Khalsa University vs The State Of Punjab on 3 October, 2024

Author: B.R. Gavai

Bench: B.R. Gavai, Prashant Kumar Mishra

2024 INSC 751 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(Arising out of SLP(C) No. 33094 of 2017)

KHALSA UNIVERSITY AND ANOTHER …APPELLANT(S)

VERSUS

THE STATE OF PUNJAB
AND ANOTHER …RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. The present appeal challenges the final judgment and order dated 1st November 2017 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 17150 of 2017 (O&M), whereby the High Court dismissed the writ petition filed by the appellants inter-alia seeking a writ in the nature of certiorari praying for quashing "The Khalsa University (Repeal) Act 2017" dated 17th July Date: 2024.10.03 12:33:31 IST Reason:

2017.

FACTS:

3. The facts giving rise to this appeal lie in a narrow compass.

3.1. In the year 2010, the State of Punjab framed the Punjab Private Universities Policy, 20101.

3.2. The Khalsa College Charitable Society, Amritsar,2 (appellant No.2 herein), which was in existence since 1892, submitted a proposal to the State Government for setting up a self-financing

University in the State of Punjab on the basis of the 2010 Policy.

3.3. On 5th March 2011, the Higher Education Department, Government of Punjab, after examining the proposal, issued a Letter of Intent to Khalsa Society for establishing and running the Khalsa University, Amritsar3. 3.4. On 7th November 2016, the Punjab Vidhan Sabha passed The Khalsa University Act, 20164 (Punjab Act No. 44 of 2016). The 2016 Act received the assent of the Hon'ble Governor of Punjab on 7th November 2016 and the same was Hereinafter referred to as the "2010 Policy" Hereinafter referred to as the "Khalsa Society" Hereinafter referred to as "Khalsa University" Hereinafter referred to as "2016 Act" published in the Punjab Government Gazette Extraordinary on 17th November 2016.

3.5. The Khalsa University (appellant No.1 herein), after its establishment, was imparting courses in 26 programmes and 215 students were admitted for the Academic Session 2016-

17. 3.6. On 18th January 2017, the Registrar of Khalsa University communicated to the Principal Secretary, Department of Higher Education, Government of Punjab, that they have enacted the Statutes of the Khalsa University in consonance with the 2010 Policy, the 2016 Act and University Grants Commission5 guidelines. 3.7. On 6th April 2017, the Superintendent of Higher Education Department, Government of Punjab, communicated to Khalsa University that no admission process will be started till the Statues of the University are approved by the State Government. The same was reiterated by another communication dated 17th May 2017. 3.8. On 30th May 2017, the State Government promulgated an Ordinance thereby repealing the 2016 Act. Shortly Hereinafter referred to as "UGC" thereafter, the Punjab Vidhan Sabha passed The Khalsa University (Repeal) Act 20176. The Impugned Act received assent of the Hon'ble Governor on 4th July 2017 and the same was published in the Punjab Government Gazette Extraordinary on 17th July 2017.

3.9. Aggrieved by the communications dated 6th April 2017 and 17th May 2017, the promulgation of the Ordinance and passing of the Impugned Act, the Khalsa University and Khalsa Society (hereinafter referred to as "appellants") filed a Writ Petition being C.W.P. No. 17150 of 2017 (O&M) before the Punjab and Haryana High Court.

3.10. Vide final judgment and order dated 1st November 2017, the High Court dismissed the Writ Petition filed by the appellants. Being aggrieved thereby, the present appeal arises.

SUBMISSIONS:

4. We have heard Shri P.S. Patwalia, learned Senior Counsel appearing on behalf of the appellants and Shri Shadan Farasat, learned Additional Advocate General (AAG) appearing on behalf of the respondents. Hereinafter referred to as the "Impugned Act"

5. Shri Patwalia, learned Senior Counsel appearing on behalf of the appellants submits that the Impugned Act is patently arbitrary, mala fide, discriminatory and violative of Article 14 of the Constitution of India.

6. Shri Patwalia submits that the mala fides in passing of the Impugned Act are apparent inasmuch as the statements made by Captain Amarinder Singh, who at the relevant time was in the opposition, would clearly show that he was opposed to the establishment of the Khalsa University. It is submitted that Captain Amarinder Singh had made public statements that he was "touchy" about the Khalsa College, that he would not permit the ruling party to tinker with the status of the same and that, after he comes to power, he will reverse the decision. It is submitted that immediately after Captain Amarinder Singh became the Chief Minister of Punjab in 2017, an Ordinance was promulgated repealing the 2016 Act, and shortly thereafter, the said Ordinance got the imprimatur of the legislature by the passing of the Impugned Act dated 17th July 2017.

7. Shri Patwalia further submitted that the State of Punjab had come up with the 2010 Policy and under the said Policy, 16 Universities were established, however, it was only the Khalsa University which was picked up and abolished. He submitted that picking up a single University out of 16 Universities which were established as per the 2010 Policy is patently arbitrary, discriminatory and violative of Article 14 of the Constitution.

8. Shri Patwalia further submitted that the Impugned Act is passed on a non-existent factual matrix. He submitted that the Statement of Objects and Reasons7 of the Impugned Act shows that the only reason for passing it is to "protect the heritage character of Khalsa College". He submitted that the SOR shows that the Impugned Act was passed on the basis that the Khalsa College has, over a period of time, become a significant icon of Khalsa Heritage and the Khalsa University established in 2016 was likely to shadow and damage its character and pristine glory. He submitted that the Khalsa College was established in 1892 and the appellants had clearly given an undertaking that the establishment of the Khalsa University would not touch the Khalsa College. He submitted that the Khalsa Society comprises of various other Hereinafter referred to as "SOR" establishments apart from Khalsa College and that the Khalsa University was established to provide affiliation for only three colleges namely Khalsa College of Pharmacy, Khalsa College of Education and Khalsa College for Women. He submits that all the three institutions were started after more than half a century of establishment of Khalsa College. It is submitted that Khalsa University (appellant No.1) had also planned/established various other colleges or institutions which would be affiliated to it, however, the same was to be done without in any way affecting the Khalsa College. As such, it is submitted that the reasoning given in the SOR that the Impugned Act was being passed only to protect the heritage character of Khalsa College is formed on a factually erroneous matrix.

9. Shri Patwalia further submitted that the Impugned Act was patently arbitrary, discriminatory and violative of Article 14 of the Constitution. It is submitted that the Constitution Bench of this Court in the case of Shayara Bano v. Union of India and Others (Ministry of Women and Child Development Secretary and Others)8 has held that the (2017) 9 SCC 1 : 2017 INSC 785 ground of manifest arbitrariness is also available for examining the validity of a legislation. It is submitted that if it is found that the legislative enactment is not based on an intelligible differentia, then such a classification would not be permissible and the enactment would be liable to be struck down on the ground of manifest arbitrariness.

10. Per contra, Shri Farasat, learned AAG appearing on behalf of the respondents submits that a reasonable classification having a nexus with the object to be achieved is permissible under Article 14 of the Constitution. He submits that merely because Khalsa University (appellant No.1) has been singled out as against the other Universities established under the 2010 Policy cannot be a ground for holding the Impugned Act to be invalid.

11. The learned AAG submits that there is a presumption with regard to the validity of a legislative action. He submits that the burden with regard to invalidity is on the person who challenges it. It is submitted that the classification is based on the fact that the Khalsa College had, over a period of century, received a heritage status. The name "Khalsa" was identified with the Khalsa College. He submitted that the establishment of Khalsa University tinkered with the heritage status of Khalsa College.

12. The learned AAG further submitted that the Khalsa University and the Khalsa College have been established in the same premises and therefore there is a possibility of confusion being caused in the minds of a general observer. He further submitted that it was, over a period of time, the Khalsa College had earned a huge reputation and was playing a leading role in Punjabi socio-religious society. It is submitted that the establishment of a private University could diminish its nature. It is submitted that there was further a possibility that Khalsa Society (appellant No.2) would allocate greater attention and resources to the private university and neglect Khalsa College which has a historic value. To buttress his submissions, he relies on the judgments of this Court in the cases of Chandan Banerjee and Others v. Krishna Prosad Ghosh and Others9 and State of Tamil Nadu and Another v. National South Indian River Interlinking Agriculturist Association10. (2022) 15 SCC 453 : 2021 INSC 516 (2021) 15 SCC 534 : 2021 INSC 777

13. Shri Farasat further submitted that the appellants had no vested right in their status as a University. It is submitted that shortly after the 2016 Act was enacted, the Impugned Act came to be enacted. During that short period, a few students were admitted, however, the Impugned Act also took care of the said students inasmuch as the colleges where they were studying were affiliated with the other Universities. He therefore submits that there is no merit in the appeal and the appeal deserves to be dismissed. CONSIDERATION:

14. The facts in the present case are not in dispute. The Government of Punjab, Department of Higher Education had come up with the 2010 Policy. The 2010 Policy was framed in order to attract high quality private sector investment and expertise in the realm of higher education and provides for establishment and incorporation of private self-financed Universities in the State of Punjab. By the 2010 Policy, it was decided to permit establishment of self-financed universities which shall not receive any grant or aid from the State Government. However, it provided for laying down a rationale proposal and well-defined conditions for the establishment of such universities in order to safeguard the interest of the stakeholders, ex-students, staff members and genuine promoters.

15. In furtherance of the 2010 Policy, Khalsa Society (appellant No.2) applied to the State Government for establishing Khalsa University. The State Government vide communication dated 5th March 2011 issued Letter of Intent to the Khalsa Society on various conditions mentioned

therein.

16. Subsequently, the 2016 Act came to be enacted on 7th November 2016. It will be relevant to refer to the SOR of the 2016 Act, which read thus:

> "STATEMENT OF OBJECTS AND REASONS As the Punjab Private Universities Policy - 2010 has been formulated to provide greater access and to ensure quality in higher education, the Government of Punjab wishes to allow the establishment of self financed private universities to supplement the efforts of the State Universities. The object of the Khalsa University is to impart comprehensive education at all levels to achieve excellence and to promote research and teaching in areas of Education, Engineering and Technology, Languages, Laws, Life Sciences and other courses under the general heads of the Arts and Humanities, Social Sciences etc.
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> 2. As the establishment of such private self financed universities requires a broadly uniform set of guidelines for ensuring academic standards, prevention of commercialization and mismanagement etc., it deemed, therefore, expedient to provide for promulgation of 'The Khalsa University Bill- 2016."

17. Subsequent to the enactment of the 2016 Act, Khalsa University (appellant No.1) received a communication dated 15th February 2017 from the UGC informing it that, in view of its establishment, its name has been included in the list maintained by the UGC. It was also informed to it that it was required to follow the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003.

18. It appears that thereafter there was a change of regime in the Government of Punjab. It further appears that from April, 2017 onwards, Khalsa University started receiving communications that it should not admit any more students till the Statutes of the University were approved by the State Government.

19. Thereafter on 30th May 2017, the State Government promulgated an Ordinance thereby repealing the 2016 Act. The Impugned Act came to be passed by Punjab Vidhan Sabha, which received the assent of the Hon'ble Governor on 4th July 2017 and published in the Punjab Government Gazette (Extraordinary) on 17th July 2017.

20. The SOR of the Impugned Act read thus:

> "STATEMENT OF OBJECTS AND REASONS The Khalsa University (Repeal) Ordinance, 2017 aims to repeal the Khalsa University Act, 2016 with a view to protect heritage character of Khalsa College, Amritsar. The Khalsa College, Amritsar has, over a period of time, become a significant icon of Khalsa Heritage and the University established in 2016 is likely to shadow and damage its character and pristine glory. Therefore, the Act ibid is proposed to be repealed."

21. The Impugned Act, which consists of three sections, reads thus:

> "Be it enacted by the Legislature of the State of Punjab in the Sixty-eight year of the Republic of India as follows: -
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> 1. (1) This Act may be called the Khalsa University (Repeal) Act, 2017.

(2) It shall be deemed to have come into force with effect from the 30th day of May, 2017.

2. The Khalsa University Act, 2016 (Punjab Act No.44 of 2016), is hereby repealed: -

> Provided that admission to the affected students shall be given in other appropriate educational institutions of the State of Punjab as per their eligibility, so that the interests of the students are not prejudicially affected.

3. The Khalsa University (Repeal) Ordinance, 2017 (Punjab Ordinance No. l of 2017), is also hereby repealed."

22. It is thus clear that by the 2016 Act under the 2010 Policy of the State Government, Khalsa University was established as one of the private universities. The Impugned Act has been enacted with the sole purpose of repealing the 2016 Act by which the Khalsa University was established. It is also clear that the Impugned Act deals with only a single entity/institution i.e. the Khalsa University.

23. At the outset, we clarify that we do not propose to go into the question with regard to the allegation of mala fides attributed to any individual involved in the passing of the Impugned Act. In fact, the former Chief Minister of Punjab Captain Amarinder Singh was arrayed as respondent No.2 in the present appeal, however, by an order dated 8th August 2018, the name of Captain Amarinder Singh was deleted. Be that as it may, for the purpose of the present appeal, we propose to examine only two questions.

24. The first question is, whether an enactment for giving out a differential treatment to a single entity is valid in law or not and secondly, whether the Impugned Act is liable to be struck down on the ground of manifest arbitrariness. A. Whether an enactment for giving out a differential treatment to a single entity is valid in law or not?

25. For considering the first issue, we propose to examine certain landmark judgments of this Court on the issue.

26. In the case of Chiranjit Lal Chowdhuri v. The Union of India and Others11, the Constitution Bench of this Court was faced with a situation where the Governor General of India had promulgated an Ordinance on the basis of a finding that, on account of mismanagement and neglect, a situation had arisen concerning the affairs of the Sholapur Spinning and Weaving Company Ltd.12 which had not only prejudicially affected the production of an essential commodity but also had caused serious unemployment amongst a certain section of the community. On account

of such an emergency, a situation had arisen which rendered it necessary to make a special provision for the proper management and administration of the Sholapur Mill. The aforesaid Ordinance was subsequently re-enacted in the form of an Act of the Legislature called the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 195013. The [1950] SCR 869 : 1950 INSC 36 Hereinafter referred to as "Sholapur Mill" Hereinafter referred to as "Sholapur Mill Act". net result of the Sholapur Mill Act was that the Managing Agents of the Sholapur Mill were dismissed and the Directors holding the office automatically vacated their office.

27. The Sholapur Mill Act was challenged on various grounds. One of the grounds was that since the application of the said Act was found to affect only one person, it was, therefore, plainly discriminatory in character and within the constitutional inhibition of Article 14 of the Constitution. The said ground was rejected by the Constitution Bench by a majority of 3:2.

28. One of the arguments that was made before this Court was that there would be other companies wherein similar allegations of mis-management and neglect would be available. It was sought to be argued that the provisions of the Companies Act were sufficient to deal with the said situation. However, the passing of an enactment whereby the Sholapur Mill was singled out for giving a "special treatment" was not permissible under Article 14 of the Constitution. While rejecting the said contention, Saiyid Fazl Ali, J. (one of the Judges forming part of the majority) observed thus:

> ".....The Government of India, as a matter of precaution and lest it should be said that they were going to interfere unnecessarily in the affairs of the Company and were not allowing the existing provisions of the law to take their own course, consulted other interests and placed the matter before the Standing Committee of the Industrial Advisory Council where a large number of leading industrialists of the country were present, and ultimately it was realised that this was a case where the Government could rightly and properly intervene and there would be no occasion for any criticism coming from any quarter. It appears from the discussion on the floor of the House that the total number of weaving and spinning mills which were closed down for one reason or the other was about 35 in number. Some of them are said to have closed for want of cotton, some due to overstocks, some for want of capital and some on account of mismanagement. The Minister for Industry, who sponsored the Bill, in explaining what distinguished the case of Sholapur Mill from the other mills against whom there might be charges of mismanagement, made it clear in the course of the debate that "certain conditions had to be fulfilled before the Government can and should intervene", and he set out these conditions as follows:
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> (1) The undertaking must relate to an industry which is of national importance. Not each and every undertaking which may have to close down can be taken charge of temporarily by the Government. (2) The undertaking must be an economic unit. If it appears that it is completely uneconomic and cannot be managed at all, there is no sense in the Government taking charge of it. If anything, it will mean the Government will have to waste money which belongs to the taxpayer on an uneconomic unit.

> (3) There must be a technical report as regards the condition of the plants, machinery, etc., which either as they stand, or after necessary repairs and reconditioning can be properly utilised.
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> (4) Lastly, and this is of considerable importance, there must be a proper enquiry held before the Government takes any action. The enquiry should show that managing agents have so misbehaved that they are no longer fit and proper persons to remain in charge of such an important undertaking. [Parliamentary Debates, Vol. III, No. 14, 31-3-1950 at pp. 2394-

95] It appears from the same proceedings that Sholapur Mill is one of the largest mills in Asia and employs 13,000 workers. Per shift, it is capable of producing 25 to 30 thousand pounds of yarn, and also one lakh yards of cloth. It was working two shifts when it was closed down on 29-8-1949. The closure of the Mill meant a loss of 25 lakhs yards of cloth and one-and-a-half lakhs pounds of yarn per month. Prior to 1947, the highest dividend paid by the Company was Rs 525 per share and the lowest Rs 100, and, in 1948, when the management was taken over by the managing agents who have been removed by the impugned Act, the accounts showed a loss of Rs 30 lakhs, while other textile companies had been able to show very substantial profits during the same period.

Another fact which is brought out in the proceedings is that the managing agents had acquired control over the majority of the shares of the Company and a large number of shareholders who were dissatisfied with the management had been rendered powerless and they could not make their voice heard. By reason of the preponderance of their strength, the managing agents made it impossible for a Controller under the Essential Supplies Act to function and they also made it difficult for the Company to run smoothly under the normal law.

It was against this background that the Act was passed, and it is evident that the facts which were placed before the legislature with regard to Sholapur Mill were of an extraordinary character, and fully justified the Company being treated as a class by itself. There were undoubtedly other mills which were open to the charge of mismanagement, but the criteria adopted by the Government which, in my opinion, cannot be said to be arbitrary or unreasonable, is not applicable to any of them. As we have seen, one of the criteria was that a mere allegation of mismanagement should not be enough and no drastic step such as is envisaged in the Act should be taken without there being a complete enquiry. In the case of Sholapur Mill, a complete enquiry had been made and the revelations which were made as a result of such enquiry were startling." [emphasis supplied]

29. It can thus be seen that Fazl Ali, J. found that before the Act was passed, the matter was placed before the Standing Committee of the Industrial Advisory Council where a large number of leading industrialists of the country were present. It was ultimately realized that, that was a case where the Government could rightly and properly intervene. It was further found that when the matter was discussed on the floor of the House, it emerged that there were about 35 weaving and spinning mills which were closed for one reason or the other. Some of them were closed for want of cotton, some due to overstock, some for want of capital and some on account of mismanagement. However, while singling out the Sholapur Mill, the Parliament had taken into consideration various factors. One of

them was that the undertaking was related to an industry which was of national importance. It was found that the Sholapur Mill was one of the largest mills in Asia and employed 13,000 workers. Another factor was that it was an economic unit and was working in two shifts before it was closed down. It was further found that prior to 1947, the highest dividend paid by the Company was Rs. 525/- per share and the lowest was Rs. 100/-. It was further noticed that only when the management was taken over by the Managing Agents, Sholapur Mill started showing losses. It was further found that the Managing Agents had acquired the control over the majority of the shares of the Sholapur Mill and a large number of shareholders who were dissatisfied with the management had been rendered powerless. It was further found that, by reason of the preponderance of their strength, the managing Agents made it impossible for a Controller under the Essential Supplies Act to function. In the totality of the circumstances, the Court found that a situation of an extraordinary character had arisen which fully justified the Sholapur Mill being treated as a class by itself. It was further found that though the other companies were also open to the charge of mismanagement, however, the criterion made applicable by the Government to Sholapur Mill for singling out could not be said to be arbitrary or unreasonable. It could further be noticed that 4 reasons were given by the Government for singling out the Sholapur Mill.

30. It will also be pertinent to note the observations made by Mukherjea, J. (who again formed a part of the majority) in the said judgment, which read thus:

> "It must be admitted that the guarantee against the denial of equal protection of the laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America, "equal protection of laws is a pledge of the protection of equal laws [Yick Wo v. Hopkins, 30 L Ed 220 : 118 US 356 at p. 369 (1886) : 1886 SCC OnLine US SC 188] " (L Ed p. 226), and this means "subjection to equal laws applying alike to all in the same situation [Southern Railway Co. v. Greene, 54 L Ed 536 : 216 US 400 at p. 412 (1910) : 1910 SCC OnLine US SC 59] " (L Ed p. 539). In other words, there should be no discrimination between one person and another if as regards the subject- matter of the legislation their position is the same. I am unable to accept the argument of Mr Chari that a legislation relating to one individual or one family or one body corporate would per se violate the guarantee of the equal protection rule. There can certainly be a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character [Willis : Constitutional Law at p. 580.] . It would be bad law: "if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations, and visits a penalty upon them which is not imposed upon others guilty of like delinquency [Gulf, Colorado and Santa Fe Railway Co. v. Ellis, 41 L Ed 666 : 165 US 150 at 159 (1897) : 1897 SCC OnLine US SC 20] …." (L Ed p. 669 : US p. 159) The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just

relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid [Southern Railway Co. v. Greene, 54 L Ed 536 : 216 US 400 at p. 412 (1910) : 1910 SCC OnLine US SC 59].

The question is whether judged by this test the impugned Act can be said to have contravened the provision embodied in Article 14 of the Constitution. Obviously, the Act purports to make provisions which are of a drastic character and against the general law of the land as laid down in the Indian Companies Act, in regard to the administration and management of the affairs of one Company in Indian territory. The Act itself gives no reason for the legislation but the Ordinance, which was a precursor of the Act, expressly stated why the legislation was necessary. It said that owing to mismanagement and neglect, a situation had arisen in the affairs of the Company which prejudicially affected the production of an essential commodity and caused serious unemployment amongst a certain section of the community. Mr Chari's contention in substance is that there are various textile companies in India situated in a similar manner as Sholapur Company, against which the same charges could be brought and for the control and regulation of which all the reasons that are mentioned in the Preamble to the Ordinance could be applied. Yet, it is said, the legislation has been passed with regard to this one Company alone. The argument seems plausible at first sight, but on a closer examination I do not think that I can accept it as sound. It must be conceded that the legislature has a wide discretion in determining the subject- matter of its laws. It is an accepted doctrine of the American courts and which seems to me to be well founded on principle, that the presumption is in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a transgression of constitutional principles. As was said by the Supreme Court of America in Middleton v. Texas Power and Light Co. [Middleton v. Texas Power and Light Co., 63 L Ed 527 : 249 US 152, 157 (1919) : 1919 SCC OnLine US SC 50] : (L Ed p. 531) "... [It must be presumed] that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds." (US p. 157) This being the position, it is for the petitioner to establish facts which would prove that the selection of this particular subject by the legislature is unreasonable and based upon arbitrary grounds.

No allegations were made in the petition and no materials were placed before us to show as to whether there are other companies in India which come precisely under the same category as Sholapur Spinning and Weaving Company and the reasons for imposing control upon the latter as mentioned in the Preamble to the Ordinance are applicable to them as well. Mr Chari argues that these are matters of common knowledge of which we should take judicial notice. I do not think that this is the correct line of approach. It is quite true that the legislature has, in this instance, proceeded against one company only and its shareholders; but even one corporation or a group of persons can be taken as a class by itself for the purpose of legislation, provided it exhibits some exceptional features which are not possessed by others. The courts should prima facie lean in favour

of constitutionality and should support the legislation if it is possible to do so on any reasonable ground, and it is for the party who attacks the validity of the legislation to place all materials before the court which would go to show that the selection is arbitrary and unsupportable. Throwing out of vague hints that there may be other instances of similar nature is not enough for this purpose. We should bear in mind that a corporation, which is engaged in production of a commodity vitally essential to the community, has a social character of its own, and it must not be regarded as the concern primarily or only of those who invest their money in it. If its possibilities are large and it had a prosperous and useful career for a long period of time and is about to collapse not for any economic reason but through sheer perversity of the controlling authority, one cannot say that the legislature has no authority to treat it as a class by itself and make special legislation applicable to it alone in the interests of the community at large. The combination of circumstances which are present here may be of such unique character as could not be existing in any other institution. But all these, I must say, are matters which require investigation on proper materials which we have not got before us in the present case. In these circumstances I am constrained to hold that the present application must fail on the simple ground that the petitioner made no attempt to discharge the prima facie burden that lay upon him and did not place before us the materials upon which a proper decision on the point could be arrived at. In my opinion, therefore, the attack on the legislation on the ground of the denial of equal protection of law cannot succeed. We have not even before us any statement on oath by the petitioner that what has been alleged against this particular Company may be said against other companies as well. If there was any such statement, the respondents could have placed before us the whole string of events that led up to the passing of this legislation. If we are to take judicial notice of the existence of similar other badly managed companies, we must take notice also of the facts which appear in the parliamentary proceedings in connection with this legislation which have been referred to by my learned Brother, Fazl Ali, J. in his judgment and which would go to establish that the facts connected with this corporation are indeed exceptional and the discrimination that has been made can be supported on just and reasonable grounds. I purposely refrain from alluding to these facts or basing my decision thereon as we had no opportunity of investigating them properly during the course of the hearing. As matters stand, no proper materials have been placed before us by either side and as I am unable to say that the legislature cannot be supported on any reasonable ground, I think it to be extremely risky to overthrow it on mere suspicion or vague conjectures. If it is possible to imagine or think of cases of other companies where similar or identical conditions might prevail, it is also not impossible to conceive of something “peculiar” or “unusual” to this corporation which led the legislature to intervene in its affairs. As has been laid down by the Supreme Court of America, “The Legislature is free to recognise degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest [Radice v. New York, 68 L Ed 690 : 264 US 292 (1924) : 1924 SCC OnLine US SC 62] .” (L Ed p. 695). We should bear in mind that a corporation, which is engaged in production of a commodity vitally essential to the community, has a social character of its own, and it must not be regarded as the concern primarily or only of those who invest their money in it. If its possibilities are large and it had a prosperous and useful career for a long period of time and is about to collapse not for any economic reason but through sheer perversity of the controlling authority, one cannot say that the legislature has no authority to treat it as a class by itself and make special legislation applicable to it alone in the interests of the community at large. The combination of circumstances which are present here may be of such unique character as could

not be existing in any other institution. But all these, I must say, are matters which require investigation on proper materials which we have not got before us in the present case. In these circumstances I am constrained to hold that the present application must fail on the simple ground that the petitioner made no attempt to discharge the prima facie burden that lay upon him and did not place before us the materials upon which a proper decision on the point could be arrived at. In my opinion, therefore, the attack on the legislation on the ground of the denial of equal protection of law cannot succeed." [emphasis supplied]

31. It can be seen that His Lordship rejected the arguments that the legislation relating to one individual or one family or one body corporate would violate the guarantee of the equal protection rule. His Lordship further held that there can be certainly a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character. However, it would be bad law if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations, and visits a penalty upon them which is not imposed upon others guilty of like delinquency. The contention of the appellants therein as recorded by His Lordship was that there were various textile companies in India situated in a similar manner as the Sholapur Mill, but the legislation was passed only with regard to one Company i.e. the Sholapur Mill. While dealing with the said contention, His Lordship observed that neither any allegations were made in the petition nor any materials were placed before the Court to show as to whether there were other companies in India which came precisely under the same category as that of Sholapur Mill. His Lordship found that the legislature can enact a law in respect of one undertaking or a group of persons by treating them as a class by itself provided it exhibits some exceptional features which are not possessed by others. His Lordship further observed that the courts should prima facie lean in favour of constitutionality and support the legislation if it is possible to do so on any reasonable ground. It has been held that it is for the party who attacks the validity of the legislation to place all materials before the court which would go to show that the selection was arbitrary and unsupportable. His Lordship specifically noticed that leave aside placing any material on record, there was not even any allegation/statement placed on record by the petitioner therein.

32. Patanjali Sastri and Das, JJ. disagreed with the majority in the said case. Sastri, J. observed thus:

> "It is obvious that the legislation is directed solely against a particular Company and shareholders and not against any class or category of companies and no question, therefore, of reasonable legislative classification arises. If a law is made applicable to a class of persons or things and the classification is based upon differentia having a rational relation to the object sought to be attained, it can be no objection to its constitutional validity that its application is found to affect only one person or thing. For instance, a law may be passed imposing certain restrictions and burdens on joint stock companies with a share capital of, say, Rs 10 crores and upwards, and it may be found that there is only one such Company for the time being to which the law could be applied. If other such companies are brought into existence in future the law would apply to them also, and no discrimination would thus be involved. But the

impugned Act, which selects this particular Company and imposes upon it and its shareholders burdens and disabilities on the ground of mismanagement and neglect of duty on the part of those charged with the conduct of its undertaking, is plainly discriminatory in character and is, in my judgment, within the constitutional inhibition of Article 14. Legislation based upon mismanagement or other misconduct as the differentia and made applicable to a specified individual or corporate body is not far removed from the notorious parliamentary procedure formerly employed in Britain of punishing individual delinquents by passing bills of attainder, and should not, I think, receive judicial encouragement.

It was next urged that the burden of proving that the impugned Act is unconstitutional lay on the petitioner, and that, inasmuch as he has failed to adduce any evidence to show that the selection of this Company and its shareholders for special treatment under the impugned Act was arbitrary, the application must fail. Whilst all reasonable presumption must undoubtedly be made in support of the constitutional validity of a law made by a competent legislature, the circumstances of the present case would seem, to my mind to exclude such presumption. Hostile discrimination is writ large over the face of the impugned Act and it discloses no grounds for such legislative intervention. For all that appears no compelling public interests were involved. Even the Preamble to the original Ordinance was omitted. Nor did Respondents 1 and 2 file any counter-statement in this proceeding explaining the circumstances which led to the enactment of such an extraordinary measure. There is thus nothing in the record even by way of allegation which the petitioner need take steps to rebut. Supposing, however, that the impugned Act was passed on the same grounds as were mentioned in the Preamble to the repealed Ordinance, namely, mismanagement and neglect prejudicially affecting the production of an essential commodity and causing serious unemployment amongst a section of the community, the petitioner could hardly be expected to assume the burden of showing, not that the Company's affairs were properly managed, for that is not his case, but that there were also other companies similarly mismanaged, for that is what, according to the respondents, he should prove in order to rebut the presumption of constitutionality. In other words, he should be called upon to establish that this Company and its shareholders were arbitrarily singled out for the imposition of the statutory disabilities. How could the petitioner discharge such a burden? Was he to ask for an investigation by the Court of the affairs of other industrial concerns in India where also there were strikes and lockouts resulting in unemployment and cessation of production of essential commodities? Would those companies be willing to submit to such an investigation? And even so, how is it possible to prove that the mismanagement and neglect which is said to have prompted the legislation in regard to this Company was prevalent in the same degree in other companies? In such circumstances, to cast upon the petitioner a burden of proof which it is as needless for him to assume as it is impracticable to discharge is to lose sight of the realities of the case." [emphasis supplied]

33. His Lordship Sastri, J. found that the enactment dealing with the single entity i.e., Sholapur Mill was plainly discriminatory in character and within the constitutional inhibition of Article 14 of the Constitution. His Lordship observed that if a law is made applicable to a class of persons or things and the classification is based upon differentia having a rational relation to the object sought to be attained, there can be no objection to its constitutional validity. In such cases, even legislation dealing with single entity would be valid.

34. While disagreeing with the majority view with regard to burden of proving that the impugned enactment was unconstitutional lay on the petitioner and that the petitioner had failed to adduce any evidence in that regard, His Lordship observed that though all reasonable presumption must be made in support of the constitutional validity of a law made by a competent legislature, the facts and circumstances of the said case would seem to exclude such a presumption.

35. His Lordship further observed that hostile discrimination was writ large over the face of the impugned enactment and it disclosed no grounds for such legislative intervention. It was further observed that asking the petitioner therein to establish that the Sholapur Mill and its shareholders were arbitrarily singled out for imposition of statutory disabilities cast upon the petitioner a burden of proof which was needless for him to assume and impracticable to discharge and was to lose sight of the realities of the case.

36. Das, J., while giving separate dissenting opinion, observed thus:

"..... But if mismanagement affecting production and resulting in unemployment is to be the basis of a classification for making a law for preventing mismanagement and securing production and employment, the law must embrace within its ambit all companies which now are or may hereafter become subject to the vice. This basis of classification by its very nature cannot be exclusively applicable to any particular company and its shareholders but is capable of wider application and, therefore, the law founded on that basis must also be wide enough so as to be capable of being applicable to whoever may happen at any time to fall within that classification. Mismanagement affecting production can never be reserved as a special attribute peculiar to a particular company or the shareholders of a particular company. If it were permissible for the legislature to single out an individual or class and to punish him or it for some delinquency which may equally be found in other individuals or classes and to leave out the other individuals or classes from the ambit of the law the prohibition of the denial of equal protection of the laws would only be a meaningless and barren form of words. The argument that the presumption being in favour of the legislature, the onus is on the petitioner to show there are other individuals or companies equally guilty of mismanagement prejudicially affecting the production of an essential commodity and causing serious unemployment amongst a certain section of the community does not, in such circumstances, arise, for the simple reason that here there has been no classification at all and, in any case, the basis of classification by its very nature is much wider and cannot, in its application, be limited only to this Company and its shareholders and, that being so, there is no reason to throw on the petitioner the almost impossible burden of proving that there are other companies which are in fact precisely and in all particulars similarly situated. In any event, the petitioner, in my opinion, may well claim to have discharged the onus of showing that this Company and its shareholders have been singled

out for discriminating treatment by showing that the Act, on the face of it, has adopted a basis of classification which, by its very nature, cannot be exclusively applicable to this Company and its shareholders but which may be equally applicable to other companies and their shareholders and has penalised this particular Company and its shareholders, leaving out other companies and their shareholders who may be equally guilty of the alleged vice of mismanagement and neglect of the type referred to in the preambles. In my opinion the legislation in question infringes the fundamental rights of the petitioner and offends against Article 14 of our Constitution." [emphasis supplied]

37. It can be seen that His Lordship observed that if the mismanagement affecting production and resulting in unemployment is to be the basis of a classification for making a law for preventing mismanagement and securing production and employment, then the law must embrace within its ambit all companies which now are or may hereafter become subject to the vice. His Lordship held that the basis of classification by its very nature cannot be exclusively applicable to any particular company and its shareholders but was capable of wider application and, therefore, the law founded on that basis must also be wide enough so as to be capable of being applicable to whoever may happen at any time to fall within that classification. His Lordship observed that the basis of classification by its very nature was much wider and that there would be no classification at all and, therefore, there was no reason to throw on the petitioner the almost impossible burden of proving that there were other companies which were in fact precisely and in all particulars similarly situated. His Lordship observed that in the facts of the said case, the petitioner could very well claim to have discharged the onus of showing that the Company and its shareholders had been singled out for discriminating treatment, by showing that the Act, on the face of it, had adopted a basis of classification which, by its very nature, could not have been exclusively applicable to the Company and its shareholders, but which could also be equally applicable to the other companies and their shareholders.

38. It can thus be seen that though there appears to be disagreement on other aspects but all the opinions unanimously hold that even a legislation dealing with a single entity or an undertaking would be permissible in law, if it is based on a reasonable classification having nexus with the object to be achieved. The classification should be such wherein an entity or an undertaking to whom a special treatment is provided can be singled out on the basis of some reasonable classification from the others in the same class.

39. However, there appears to be disagreement with regard to the discharge of burden. Whereas the majority is of the view that there is a presumption with regard to validity of the enactment and that the burden is on the person who challenges the validity thereof, the minority holds that in such cases wherein an entity has been singled out, then once the petitioner points out that he has been singled out from a class similarly circumstanced, the same should be taken as having discharged the burden. It has been held by the minority that asking the petitioner to discharge the burden by placing the evidence in such cases would be asking him to do an impossibility. However, even from the majority view, it appears that in the facts and circumstances of the said case, the majority found that quite apart the petitioner placing any material on record to discharge the burden, there was not even a single statement on affidavit with regard to discrimination.

40. In the case of D.S. Reddy v. Chancellor, Osmania University and Others14, the Constitution Bench of this Court was considering the constitutional validity of Section 5 of the Osmania University (Second Amendment) Act, 1966 which introduced Section 13A into the original Act. The challenge of the petitioner therein was that, by virtue of Section 13A, a differentiation was made between the appellant who was a Vice-Chancellor on the date of the commencement of the said Act and other persons who were to be appointed Vice-Chancellors thereafter. It was argued that the differentiation was without any basis and that such a classification did not have any reasonable relation to the main object of the legislation.

[1967] 2 SCR 214 : 1966 INSC 259

41. It will be relevant to refer to the observations of the Constitution Bench in the said case, which read thus:

> "There can be no controversy that Section 13- A, introduced by Section 5 of the Second Amendment Act, deals only with the appellant. In fact, the stand taken on behalf of the respondents in the counter affidavit filed before the High Court, was to the effect that the legislature had chosen to treat the Vice-Chancellor holding office at the time of the commencement of the Second Amendment Act, as a class by himself and with a view to enable the Chancellor to make fresh appointments, Section 13-A of the Act was enacted.
>
> Therefore, it is clear that Section 13-A applies only to the appellant. Though, no doubt, it has been stated, on behalf of the respondents, that similar provisions were incorporated, at about the same time, in two other Acts, relating to two other Universities viz. the Andhra University and the Sri Venkateswara University, and though this circumstance has also been taken into account by the learned Judges of the High Court, in our opinion, those provisions have no bearing in considering the attack levelled by the appellant on Section 13-A of the Act.
>
> This is a clear case where the statute itself directs its provisions by enacting Section 13-A, against one individual viz. the appellant; and before it can be sustained as valid, this Court must be satisfied that there is a reasonable basis for grouping the appellant as a class by himself and that such reasonable basis must appear either in the statute itself or must be deducible from other surrounding circumstances according to learned Counsel for the appellant, all Vice- Chancellors of the Osmania University come under one group and can be classified only as one unit and there is absolutely no justification for grouping the appellant under one class and the Vice-
>
> Chancellors to be appointed in future under a separate class. In any event, it is also urged that the said classification has no relation or nexus to the object of the enactment.

> ..... In our view, the Vice-Chancellor, who is appointed under the Act, or the Vice-Chancellor who was holding that post on the date of the commencement of the Second Amendment Act, form one single group or class. Even assuming that the classification of these two types of persons as coming under two different groups can be made nevertheless, it is essential that such a classification must be founded on an intelligible differentia which distinguishes the appellant from the Vice-Chancellor appointed under the Act. We are not able to find any such intelligible differentia on the basis of which the classification can be justified.
>
> .....
>
> For the above reasons, we accept the contentions of the learned Counsel for the appellant, and hold that Section 5 of the Second Amendment Act (Act 11 of 1966), introducing Section 13-A in the Act, is discriminatory and violative of Article 14 of the Constitution and, as such, has to be struck down as unconstitutional. The result is that the appeal is allowed, and the appellant will be entitled to his costs in the appeal, payable by the respondents, here and in the High Court." [emphasis supplied]

42. It can thus be seen that the Constitution Bench found that Section 13A was applied only to the appellant therein. The Court further found that the Vice-Chancellor, who was appointed under the said Act or the Vice-Chancellor who was holding that post on the date of the commencement of the Second Amendment Act, formed one single group or class. The Court found that though the classification of these two types of persons as coming under two different groups could be made, however, the same could not be made unless the classification was founded on an intelligible differentia which distinguished the appellant from the Vice-Chancellor appointed under the Act. The Court found that before upholding an enactment applicable to one individual, this Court must be satisfied that there is a reasonable basis for grouping such an individual as a class by himself and that such reasonable basis must appear either in the statute itself or must be deducible from other surrounding circumstances. The Court found that there was no such intelligible differentia on the basis of which such classification could be justified.

43. In the case of S.P. Mittal v. Union of India and Others15, the Constitution Bench of this Court was considering the provisions of Auroville (Emergency (1983) 1 SCC 51 : 1982 INSC 81 Provisions) Act, 1980. In the said case also, an argument was advanced that a legislation singling out Sri Aurobindo Society amounted to hostile treatment. Dealing with the said argument, speaking for the majority, R.B. Misra, J. observed thus:

> "163. It was further contended by Mr Venugopal that if the management of the institution had been taken over by the Government on the ground of mismanagement, there could be other institutions where similar situation might be prevailing. There should have been a general legislation rather than singling out Sri Aurobindo Society for hostile treatment.

> 164. The argument cannot be accepted for two reasons. Firstly, because it has not been pointed out which were the other institutions where similar situations were prevailing. Besides, there is a uniqueness with this institution inasmuch as the Government is also involved. Even a single institution may be taken as a class. The situation prevailing in the Auroville had converted the dream of the Mother into a nightmare. There had arisen acute law and order situation in the Auroville, numerous cases were pending against various foreigners, the funds meant for the Auroville had been diverted towards other purposes and the atmosphere was getting out of hand. In the circumstances the Government intervened and promulgated the Ordinance and later on substituted it by the impugned enactment. It cannot be said that it is violative of Article 14 on that account..... .....
>
> 171. We are afraid the argument has no substance.

Obviously, there were serious irregularities in the management of the said Society as has been pointed out in the earlier part of the judgment. There has been misutilisation of funds and their diversion to other purposes. This is evident from the audit report. There was no material change in the situation on the date of the impugned Ordinance or the Act, rather the situation had grown from bad to worse and the sordid situation prevailing in the Auroville so pointed out by the parties fully justified the promulgation of the Ordinance and the passing of the enactment. Of course, each party tried to apportion the blame on the other. Whosoever be responsible, the fact remains that the prevailing situation in the Auroville was far from satisfactory. The amount donated for the construction of the cultural township Auroville and other institutions was to the tune of Rs 3 crores. It was the responsibility of the Government to see that the amount was not misutilised and the management was properly carried out. So, the basis of the argument that the facts as pointed out in the Preamble were non est is not correct." [emphasis supplied]

44. No doubt that the Court held that even a single institution may be taken as a class, in the facts of the said case, the Court found that from the Preamble of the impugned enactment itself, it was clear that there were serious irregularities in the management of the society. The Court found that there had arisen acute law and order situation in the Auroville, numerous cases were pending against various foreigners, the funds meant for the Auroville had been diverted towards other purposes and the atmosphere was getting out of hand. It was found that in such circumstances, the intervention of the Government by promulgating the Ordinance and later on substituted it by the impugned enactment could not be held to be violative of Article 14 of the Constitution.

45. In the case of Dharam Dutt and Others v. Union of India and Others16, the Court was considering the validity of Indian Council of World Affairs Act, 2001. In the said case, again a similar argument was advanced before the Division Bench of this Court. Rejecting the said argument, the Court observed thus:

> "56. Article 14 of the Constitution prohibits class legislation and not reasonable classification for the purpose of legislation. The requirements of the validity of legislation by reference to Article 14 of the Constitution are : that the subject-matter

> of legislation should be a well-defined class founded on an intelligible differentia which distinguishes that subject-matter from the others left out, and such differentia must have a rational relation with the object sought to be achieved by the legislation. The laying down of intelligible differentia does not, however, mean that the legislative classification should be scientifically perfect or logically complete.
>
> 57. We have already pointed out in an earlier part of this judgment that in the present case successive Parliamentary Committees found substance in the complaints received that an institution of national importance was suffering (2004) 1 SCC 712 : 2003 INSC 667 from mismanagement and maladministration.

The Central Government acted on such findings. Circumstances warranting an emergent action satisfied the President of India, resulting in his promulgating ordinances which earlier could not culminate in legislative enactments on account of fortuitous circumstances. At the end Parliament exercised its legislative power under Article 245 of the Constitution read with Entries 62 and 63 of List I. The legislation cannot be said to be arbitrary or unreasonable.

58. It was further submitted that the provisions of the Societies Registration Act, 1860 were effective enough which, if invoked, could have taken care of the alleged grievances. If there was any truth or substance therein the same could have been found on enquiries being held. In our opinion, in a given set of facts and circumstances, merely because an alternative action under the Societies Registration Act, 1860 could have served the purpose, a case cannot be and is not made out for finding fault with another legislation if the same be within the legislative competence of Parliament, which it is, as will be seen hereinafter.

59. A similar submission was made and repelled in S.P. Mittal case [(1983) 1 SCC 51] . The contention there was that provisions in the Societies Registration Act were available to meet the situation in Auroville and that the law and order situation could be controlled by resorting to provisions of the Code of Criminal Procedure. The Constitution Bench held : (SCC p. 116, para 169) "169. Whether the remedies provided under the Societies Registration Act were sufficient to meet the exigencies of the situation is not for the Court to decide but it is for the Government and if the Government thought that the conditions prevailing in the Auroville and the Society can be ameliorated not by resorting to the provisions of the Societies Registration Act but by a special enactment, that is an area of the exercise of the discretion of the Government and not of the Court." The Constitution Bench also observed that assuming the facts brought to the notice of the legislature were wrong, it will not be open to the Court to hold the Act to be bad on that account.

60. It was then submitted that the institution ICWA was singled out and though there were several other institutions run by societies or other organizations which were in the grip of more serious mismanagement and maladministration, they were not even touched and Parliament chose to legislate as to one institution only. This submission too holds no merit. Firstly, no other institution is named or particularized so as to be comparable with ICWA. Secondly, there can be a legislation in respect of a single institution as is clear from the language itself of Entries 62 and 63 of List I. A single institution is capable of being treated as a class by itself for the purpose of legislation if there

are special circumstances or reasons which are applicable to that institution and such legislation would not incur the wrath of Article

14. In S.P. Mittal [(1983) 1 SCC 51] the impugned legislation brought with the object and purpose of taking away the management of Auroville from the Aurobindo Society and to bring it under the management of the Central Government under the provisions of the impugned Act was held to be valid. The exercise of legislative power by Parliament was sought to be justified as falling within the field of Entry 63 of List I. Their Lordships referred to several decisions wherein the constitutional validity of similar legislations was upheld. In Ram Krishna Dalmia v. Justice S.R. Tendolkar [AIR 1958 SC 538 :

> 1959 SCR 279] legislation relating to a single "individual", in Raja Bira Kishore Deb v. State of Orissa [AIR 1964 SC 1501 : (1964) 7 SCR 32] legislation in respect of a single "temple" and in Charanjit Lal Chowdhury v. Union of India [1950 SCC 833 : AIR 1951 SC 41 : 1950 SCR 869] a separate law enacted for one company were held not to offend Article 14 of the Constitution on the ground that there were special reasons for passing such legislation." [emphasis supplied]
>
> 46. It can thus clearly be seen that in the said case also, the Court took note of the successive Parliamentary Committees finding substance in the complaints received that an institution of national importance was suffering from mismanagement and maladministration. It was found that the Central Government acted on such findings. It was also found that the circumstances warranted an emergent action.

Relying on the case of S.P. Mittal (supra), the Court found that a single institution was capable of being treated as a class by itself for the purpose of legislation if there were special circumstances or reasons which were applicable to that institution and in such circumstances, the legislation would not incur the wrath of Article 14 of the Constitution.

47. In the case of P. Venugopal v. Union of India17, this Court was considering the proviso to Section 11 (1-A) of the All-India Institute of Medical Sciences Act, 1956 vide which the tenure of the petitioner therein was sought to be (2008) 5 SCC 1 : 2008 INSC 607 curtailed. Relying on the other judgments of this Court, the Court held the said proviso to Section 11 (1-A) unconstitutional and ultra vires. It was found that the facts of the said case were similar to that of D.S. Reddy (supra).

48. It is thus a settled position of law that though a legislation affecting a single entity or a single undertaking or a single person would be permissible in law, it must be on the basis of reasonable classification having nexus with the object to be achieved. There should be a reasonable differentia on the basis of which a person, entity or undertaking is sought to be singled out from the rest of the group. Further, if a legislation affecting a single person, entity or undertaking is being enacted, there should be special circumstances requiring such an enactment. Such special circumstances should be gathered from the material taken into consideration by the competent legislature and shall include the Parliamentary/Legislative Debates.

49. In the case of Chiranjit Lal Chowdhuri (supra), this Court found that the Sholapur Mill was an undertaking of national importance employing 13,000 people, it was found that till the Managing Agents took over, it was running in profits and only thereafter, it started running in losses. It was further found that the Managing Agents were indulging in serious mismanagement and irregularities. The Court found that before the enactment was passed, the matter was placed before the Standing Committee of the Industrial Advisory Council where a large number of leading industrialists of the country were present. It was further found that before such an enactment was passed, it was persuaded by wide-scale consultations with the stakeholders. The Court also took note of the 4 factors taken into consideration by the Government for singling out the petitioner therein from the other industries facing mismanagement. They were: (i) that the undertaking was of national importance; (ii) the undertaking was an economic unit; (iii) the technical report showed that the condition of the plants, machinery etc., which either as they stand, or after necessary repairs and reconditioning can be properly utilized; and (iv) there was a proper enquiry held before the Government took any action. It was further found that the enquiry had shown that the Managing Agents had so mismanaged that they were no longer fit and proper persons to remain in charge of such an important undertaking.

50. Insofar as the case of S.P. Mittal (supra) is concerned, this Court found that not only there was serious mismanagement in the society but the situation had become precarious and had also led to law and order situation wherein the Government found it necessary to take emergent and extreme steps.

51. Similarly, in the case of Dharam Dutt (supra), this Court found that the Indian Council of World Affairs was an institute of national importance and the Parliamentary Committee Report found that there was mismanagement and as such, it was necessary to take an emergent action.

52. Per contra, in the case of D.S. Reddy (supra), the Court held that a legislation pertaining to a single individual which was not based on a reasonable basis for grouping one person as a class by itself and that such a classification was not founded on an intelligible differentia and as such was violative of Article 14 of the Constitution. Similarly, in the case of P. Venugopal (supra), the Court struck down a legislation which was made singly applicable to the appellant therein being violative of Article 14 of the Constitution.

53. It can thus be seen that wherever this Court has upheld the legislation affecting the single entity, institution or undertaking, it found that it was done in emergent and extreme circumstances preceded by enquiries, parliamentary debates, etc. It was done when the legislature took into consideration the relevant material and found it expedient to do so.

54. It is also settled by this Court that there will be a presumption with regard to the validity of the enactment and the burden would be on the person who challenges the same. In the case of Chiranjit Lal Chowdhuri (supra), the majority found that quite apart from not discharging the burden of hostile discrimination, the petitioners therein had not even averred with regard to such a discrimination by a statement on affidavit. No doubt that Shastri and Das, JJ. disagreed and held that in such cases asking the petitioner to discharge the burden would be asking him to do an

impossibility.

55. In the light of the aforesaid legal position, we have to examine the present case.

56. Undisputedly, the Impugned Act is a single entity legislation repealing the 2016 Act by which the Khalsa University was established. The only reasoning as could be found in the SOR of the Impugned Act is that the Khalsa College, Amritsar has, over a period of time, become a significant icon of Khalsa Heritage and the appellant was likely to shadow and damage its character and pristine glory.

57. In the writ petition filed before the High Court, the appellants have specifically placed on record their challenge on the ground of discrimination which reads thus:

> "There are 16 apart from the petitioner private Universities are operating in the State of Punjab. These are detailed as under: -
>
> (i) Shri Guru Granth Sahib World University, Fatehgarh Sahib.
>
> (ii) Chandigarh University, Chandigarh.
>
> (iii) Desh Bhagat University, Mandi Gobindgarh.
>
> (iv) RIMT University, Mandi Gobindgarh.
>
> (v) Rayat Bahara University, Mohali.
>
> (vi) Adesh Medical University, Bathinda.
>
> (vii) Akal University Bathinda.
>
> (viii) Guru Kanshi University, Bathinda.
>
> (ix) Thapar University, Patiala
>
> (x) CT University, Ludhiana .
>
> (I) Chitkara University, Rajpura
>
> (xii) Khalsa University, Amritsar
>
> (xiii) Shri Guru Ramdas Medical University, Amritsar.
>
> (xiv) LPU, Jalandhar.

(xv) D.A.V. Jalandhar.

(xvi) GNA University, Phagwara. (xvii) Baba Bhag Singh University, Padhiana Sahib, Phagwara.

All the private Universities apart from the Thapar University, Lovely Professional University have been established in the past 10 years. It is only the petitioner University which is being singled out by the State Government. There is absolutely no reason or justification whereby the petitioner University can be ordered to be shut down in such a discriminatory manner.

Still further it is respectfully submitted that in the Malwa region of Punjab with population share of 52 per cent there are 22 Universities. In the Doaba region with 19 per cent population there are 7 Universities; but in the Majha region with 29 per cent population there are only 3 Universities one being the Guru Nanak Dev University, Amritsar, the second being Sri Guru Ramdas University wherein only B.D.S., M.B.B.S., M.D., M.D.S. and Nursing courses are imparted and the third being the petitioner Khalsa University which by virtue of the impugned Act today stands shut down. The action is thus violative of Article 14 of the Constitution of India as well."

58. It can thus clearly be seen that the Khalsa University has specifically averred that it has been singled out by the State Government amongst 16 Universities. It has also been averred that there is absolutely no reason or justification whereby the Khalsa University could be ordered to be shut down in such a discriminatory manner. The Khalsa University has also made specific averments with regard to discrimination inasmuch as there are more number of Universities in Malwa region and Doaba region as against the Majha region.

59. Though a detailed reply has been filed on behalf of respondent No.1 before the High Court, the reply does not deal with the submissions made by the appellants on the ground of discrimination. In any case, no material is placed on record as to what was the compelling and emergent situation so as to enact a law which could affect the Khalsa University (appellant No.1). No material is placed on record to show that there were any discussions prior to the Impugned Act being passed or as to what material was placed and taken into consideration by the competent legislature. Even going by the law laid down by the majority in the case of Chiranjit Lal Chowdhuri (supra), since the Khalsa University had specifically pleaded a ground regarding discrimination, it was incumbent upon the respondents to have dealt with the said challenge. We therefore find that the Impugned Act singled out the Khalsa University (appellant No.1) amongst 16 private Universities in the State and no reasonable classification has been pointed out to discriminate the Khalsa University (appellant No.1) against the other private Universities. The Impugned Act therefore would be discriminatory and violative of Article 14 of the Constitution.

B. Whether the Impugned Act is liable to be struck down on the ground of manifest arbitrariness?

60. The next ground on which the Impugned Act is challenged is that the Impugned Act suffers from manifest arbitrariness. Reliance in this respect is placed on the Constitution Bench judgment of this Court in the case of Shayara Bano (supra). In the said case, R.F. Nariman, J., speaking for himself

and Uday U. Lalit, J., after referring to various earlier judgments, in para 70 onwards, observed thus:

> "95. On a reading of this judgment in Natural Resources Allocation case [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1] , it is clear that this Court did not read McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] as being an authority for the proposition that legislation can never be struck down as being arbitrary. Indeed the Court, after referring to all the earlier judgments, and Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] in particular, which stated that legislation can be struck down on the ground that it is "arbitrary" under Article 14, went on to conclude that "arbitrariness" when applied to legislation cannot be used loosely.

Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is "manifestly arbitrary" i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.

96. Another Constitution Bench decision in Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] dealt with a challenge to Section 6-A of the Delhi Special Police Establishment Act, 1946. This section was ultimately struck down as being discriminatory and hence violative of Article 14. A specific reference had been made to the Constitution Bench by the reference order in Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2005) 2 SCC 317 : 2005 SCC (L&S) 241] and after referring to several judgments including Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] , Mardia Chemicals [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] , Malpe Vishwanath Acharya [Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1] and McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] , the reference, inter alia, was as to whether arbitrariness and unreasonableness, being facets of Article 14, are or are not available as grounds to invalidate a legislation.

97. After referring to the submissions of the counsel, and several judgments on the discrimination aspect of Article 14, this Court held:

> (Subramanian Swamy case [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] , SCC pp. 721-22, paras 48-49) "48. In E.P. Royappa [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 :
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> 1974 SCC (L&S) 165] , it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 as under: (SCC p. 38) '85. ... From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are

> sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.' Court's approach
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> 49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers;

conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is."

98. Since the Court ultimately struck down Section 6-A on the ground that it was discriminatory, it became unnecessary to pronounce on one of the questions referred to it, namely, as to whether arbitrariness could be a ground for invalidating legislation under Article 14. Indeed the Court said as much in para 98 of the judgment as under:

> (Subramanian Swamy case [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] , SCC p. 740) "98. Having considered the impugned provision contained in Section 6-A and for the reasons indicated above, we do not think that it is necessary to consider the other objections challenging the impugned provision in the context of Article 14."

99. However, in State of Bihar v. Bihar Distillery Ltd. [State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453] , SCC at para 22, in State of M.P. v. Rakesh Kohli [State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481] , SCC at paras 17 to 19, in Rajbala v. State of Haryana [Rajbala v. State of Haryana, (2016) 2 SCC 445] , SCC at paras 53 to 65 and in Binoy Viswam v. Union of India [Binoy Viswam v. Union of India, (2017) 7 SCC 59] , SCC at paras 80 to 82, McDowell [State of A.P.

v. McDowell and Co., (1996) 3 SCC 709] was read as being an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14. As has been noted by us earlier in this judgment, McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] itself is per incuriam, not having noticed several judgments of Benches of equal or higher strength, its reasoning even otherwise being flawed. The judgments, following McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] are, therefore, no longer good law.

100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In Cellular Operators Assn. of India v. TRAI [Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703] , this Court referred to earlier precedents, and held: (SCC pp. 736-37, paras 42-44) "Violation of fundamental rights

42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, para 75.]

43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In Khoday Distilleries Ltd. v. State of Karnataka [Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304] , this Court held: (SCC p. 314, para

13) '13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable;

"unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends

Article 14 of the Constitution.'

44. Also, in Sharma Transport v. State of A.P. [Sharma Transport v. State of A.P., (2002) 2 SCC 188] , this Court held: (SCC pp. 203-04, para 25) '25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.' " (emphasis in original)

101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14." [emphasis supplied]

61. It is to be noted that Nariman, J. wrote the judgment for himself and Lalit, J., and concurred with the judgment delivered by Kurian Joseph, J. As such, the views expressed by Nariman, J. would be part of the majority view.

62. It can thus be seen that in the said case, it was held that the test of manifest arbitrariness as laid down by this Court in various judgments would also apply to invalidate legislation as well as subordinate legislation under Article 14. It was held that manifest arbitrariness must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. It further goes on to hold that when something is done which is excessive and disproportionate, such a legislation would be manifestly arbitrary. It, in unequivocal terms, held that arbitrariness in the sense of manifest arbitrariness would apply to negate legislation under Article 14 of the Constitution. In para 95, it was observed that the case of Natural Resources Allocation, In re, Special Reference No. 1 of 201218, did not lay down a proposition that legislation can never be struck down as being arbitrary. This Court, after referring to all the earlier judgments including Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others19, stated that legislation can be struck down on the ground that it is arbitrary under Article 14 of the Constitution. However, arbitrariness when applied to legislation cannot be used loosely.

63. In touchstone of the aforesaid parameters, let us examine the Impugned Act.

64. The only reasoning given in the SOR of the Impugned Act is that the Khalsa College has, over a period of time, become a significant icon of Khalsa heritage and the University established in 2016 is likely to shadow and damage its character and pristine glory. It is to be noted that (2012) 10 SCC 1 (1981) 1 SCC 722 : 1980 INSC 218 the Khalsa College which was established in 1892 is not a part of the Khalsa University. The only colleges which were affiliated with the Khalsa University are the Khalsa College of Education, Amritsar established in 1954, Khalsa College for Women, Amritsar established in 1968 and Khalsa College of Pharmacy, Amritsar established in 2009. Apart from that, the appellants have given a specific undertaking stating thus:

> "It is accordingly respectfully submitted that the majestic façade and visual appeal of the building of the Khalsa College has not been touched or adversely affected by the establishment of the Khalsa University in any way what so ever. The Khalsa University has been established by converting the pre-existing 3 colleges viz College of Pharmacy, College for Women and College of Education into departments in the Khalsa University."

65. Though it is the stand of the appellants that they were in the process of establishing new institutions for getting them affiliated with the Khalsa University, a specific undertaking was given that the Khalsa College would not be touched or adversely affected by the establishment of the Khalsa University. Even during the course of hearing, a specific statement has been made by the appellants that the Khalsa College would not be affiliated with the Khalsa University. The maps have been placed on record which show the placement of Khalsa College in the campus along with the other institutions. The perusal of the said map would clearly reveal that it is only the Khalsa College established in 1892 which is a heritage one. All other buildings have been subsequently constructed having no resemblance with the Khalsa College building. It can thus be seen that the very foundation that Khalsa University would shadow and damage the character and pristine glory of Khalsa College which has, over a period of time, become a significant icon of Khalsa heritage is on a non-existent basis. It could thus be seen that the Impugned Act, which was enacted with a purpose which was non-existent, would fall under the ambit of manifest arbitrariness and would therefore be violative of Article 14 of the Constitution. We are therefore of the considered view that the Impugned Act is also liable to be set aside on the same ground.

66. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The impugned judgment and order dated 1st November 2017 passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 17150 of 2017 (O&M) is quashed and set aside;

(iii) Writ Petition being C.W.P. No. 17150 of 2017 (O&M) is allowed and the Khalsa University (Repeal) Act, 2017 is struck down as being unconstitutional. The consequent direction is also issued to the effect that the Khalsa University Act, 2016 would be deemed to be in force and status quo as it obtained on 29th May 2017 would stand restored; and

(iv) In the facts and circumstances of the case, no order as to costs.

67. We place on record our appreciation for the valuable assistance provided by Shri P.S. Patwalia, learned Senior Counsel and Shri Shadan Farasat, Additional Advocate General for the State of Punjab.

68. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI) .....J. (K.V. VISWANATHAN) NEW DELHI;

OCTOBER 03, 2024