Sardar Sarup Singh & Others

Vs

The State of Punjab & Others

Petition No. 13 of 1959

(CJI S. R. Dass, N. H. Bhagwati, S. K. Dass, P. B. Gajendragadkar, K. N. Wanchoo JJ)

01.04.1959

JUDGMENT

S. K. DAS, J. -

This is a petition under Art. 32 of the Constitution in which the petitioners challenge the constitutional validity of s. 148-B of the Sikh Gurdwaras Act, 1925 (Punjab VIII of 1925), hereinafter called the principal Act, the said section having been added to the principal Act by the Sikh Gurdwaras (Amendment) Act, 1959, hereinafter called the amending Act of 1959. The petitioners profess and practice the Sikh faith and they allege that they are interested in the maintenance and management of Sikh Gurdwaras, scheduled and notified under the principal Act. Their main contention is that s. 148-B violates the fundamental right granted under Art. 26(b) of the Constitution to every religious denomination or any section thereof including the Sikh denomination, "to manage its own affairs in matters of religion". The respondents to the petition are, firstly, the State of Punjab and, secondly, President and twelve members of the Interim Gurdwara Board, Patiala, who under cl. (a) of sub-s. (1) of s. 148-B shall be deemed to be members of the Board constituted under s. 43 of the principal Act. That Board is not known by the name of the Sikh Gurdwara Prabandhak Committee. The application has been contested before us by respondent No. 1 only, namely, the State of Punjab, on the ground that s. 148-B does not, in any way, violate the fundamental right granted to the petitioners or other members of the Sikh denomination under Art. 26(b) of the Constitution. Therefore, the only question for consideration before us is if s. 148-B of the Principal Act does or does not contravene the fundamental right granted to the Sikhs under Art. 26(b) of the Constitution.

We shall presently set out the provisions of s. 148-B and also of some other relevant sections of the principal Act. But before we do that, it is necessary to state a few facts with regard to the passing of the amending Act of 1959. It has been stated before us that in or about the year 1919 there was considerable unrest amongst the Sikhs in the Punjab in respect of the management of their gurdwaras and shrines, and in 1922 an Act called the Sikh Gurdwaras and Shrines Act was passed; this did not satisfy the Sikhs and in 1925 the principal Act was passed, as its preamble states, "for the better administration of certain Sikh gurdwaras and for enquiries into matters and settlement of disputes connected therewith". The principal Act was amended from time to time. On November 1, 1956, there was merger of the erstwhile State of Patiala and the East Punjab States Union (hereafter called Pepsu in brief) with the State of Punjab. Sometime in February 1957 the Government of the State of Punjab appointed an advisory committee to report as to whether the principal Act should be extended to the area which was formerly within Pepsu. In September 1957 the committee recommended in favour of such extension. On April 8, 1958, a bill called the Sikh Gurdwaras (Amendment) Bill, 1958, was introduced in the Punjab Vidhan Sabha and the Bill was sent to the

regional committees constituted by an order of the President called the Punjab Regional Committees Order, 1957, made under cl. (1) of Art. 371 of the Constitution. The regional committees dealt with the Bill and made certain recommendations. For the purposes of the application before us, it is unnecessary to go into details of the proceedings before the regional committees. Sometime in November 1958 there was a meeting of the Sikh Gurdwara Prabandhak Committee for the purpose of the annual election. Learned counsel for the petitioners has stated before us that at this meeting there was a majority by a very small margin (three votes only) in favour of a particular group of Sikhs and against another group known as the "Shiromoni Akali Dal". Within one week, however, a notice was given for calling a meeting to consider the provisions of the amending Bill; this meeting could not, however, be held as an order of stay was obtained from the Judicial Commission constituted under the principal Act. In December 1958 a special session of the Vidhan Sabha was summoned to consider the amending Bill. It has been stated that originally the amending Bill did not contain provisions like those later embodied in s. 148-B. The Bill was accordingly sent back to the regional committees and on December 27, 1958, the regional committees submitted a final report and recommended the addition of provisions which subsequently became the provisions of s. 148-B of the Principal Act. It may be here stated that even in the regional committees there was some opposition to the provisions in question. On December 31, 1958, the Bill was passed by the Vidhan Sabha and on January 3, 1959, it was passed by the Legislative Council. On January 8, 1959, it received the assent of the Governor and became Punjab Act No. I of 1959, which is the Amending Act of 1959. It came into force at once and some rules under the Act were made a few days after. On February 2, 1959, the present petition was filed and on February 14, 1959, the election of 35 Sikhs contemplated under cl. (b) of sub-s. (1) of s. 148-B was completed.

It is necessary at this stage to refer to some of the old provisions of the principal Act as also the new provisions added by the amending Act of 1959. The Board which is known as the Sikh Gurdwara Prabandhak Committee acts as the committee of management in respect of some of the principal Sikh gurdwaras; in addition, it also has the duty of ensuring that every committee of management deals with the property and income of the gurdwara or gurdwaras managed by it in accordance with the provisions of the Act and for the fulfilment of this duty it exercises control, direction and general superintendence over all committees appointed under the provisions of the principal Act (see s. 125). The Board is constituted under s. 43 of the principal Act. Previous to the passing of Punjab Act No. 44 of 1953, s. 43 said that the Board shall consist of (i) 84 elected members, (ii) the head ministers of certain well-known Sikh gurdwaras, (iii) 12 members nominated by the Rajpramukh of Pepsu and (iv) 17 members resident in India of whom not more than four shall be residents in Punjab, co-opted by the members of the Board as described in (i), (ii) and (iii) above. In 1953 was passed Punjab Act No. 44 of 1953 and s. 43 of the principal Act was amended. The amended section was in these terms :-

> "S. 43. (1) The Board shall consist of -
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> (i) one hundred and thirty-two elected members;
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> (ii) the head ministers of the Darbar Sahib, Amritsar, and the following four Takhts, namely, - the Sri Akali Takht Sahib, Amritsar, the Sri Takht Kesgarh Sahib, Anandpur, the Sri Takht Patna Sahib, Patna, and the Sri Takht Nazur Sahib, Hyderabad-Deccan; and
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> (iii) twenty-five members resident in India of whom at least twelve shall be residents of Pepsu, at least nine of other parts of India than Punjab and Pepsu and not more

than four of Punjab, co-opted by the members of the Board as described in clauses (i) and (ii).

#(2)....."##

It would thus appear that after the passing of Punjab Act No. 44 of 1953 the Board consisted of only three categories of members, namely, (1) elected members, (2) certain designated members and (3) 25 co-opted members. Now, we come to s. 148-B which was added by the amending Act of 1959. That section in so far as it is material for our purpose is in these terms :-

"S. 148-B. (1) As from the commencement of the Amending Act, in addition to the members of the Board constituted under section 43 and till the next election of the new Board under section 43-A -

(a) every person in the extended territories who, immediately before the commencement of the Amending Act, is a member of the Interim Gurdwara Board, Patiala, constituted by Punjab Government, Home Department, Notification No. 18-Gurdwaras, dated the 10th January, 1958, shall be deemed to be a member of the Board, constituted under section 43; and

(b) thirty-five Sikhs including six Sikhs belonging to the Scheduled Castes residents in the extended territories, to be divided among different districts thereof in proportion to the Sikh population of each district in the prescribed manner, who shall, within forty days of the commencement of the Amending Act, be elected by the persons specified in sub-section (2) in accordance with the rules made in this behalf by the State Government, shall become the members of the Board from the date specified in sub-section (3).

(2) The thirty-five persons referred to in clause (b) of sub-section (1) shall be elected by -

(i) the persons who are deemed to be the members of the Board under clause (a) of sub-section (1);

(ii) the twelve members of the Board being residents of Pepsu as are referred to in clause (iii) of sub-section (1) of section 43;

(iii) the sitting Sikh members of Parliament and the two Houses of State Legislature returned from any constituency or part thereof from the extended territories;

(iv) the Sikh members of Municipal Committees in the extended territories;

(v) the Presidents or Chairmen of such Singh Sabhas and the Managers or Secretaries of such Sikh educational institutions or Sikh religious organisations as are registered on or before the 1st December, 1958, in the extended territories; and

(vi) the Sikh Sarpanches and Sikh Nayay Pardhans of Nagar Panchayats and Panchayati Adalats, respectively :

Provided that the electors under clauses (iii), (iv), (v) and (vi) are not disqualified

under the proviso to section 49 of the Act.

#(3).....(4).....(5)....."##

It is worthy of note here that s. 148-B occurs in chapter XII-A and the heading of the chapter is "Temporary and Transitional Provisions" which indicates clearly enough that the provisions in sections 148-B to 148-F are temporary and transitional provisions. It has been stated at the Bar that in about a year, a fresh election of the Board is due under s. 43-A, and the temporary and transitional provisions in chapter XII-A are to be in force only for the intervening period. Section 43-A which was also added by the amending Act of 1959 says -

"S. 43-A. (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 four Takhats, namely :-

the Sri Takhat Sahib, Amritsar,

the Sri Takhat Keshgarh Sahib, Anandpur,

the Sri Takhat Patna Sahib, Patna, and

the Sri Takhat 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 (iii) 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."

Thus, the new or permanent Board which will be constituted under s. 43-A will consist of (1) one hundred and forty elected members, (2) five designated members, and (3) fifteen co-opted members, and there will be no room for any nominated members therein. The petitioners have raised no objections to the constitution of the Board under s. 43-A; all their objections are confined to the constitution of the Board under s. 148-B, even though it is a transient provision for the transitional period only.

What then are these objections, in so far as they bear on the alleged violation of the petitioners' fundamental right under Art. 26(b) of the Constitution ?

Learned counsel for the petitioners has first commented on what he has characterised as undue haste in passing the amending Act of 1959. He has submitted that the Pepsu area came within the State of Punjab in November, 1956, and for about two years, the Punjab Government evinced no serious

anxiety to extend the principal Act to that area; but from November 16, 1958, when the annual election of the Sikh Gurdwara Prabandhak Committee was held, up to January, 1959, when the amending Act of 1959 was passed, hurried proceedings were taken to enact the amending law in question and so constitute the Board that a particular group of Sikhs might not regain the mojority it had lost on November 16, 1958. In our opinion these submissions (we do not say whether they are right or wrong) have no bearing on the question at issue before us. The petitioners have not specifically alleged in their petition that the State Government has acted in any mala fide manner; and whatever justification some people may feel in their criticisms of the political wisdom of a particular legislative or executive action, this Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of the legislature in enacting a law which it is otherwise competent to make. We do not say that in pronouncing on the rights of the parties before it, this Court must always stand aloof on the chill and distant heights of abstract logic and pay no heed to the great tides and currents which move society and men. If and when the occasion demands, for example, when there is violation of a fundamental right guaranteed by the Constitution, it will never hesitate to act. But it is well to remember that a fundamental right, such as freedom of religion, is of an enduring character and must stand beyond the sweep of changing and deflecting forces of current opinion. Our limited function in this case, therefore, is to examine the constitutionality of s. 148-B, and to that task we must how confine our attention.

The main argument of learned counsel for the petitioners is that Art. 26(b) gives to every religious denomination, or any section thereof, the right "to manage its own affairs in matters of religion" and the right is subject only to public order, morality and health. In this case, according to him, the right is given to all members of the Sikh denomination and not to any particular members thereof, to manage Sikh gurdwaras; therefore, the right must be exercised by all Sikhs, and they alone must elect their representatives to manage Sikh gurdwaras; and to the extent that s. 148-B departs from the aforesaid principle, it constitutes an infringement of the right guaranteed to the petitioners under Art. 26(b) of the Constitution.

We are unable to accept this argument as correct. Article 26 of the Constitution, so far as it is relevant for our purpose, says -

> "Art. 26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -
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> #(a).....##
>
> (b) to manage its own affairs in matters of religion;
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> #(c).....##
>
> (d) to administer such property in accordance with law."

The distinction between cls. (b) and (d) strikes one at once. So far as administration of its property is concerned, the right of a religious denomination is to be exercised in "accordance with law", but there is no such qualification in cl. (b). In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt ([1954] S.C.R. 1005, 1023, 1026.), this distinction was pointed out by this Court and it was there observed : "The administration of its property by a religious denomination has thus been placed on a different footing from the right to

manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose". Secondly, the expression used in cl. (b) is 'in matters of religion'. In what sense has the word 'religion' been used ? This was considered in two decisions of this Court : The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt ([1954] S.C.R. 1005, 1023, 1026.) and Sri Venkataramana Devaru v. The State of Mysore ([1958] S.C.R. 895.), and it was held that freedom of religion in our Constitution is not confined to religious beliefs only, but extends to essential religious practices as well subject to the restrictions which the Constitution has laid down. In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt ([1954] S.C.R. 1005, 1023, 1026.) it was observed at p. 1026 that under Art. 26(b), a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold (we emphasise here the word 'essential'). The same emphasis was laid in the later decision of Sri Venkataramana Devaru v. The State of Mysore ([1958] S.C.R. 895.), where it was said that matters of religion in Art. 26(b) include practices which are regarded by the community as part of its religion. Two questions, therefore, arise in connection with the argument of learned counsel for the petitioners : (1) does s. 148-B added to the principal Act by the amending Act of 1959 have reference only to administration of property of Sikh gurdwaras and, therefore, must be judged by cl. (d) of Art. 26 or (2) does it affect 'matters of religion' within the meaning of cl. (b) of the said Article ?

The argument on behalf of the petitioners is that the principal Act to which s. 148-B has been added relates not merely to administration of properties of Sikh gurdwaras but also to matters of religion and in so far as s. 148-B brings in new members into the Board, it affects Sikhs in their religious affairs. The argument on behalf of the respondent State is that matters of religion in the sense of essential beliefs and practices of the Sikh faith are left untouched by s. 148-B, and even other relevant sections of the principal Act do not interfere with Sikh religion. In this connection, our attention has been drawn to the provisions in Ch. X which deal with the powers and duties of the Board and to those in Ch. XI which deal with powers and duties of Committees. Section 125, to which we have already referred, states that the duty of the Board is to ensure that every Committee deals with the property and income of the gurdwara or gurdwaras it manages in accordance with the provisions of the Act and in fulfilment of that duty, the Board has vested in it control, direction and general superintendence over all committees appointed under the provisions of the Act. Section 129 states -

> "S. 129. The Board in any meeting may consider and discuss any matter with which it has power under this Act to deal and any matter directly connected with the Sikh religion, but shall not consider or discuss, or pass any resolution or order upon, any other matter."

If s. 129 is read subject to s. 125 as the learned Advocate-General for the State contends it should be read, then the powers and duties of the Board, in substance and effect, relate to administration of gurdwara properties and matters ancillary thereto. They have hardly any reference to 'matters of religion'. Section 133 states generally the powers of Committees, and one of the powers is 'enforcing the proper observance of all ceremonies and religious observances in connexion with such gurdwara or gurdwaras and of taking all such measures as may be necessary to ensure the proper management of the gurdwara or gurdwaras and the efficient administration of the property, income and endowments thereof.' Learned counsel for the petitioners has emphasised that part of the section which relates to 'proper observance of all ceremonies and religious observances' and has

contended that as the Board is the committee in respect of some of the principal gurdwaras, it has a duty to ensure proper observance of all essential religious ceremonies of the Sikh faith, which according to him is a 'matter of religion'. Under s. 134, the Committee has power inter alia to dismiss an office-holder or minister, if he fails in the performance of 'any rituals and ceremonies in accordance with the teachings of Sir Guru Granth Sahib' or has ceased to be a Sikh; it is contended that this power also relates to a 'matter of religion' within the meaning of Art. 26(b).

Without a fuller and more detailed examination of the provisions of the principal Act we hesitate to pronounce finally on the larger question if any of the other provisions of the principal Act affect matters of religion; nor do we think it necessary to decide that larger question in the present case. We are of the view that the present petition can be decided on a shorter ground, even if we proceed on the assumption that some of the provisions of the principal Act relate to matters of religion and the Board, either acting in exercise of its power of control, direction and superintendence over other committees or in its capacity as the committee for certain gurdwaras, can pass orders about matters of religion. We may point out, however, that the preamble of the principal Act indicates that it is mainly a law to provide for the better administration of certain Sikh gurdwaras and it is admitted that in so far as the powers of the Board relate to mere administration of gurdwara properties in either of its two capacities, such administration must be in accordance with law, and the appropriate legislature can lay down what the law should be. The question which is decisive of the present petition is - does s. 148-B interfere in matters of religion ? Sections 133 and 134 of the principal Act are not impugned before us; what is impugned is s. 148-B. That section has not in any way affected whatever powers the Board or Committee has under ss. 133 and 134 of the principal Act. The gravamen of the objections urged on behalf of the petitioner is that s. 148-B introduces, even though as a temporary measure, some more designated Sikh Members into the Board by cl. (a) of sub-s. (1) thereof the further introduces the election of thirty-five Sikhs (from the Pepsu area) into the Board by means of an indirect method, that is, by a limited Sikh electorate, the members of which electorate are in their turn elected by Sikhs as well as non-Sikhs. In order to establish their case, the petitioners must prove not merely that some provisions of the principal Act refer to matters of religion, but that the introduction of new members into the Board in respect of the extended territories of the Pepsu area, in the manner envisaged by s. 148-B, violates by itself the right of the Sikhs in matter of religion. Learned counsel for the petitioners is thus forced to take up the stand that a direct election of the members of the Board by the entire Sikh community is itself a matter of the Sikh religion and, therefore, part of the content of the right guaranteed under Art. 26(b). We do not think that such a stand is correct or justified by Art. 26 of the Constitution : nor has any authoritative text been placed before us to show that a direct election by the entire Sikh community in the management of gurdwaras is part of the Sikh religion. The principal Act, as it stood before the amending Act of 1959, does not support any such contention. However great our respect may be for the democratic principle of direct election, we do not think that having regard to the provisions of the principal Act and the circumstances in which s. 148-B came to be added thereto, the principle of direct election on universal denominational suffrage can be raised to the pedestal of religion within the meaning of Art. 26(b) of the Constitution. If it were so raised, then the co-option of some members which has not been challenged by the petitioners would also be violative of their fundamental right; so also any restrictions which the principal Act or the rules made thereunder may impose in the matter of election or the exercise of the vote, such as, restrictions with regard to the age of the voter, etc. Obviously, these are not matters of religion and we say without meaning any offence to anybody that to treat these as matters of religion is tantamount to confusing religion with current politics.

It is to be remembered that the principal Act constituted a Board representative of the Sikhs both

inside Punjab and outside it; that is why in the constitution of the Board there was provision for election, nomination, designation of the head ministers of certain principal Sikh gurdwaras, and also co-option. The purpose obviously was to make the Board as representative as possible, and because an Act passed by the Punjab legislature could not contain provisions for the election of members from constituencies outside the Punjab, there arose the necessity for nomination, designation and co-option. The designation of the head ministers of the five principal Sikh shrines may be also attributed to the reason that they were important functionaries who should be on the Board. In 1953, nomination was done away with and the number of co-opted members was increased to twenty-five, of whom at least twelve were to be residents of Pepsu. This was even before the principal Act was extended to the Pepsu area. When the amending Act of 1959 extended the principal Act to the Pepsu area, the problem at once arose as to how to give some representation to the Sikhs in the extended areas, for the intervening period before the next election of the Board, and also as a permanent measure : s. 148-B gives representation to those areas as an interim measure and s. 43-A as a permanent measure. Considering s. 148-B in the light of these circumstances, we are unable to hold that it violates the fundamental right of the Sikhs under Art. 26(b) of the Constitution. The method of representation for the extended areas during the interim period appears to us to be an arrangement dictated merely by considerations of convenience and expediency, and does not involve any principle of religion. The question before us is not whether a more satisfactory arrangement could have been made even for the interim period; perhaps, it could have been. Learned counsel for the petitioners has pointed out that many Sikhs of influence and standing in the Pepsu area will have no vote for the interim period. That may be unfortunate, but is not a relevant consideration for determining the question before us, namely, whether there has been interference with freedom of religion.

We now proceed to consider the specific grievances which the petitioners have made in respect of the persons who come into the Board under s. 148-B. As to the members of the Interim Board, Patiala, who under cl. (a) of sub-s. (1) of s. 148-B are deemed to be members of the Board constituted under s. 43, it is argued that they were appointed under a Punjab Government notification dated January 10, 1958, and though they are Sikhs, they do not represent the Sikh community and are mere nominees of Government; furthermore, they are not subject to the disqualifications mentioned in ss. 45 and 46 of the Act in respect of elected and co-opted members respectively. We have pointed out earlier that the principal Act contained a provision before 1953 for nomination of 12 members by the Rajpramukh of Pepsu; and after 1953, the co-opted members included twelve residents of Pepsu. By an order of the Maharaja of Patiala, the Interim Gurdwara Board, Patiala, was constituted to look after certain gurdwaras of the Pepsu area, and after merger the appointment was made by the Governor of the Punjab. Under s. 148-A which was also added to the principal Act by the amending Act of 1959, the Interim Gurdwara Board, Patiala, has ceased to function, and under s. 148-B(1)(a) the members of the Interim Board, Patiala, have become members of the Board constituted under s. 43. We are unable to hold that the designation of such members, as an interim measure, to represent those gurdwaras in the Pepsu area which they were actually managing is violative of any fundamental right; nor do we think that the non-application of the disqualifications stated in ss. 45 and 46 of the Act to these members advances the case of the petitioners any further. The principal Act did not contain any provisions as to disqualification of designated members; it contained provisions for disqualification of elected, nominated or co-opted members and after nomination had ceased in 1953, of elected or co-opted members only. It is permissible to presume that the legislature knows that the members it is designating do not suffer from any disqualifications; furthermore, the petitioners have not even suggested in their petition that the members of the Interim Board, Patiala, suffer from any of the disqualifications stated in s. 45 or

s. 46.

With regard to the thirty-five Sikhs to be elected under cl. (b) of sub-s. (1) of s. 148-B, there is three-fold contention. It has been submitted that (1) the electorate detailed in sub-s. (2) of s. 148-B is not representative of all the Sikhs; (2) some of the members of the electorate like Sikh members of Parliament and Municipal Committees are in their turn elected by joint constituencies of Sikhs and non-Sikhs; and (3) some of the members of the electorate like Sikh Sarpanches and Sikh Naya Pradhans are in the service, and under the influence of Government. We do not agree that these considerations are determinative of the problem before us. We have already said that the method of representation to the Board for the extended areas as an interim measure is not a matter of religion. The circumstance that some members of the electorate are in their turn elected by constituencies consisting of Sikhs and non-Sikhs is far too remote and indirect to constitute an infringement of freedom of religion. The members of the electorate itself are all Sikhs and they have to elect thirty-five Sikhs. Unless one proceeds mechanically on mere abstract considerations, there is no real basis for the contention that non-Sikhs can in any way influence the Board. We do not agree that Sikh Sarpanches and Naya Pradhans are in the service of Government or that their inclusion as members of the electorate violates the right of the Sikhs under Art. 26(b) of the Constitution. It may not be quite irrelevant to point out here that the twelve members of the Interim Gurdwara Board, Patiala, plus thirty-five elected Sikhs from the Pepsu area will be a minority as against 132 elected members and twenty-five co-opted members of the Board.

For the reasons given above, we hold that the petitioners have failed to make out a case of violation of their fundamental right. Accordingly, the petition fails and is dismissed with costs.

Petition dismissed.

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