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MANGAL SINGH & ANR.

v.

UNION OF INDIA

B *November* 17, 1966

[K. SUBBA RAO, C.J., J. C. SHAH, S. M. SIKRI, V. RAMASWAMI AND C. A. VAIDIALINGAM, JJ.]

Constitution of India, Arts. 4, 170(1)—*State Legislative Assembly—Minimum membership prescribed—Reduction if violates Art.* 170(1)—*Legislative Council—Unseating of members elected from area constituted* C *having unicameral Legislature.*

Punjab Reorganisation Act (31 *of* 1966), *ss.* 13, 20 *and* 22—*Validity.*

The Punjab Reorganisation Act, 1966, carved out of the old State of Punjab two new States, Punjab and Haryana, transferred some areas to Himachal Pradesh and constituted Chandigarh, a territory of the old State, into a Union territory. The old State had a bi-cameral Legislature D and so also has the new State of Punjab; but that of Haryana is to be unicameral. Under the Act the Legislative Assembly of Haryana is to consist of only 54 members; members of the Legislative Council of the old State belonging to Haryana area are unseated, while those members residing in the Union Territory of Chandigarh continue to be members of the Legislative Council of that new State of Punjab. The appellants, none of whom was a sitting member of the Legislative Council of the old State, challenged the legality of the Act in a writ petition, which the High Court rejected. E In appeal to this Court, the appellants contended that (i) Constitution of the Legislative Assembly of Haryana by s. 13(1) of the Act which departs from the minimum membership prescribed to the State Legislative Assembly violates the mandatory provisions of the Art. 170(1) of the Constitution; and (ii) by enacting that members of the Legislative Council of the old State residing in the Union Territory of Chandigarh shall continue to sit in the Legislative Council in the new State of Punjab and by enacting that the members elected to the Legislative Council from the Haryana area F shall be unseated, there was denial of equality.

HELD : The appeal must be dismissed.

(i) Power to reduce the total number of members of the Legislative Assembly below the minimum prescribed by Art. 170(1) is implicit in the authority to make laws under Art. 4 of the Constitution. Such a provision is undoubtedly an amendment of the Constitution, but by the express pro- G vision contained in Art. 4(2), no such law which amends the First and the Fourth Schedule or which makes supplemental, incidental and consequential provision is to be deemed an amendment of the Constitution for purposes of Art. 368. The Constitution also contemplates by Art. 4 that in the enactment of laws for giving effect to the admission, establishment or formation of new States or alteration of areas and the boundaries of those States power to modify provisions of the Constitution in order to tide over a temporary difficulty may be exercised by the Parliament. [112 H; H 113 C-D]

(ii) Parliament could not make adjustments as would strictly conform to the requirements of Art. 171(3) without fresh elections. It, therefore, adopted an *ad hoc* test and unseated members of the Council who were

residents of the Haryana area. There was, however, no discrimination in unseating members from the Haryana Area of which appellants could complain. The appellants were not the sitting members of the Legislative Council of the old State and no personal right of the appellants was infringed by unseating those members. A resident of the State of Haryana merely because of that character, cannot claim to sit in the Punjab Legislative Council. By allowing the members from the Chandigarh area to continue to remain members of the new State of Punjab no right of the residents of Haryana was violated. [114 E-H; 115 A] A B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2314 of 1966.

Appeal from the judgment and order dated October 7, 1966 of the Punjab High Court in Circuit Bench at Delhi in Civil Writ Petition No. 790-D of 1966. C

M. C. Setalvad, Ravinder Narain, J. B. Dadachanji, for the appellants.

S. V. Gupte, Solicitor-General, R. Ganapathy Iyer, R. N. Sachthey, and *R. H. Dhebar*, for the respondent. D

The Judgment of the Court was delivered by

Shah, J. The Punjab Reorganisation Act, 1966—hereinafter called 'the Act'—was enacted with the object of reorganising the State of Punjab. By the Act which came into force on November 1, 1966, the eastern hilly areas of the old State were transferred to the Union territory of Himachal Pradesh; the territory known as Chandigarh in Kharar tahsil was constituted into a Union territory; and the remaining territory was divided between the new State of Punjab and the Haryana State. The old State of Punjab had a bi-cameral Legislature with 154 members in the Legislative Assembly and 51 members in the Legislative Council. Under s. 13 of the Act as from November 1, 1966, the Legislative Assembly of the new State of Punjab consists of 87 members and the Haryana Legislative Assembly consists of 54 members. The new State of Punjab has also a bi-cameral Legislature. Out of the original membership of 51, 16 members whose names are set out in the Seventh Schedule to the Act ceased to be members of the Legislative Council, and the remaining members continued to be members of the Legislative Council of the new State of Punjab. Out of the 16 members who ceased to be members of the Legislative Council, 14 members, it is claimed by the appellants, belong to the Haryana area and 2 to the Himachal Pradesh Union territory. E F G

The Act was challenged as "illegal and *ultra vires* of the Constitution" on diverse grounds in a writ petition filed by the two appellants in the High Court of Punjab. The High Court rejected the petition. H

A In this Court two contentions were urged in support of the appeal:

(1) Constitution of the Legislative Assembly of Haryana by s. 13(1) of the Punjab Reorganisation Act, 1966, violates the mandatory provisions of Art. 170(1) of the Constitution; and

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(2) By enacting that 8 members of the Legislative Council who are residents of the Union territory of Chandigarh shall continue to sit in the Legislative Council in the new State of Punjab, and by enacting that the members elected to the Legislative Council from the Haryana area shall be unseated, there is denial of equality.

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By s. 24 of the Act it is provided that the total number of seats in the Legislative Assembly of Haryana "to be constituted at any time after the appointed day *i.e.* November 1, 1966 to be filled by persons chosen by direct election from territorial constituencies, shall be eighty-one." It is clear that s. 13(1) which allocates fifty-
D four sitting members out of the members elected to the Legislative Assembly of the old State of Punjab to the Haryana area Legislative Assembly on November 1, 1966, is a temporary provision.

Constitution of the Legislative Assembly of Haryana on November 1, 1966, is, it is contended, violative of Art. 170 of the Constitution. In terms Art. 170 enacts that a Legislative Assembly
E shall be constituted by members chosen by direct elections from territorial constituencies, and that the Assembly shall consist of not more than five hundred and not less than sixty members. But Art. 170 is not the only provision having a bearing on the constitution of a Legislative Assembly.

F By Art. 2 the Parliament may by law admit into the Union or establish new States on such terms and conditions as it thinks fit; and Art. 3 provides that the Parliament may by law—

(*a*) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any
G State;

(*b*) increase the area of any State;

(*c*) diminish the area of any State;

(*d*) alter the boundaries of any State;

(*e*) alter the name of any State.

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Any law referred to in Art. 2 or Art. 3 shall, it is provided by Art. 4(1), contain such provision for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the

provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary. By cl. (2) of Art. 4 it is provided :

> "No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of articles 368."

The law referred to in Arts. 2 & 3 may therefore alter or amend the First Schedule to the Constitution which sets out the names of the States and description of territories thereof and the Fourth Schedule allotting seats to the States in the Council of States in the Union Parliament The law so made may also make supplemental, incidental and consequential provisions which would include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters. On the plain words of Art. 4, there is no warrant for the contention advanced by counsel for the appellants that the supplemental, incidental and consequential provisions, which by virtue of Art. 4 the Parliament is competent to make, must be supplemental, incidental or consequential to the amendment of the First or the Fourth Schedule. The argument that if it be assumed that the Parliament is invested with this wide power it may conceivably exercise power to abolish the legislative and judicial organs of the State altogether is also without substance. We do not think that any such power is contemplated by Art. 4. Power with which the Parliament is invested by Arts. 2 and 3, is power to admit, establish, or form new States which conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution, and is not power to override the constitutional scheme. No State can therefore be formed, admitted or set up by law under Art. 4 by the Parliament which has not effective legislative, executive and judicial organs.

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

A deemed an amendment of the Constitution for the purposes of Art. 368.

Our attention was invited to Art. 371A(2)(h) of the Constitution which makes an express provision in derogation to Art. 170(1) relating to the constitution of a Legislative Assembly for the State of Nagaland, and fixes "notwithstanding anything in this B Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as "the Governor may, on the recommendations of the regional Council, by public notification specify in this behalf" the membership of the Legislative Assembly at 46. Power of the Parliament to make amendments in the Constitution by express enactment so as to C reduce the number of members of a Legislative Assembly below the minimum prescribed having regard to the exigency of a special case may not be denied. But the Constitution also contemplates by Art. 4 that in the enactment of laws for giving effect to the admission, establishment or formation of new States, or alteration of areas and the boundaries of those States, power to modify provi- D sions of the Constitution in order to tide over a temporary difficulty may be exercised by the Parliament. The High Court was, therefore, right in holding that s. 13(1) was not invalid merely because it departed from the minimum prescribed as the total membership of the Legislative Assembly for a State.

Sections 20 & 22 of the Act deal with the constitution of the E Legislative Council. By s. 20 the Legislative Council of the new State of Punjab is to consist of 40 representatives and the Third Schedule to the Representation of the People Act, 1950, is to stand modified accordingly. By s. 22 it is provided:

> "(1) On the appointed day, the sitting members of the Legislative Council of Punjab specified in the Seventh F Schedule shall cease to be members of that Council.
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> (2) On and from the appointed day, all sitting members of the Legislative Council of Punjab, other than those referred to in sub-section (1), shall continue to be members of that Council.

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By the Seventh Schedule, 16 members, of whom it is claimed 14 are from the territory which is now in Haryana State, have been unseated. It was claimed by the appellants in their petition before the High Court that those 14 members of the Old Punjab Legislative Council "would cease to be members of the new Council" H from November 1, 1966, whereas 8 members belonging to the newly constituted area of the Union territory of Chandigarh still continue to be members of the new Punjab Legislative Council, and that such discriminatory treatment of members from the Haryana region

amounted to denial of equality. In the affidavit on behalf of the Union of India it was submitted that because Chandigarh is to be the capital of the existing State of Punjab and will continue to be the seat of new Government of the Punjab, the members from Chandigarh were admitted as members of the Legislative Council of the new State of Punjab, and that the provision was consequential and incidental to the main provision constituting the State of Punjab, and that in any event, the appellants were not persons aggrieved by the so-called discriminatory treatment.

By Art. 171(3) of the Constitution membership of the Legislative Council is not from territorial constituencies: it is by nomination, indirect election or by election from teachers' and graduates' constituencies. Of the total number of members of the Legislative Council of a State, one-third are to be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State, one-twelfth are to be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in India or possess equivalent qualifications, one-twelfth are to be elected by electorates consisting of persons who have been engaged in teaching in educational institutions within the State, one-third are to be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly, and "the remainder" are to be nominated by the Governor in accordance with the provisions of cl. 5. These constituencies are not territorial constituencies. On the reorganisation of the old State of Punjab, adjustments had to be made in the membership of the Legislative Council. No such adjustment as would strictly conform to the requirements of Art. 171(3) could however be made without fresh elections. The Parliament therefore adopted an *ad hoc* test, and unseated members who were residents in the territory of Haryana and Himachal Pradesh. It is true, as admitted in the affidavit on behalf of the Union of India, that members belonging to the Union territory of Chandigarh will be members of the new Punjab Legislative Council, and members from the Haryana State territory will be unseated. Whether in unseating the members from Haryana area and allowing the members from the Chandigarh area to continue, a valid classification is made on the ground that Chandigarh is the capital of the two States need not detain us, because we are of the view that no discrimination by unseating members from the Haryana area can be deemed to be practised against the appellants of which they can complain. The appellants were not sitting members of the Legislative Council of the old State of Punjab and no personal right of the appellants is infringed by unseating the members whose names are set out in the Seventh Schedule. Again the new State of Punjab is a bi-cameral Legislature. The new State of Haryana is uni-cameral. It is not claimed,

A and cannot be claimed, that a resident of the State of Haryana is, merely because of that character, entitled to sit in the Punjab Legislative Council. By allowing the members from the Chandigarh area to continue to remain members of the Legislative Council of the new State of Punjab, no right of the residents of Haryana is therefore violated.

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The appeal fails and is dismissed with costs.

Y. P. *Appeal dismissed.*