

decided before section 21-A of the Punjab Pre-emption Act was enacted, it was held that when the strangers sold their shares to the other vendees, namely the proprietors, the pre-emptor's right could be defeated. I find myself in complete agreement with the reasoning of Din Mohammad and Tek Chand, JJ., in that case and am of the view that the decision of the learned Chief Justice was correct."

(38) It is thus apparent that the view propounded by the learned Single Judge in the case before us has the support of the high authority and speaking with respect, I have no hesitation in endorsing the view expressed by S. R. Das, C. J., and the Judges of the Letters Patent Bench in *Tej Ram's case* (1) and (2). In fact, the construction put by them on section 21-A of the Punjab Pre-emption Act is in consonance with the object with which this provision was introduced by the Amending Act 1 of 1944. By this amendment as has also been observed earlier, the Legislature clearly intended to recognise no voluntary improvement in the status of a vendee after the institution of the suit, but only those resulting from inheritance or succession. Apart from this, the view taken by me is in consonance with the rules of equity and if it is accepted as the correct rule of law, it would prevent genuine claims being rendered infructuous.

(39) I would, accordingly, answer the question of law stated in the opening part of the judgment in the negative, affirm the judgment and decree of the learned Single Judge and dismiss the appeal with costs.

HARBANS SINGH, C.J.—I agree.

P. C. JAIN, J.—I also agree.

K. S. K.

FULL BENCH

Before Gurdev Singh, R. S. Narula and Bal Raj Tuli, JJ.

DAYANAND ANGLO-VEDIC COLLEGE MANAGING
COMMITTEE,—*Petitioner.*

versus

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

Civil Writ No. 2058 of 1971.

August 12, 1971.

Guru Nanak University Act (XXI of 1969)—Section 5(3)—Whether void for lack of territorial nexus—Punjab University located in Chand-

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Tuli, J.)

garh—Disaffiliation of colleges situated in Punjab from the University—Affiliation of such colleges to Guru Nanak University under section 5(3)—Whether invalid—Punjab Re-organisation Act (XXXI of 1966)—Section 72—Law in respect of Panjab University—Parliament—Whether competent to make—Constitution of India (1950)—Articles 245, 246 and Schedule Seventh List II, Entry 11—Whether deemed to be amended by section 72, Punjab Re-organisation Act with regard to Panjab University—Parliament's power to amend Constitution under Article 4(1), second part—Extent of—Constituent power of Parliament under Article 4—Whether as wide as under Article 368.

Held, that every State can make laws with regard to Education and Universities within its State and can control and regulate their functions and operations therein irrespective of the location of the seat of the University. What has to be seen is that the subject-matter of the legislation falls within the jurisdiction of the State Legislation and if that be so, it can affect all persons and institutions within the State to which it may be applied. The mere fact that the Panjab University is located at Chandigarh, which is outside the territory of the Punjab State, does not debar the Punjab State Legislature from enacting a law affecting the functions and operations of the Panjab University within its own territory. Hence the provisions in section 5(3) of the Guru Nanak University, Amritsar, Act, disaffiliating certain colleges situated in some districts of the State of Punjab and affiliating them to the Guru Nanak University, is constitutionally valid and section 5(3) of the said Act is not void for lack of territorial nexus.

(Para 4)

Held, that the word 'law' occurring in expression "other provision made by law in respect of the said body corporate" in section 72 of the Punjab Re-organisation Act means the law made by competent Legislature and cannot be confined to a law made by Parliament. The interpretation of section 72 is not to be confined only to the Act but to all such bodies corporate which were intra-State prior to the appointed day and because of the re-organisation of the erstwhile State of Punjab became inter-State bodies corporate on and after the appointed day. The first part of subsection (1) of section 72 clearly points out that the Parliament was making the provision in section 72 with regard to the bodies corporate which had been constituted under a Central Act, State Act or Provincial Act and that is why the legislative authority for making a law in respect of these bodies corporate was not specified. It may be for the reason that with regard to the bodies corporate constituted under a Central Act, the Parliament was the appropriate Legislature to make the law while with regard to the Corporations constituted under any State Act or a Provincial Act, the State Legislature was to be the appropriate Legislature. Education including Universities is a State subject as per entry 11 in List II of the Seventh Schedule to the Constitution and the Panjab University was incorporated under a Punjab Act. Till the re-organisation of the

erstwhile State of Punjab, it continued to function according to the provisions of the said Act. It cannot be imagined that with regard to all inter-State bodies corporate which were constituted under any State or Provincial Act, the jurisdiction to make any other provision by law was taken over to the Parliament itself. These bodies corporate were and are to function and operate for the people of a particular State and have to cater to their needs. Their needs are expressed by their elected representatives and, therefore, it cannot be assumed that the Parliament wanted to deprive the successor States of an important field of their legislation with regard to education which is absolutely necessary for the development and progress of any State. Hence it is the Punjab Legislature which is competent to make law in respect of Panjab University and not the Parliament. (Para 4)

Held, that section 72, Punjab Re-organisation Act does not effectuate an amendment of Articles 245 and 246 and entry 11 in List II of Seventh Schedule to the Constitution with regard to the Panjab University. It is not only the Punjab University that is governed by section 72 of the Punjab Re-organisation Act, but many other bodies corporate constituted under any Central, State or Provincial Act, which were intra-State in operation before the appointed day and became inter-State bodies corporate because of the re-organisation. (Para 6).

Held (per Narula, J.),—that the extent to which the Parliament is authorised by the second part of Article 4(1) of the Constitution to amend the Constitution is as under:—

- (i) The amendments which can be made to the various provisions of the Constitution (other than those contained in Part III) in the course of enacting a Re-organisation Act under Article 2 or 3 of the Constitution by virtue of the power vested in the Parliament to make provisions which are “supplemental, incidental and consequential” to the law of re-organisation must be within the scope, scheme and framework of the Constitution and not contrary thereto;
- (ii) only such provisions can be made in exercise of the above-mentioned power as are essential to the effective administration of the State or States to be created by the new law and as may be necessary to give effect to the other provisions of the Re-organisation Act;
- (iii) the amendments to the Constitution which can be made in exercise of the above-mentioned power are not restricted to the amendment to the First Schedule and the Fourth Schedule to the Constitution, but are nevertheless to be germane to the question of re-organisation of the State or States with which the enactment deals;
- (iv) only such amendments of any part of the Constitution (other than the First and the Fourth Schedules) can be made by way

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Tuli, J.)

of "supplemental, incidental and consequential" provisions which are—

- (a) necessary for the purpose of tiding over some temporary difficulty; or
- (b) necessary to remove some unsurmountable hurdle which would not allow the desired re-organisation of the State to take place effectively unless such amendments are made; or
- (c) necessary to ensure a smooth continuity of the stream of life law and order in the successor States. Such amendments must be those which are deemed by the Parliament in its wisdom to be necessary to give effect to the provisions of the relevant law of re-organisation. The constituent power of the Parliament under Article 4 is, from this point of view, not as wide as the power vested in it under Article 368.

(Para 19).

PETITION under Articles 226/227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the Notification issued by the Punjab Government dated 16th March, 1970, by declaring unconstitutional and ultra vires the provisions of the Guru Nanak University, Act and declaring the provisions of Section 5 of the aforesaid Act as ultra vires the Punjab Reorganisation Act, 1966.

J. N. KAUSHAL, SENIOR ADVOCATE WITH M. R. AGNIHOTRI, ADVOCATE, for the petitioners.

H. L. SIBAL, ADVOCATE-GENERAL, PUNJAB, WITH M. R. SHARMA SENIOR DEPUTY ADVOCATE-GENERAL, PUNJAB AND S. S. KANG, DEPUTY ADVOCATE-GENERAL, PUNJAB for the respondent No. 1.

M. K. NAMBIAR, S. VENKITESWARAN, AJIT SINGH SARHADI, N. S. BHATIA, SURJIT SINGH, D. S. NEHRA, AND S. S. MAHAJAN, ADVOCATES, for the respondents.

JUDGMENT.

B. R. TULI, J.—The Panjab University was incorporated under the East Punjab University Act, 7 of 1947 (hereinafter referred to as the Act). This Act replaced the East Punjab University Ordinance, 1947. The seat of the University was stated to be Simla or such other place as may be determined by the Government. To begin with, the University worked from Solan and with the establishment of Chandigarh, its head-quarters were shifted to that place. An amendment was made in section 3(b) of the Act so as to provide that "the seat of the University shall be at Chandigarh". The necessity to establish

this University arose because the Punjab University at Lahore became a university of a foreign country on the partition of the country as it fell within Pakistan and could not have any jurisdiction over the colleges situated in India. Section 26 of the Act gave the list of colleges which were affiliated to it under the Act. This list shows that various colleges situate in Delhi, East Punjab and East Punjab States were affiliated to this University because they were previously affiliated to the Punjab University at Lahore. By the Punjab University Amendment Act, 1960, section 26 was substituted by the following:—

“The colleges affiliated to the University of the Punjab, Lahore, on or before the 27th September, 1947, and located in India, shall be deemed to be affiliated to the University and shall be subject to all the provisions of this Act.”

Section 27 of the Act authorises the University to accord affiliation to other colleges. Section 30 provides for disaffiliation of colleges and section 39 provides—

“The Government may by notification define the territorial limits within which, and specify the colleges in respect of which, any powers conferred by this Act shall be exercised.”

It has been stated on behalf of the petitioner and the Panjab University that the Government never issued any notification defining the territorial limits within which the University was to function or exercise its powers with the result that the power of the University only extends to the colleges affiliated with it from time to time. There are 14 colleges in the districts of Gurdaspur, Amritsar, Jullundur and Kapurthala, managed and run by the Dayanand Anglo Vedic College Managing Committee, and all these colleges were affiliated to the Panjab University and were disaffiliated by virtue of section 5(3) of the Guru Nanak University, Amritsar, Act, 1969, and the notification issued thereunder with effect from June 30, 1970. These 14 colleges filed writ petitions in the Supreme Court of India challenging the constitutional validity of sections 4, 4(2), 4(3) and 5 of the said Act as being violative of Article 14, 19(1)(c) and (f), 26, 29(1) and 30(1) of the Constitution of India. A prayer was also made to quash the notification dated March 16, 1970 issued by the Governor of Punjab under sub-sections (1) and (3) of section 5 of the Guru Nanak University, Amritsar, Act, specifying “the districts of Amritsar, Gurdaspur, Jullundur and Kapurthala in the State of Punjab as the area in

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Tuli, J.)

which the Guru Nanak University, Amritsar, shall exercise its power and discharge its duties" and notified "the 30th day of June, 1970, as the date for the purposes of sub-section (1) in respect of the educational institutions situated within the limits of the aforesaid area." Their Lordships came to the conclusion that the various provisions of the Guru Nanak University Act and the impugned notification did not involve the contravention of any fundamental rights of the petitioner-colleges and, therefore, held them to be valid. The petitioners had also challenged the legislative competency of the Punjab Legislature to make a provision in section 5(3) of the Guru Nanak University Act, for the disaffiliation of the colleges already affiliated to the Panjab University but their Lordships did not determine that question as it did not relate to the fundamental rights of the petitioners before them. The result is that the petitioner-society has challenged section 5(3) of the Guru Nanak University, Amritsar, Act, and the notification dated March 16, 1970, referred to above, in this petition on various grounds relating to the legislative competence of the Punjab Legislature to pass any law for the disaffiliation of any colleges which were formerly affiliated to the Punjab University.

(2) The petition has been contested by the State of Punjab and the Guru Nanak University and has been supported by the Panjab University. The Union of India, which has been made a respondent to the petition, has not cared to put in either a return or appearance at the hearing.

(3) The learned counsel-for the petitioner has mainly argued that section 72 of the Punjab Reorganisation Act, 1966, bars the jurisdiction of the Punjab Legislature to pass any law in respect of the Panjab University and, therefore, section 5(3) of the Guru Nanak University, Amritsar, Act, in so far as it provides for the disaffiliation of the colleges situate in the districts of Gurdaspur, Amritsar, Jullundur and Kapurthala, from the Panjab University, is *ultra vires* the Constitution. His arguments can be summarised under three heads :—

- (1) Section 72 of the Punjab Re-organisation Act effectuates an amendment of Articles 245 and 246 and Entry 11 in List II of the Seventh Schedule to the Constitution with regard to the Panjab Univesrity;

- (2) On a fair construction of section 72 of the Punjab Re-organisation Act, Parliament alone has the power to make the law in respect of the Panjab University;
- (3) (a) Section 5(3) of the Guru Nanak University, Amritsar, Act, is not a law in respect of the Panjab University;
- (b) if it is such a law, it is void for lack of territorial nexus.
- I shall first deal with point No. 2 as the decision on this point shall make the decision on point No. 1 very easy.

- (4) Section 72 of the Punjab Re-organisation Act, runs as under:—

“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 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).

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Tuli, J.)

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

This section appears in Part VII of the Punjab Re-organisation Act which makes provisions with regard to certain corporations. Section 67 relates to the State Electricity Board and the State Warehousing Corporation with regard to which the provision is that they would continue to function, on and from the appointed day, in those areas in respect of which they were functioning immediately before that day subject to the provisions of the section and such directions as may from time to time be issued by the Central Government. The State Government were given one year's time to establish their own Electricity Boards and Warehousing Corporations and it was provided that these two Corporations would be deemed to be dissolved on the first day of November, 1967. Section 69 made a provision with regard to the Punjab State Financial Corporation. The Corporation was to be reorganised, in the manner stated in the section, into the Financial Corporations set up in the successor States. Section 70 related to Multi-Unit Co-operative Societies and added section 5-D to the Multi-Unit Co-operative Societies Act, 1942, in order to enact transitional provisions relating to certain Multi-Unit Co-operative Societies which were formerly working in the State of Punjab and were necessarily to be split up after the re-organisation of that State amongst the co-operative societies of the successor States. Section 71 related to co-operative banks and section 73 made provision for certain State-owned Corporations. Section 77 made provision of continuance of facilities in certain State institutions mentioned in Schedule Sixteen to the Punjab Re-organisation Act. It is thus evident that section 72 was enacted to make general provisions for such bodies corporate for which no provision had been made in other parts of the Act and the Panjab University was stated to be a body corporate of that kind. As I have said above, this University had power or jurisdiction only over certain colleges which were affiliated to it as no area of its operations had been notified under section 39 of the Act. On the appointed day and immediately before that, various colleges were affiliated to that University which were situate in the

successor States of Punjab and Haryana, Union Territory of Chandigarh and the Union Territory of Himachal Pradesh, to which certain areas of the Punjab had been transferred. It was, therefore, provided in section 72 that the Panjab University was to continue to function and operate in those areas in respect of which it was functioning and operating immediately before the appointed day in order not to deprive the successor States of the educational facilities immediately on the re-organisation of the erstwhile State of Punjab. The continuity of the Panjab University was desirable in the interest of the successor States but the Panjab University was to serve those successor States only till they made any other provision for appropriate education in their own territories under Entry 11 of List II in the Seventh Schedule to the Constitution. Till any successor State took action by law in this behalf, the Panjab University was to continue its functions and operations subject to the directions issued by the Central Government. The power of the Central Government to issue directions was for a limited period, that is, till other provision was made by law in respect of the Panjab University. If the successor States desired the Panjab University to continue as before in their territories, there was no necessity for them to make any provision by enacting a law on the subject but in order to avoid conflict amongst the successor States over the functioning of the Panjab University, the power to issue directions with regard to the said University was rightly given to the Central Government, so that the University should continue to function and operate fairly and justly in the areas in which it was operating and functioning before the appointed day. In my view if it was intended that other provision by law was also to be made by the Central Government, the Parliament would have clearly stated so in section 72 instead of saying "until other provision is made by law in respect of the said body corporate." For the issuance of the directions, the authority is expressly mentioned as the Central Government but the Parliament has not been mentioned as the Legislature to enact the law making other provision. While interpreting section 72, we have not to confine ourselves only to the Act but to all such bodies corporate which were *intra* State prior to the appointed day and because of the re-organisation of the erstwhile State of Punjab became inter-State bodies corporate on and after the appointed day. The first part of sub-section (1) of section 72 clearly points out that the Parliament was making the provision in section 72 with regard to the bodies corporate which had been constituted under a

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Tuli, J.)

Central Act, State Act or Provincial Act and that is why the legislative authority for making a law in respect of these bodies corporate was not specified. It may be for the reason that with regard to the bodies corporate constituted under a Central Act, the Parliament was the appropriate Legislature to make the law while with regard to the Corporations constituted under any State Act or a Provincial Act, the State Legislature was to be the appropriate Legislature. Education including Universities is a State subject as per entry 11 in List II of the Seventh Schedule to the Constitution and the Panjab University was incorporated under a Panjab Act. Till the re-organisation of the erstwhile State of Punjab, it continued to function according to the provisions of the said Act. It cannot be imagined that with regard to all inter-State bodies corporate which were constituted under any State or Provincial Act, the jurisdiction to make any other provision by law was taken over by the Parliament itself. These bodies corporate were and are to function and operate for the people of a particular State and have to cater to their needs. Their needs are expressed by their elected representatives and, therefore, it cannot be assumed that the Parliament wanted to deprive the successor States of an important field of their legislation with regard to education which is absolutely necessary for the development and progress of any State. No intention can be attributed to the Parliament to discriminate between one State and another forming part of the Indian Union. The States have been given the same pattern of administration excepting a very few because of their peculiar circumstances and problems like Jammu and Kashmir and Nagaland. The Constitution was given to themselves by the people of India in 1950 by enacting it through a Constituent Assembly and this Constitution provided the form of Government and the area and extent of the respective States with regard to the governance of their territories on a uniform pattern. It will be highly unreasonable to think that as far as Punjab and Haryana were concerned, the Parliament was depriving them of the right to legislate with regard to education and universities while every other State was free to do so. An illustration will make my point clear. I have pointed out above that no territorial area has been fixed for the functioning of the Panjab University although any college situate anywhere in India or even abroad can apply to it for affiliation and can be affiliated. Supposing some colleges in other States like Uttar Pradesh or Maharashtra or Tamil Nadu had been affiliated to the Panjab University before the

appointed day, can it be said that after the appointed day those States could not pass any law providing that the colleges situated in their own States would thenceforth be affiliated to a university within that State and be disaffiliated from the Punjab University? It would mean an encroachment on the power of legislation of those States which cannot be countenanced. Every State can make laws with regard to education and universities within its State and can control and regulate their functions and operations therein irrespective of the location of the seat of the University. What has to be seen is that the subject-matter of the legislation falls within the jurisdiction of the State Legislature and if that be so, it can affect all persons and institutions within the State to which it may be applied. In my opinion, therefore, the mere fact that the Panjab University is located at Chandigarh, which is outside the territory of the Punjab State, does not debar the Punjab State Legislature from enacting a law affecting the functions and operations of the Panjab University within its own territory. For this reason, the provision in section 5(3) of the Guru Nanak University, Amritsar, Act, disaffiliating the colleges situate in the districts of Gurdaspur, Amritsar, Jullundur and Kapurthala, and affiliating them to the Guru Nanak University, is constitutionally valid.

(5) The learned counsel for the petitioner very vehemently argued that the object of the Parliament in enacting section 72 of the Punjab Re-organisation Act was to keep the Punjab University intact as it existed prior to November 1, 1966, as it was intended that no successor State should be able to deprive it of its operation and function in the areas in which it was functioning prior thereto. If that had been the intention, the Central Government itself would not have taken away the districts of Patiala, Sangrur, Bhatinda and Rupar, in the State of Punjab, from the Panjab University by a notification, dated September 12, 1969, and the whole territory of Himachal Pradesh subsequently. As a result of these notifications, the Panjab University has ceased to operate and function in those four districts of the State of Punjab and the entire State of Himachal Pradesh. There is thus no merit in the submission made by the learned counsel for the petitioner.

(6) In view of the decision on point No. 2, referred to above, point No. 1 really does not call for any decision, but in fairness to the learned counsel who have argued the case on both sides, I

Dayanand Anglo-Vedic College Managing Committee v. The State of
Punjab, etc. (Tuli, J.)

proceed to briefly deal with this point. It has been submitted that the Punjab Re-organisation Act is a law under Article 3 of the Constitution and while enacting that law, the Parliament was entitled to make such supplemental, incidental and consequential provisions as it deemed necessary, as has been provided in Article 4 of the Constitution. If such a provision meant the amendment of the Constitution, it could be made. It is, therefore, submitted that while enacting section 72 of the Punjab Re-organisation Act, the Parliament intended to amend entry 11 in List II of the Seventh Schedule to the Constitution by taking Panjab University out of the said List and to vest the power of legislation with regard thereto in the Parliament, thereby impliedly amending Articles 245 and 246 of the Constitution. In view of what I have said above, this submission has no force. The Parliament did not specify the law as meaning the law made by it. All that it said was "until other provision is made by law in respect of the body corporate". I have interpreted the word "law" in that sentence to mean the law made by the appropriate Legislature, that is, with regard to the bodies corporate constituted under any Central Act or *qua* which legislation is to be made on a subject enumerated in List I of the Seventh Schedule to the Constitution, the law had to be made by the Parliament, but in respect of a body corporate constituted under a State or a Provincial Act, wherein the subject of legislation was to be found in List II of the Seventh Schedule to the Constitution, the appropriate Legislature to make the law is to be the State Legislature. Article 4(1) of the Constitution is in two parts, the first part relates to the amendment of the First and Fourth Schedules to the Constitution about which the mandate of the Constitution is that a provision amending those Schedules shall be made in the law made under Articles 2 and 3 of the Constitution. In addition thereto, such a law may contain any supplemental, incidental or consequential provisions, as the Parliament may deem fit, but those provisions are to be made in order to effectuate the object of the Act so made. The purpose and object of the Punjab Re-organisation Act was to break up the entity of that State and to split it up into four units, in response to a very strong demand made by a very vocal and powerful section of the Punjabis, particularly the Sikhs in the present State of Punjab to have a Punjabi speaking State. The people of Haryana clamoured for a Hindi speaking Haryana State. The division of Punjab was made on unilingual basis; that is

why the hilly portion of the State of Punjab was transferred to Himachal Pradesh. The Punjab State has been established as a Punjabi speaking State and Punjabi has been declared to be the official language by an Act of the State Legislature. In most of the offices of the Government within the State, the entire work is being done in Punjabi language written in Gurmukhi script. In view of this historic background, it cannot be said that provision keeping the Panjab University, out of the control of the Punjab State Legislature in so far as its operations and functions within its territories were concerned, was either supplemental, incidental or consequential to the re-organisation. All that can be said was that a provision was being made for a transitional period, that is, until other provision was made by law by the State Legislature. It was observed by their Lordships of the Supreme Court in *Mangal Singh and another v. Union of India* (1):—

“But the Constitution also contemplates by Article 4 that in the enactment of laws for giving effect to the admission, establishment or formation of new States, or alteration of areas and the boundaries of those States, power to modify provisions of the Constitution in order to tide over a temporary difficulty may be exercised by the Parliament. The High Court was, therefore, right in holding that section 13(1) was not invalid merely because it departed from the minimum prescribed as the total membership of the Legislative Assembly for a State.”

The facts of that case were that when Haryana State was created on November 1, 1966, its Legislative Assembly consisted of 54 members instead of the minimum of 60 prescribed in Article 170 of the Constitution. In that context, it was held that the provision was valid although it did not comply with the mandatory provisions of Article 170(1) of the Constitution. The provision was made for a transitional period and was incidental and consequential to the formation of the Haryana State. The power to issue directions with regard to the Panjab University which was given to the Central Government by section 72 was essentially for a limited period, that is, till the Legislature of the appropriate State made a provision with regard to the functioning and operation of the Panjab University within its own area. It cannot, therefore, be said that section 72 of the Punjab Re-organisation Act effectuated an amendment of Articles 245 and 246 and entry 11 in List

(1) A.I.R. 1967 S.C. 944.

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Tuli, J.)

II of Seventh Schedule to the Constitution with regard to the Panjab University. It is not only the Panjab University that is governed by section 72 of the Punjab Re-organisation Act, but many other bodies corporate constituted under any Central, State or Provincial Act, which were intra State in operation before the appointed day and became inter-State bodies corporate because of the re-organisation.

(7) The third argument of the learned counsel for the petitioner is that section 5(3) of the Guru Nanak University, Amritsar, Act is not a law in respect of the Panjab University, which, I confess, is difficult to understand. It is conceded by the learned counsel for the petitioner that it was within the power of the State Legislature to incorporate a new university and that the incorporation of the Guru Nanak University at Amritsar was within its jurisdiction. That the State Legislature could affiliate colleges within the area reserved for the Guru Nanak University to it is also not disputed. What is disputed is the provision that the colleges in the four districts reserved for the Guru Nanak University, which were formerly affiliated to the Panjab University, could not be disaffiliated from that University and it is this portion of section 5(3) which is challenged as *ultra vires* the powers of the State Legislature. This provision directly hits the operation and functioning of the Panjab University with regard to the colleges in those four districts now reserved for the Guru Nanak University and is, therefore, a direct legislation touching that University. It cannot be said that this legislation is not in respect of the Panjab University. It was not necessary for the State Legislature first to enact a law disaffiliating the colleges situated in the districts reserved for the Guru Nanak University from the Panjab University and then, by a separate enactment, to affiliate them to the Guru Nanak University. This very object has been achieved by enacting section 5(3) of the Guru Nanak University, Amritsar, Act and so it is a law in respect of the Panjab University within the meaning of section 72 of the Punjab Reorganisation Act.

(8) The last argument of the learned counsel for the petitioner is that if section 5(3) of the Guru Nanak University Act is a law in respect of the Panjab University, it is void because of lack of territorial *nexus*. The basis of the argument is that the location of the Panjab University is at Chandigarh which is outside the territorial

limits of the Punjab State. In the Act also it is mentioned that the seat of the University shall be at Chandigarh. It is, therefore, submitted that only the Legislature having jurisdiction over Chandigarh can make any law in respect of the Panjab University. I regret my inability to agree to this submission. Entry 11 in List II of the Seventh Schedule to the Constitution is not confined to the universities incorporated by the particular State by which a law is made. Every State is empowered to make law with regard to the educational universities within its territories irrespective of the fact that their seat is somewhere else. It is their functioning and operation within the territorial limits of the State enacting the law which is affected by the said law and it cannot be said that by enacting such a law the State Legislature is acting extra-territorially by disaffiliating colleges situated in four districts of the State of Punjab which were formerly affiliated to the Panjab University. The said law has only affected the operation and functioning of the Panjab University in those four districts and has not in any way interfered with its activities elsewhere nor has it passed any law affecting its power or varied functions like the prescribing of syllabi, holding of examinations, making provisions for teaching, the constitution of its managing bodies like the Senate and the Syndicate, or its officers, or any other essential function of the University. The only effect of section 5(3) is to take out of the jurisdiction of the Panjab University some of the colleges situate in the State of Punjab, which only means a reduction in the number of colleges that remain affiliated to it. It has not in any other way affected the Panjab University. In my opinion, it was within the jurisdiction of the Panjab State to disaffiliate the college situate within any part of its territory from the Panjab University.

(9) For the reasons given above, this petition has no merit and is dismissed but without any order as to costs.

GURDEV SINGH, J.—(10) I am in complete agreement with my learned brother. I would, however, like to add a few words. In interpreting a law framed under Article 4 for the purposes stated in Articles 2 and 3 of the Constitution, amendment of other provisions of the Constitution in absence of express provision is not readily to be inferred unless the language used leaves no doubt that it was intended. Part XX containing Article 368 of the Constitution specifically deals with the question of amendment of the Constitution

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Gurdev Singh, J.)

and lays down the procedure for the same. A law made under Articles 2 and 3 is, however, taken out of the ambit of Article 368 of the Constitution by the specific provision in Article 4(2) that no such law shall be deemed to be an amendment of the Constitution for the purpose of Article 368. Thus being in the nature of an exception it has to be strictly construed.

(11) The nature and scope of the law that has to be enacted under Articles 2 and 3 of the Constitution while admitting or establishing new States or forming new States and altering the areas or boundaries of the existing States is laid down in Article 4(1), which, when split up, reads thus:

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

(12) It will be seen that the amendment of the First and the Fourth Schedule of the Constitution referred to in the first part is imperative. This is so because the First Schedule contains the names of the States and the Fourth Schedule embodies the table allocating seats in the Council of States. As soon as a new State is formed or admitted into the Union, its name has to be incorporated in the list of States that form the Union of India.

(13) The second part of Article 4(1) makes no specific mention of power to amend any other provision of the Constitution, but authorises the Parliament to make such “supplemental, incidental and consequential provisions” as it may deem necessary. It was in dealing with this power that their Lordships of the Supreme Court made the following observations in *Mangal Singh v. Union of India*, (1)—

“The law so made may also make supplemental, incidental and consequential provisions which would include provisions

relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters.

—Power with which the Parliament is invested by Articles 2 and 3, is power to admit, establish or form new States which conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise by law is supplemental, incidental or consequential to admission, establishment or formation of a State as contemplated by the Constitution, and is not power to override the constitutional scheme. No State can, therefore, be formed, admitted or set up by law under Article 4 by the Parliament which has not effective legislative, executive and judicial organs.”

(14) It is true that in that case though there were no express words amending Article 170(1) of the Constitution and yet their Lordships held that this provision stood amended and the Parliament had the authority to make amendment, but the intention to amend this provision was evident from the fact that in section 13 of the Punjab Reorganisation Act, 1966, with which their Lordships were dealing, it was specifically provided that the number of seats allocated to Haryana in its Legislative Assembly shall be 54, notwithstanding that in Article 170 it had been laid down that subject to the provisions of Article 333, the Legislative Assembly of each State shall consist of not less than sixty members chosen by direct election from territorial constituencies in the State. In holding that this provision in section 13 of the Punjab Reorganisation Act was valid, Shah J., speaking for the Court said :—

“Power of the Parliament to make amendments in the Constitution by express enactment so as to reduce the number of members of a Legislative Assembly below the minimum prescribed having regard to the exigency of a special case may not be denied. But the Constitution also contemplates by Article 4 that in the enactment of laws for giving effect to the admission, establishment or formation of new States, or alteration of areas and the boundaries

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Gurdev Singh, J.)

of those States, power to modify provisions of the Constitution in order to tide over a temporary difficulty may be exercised by the Parliament. The High Court was, therefore, right in holding that section 13(1) was not invalid merely because it departed from the minimum prescribed as the total membership of the Legislative Assembly for a State."

Earlier, his Lordship had observed :

"Power to reduce the total number of members of the Legislative Assembly below the minimum prescribed by Article 170(1) is, in our judgment, implicit in the authority to make laws under Article 4. Such a provision is undoubtedly an amendment of the Constitution, but by the express provision contained in Cl. (2) of Article 4, no such law which amends the First and the Fourth Schedule or which makes supplemental, incidental and consequential provision is to be deemed an amendment of the Constitution for the purpose of Article 368."

(15) From the clear language of Article 4 of the Constitution, it follows that apart from the amendments of Schedules I and II of the Constitution, which are imperative, while enacting a law for the purposes of Articles 2 and 3 of the Constitution, Parliament can amend any other provision of the Constitution only if it is necessary to achieve the purpose of the legislation and to the extent it is required for making "supplemental, incidental and consequential provisions"; for making "supplemental, incidental and consequential provisions"; Article 4 does not contemplate that in exercise of this power the Parliament in forming new States can override the constitutional scheme.

(16) The distribution of legislative powers between the States and the Union is one of the corner stones of our Constitution. Under List II of Schedule VII "Education including Universities" is a State subject, in respect of which by virtue of Article 246 the State Legislature has the exclusive power to make a law for such State or any part thereof. Reading section 72 of the Punjab Reorganisation Act,

1966, in the light of what has been said above, I do not find anything to support Mr. Kaushal's contention that the Punjab Legislature had no power to make any law with regard to the functioning of the Punjab University in the State of Punjab. The authority conferred on the Central Government under section 72(1) of the Punjab Reorganisation Act, 1966, to issue necessary directions from time to time regarding functioning of inter-State Corporations is to ensure only till "other provision is made by law in respect of the said body corporate". The word 'law' occurring in this provision, as held by my learned brother Tuli, J., must mean the law made by competent Legislature and cannot be confined to a law made by the Parliament. Had the intention of the Legislature been that the Parliament alone would be competent to make such a law, it could have easily qualified the word 'law' by adding the words 'enacted by the Parliament', especially when it had earlier specified that the authority competent to issue directions with regard to functioning of such Corporations would be the Central Government. For these and other reasons, recorded by my brother Tuli J., the petition must fail.

(17) R. S. NARULA, J.—I entirely agree with the conclusion arrived at by my learned brother Tuli, J., on all the points argued before us and also with everyone of the reasons given in support thereof. Section 5(3) of the Guru Nanak University Amritsar Act, regarding which the whole controversy has been raised and under which provision the impugned notification was issued is in the following terms :—

"Notwithstanding anything contained in any other law for the time being in force, any educational institution situated within the limits of the area specified under subsection (1) shall, with effect from such date as may be notified in this behalf by the State Government, be deemed to be associated with and admitted to the privileges of the University and shall cease to be associated in any way with, or be admitted to any privileges of the Punjab University; and different dates may be appointed for different institutions :

Provided that—

- (a) any student of any such institution affiliated to the Punjab University before the said date, who was

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Narula, J.)

studying for any degree and diploma examination of the said University shall be permitted to complete his course in preparation therefor and the University shall hold for such students examinations in accordance with the curricula of study in force in Punjab University for such period as may be prescribed by the Statutes or Ordinances or Regulations; and

- (b) any such student may, until any such examination is held by the University, be admitted to the examination of the Punjab University and be conferred the degree, diploma or any other privileges of that University for which he qualifies on the result of such examination."

It expressly provides for automatic disaffiliation from the Panjab University of all such educational institutions as are situated within the limits of the area in which the Guru Nanak University is required to exercise its powers and perform its duties by virtue of sub-section (1) of section 5. As soon as the notification, dated March 16, 1970, specifying the four named districts in the State of Punjab as the area in which the Guru Nanak University was to exercise its powers and perform its duties was issued and the relevant date under sub-section (3) of section 5 was notified, the institutions situated within the limits of the said four districts stood disaffiliated from the Panjab University with effect from that date. Section 5(3), therefore, directly cuts an inroad into section 26 (as amended up to 1960) of the Panjab University Act. It really amounts to the enactment of a proviso to section 26. Inasmuch as section 26 provides that colleges affiliated to the University of Panjab, Lahore, on or before September 27, 1947, located in India shall be deemed to be affiliated to the Panjab University, section 5(3) of the Guru Nanak University Act clearly carves out an exception to the rule contained in section 26 of the Panjab University Act. A competent Legislature can amend a statute in respect of its operation in the territories for which it can legislate either by passing an amending Act or by providing to that effect in a separate piece of legislation. The latter course appears to have been adopted by the Punjab Legislature while enacting section 5(3) of the Guru Nanak University Act which carves out an exception to section 26 of the

Punjab University Act. I think there cannot be any greater fallacy than arguing in this situation that section 5(3) is not "a law in respect of the Punjab University" within the meaning of that expression as extracted (subject to relevant modification) from section 72 of the Punjab Reorganisation Act. The Punjab University and the colleges which remained affiliated to it could indeed have no grievance if the impugned law was not passed in respect of that University. I, therefore, fully endorse the finding of Tuli, J. that section 5(3) of the 1969 Act is a law enacted by the Punjab Legislature in respect of the Punjab University. The question of the Punjab Legislature having exceeded its territorial limits while enacting the said provision cannot possibly arise as the operation of section 5(3) is confined only to those four districts which are admittedly within its territorial jurisdiction. The mere fact that a law passed by a competent Legislature on a subject within its exclusive legislative field adversely affects some institution outside the State in its activity within the State has never been held to invalidate such a law on that ground alone.

(18) The word "law" in the sentence "until other provision is made by law in respect of the said body corporate" in the closing part of sub-section (1) of section 72 of the Punjab Reorganisation Act merely means law passed by the appropriate competent Legislature. The context in which the expression occurs does not permit its meaning to be restricted to a law enacted by the Parliament alone. Inflexible rules relating to distribution of legislative powers between the States and the Centre are contained in Chapter I of Part XI of the Constitution. The territorial extent of the jurisdiction of the Parliament on the one hand and the State Legislatures on the other is defined in Article 245. Clause (3) of Article 246 vests in the Legislature of every State in India the exclusive power to make laws for such State or any part thereof with respect of any of the matters enumerated in the State List in the Seventh Schedule. That exclusive power is subject only to what is stated in clause (1) and (2) of Article 246 in respect of the exclusive power of the Parliament to make laws on matters enumerated in the Union List and of the Parliament and the State Legislatures to make laws on matters enumerated in the Concurrent List. It is not disputed that entry 11 in the State List vests in the State Legislature the power to make laws in respect of "education including universities." Law passed by the Punjab Legislature in respect of the Punjab University contained in the Guru Nanak University Act admittedly does not fall

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Narula, J.)

within any of the exceptions to the State legislative power enumerated in entry II. There appears to be no warrant for imputing to the Parliament the unexpressed intention of having used the word "law" (so far as legislative enactment is concerned) in a sense different from that in which the word is used in Article 246 of the Constitution. Section 72 of the Punjab Reorganisation Act is almost a verbatim copy of section 109 of the States Reorganisation Act, 1956. It cannot be argued with any success that the power of all the States in India which came into existence as a result of their reorganisation in 1956 to legislate in respect of inter-State corporations was taken away by the Parliament for all times to come with regard to the respective territorial limits of the State Legislatures. A further indication in this respect is available from the scheme of section 72. Though the section was enacted for all the inter-State statutory corporations which had not been covered by the earlier provisions of Part VII of the Act, the Panjab University and two other institutions were named specifically to be covered by the section merely for the removal of doubt. The object of the provision does not appear to give some kind of suzerainty or power of governance to the inter-State corporations, but to make their services available to the successor States till such States could make their own arrangements, if they so wanted. It is significant that what the University was expected to continue to do, subject to Central Government's directions, till a law was made by the appropriate Legislature was to "serve the needs of the successor States". If the successor States at any subsequent time did not want to avail of the services of any of the inter-State corporations referred to in section 72, their 'services' could not be foisted on the successor States for all times to come. This is particularly so in respect of education. This is one of the most important subjects in State legislative field in relation to linguistic division of States. Sub-section (4) of section 72 points in the same direction. The amount or proportion of grants to be made by the successor States to the Panjab University were not fixed by the Act, but was left to be determined by the Central Government "from time to time". This clearly envisages that it is open to the Central Government to fix the amount or proportion of grants payable at different rates by the successor States from time to time. The only possible reason for making a provision for changing the amount of grants for different States from time to time could be the possible reduction of the area of the concerned successor

States in which the University was expected to continue to serve. Mr. Kaushal conceded that the Punjab Government could, by a notification under section 5(3) of the Punjabi University Act, disaffiliate all the educational institutions in the remaining districts of Punjab, and he could have no objection to the same as the Punjabi University Act was enacted prior to the reorganisation of the State. If that had happened or if the State of Haryana had disaffiliated the colleges in that State from the Panjab University and affiliated them to the Kurukshetra University under the Kurukshetra University Act, the concerned State could have been justified to ask the Central Government to exonerate that State from liability to make any grant at all to the Panjab University. Section 88 of the Punjab Reorganisation Act also gives an indication in the same direction. The laws in force in the erstwhile State of Punjab were directed to remain in force in the successor States unaffected by the reorganisation "until otherwise provided by a competent Legislature" or other competent authority. Even the power of adaptation conferred by section 89 of that Act was limited to a period of two years whereafter any desired adaptation or modification could be made only by law made by a competent Legislature or other competent authority. With these observations I record my complete agreement with the finding of Tuli, J. that the Punjab Legislature was competent to enact section 5(3) of the Guru Nanak University Act for purposes of section 72(1) of the Punjab Reorganisation Act.

(19) Though it is indeed not necessary to travel into the controversy relating to the extent to which the Parliament is authorised by the second part of Article 4(1) of the Constitution to amend the Constitution, in the view taken by us on the question of true scope and proper construction of section 72 of the Punjab Reorganisation Act, I wish to record my own conclusions on the subject since the matter was debated by the learned counsel for the parties at quite some length:—

- (i) the amendments which can be made to the various provisions of the Constitution (other than those contained in Part III) in the course of enacting a Reorganisation Act under Article 2 or 3 of the Constitution by virtue of the power vested in the Parliament to make provisions which are "supplemental, incidental and consequential" to the law of reorganisation must be within the scope, scheme and framework of the Constitution and not contrary thereto;

Dayanand Anglo-Vedic College Managing Committee v. The State of Punjab, etc. (Narula, J.)

- (ii) only such provisions can be made in exercise of the above-mentioned power as are essential to the effective administration of the State or States to be created by the new law and as may be necessary to give effect to the other provisions of the Reorganisation Act;
- (iii) the amendments to the Constitution which can be made in exercise of the abovementioned power are not restricted to the amendment of the First Schedule and the Fourth Schedule to the Constitution, but are nevertheless to be germane to the question of reorganisation of the State or States with which the enactment deals ;
- (iv) only such amendments of any part of the Constitution (other than the First and the Fourth Schedules) can be made by way of "supplemental, incidental and consequential" provisions which are (a) necessary for the purpose of tiding over some temporary difficulty, or (b) necessary to remove some unsurmountable hurdle which would not allow the desired reorganisation of the State to take place effectively unless such amendments are made, or (c) necessary to ensure a smooth continuity of the stream of life, law and order in the successor States. Such amendments must be those which are deemed by the Parliament in its wisdom to be necessary to give effect to the provisions of the relevant law of reorganisation. The constituent power of the Parliament under Article 4 is, from this point of view, not as wide as the power vested in it under Article 368.

(20) For the foregoing reasons and other reasons recorded by my learned brother Tuli, J., I would hold that:—

- (i) Section 72 of the 1966 Act has not effectuated any amendment of any part of Article 245, Article 246, or the State List ;
- (ii) Section 72 of the Act is not capable of being construed in such a manner as to indicate that Parliament has thereby taken over the power of the Punjab State Legislature under

entry 11 of the State List in respect of the Punjab University ;

(iii) Section 5(3) of the 1969 Act is a law in respect of the Panjab University within the meaning of the relevant expression used in section 72; and

(iv) Section 5(3) of the 1969 Act is not void for want of territorial nexus;

and would accordingly dismiss the petition, though without any order as to costs.

K. S. K.