirds of the expenses are the liability of the Board and with regard to the remaining one-third, the Punjab State Government, respondent 2, can take necessary steps to recover whatever share the other successor States may have to contribute in this respect. Besides, nothing has compelled the Punjab State Government, respondent 2, to make payment to the Commission, and, if it had taken objection to such payment, then the proper authority and legislature having the power to adapt, amend or alter the Act would have proceeded to provide for such a contingency. If there are to be four Judicial Commissions, each in each successor State, with regard to the functioning of one inter-State body corporate, the Board, the impediments to the functioning of the Board can readily be seen. That apart, having regard to the provisions of the Act, as they are at present, the Board cannot be compelled to contribute to two-thirds of the expenses of such four Judicial Commissions. There is nothing in the Reorganisation Act which supports any such consequence. The learned Attorney-General has contended, on reference to *W. W. Joshi's case*, that the Reorganisation Act should be liberally construed, but to narrow down the jurisdiction and authority of the Judicial Commission to the Punjab State, one of the four successor States on reorganisation of the 'existing State of Punjab', would not be giving liberal interpretation to the provisions of the Reorganisation Act but would, instead, be narrowing it down in a somewhat extreme manner. So section 83 cannot be of assistance to support the argument on the side of the respondents. It is not necessary in these petitions for this Court to say whether in any provisions of the Act, and particularly the provisions relating to the constitution, powers and jurisdiction of the Judicial Commission, 'Central Government' can be read for 'State Government' as the latter expression appears in the Act. So, the argument of the learned Attorney-General in this respect that that cannot be done is to my mind not quite in point. What this Court has to decide is whether the Punjab State Government, one of the four successor States to the 'existing State of Punjab', alone can act to interfere with the constitution of the Judicial Commission and its functioning. So that it is not for this Court to decide whether the substitution as referred to by the learned Attorney-General can or cannot be made, nor is it necessary for this Court to exercise its power to construe the provisions of the Act under section 90 of the Reorganisation Act in this manner. The narrow question, as I have already said, for decision is whether the Punjab State Government, respondent 2, has or has not power and authority to interfere and make a change in

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. *v.* Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehtar Singh, C.J.)

the constitution of the Judicial Commission? Another aspect of the argument of the learned Attorney-General, which is another shape to the argument just now considered, has been that under section 72 of the Reorganisation Act, the Central Government can issue only certain directions with regard to the functioning and operation of the Board and under section 89 of the same Act it has certain power to make adaptation in the Act, but it cannot issue any notification or make any appointment under the Act. This argument means the same thing as the earlier argument that the expression 'Central Government' cannot be substituted for the expression 'State Government' in the Act in so far as the provisions of the Act concern the Judicial Commission. This, however, is a problem which may be tackled by the Central Government when exercising its powers under section 72 or under section 89 of the Reorganisation Act, but, as I have already said, this matter does not arise for the consideration of this Court. So the argument of the learned Attorney-General that respondent 2, the State Government of Punjab, has the power to remove a member of the Judicial Commission under section 79(iv) of the Act and to appoint a new member under section 70 of the Act cannot prevail. It may be a case of omission, in which case the omission can either be supplied by some amendment of the Reorganisation Act or perhaps it can be met under the provisions of section 96 of this Act which says—"If any difficulty arises in giving effect to the provisions, of this Act, the President may, by order, do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty." It may be that it is not a case of omission and the situation can be effectively dealt with by exercise of the powers by the Central Government under section 72 and also under section 89 of the Reorganisation Act. The question to be decided here is not how this problem is to be solved, but whether the Punjab State Government has the power and authority to remove a member from and to appoint a new to the Judicial Commissioner? No doubt in section 79 of the Act, the State Government has been given power to remove a member of the Commission, and under section 70 of it, it can appoint a member to it, but one of the four successor State Governments, in this case the Government of the State of Punjab, cannot be accepted to exercise such power in relation to a Judicial Commission which has jurisdiction under the Act not only in that State but also in the remaining three successor States. If this was permitted, the functioning and operation of the Board would be impaired and may come to a stop by this

act of respondent 2, the State Government of Punjab, also in the territory under the remaining three successor States, which it has not the power to do under any provision of the Reorganisation Act. More than that, it has not the power to do any act in the shape of removing a member of the Judicial Commission or appointing a new member to the Commission so as to lead to interference with the functioning and operation of the Board, an inter-State body corporate. It has already been shown sufficiently and clearly that the jurisdiction and functioning of the Judicial Commission being so intermixed and intermingled with the functioning and operation of the Board that the same cannot be separated, for (a) there are cases in which, where the Board is obstructed in its functioning, the Judicial Commission, on its application, has jurisdiction and authority to carry out such functions, (b) there are cases in which the Judicial Commission has co-ordinate power of legislative nature, in the shape of framing schemes of administration and management for Gurdwaras, with the Board, in other words, where the Board in such a case is unable to perform its functions, it is the Judicial Commission which does so, and (c) in one case at least the Judicial Commission is an appellate tribunal of a co-ordinate and concurrent jurisdiction with the Board, so that a function which can be performed by the Board in its appellate jurisdiction may come to be performed by the Judicial Commission, depending upon whether the approach is made to one or the other. So the Judicial Commission is a judicial body which directly and substantially controls the functioning and operation of the Board and, as I have already said, its jurisdiction and functioning cannot be divorced from the operation and functioning of the Board. Any interference with the constitution and powers of the Judicial Commission immediately spells interference and obstruction to the functioning and operation of the Board, an inter-State body corporate, with the functioning and operation of which the Punjab State Government, respondent 2, has no power or authority to interfere. On this consideration it is obvious that the Judicial Commission under the Act is not now, in consequence of the provisions of the Reorganisation Act, within the power and authority of respondent 2, the State Government of Punjab.

Same conclusion is available and is reached on a somewhat different consideration. It is settled that entries in the Legislative Lists in the Seventh Schedule to the Constitution are to be so liberally and broadly construed that they are to include within their

Shiromani Gurdwaras Parbandhak Committee, Amritsar, etc. v. Lachhman Singh Gill, Chief Minister, Punjab, etc. (Mehar Singh, C.J.)

ambit and scope all ancillary and necessary matters, the inclusion of which renders the legislation under a particular entry the more effective, useful and purposeful. The entries are not to be construed strictly so as to limit their ambit and scope. Consequently entry 44 in List I--Union List--, which obviously covers legislation in regard to an inter-State body corporate such as the Board, also has within its ambit and scope legislation necessary for the operation and functioning of such an inter-State body corporate, in the present case as to the Judicial Commission, which very largely and substantially not only controls the operation and functioning of the Board but may at any moment have to perform the functions of the Board, where the Board cannot do so. It has already been sufficiently clearly shown that the jurisdiction and functioning of the Judicial Commission is so integral to the functioning and operation of the Board that in the terms of the Act no separation is practical. So in this approach the provisions of the Act relating to the Judicial Commission are as much within the scope of entry 44 in List I--Union List--as its provisions relating to the Board. On this view not one of the successor States, which of course includes the State of Punjab, respondent 2, can interfere with the constitution of the Judicial Commission.

The consequence of the considerations as above is that Punjab State Government, respondent 2, has no power or authority to remove a member of the Judicial Commission under section 79 of the Act, nor has it a power to appoint a new member to it. It follows that it has no authority and power to accept the resignation of Mr. Bakhat Singh, one of the members of the Judicial Commission. It is true that in the petitions no prayer is made in regard to Mr. Bakhat Singh, but it has been necessary to state so because the Judicial Commission has to function to enable the Board to operate and function, in the wake of the provisions of the Reorganisation Act, under the provisions of the Act. So the impugned notification in Civil Writ No. 2847 of 1967 removing petitioner 2, Mr. Sajjan Singh, Giani, from the membership of the Judicial Commission, and the impugned notification in Civil Writ No. 2899 of 1967, appointing Mr. Sardul Singh, respondent 4, as member of the Judicial Commission, are *ultra vires* and invalid.

In the result, on conclusions as above, Mr. Sajjan Singh Giani, petitioner 2, continues to be the member as also the president of

the Judicial Commission, and Mr. Sardul Singh, respondent 4, has not become a member of the Judicial Commission. As already pointed out, for the proper functioning of the Judicial Commission and it is stated merely as a matter of clarity, that what has been the conclusion in these petitions also has effect on the tenure of Mr. Bakhat Singh, the third member of the Judicial Commission in the same manner as it has on the tenure of Mr. Sajjan Singh Giani, petitioner 2. So the two petitioners are accepted and the two impugned notifications are quashed. The State Government of Punjab, respondent 2, shall bear the costs of the two petitioners in Civil Writ No. 2847 of 1967, and of the petitioner in Civil Writ No. 2899 of 1967, in either the counsel's fee being Rs. 250.

D. K. MAHAJAN, J.—I agree.

R. S. NARULA, J.—I also agree.

B. R. T.

FULL BENCH

*Before Mehar Singh, C.J., S. B. Kapoor, Harbans Singh, D. K. Mahajan and
and J. S. Bedi, JJ.*

SATYA PAL DANG, MEMBER, PUNJAB LEGISLATIVE ASSEMBLY
AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1226 of 1968

Civil Writ No. 1227 of 1968.

May 10, 1968

*Constitution of India (1950)—Articles 173, 174, 180, 189, 199, 208, 209, 212 and
213—Punjab Appropriation Act (9 of 1968) and Punjab Appropriation (No. 2)
Act (10 of 1968)—Whether ultra vires the Constitution—Punjab Legislature*