

Kashmir Singh vs Union Of India & Ors on 13 May, 2008

Author: S.B. Sinha

Bench: V.S. Sirpurkar, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7024 OF 2002

Kashmir Singh

...Appellant

Versus

Union of India & ors.

...Respondents

WITH

CIVIL APPEAL NO.....OF 2008
[arising out of SLP (C) No. 20803 of 2002]
CIVIL APPEAL NOS. 5546, 8171-8172,
8169-8170 of 2003 and 3162-3165 of 2004

JUDGMENT

S.B. SINHA, J :

Leave granted.

1. Whether rule of perpetuity would be applicable in respect of a member of a Sikh Judicial Commission (for short "Commission") constituted under the Sikh Gurdwaras Act, 1925 (for short "the Act") is in question in this appeal which arises out of a judgment and order dated 13.09.2002 passed by a Five-Judge Bench of the Punjab and Haryana High Court in Civil Writ Petition No. 371 of 1999.
2. The Act was applicable to the entire territories of the undivided State of Punjab including PEPSU. By reason of the provisions of the State Reorganisation Act, 1956, the State of Himachal Pradesh was constituted, having been carved out from the State of Punjab.

3. Another Parliamentary Act, being Punjab Reorganisation Act, 1966 (for short "the 1966 Act") was enacted in terms whereof the State of Punjab was divided into the State of Punjab, the State of Haryana and the Union Territory of Chandigarh.
4. The Central Government admittedly is the appropriate authority for passing requisite orders in relation to the matters involving inter-State Boards as envisaged under Section 88 of the 1966 Act. It issued a notification dated 19.10.1978 nominating the State of Punjab for the purpose of exercising its power under the 1966 Act.
5. In terms of the provisions of the Act, the Shiromani Gurdwara Prabandhak Committee (hereinafter referred to as "the Board") was constituted. Appellant was appointed as a member of the Commission in terms of a notification dated 4.07.1989. He was elected the President thereof. Along with him one S. Dara Singh and S. Ragbir Singh were also appointed as members of the Commission.
6. A new Board was constituted on 21.11.1996. While the Commission was functioning with the said members, the State of Punjab issued a notification on 6.01.1999 whereby and whereunder all the members including the appellant were removed and in their places S. Man Mohan Singh, S. Amrik Singh and S. Ajwant Singh Mann were appointed.
7. A writ petition was filed thereagainst in January, 1999. During pendency of the said writ petition, the State of Punjab issued two more notifications on or about 12.01.1999. By reason of the first notification issued under Sections 70 and 71 of the Act, the notification dated 6.01.1999 was rescinded and by reason of the second notification, the Commission was reconstituted.
8. The writ petition was amended questioning also the validity of the aforementioned two notifications dated 12.01.1999.
9. The State of Punjab as also the Union of India, however, opposed the said writ petition contending that the State of Punjab had the requisite jurisdiction to remove the members of the Commission.
10. It was furthermore contended that the Union of India in terms of Section 72 of the 1966 Act had the requisite power to amend the law in regard to an intra-state body corporate. It was urged that by reason of the notification dated 19.10.1978, only a clarification had been issued to the effect that the word "State Government" would mean the "Government of State of Punjab" and even the State of Haryana consented thereto.
11. As regards the notifications dated 12.01.1999, it was contended that some inadvertent mistake had crept in; which was corrected by the said notifications, insofar as the source of power for issuance of the said notifications being Section 79 of the Act was not available, particularly, in view of the fact that clause (iv) thereof had been declared ultra vires by a Full Bench of the Punjab and Haryana High Court in Shiromani Gurdwaras Parbandhak Committee, Amritsar and another v. Lachhman Singh Gill and others [AIR 1970 P & H 40].

12. The matter was placed before a Division Bench of the Punjab and Haryana High Court. By an order dated 19.04.1999, the Division Bench formulated the following five questions and referred the matter to a Five- Judge Bench:

- "(i) Whether the Government of India has power under Section 72 of the Punjab Re-organisation Act to issue notification dated 19.10.1978 directing the substitution of the words "the State Government" with the words "the Government of the State of Punjab" in Sections 70, 71, 74, 78, 79 and 80 of the Sikh Gurdwaras Act, 1925?
- (ii) If the answer to question No. (i) is in negative, then
- (a) Whether the petitioners and such other members who have been appointed by the Government of Punjab State after reorganization can challenge the notifications dated 19.10.1978 and 12.1.1999 as their own appointments are invalid?
- (b) Which Government would exercise the powers of the State Government in relation to the various provisions of the Sikh Gurdwara Act, 1925 which deals with the functioning of the Judicial Commission, powers to issue directions in relation to the Judicial Commission?
- (iii) If the answer to question No. (i) is in affirmative, then
- (a) Whether the jurisdiction of the Central Government would be ousted in view of the provisions of Sections 3 and 4 of the Inter-state Cooperation Act, 1957? And
- (b) Whether notification dated 19.10.1978 suffers from the vice of excessive delegation?
- (iv) Whether under the Sikh Gurdwara Act, 1925 any period is fixed for which a member of the Commission will hold the office or does he hold the office in perpetuity?
- (v) Whether the notification dated 12.1.1999 is liable to be set aside on account of mala-fide?"

13. The Five-Judge Bench heard the matter for some time and reserved its judgment on 24.05.2001. On or about 5.07.2002, however, the purported notification dated 12.01.1999 was withdrawn and the Commission was restored. Appellant herein filed an application for withdrawal of the said writ petition which having been opposed, by an order dated 16.07.2002, permission to withdraw the said writ petition was refused.

The judgment was delivered on 13.09.2002.

Three Hon'ble Judges were of the opinion:

(i) The tenure of the members of the Commission is co-tenuous with the term of the Board; and

(ii) The Government of Punjab had the power to issue directions in regard to the constitution of the Commission.

One of the Hon'ble Judges opined that having regard to the decision of the Full Bench of the High Court in Shiromani Gurdwaras Parbandhak Committee (supra), the members of the Commission cannot be removed.

The Chief Justice of the High Court, however, was of the opinion that in view of the terminologies used in the relevant provisions of the Act and as no fixed period for holding the office has been provided therein, the Commission can be directed to be wound up only when no case remains pending before it.

14. We may place on record that during pendency of the writ petition, members were appointed on 8.07.2002 whereagainst the Board filed writ petition which was allowed by an order dated 14.08.2003. Civil Appeal Nos. 8169-8172 of 2003 and 3162-3165 of 2004 are directed against the said order dated 14.08.2003.

15. The Act was enacted to provide for the legal procedure in terms whereof Gurdawaras and Shrines which, owing to their origin and habitual use, are regarded by Sikhs as essentially places of worship may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious views of the said community.

The Act extended to the territories which immediately before 1.11.1956 were in the States of Punjab and Patiala and East Punjab States Union.

"Commission" had been defined in Section 2(2) of the Act to mean "the Judicial Commission constituted under the provisions of Part III" of the Act.

"Committee" has been defined in Section 2(3) of the Act to mean "a committee of management constituted under the provisions of Part III".

Chapter II of the Act consists of Sections 3 to 11. It deals with the matter relating to filing of petitions to State Government relating to Gurdwaras.

Chapter III, consisting of Sections 12 to 37, deals with appointment of the members of the Tribunal and proceedings before it. Sub-section (1) of Section 12 of the Act reads as under:

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

Chapter V of the Act, occurring in Part III, deals with the control of Sikh Gurdwaras. Section 40 of the Act deals with the Board, Committee and Commission to be constituted for the purposes of this Act. Section 41 of the Act reads as under:

"41. The management of every Notified Sikh Gurdwara shall be administered by the committee constituted therefor, the Board and the Commission in accordance with the provisions of this Part."

In terms of the provisions of the Act, the Board is the highest administrative body. It is controlled by the State Government. All regional political parties participate in the election of the Board.

Section 42 of the Act provides for constitution of the Board. Process of election is contemplated by Sections 43, 43-A and 50 of the Act.

Section 43-A of the Act reads as under:

"43-A. Constitution of new Board.-- (1) Whenever a new Board within the meaning of Section 51 is constituted, it shall consist of --

(i) one hundred and forty elected members;

(ii) the Head Ministers of the Darbar Sahib, Amritsar, and the following ground Takhats, namely--

the Sri Akal Takht Sahib, Amritsar, the Sri Takhat Keshgarh Sahib, Anandpur, the Sri Takhat Patna Sahib, Patna the Sri Takht Hazur Sahib, Nanded; and

(iii) fifteen members resident in India, of whom not more than five shall be residents of Punjab, co-opted by the members of the Board as described in clauses (i) and (ii);

(2) The State Government shall, as soon as may be, call a meeting of the members of the Board described in clauses (i) and (ii) of sub-section (1) for the purpose of co-opting the members described in clause (ii) of that sub-

section, and after the members have been co-

opted, the State Government shall notify the fact of the Board having been duly constituted; and the date of the publication of the notification shall be deemed to be the date of the constitution of the Board."

The term of the members of the Board is five years from the date of its constitution or until the constitution of a new Board, whichever is later as provided under Section 51 of the Act. Life of the Board is also limited.

Constitution of Judicial Commission is contained in Section 70 of the Act. The members of the Commission must be Sikhs appointed from time to time, as may be found necessary by the local Government. Sub-section (2) of Section 70 provides for the essential qualifications for being appointed as members. Sub-section (3) of Section 70 of the Act provides that two of the members of the Commission shall be selected by the State Government out of a list of qualified persons prepared and maintained as specified in Section 71 thereof.

Section 71 of the Act reads as under:

"71. Appointment of members of the Commission.-- (1) For the purpose of the appointment of members of the Commission the Board shall, as soon as may be, after its constitution submit a list of the names of seven persons nominated by the Board, and the State Government shall after being satisfied that the persons are qualified as required by section 70 record the list; provided that if the Board fails to submit a list within ninety days from the constitution of the Board the State Government may itself complete a list of qualified persons.

(2) A person whose name is on the list described in sub-section (1) shall be entitled to have his name retained thereon for two years after his nomination has been recorded, provided that the State Government may at any time remove his name, if it is satisfied upon a report made by the Board and any enquiries it may see fit to make, that he is incapable of acting as a member of the commission.

(3) If any person whose name is on the list dies, or applies to the Board to have his name removed therefrom the Board shall inform the State Government and his name shall be removed from the list.

(4) The State Government shall on request being made to it for this purpose by the Board remove from the list the name of any person whose name has been on the list for more than three years, provided that the name of any person shall not be so removed while such person is a member of the commission.

(5) When a name has been removed from the list the Board shall nominate a qualified person for the purpose of filling the vacancy, and the State Government shall after being satisfied that such person is qualified, place his name upon the list.

(6) If the Board fails to nominate a person to fill a vacancy as required by sub-

section (5) the State Government may after giving one month's notice of its intention to the Board place the name of any qualified person on the list to fill the vacancy."

Section 79 providing for removal of member of Commission states:

"79. Removal of member of Commission.-- The State Government may remove any member of the Commission--

(i) if he refuses to act or becomes in the opinion of the State Government incapable of acting or unfit to act as a member; or

(ii) if he has absented himself from more than the consecutive meetings of the commission, or

(iii) if it is satisfied after such enquiry as it may deem necessary that he has flagrantly abused his position as a member; or

(iv) if he has served as a member for more than two years."

16. It may be noted that clause (iv) of Section 79 of the Act, which was incorporated by Amending Act of 1954 has been declared ultra vires by the High Court in Shiromani Gurdwaras Parbandhak Committee (supra).

17. We may also notice that the object of introducing the said Amending Act was stated to be as under:

"Under the existing provisions of section 83 of the Sikh Gurdwaras Act, 1925, the State Government "may at any time, when there is no proceeding pending before the Commission, dissolve the Commission". So that the State Government can dissolve the Judicial Commission only when there is no proceeding pending before it and as long as there are any proceedings pending before the Commission, it cannot be dissolved.

As fresh cases are instituted in the Court of the Judicial Commission from time to time, the effect of the existing provision of the Act is that a Commission once constituted is more or less perpetuated. In the interest of the efficient working of the Judicial Commission and in order to remedy a possible awkward situation in which the life of a Tribunal may get very unnecessarily prolonged, it is, therefore, desirable that there should be a provision in the Act empowering the State Government to remove any member of the Commission after he has served on it for a specified period, where circumstances may so require. Hence clause

(iv) to section 79 is added.

2. Amendment of section 79 of Punjab Act VIII of 1925 - In section 79 of the Sikh Gurdwaras Act, 1925, after clause (iii), the word "or" and thereafter the following new clause shall be added:-

"(iv) if he has served as a member for more than two years".

18. Section 83 of the Act deals with the dissolution of the Commission stating that the State Government may at any time, when there is no proceeding pending before it, dissolve the same.

19. Chapter VIII of the Act deals with the Committee of Gurdwaras. 'The committee for the gurdwaras known as the Sri Akal Takht Sahib, Amritsar and Sri Takht Kesgarh Sahib, Anandpur' is the Board as contained in Section 85 of the Act. For every notified Sikh Gurdwara, other than the one specified in Section 85, the Committee is required to be constituted after it has been declared to be a Sikh Gurdwara under the provisions of the Act or upon application of the provisions of Part III thereof. The tenure of the members of the Committee admittedly is five years from the date of Constitution or until a new Committee is constituted, whichever is later. All Committees are body corporates having perpetual succession and a common seal. The vacancy in the Committee is to be filled up in the manner in which the predecessor in office was elected or nominated.

20. The Commission is a judicial body. Management of every notified Sikh Gurdwara is administered by the Committee constituted therefor, the Board as also the Commission. If a person is aggrieved by a finding of the Board, he has a remedy of preferring an appeal thereagainst before the Commission. The order passed by the Commission is final. The question as to whether a person has become a 'patit' or not has to be determined by the Commission. An election dispute under certain situations is also amenable to the jurisdiction of the Commission. The Board can also apply to the Commission for an order allowing it to devote the whole or part of such surplus sum or income to a particular and specified religious, educational or other charitable purpose or any purpose which promotes social welfare as envisaged under Section 106 of the Act whereupon the Commission may determine what portion if any of such surplus sum or income has to be retained as a reserve fund for the concerned Gurdwara whereupon it may direct the remainder of the surplus sum or income to be devoted to any such religious educational or charitable purpose as it may deem proper.

21. The Committees and the Commission have various other functions with which we are not concerned.

22. We may briefly also notice the provisions of the 1966 Act. It was enacted to reorganize the existing State of Punjab into the States of Punjab and Haryana and the Union Territory of Chandigarh and to transfer certain areas of the existing State of Himachal Pradesh. Section 2(f) of the 1966 Act defines "existing State of Punjab" to mean the State of Punjab as existing immediately before the appointed day, which is 1.11.1966.

23. Section 72 of the 1966 Act, which is relevant for our purpose, reads, thus:

"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-sec. (1) in respect of any such body corporate may include a direction that any law by which the said body corporate is governed shall, in its application to that' body corporate, have effect, subject to such exceptions and modifications as may be specified in the direction.

(3) For the removal of doubt it is hereby declared that the provisions of this section shall apply also to the Punjab University constituted under the Punjab University Act, 1947, the Punjab Agricultural University constituted under the Punjab Agricultural University Act, 1961, and the Board constituted under the provisions of Part III of the Sikh Gurdwaras Act, 1925.

(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."

Section 88 of the 1966 Act provides for the territorial extent of the laws. Section 89 provides for power to adapt laws. Section 91 provides for power to name authorities. Section 96 provides for power to remove difficulties in the following terms:

"96. Power to remove difficulties- If any difficulty arises in giving effect to the provisions of this Act, the President may, by order, do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty."

24. Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the appellant, would submit:

(i) Having regard to the fact that Section 79(iv) was deleted by Act No. 11 of 1944 and the same having been re-introduced by Act No. 11 of 1954 which having been found to be ultra vires, it must be held that the tenure of a member of the Commission being not fixed he would continue in office unless it is dissolved in terms of Section 83 of the Act, viz., as long as any proceedings remains pending before the Commission.

(ii) The Board alone being vested with a power to forward a list of seven persons out of whom two are appointed by the Government as members, the High Court committed a manifest error in opining that the tenure of the Commission is co-

terminus with that of the Board.

(iii) The notification issued by the State of Punjab was wholly illegal as the Commission is an inter-state body corporate as envisaged under Section 72 of the 1966 Act and in that view of the matter the Central Government was the only competent authority to exercise the requisite jurisdiction as contemplated under Entry 44 of List I of the Seventh Schedule of the Constitution of India and Section 72(1) of the 1966 Act.

(iv) The purported delegation of power by the Central Government in favour of the State Government in terms of the said notification dated 19.10.1978 is ex facie illegal in view of the principles contained in the maxim delegatus non potest delegare as thereby the Central Government abdicated its essential statutory functions in favour of the delegatee.

25. Mr. C.S. Vaidyanathan, learned senior counsel appearing on behalf of the State of Punjab, on the other hand, would submit:

(i) The Commission is not an occasional body but a perpetual body.

(ii) Having regard to the tenor of Sections 40 and 70 of the Act wherein the words "from time to time" have been used, it is evident that the reasonable meaning which is required to be given thereto would lead to the conclusion that the Government has the power to make fresh appointments of the members.

(iii) For the aforementioned purpose, the provisions of Sections 40 and 70 of the Act have to be given a harmonious construction and upon giving a holistic reading of the entire Act.

(iv) The Act had an extra-territorial application keeping in view the provisions of Section 88 of the State Reorganisation Act, particularly, in view of the fact that no law has been enacted in that behalf either by the State of Haryana or by the State of Himachal Pradesh.

(v) The Central Government in exercise of its power under Section 89 of the Act merely directed that the State of Punjab shall carry out the provisions of the Act. The said order is only clarificatory in nature and does not amount to delegation or sub-delegation of its power under the 1966 Act. In any event, the power of the Central Government in this behalf being not under challenge nor any act of mala fide having been attributed, the impugned judgment does not call for any interference.

26. Mr. Jaspal Singh, learned senior counsel appearing on behalf of the SGPC, supplementing Mr. Vaidyanathan urged:

(i) Upon reading of the provisions of Sections 40, 41, 51, Sub-

section (3) of Section 70 and Sub-section (6) of Section 71, it would be evident that the life of the Board is limited.

(ii) Writ Petition must be held to have been given up the challenge in respect of the notification dated 12.01.1999 as the appellant being a beneficiary in respect of the said notification, and thus, he is estopped from challenging the subsequent notification dated 17.02.2005 also as he should not be permitted to approbate and reprobate at the same time.

27. The Act was enacted to provide for the better administration of certain Sikh Gurdwaras and for inquiries into matters connected therewith. It is a complete Code. The Act provides for not only the constitution of a Tribunal but also for the constitution of a Commission. Both the Tribunal as also the Commission play significant and important roles under the Act. They deal with a large number of disputes. The disputes which are dealt with by the Commission are contained in various provisions of the Act, some of which we have noticed hereinbefore.

28. The holders of the office both of the Tribunal as also the Commission function under a statute. The Commission/ Tribunal is to be constituted from time to time. Whereas sub-section (5) of Section 12 empowers the Local Government to remove any member of the Tribunal on the grounds enumerated therein, Section 83 of the Act does not deal with such a situation.

29. Would that by itself mean that the Chairman or the Members of the Tribunal can hold office at their pleasure? Does it contemplate a rule of perpetuity is the question involved herein? Answers to these questions may seem to be difficult as the Full Bench of the High Court noticed.

30. A statute, as is well known, must be read in its entirety. It must then be read part by part, chapter by chapter, section by section and then clause by clause.

31. Be it the constitution of the Tribunal or the Commission, it is required to be done 'from time to time'. Section 40 provides for constitution of a Judicial Commission from time to time. Undoubtedly, the same is required to be done in the manner provided for therein but that would not take away the power of the Government as regards constitution of the Judicial Commission from time to time. The Commission exercises control of management of the Notified Sikh Gurdwaras alongwith the Committee and the Board.

32. Chapter VI of the Act deals with Constitution, functions and status of the Board. Constitution and functions of a Judicial Commission are dealt with in Chapter VII of the Act.

33. Sub-section (1) of Section 70 provides that the Judicial Commission shall consist of three members who shall be Sikhs, appointed from time to time as may be necessary by the Local Government. Sub-section (2) of Section 70 lays down the qualification of a Member of the Commission. Sub-section (3) of Section 70, which has some bearing for our purpose, empowers the State to select two members out of a list of qualified members as described in Section 71.

34. How the list shall be prepared and the members of the Commission are to be appointed, is provided for under sub-section (1) of Section 71 of the Act.

35. The fact that each Board must submit a list within 90 days from its constitution is itself indicative of the fact that the same is imperative in nature. The Government upon receipt of the said list must perform its functions.

36. Undoubtedly, the Commission exercises a judicial function but the same would not mean that in the name of independence in its functioning, the members will continue to hold office in perpetuity.

37. It is not for us to prescribe age of superannuation. A recommendation undoubtedly was made in that behalf by the Full Bench of the High Court in Shiromani Gurdwaras Parbandhak Committee (supra), but the recommendations having not been accepted and we, having been called upon to determine only the question with regard to construction of statute, will have to do so independent of the said observations.

38. It is, thus, one of the functions of the Board to submit a list of the names of seven persons to the Local Government. Two of the members of the Commission are to be selected by the Local Government out of the list of qualified persons prepared and maintained in terms thereof. If the Board fails to perform its duties in preparing a select list enlisting therein the names of seven persons who are qualified to become a member of the Commission; a' fortiori it would be the duty of the State Government to select the names of two of them for appointment as members of the Commission only out of the said list. The said provisions, in our opinion, clearly indicate the tenure of the Commission.

39. The dichotomy is created in view of the words "time to time" and the limited power of the State to dissolve the Commission.

40. The power of dissolution is a separate power. It is a substantive power. Removal of the members of a body corporate is also a substantive power. It is one thing to say that on happening of certain contingencies, which may include misconduct on the part of the member of a body corporate, the power of removal can be resorted to or the power of dissolution of the entire body can be taken recourse to, but then the same by itself would not lead to a conclusion that in the event the said contingencies cannot be complied with, in a given situation, the Chairman and members shall continue to hold the office in perpetuity.

41. The Act is a pre-Constitutional Act. Upon coming into force of the Constitution of India, it must be read in the light of the constitutional scheme and its provisions. In construing a statute, an interpretation which would lead to violation of the constitutional provisions, cannot be taken recourse to.

42. We have noticed hereinbefore the different opinions of the learned Judges constituting the Full Bench.

43. While agreeing with one or the other view, this Court cannot lose sight of the constitutional scheme of equality before law and equal protection of law as adumbrated in Articles 14 and 16 of the Constitution of India. We may notice some other provisions in this behalf.

44. Article 310 of the Constitution of India provides for a tenure. It does not contemplate a life tenure. It does not contemplate a permanent term. Article 16 of the Constitution of India which is a species of the equality clauses contained in Articles 14 and 16 of the Constitution of India, speaks of grant of equal opportunity to all. Allowing a person to hold public office indefinitely would be opposed to the constitutional scheme, irrespective of any misconduct or other contingencies. Constitution of India does not envisage holding of any office in perpetuity.

45. We are not unmindful of the opinion of the learned Chief Justice of the High Court that the term shall come to an end when no dispute would remain pending before the Commission.

46. The superior courts must remember a well-known principle of law that the Court while construing an ongoing statute must take into consideration the changes in the societal condition. It would be a relevant fact. It must take into consideration the development in science and technology. [See Satyawati Sharma (Dead) by LRs. v. Union of India (UOI) and Anr. [2008 (6) SCALE 325].

47. Before the Act was enacted, the office of Commission was hereditary. The Rule of perpetuity was, therefore, very much in the mind of the Legislature as would appear from paragraph 5 of the objects and reasons of the said Act. We are aware that the said paragraph related to the Tribunal but then evidently the composition of the holder of a hereditary office was very much in the mind of the Legislature.

48. The Tribunal has a wide jurisdiction. The Commission also deals with a large number of disputes which have been noticed by the High Court. The Court while construing a statute cannot shut its eyes towards the ground realities. The number of cases coming up before the Commission has gone up. When the Act was enacted, occasional meeting was probably thought to be sufficient. The period of five years during which the Commission was to function probably was more than enough in those days. It is only in that view of the matter, the legislature might have thought of dissolution of the Commission when no case was to remain pending.

49. We have noticed hereinbefore that in view of the number of cases having gone up for all intent and purport the Commission has been functioning continuously. If the contention of Mr. Patwalia is to be accepted, the same would lead to an absurd situation, viz., the members of the Commission would hold office in perpetuity. They may even abuse their position to keep one or the other matter pending before it. If the contention of Mr. Patwalia is to be accepted that having regard to the doctrine of independence of judiciary, the State Government will have no role to play in the matter of constitution of the Board, the Government will never be in a position to dissolve the Commission unless case is made out under one or the other provisions of the Act. The doctrine of 'independence of judiciary' has nothing to do when the tenure is fixed by a statute. Even in relation to selection of the members of the Board, the State has a limited role to play.

50. With a view to construe the said provision the past practice may also be held to be relevant. The High Court has taken notice of the past practice in this behalf in great details showing as to how the reconstitution of the Commission had taken place from time to time, almost at regular intervals.

51. Our attention, however, has been drawn to a chart filed by the appellant to show that the reconstitution of the Commission has not taken place immediately after the reconstitution of the Board. That may be so but the very fact that the constitution of Commission had taken place, for instance in October, 1949; January, 1955 ; April, 1955 ; March, 1957 ; September, 1965; April, 1968 ; July, 1980 ; July, 1981 ; July, 1989 ; August, 1989 ; January, 1999 and July, 2002 clearly goes to show that constitution and reconstitution of the Board had taken place from time to time. The very fact that it has been working continuously and the members of the Board have been constituted at intervals is also a pointer to show that the members had not been holding office at their will, far less in perpetuity. It had been noticed by us heretofore that the same persons have been nominated more than once, even successively.

52. In a case of this nature literal interpretation is not possible. If the statute has to be read keeping in view the constitutional schemes and make it workable, the provisions thereof are required to be given a purposive construction. [See *New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr.* JT 2008 (1) SC 31] For the said purpose, even the past practice as also the Statement of Objects and Reasons of the Act can be looked into.

53. In *Pannalal Binjraj v. Union of India* [AIR 1957 SC 397], where the vires of Section 5(7-A) of the Income tax Act, 1922 were put in issue before this Court, the challenge was repelled and during the course of the judgment the previous history of the earlier Income tax Acts was taken into account to decide what policy could be said to underlie the provisions of the impugned Section.

That judgment has been followed by this court in a plethora of decisions for the purpose of looking into the statement of objects and reasons of enacting an Act for appreciating the background of legislature's classification. [See for instance, *The Quarry Owners Association v. The State of Bihar & Ors.*, (2000) 8 SCC 655, *Gurudev datta VKSSS Maryadit & Ors. v. State of Maharashtra & Ors.*, (2001) 4 SCC 534, *K.T.M.S. Mohd. and another v. Union of India With Amanullah Quareshi v. Union of India*, (1992) 3 SCC 178, *Gopal Narain v. State of Uttar Pradesh and Anr.* (1964) 4 SCR 869, *Bhatnagars and Co. Ltd. v. The Union of India*, (1957) 1 SCR 701]

54. Clause (iv) of Section 79 might have been declared ultra vires but the same by itself is not sufficient to hold that save and except the power of the State Government to dissolve the Commission there does not exist any provision to bring to an end its tenure and it would continue to function till a case remains pending. The said interpretation would not only lead to an anomalous situation, but also frustrate the constitutional scheme.

55. For the aforementioned purpose, we must bear in mind two salient principles, i.e., the 'power to appoint' carries with it the 'power to remove' under the General Clauses Act. If the Commission is to be constituted from time to time, it must be held that to effectuate this power it would be reasonable to conclude that such power can be exercised as and when a necessity arises therefor.

56. It may be true that the Court shall not interfere with the judicial authority. It should be allowed to function independently and impartially, but at the same time it cannot be allowed to continue in perpetuity. A balance, thus, must be struck.

57. Whereas, on the one hand, the discretionary jurisdiction of the State would not lightly be assumed having regard to the nature of the office held by the appellant, it cannot also be held that no tenure is fixed therefor at all.

58. The State of Punjab, in this appeal, also opposes the appellant's contention.

59. With a view to find out an answer to the question as to what meaning should be assigned to the words "from time to time", in our opinion, a holistic reading of the statutes should be resorted to. It has to be borne in mind that perpetuity in office is neither contemplated under Act nor the constitutional scheme permits the same. It may be true that Clause (iv) of Section 79 of the Act has been declared ultra vires by the Punjab High Court in the case of Shiromani Gurdwaras Parbandhak Committee (supra), but the same by itself, in our considered opinion, is not sufficient to hold that save and except for the power of the State Government under Section 83 of the Act for dissolution of the Commission, it would continue to function till any case is pending.

60. For the purpose of giving an effective and meaningful construction of the provisions, the court is bound to take into consideration the situational change. The statute is an ongoing one. The number of litigations in the year 1925 might have been small. Occasional formation of the Commission might be contemplated keeping in view the number of litigations at that point of time. The Act, however, must be interpreted differently as the court cannot ignore the ground realities. If it is to be held that in terms of Section 83 of the Act, the State Government has the power to dissolve the Commission only in terms thereof, for all intent and purport, the Commission shall continue till a member dies or resigns.

61. On the appellant's own showing, the Commission is not an occasional body. It has continued to function for a long time. If that be so, the object and purpose for which the statute contemplated constitution of such occasional body has lost its purpose. Apart from Section 40 of the Act, even in terms of Section 70 of the Act, the Members are to be appointed from time to time. If the tenure is for the whole life of the Member, there cannot be any fresh appointment. If there cannot be any fresh appointment, the same would be clearly violative of Article 16 of the Constitution.

62. In *Sri Nasiruddin v. State Transport Appellate Tribunal* [(1975) 2 SCC 671], the interpretation of the words "such Judges of the new High Court, not less than two in number, as the Chief Justice, may, from time to time nominate, shall sit at Lucknow as used in The United Provinces High Courts (Amalgamation) Order, 1948 came up for consideration before this court.

It was held by this court that the words "from time to time" suggest not only that Judges who may come from Allahabad to Lucknow or vice versa but also that the number may be increased or decreased according to exigencies, the only limitation being that it shall not be less than two.

63. In a more recent decision of this court in *M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board* [(2004) 9 SCC 755], the question which fell for this Court's determination was whether an agreement despite expiry would prevail over a regulation made under Section 79(c) of the Electricity (Supply) Act, 1948 as regards the age of superannuation of an employee of the Respondent-Board having regard to the use of the words "time to time" in Section 2 of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 which applies to every undertaking wherein the number of employees on any day during the twelve months preceding or on the day the said Act came into force or any day thereafter was or is more than twenty and such other class or classes of undertakings as the State Government may, from time to time, by notification, specify in this behalf, this court observed :

"44. The power of the Board, therefore, to lay down the conditions of service of its employees either in terms of regulation or otherwise would be subject only to any valid law to the contrary operating in the field. Agreement within the meaning of proviso appended to Rule 14A is not a law and, thus, the regulations made by the Board shall prevail thereover.

45. The Board has power to make regulations which having regard to the provisions of General Clauses Act would mean that they can make such regulations from time to time."

64. We, therefore, are of the opinion that in view of the situational change, a meaning which could be attributed in the year 1925 cannot be given the same meaning today. For the aforementioned purpose, Sections 40 and 70 of the Act must be read together. Therefor a holistic reading of the entire Act would be necessary. So read, the opinion of the majority appeals to us. By reason of such an interpretation, the apprehension that the State would be endowed with the arbitrary power is wiped off.

65. The term 'from time to time' should be given an effective and purposeful meaning. If any other meaning is assigned, sub-section (3) of Section 70 and sub-section (1) of Section 72 would be rendered otiose.

We cannot, thus, agree with the contention of Mr. Patwalia.

66. There is another aspect of the matter which cannot be lost sight of. Appellant herein has questioned the validity of the Notification dated 6th January, 1999 on the premise that the Chief Minister of the State had acted mala fide. The Full Bench noticed that factual foundation had not been laid therefor. For all intent and purport, the said point was given up. Furthermore, the appellant has again been appointed as a Chairman of the Commission by a Notification dated 17th March, 2005. The Notification used the words "Reconstitution of the Commission". He, therefore, is a functionary thereof. He cannot be permitted to approbate and reprobate.

67. By reason of the notification dated 19.10.1978, the Central Government has not delegated its power. The 1966 Act has an extra- territorial application. It is not in dispute that no law has been

enacted either by the State of Haryana or by the State of Himachal Pradesh. In absence of any law having been enacted to the contrary, the functions under the 1966 Act must be performed by some authority. The Central Government with the consent of the State of Haryana has merely nominated the State of Punjab to do so. By reason thereof, it has not delegated any power. Sub-section (1) of Section 72 of the 1966 Act envisages a direction upon the Central Government. Such a direction has been issued by reason of the impugned notification. When a power has been conferred upon the State of Punjab by the Central Government, it exercises a statutory power. It would, therefore, not a case where the functions of the State Government must be held to be confined to its territorial jurisdiction.

68. Articles 245 or 246 or for that matter, Articles 73 and 172 of the Constitution of India will have no application.

69. Even such questions have not been raised before the High Court. In issuing the notification, the Central Government was merely exercising its statutory functions. It has not exercised a power of delegation. The ground of excessive delegation of power, thus, does not arise. Some authority is required to function. If an authority has been nominated, all other questions become academic.

70. For the reasons aforementioned, Civil Appeal Nos. 7024 of 2002 and 8171-8172 of 2003 are dismissed and Civil Appeal arising out of SLP (C) No. 20803 of 2002 as also Civil Appeal Nos. 5546 of 2003, 8169-8170 of 2003 and 3162-3165 of 2004 are allowed. No costs.

.....J. [S.B. Sinha]J. [V.S. Sirpurkar] New Delhi;

May 12, 2008