

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.17150 of 2017 (O&M)
DATE OF DECISION : 1.11.2017

Khalsa University and another

PETITIONERS

VERSUS

State of Punjab and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

Present:- Shri Rajiv Atma Ram, Senior Advocate with
Shri Arjun Pratap Atma Ram, Advocate for the petitioners.

Shri Atul Nanda, Advocate General Punjab with
Ms.Rameeza Hakeem, Additional A.G. Punjab and
Manoj Bajaj, Additional A.G. Punjab.

MAHESH GROVER, J.

The instant writ petition has been filed seeking issuance of a writ in the nature of certiorari quashing the Khalsa University (Repeal) Act, 2017 (hereinafter known as the Repeal Act) and also to quash the orders dated 6.4.2017 and 17.5.2017, further with a prayer to quash Section 26(4)(5)(8) of the Khalsa University Act, 2016.

It has been averred in the petition that petitioner No.2 is a Society managing various educational institutions. The Khalsa University Act, 2016 created Khalsa University wherein the College of Pharmacy, College of Education and College for Women Wing already run by the Society were fused into the

University.

The State of Punjab issued two orders dated 6.4.2017 and 17.5.2017 quashing of which has been sought by the petitioners by way of C.W.P. No.11318 of 2017, as they have been prohibited from making any admissions. On 30.5.2017, an Ordinance was issued repealing the Khalsa University Act which was also challenged by way of C.W.P. No.13258 of 2017. Subsequently, Repeal Act, 2017 was promulgated which has now been challenged by the petitioners along with a challenge to the earlier orders passed by the State of Punjab prohibiting admissions etc.

Apart from the grievance that the Repeal Act has resulted in a detrimental situation to the students, a challenge has been mounted on the following grounds on the lines of which the principal contentions were raised before us :-

(1) The objects and reasons for the Act under challenge talk of heritage status of the Khalsa College, Amritsar from which the Khalsa University has been carved out and it is contended that such a perception is imaginary as no one has conferred the heritage status on the College. We may extract the objects and reasons of the Act for whatever its worth, in a challenge to a legislation :-

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

(2)

Once the Khalsa University has been established under the Act of

2016, the University would come under the domain of the University Grants Commission and the Legislature of the State would have no power to amend or repeal it. It is contended that the University Grants Commission has been created under a Central Statute and the State would cease to have any control over the affairs of the University. It has been argued that under List-I, Entry-66, the University Grants Commission was created. Entry-66 is extracted here below :-

“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

(3) There has been acute discrimination with the Society as 60 Universities have been created under the State, but it is Khalsa University which has been singled out for repeal.

(4) Mala fides have been levelled against the Government and it has been stated that prior to the elections, it was openly declared by the present Chief Minister that he would order a repeal of the 2016 Act.

(5) Lastly, it has been submitted that the successive Government cannot scuttle a policy adopted and executed by the predecessors. Reliance has been placed on a decision of the Hon'ble Supreme Court in **Ajay Singh and others v. State of M.P.** 1993 A.I.R. (S.C.) 825 in particular, paras 21 and 23 which are extracted here below :-

“21. The real question for decision in the present case is : Whether the appropriate Government after constituting the Commission under Section 3 of the Act, is empowered to reconstitute the Commission substituting another person as the sole member in place of the initial appointee ? In substance, it is this power that the State Government claims to have exercised in the present case and is attempted to be justified by the argument advanced by Shri Shanti Bhushan to support

the appointment first of Justice G.G.Sohani and then of Justice Kamlakar Choubey in place of Justice S.T.Ramalingam. To recapitulate, the argument of Shri Shanti Bhushan is that the power of reconstituting the Commission in this manner is available to the State Government under Section 21 of the General Clauses Act, which can be invoked in aid of the power of the Government under Section 3 of the Commission of Inquiry Act. Section 8-A of the Commissions of Inquiry Act, is referred to by Shri Shanti Bhushan as an indication of the existence of this power in the State Government even though he does not rely on it as a source of this power. Shri Kapil Sibal, on the other hand, contends that the scheme of the enactment shows that the appropriate Government cannot interfere with the working of the Commission after its constitution except in the manner expressly provided in the Act, and Section 7 is clear indication that interference with the functioning of the Commission is not permissible in any other manner. Shri Sibal contends that Section 21 of the General Clauses Act, is not available to support the Government's action in the present case.

22. Shri Shanti Bhushan concedes that there is no express provision in the Commissions of Inquiry Act, 1952 empowering the Government to replace or substitute the sole member of a Commission with another person during the continuance of the Commission, but he submits that this is implicit in the power to appoint a Commission and designate its personnel under sub-sections (1) and (2) of Section 3 of the Commissions of Inquiry Act, read with the power to amend or

vary any notification available under Section 21 of the General Clauses Act. Shri Shanti Bhushan also conceded that the aid of Section 21 of the General Clauses Act, is available only if the context and the scheme of the Commissions of Inquiry Act, so permits. He submitted that the Government's power to extend the time specified in the initial notification for completing the work of the Commission is not to be found in any express provision in the Commissions of Inquiry Act, but is exercised by amendment of the Initial notification only under Section 21 of the General Clauses Act. According to Shri Shanti Bhushan, the appointment of a Commission is under sub-section (1) and it is under sub-section (2) of Section 3 that the person constituting the Commission is appointed even though it may be a simultaneous process. The replacement of the member initially appointed to constitute the Commission, according to the learned counsel, is by re-exercise of the power under sub-section (2) of Section 3. The submission is that the Commission appointed under sub-section (1) of Section 3 continues while it may be reconstituted by replacement of the member which is done under sub-section (2).”

Similarly, reliance has been placed on a decision of the Hon'ble Supreme Court on **State of Tamil Nadu and others v. K.Shyam Sunder and others** 2011(8) S.C.C. 737 wherein it was observed as under :-

“18. while deciding the said case, reliance had been placed by the Court on its earlier judgments in **State of U.P. & anr. v. Johri Mal**, AIR 2004 SC 3800 ; and **State of Haryana v.**

State of Punjab & anr., AIR 2002 SC 685. In the former, this Court held that the panel of District Government Counsel should not be changed only on the ground that the panel had been prepared by the earlier Government. In the latter case, while dealing with the river water-sharing dispute between two States, the Court observed thus :

“ in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.”

19. In **M.I.Builders Pvt. Ltd. v. V.Radhey Shyam Sahu and ors.**, AIR 1999 SC 2468, while dealing with a similar issue, this Court held that Mahapalika being a continuing body can be estopped from changing its stand in a given case, but where, after holding inquiry, it came to the conclusion that action was not in conformity with law, there cannot be estoppel against the Mahapalika.

20. Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.”

The State, on the other hand, defends its legislative action of repeal and contends that the power to nullify as also the power to enact are absolute in Legislature and cannot be questioned on the grounds set out by the petitioners.

Reliance was placed on the the decisions of the Hon'ble Supreme Court in **Subramaniam Swami v. Director, C.B.I.** (2014) 8 S.C.C. 682 and **Raj Bala and others v. State of Haryana and others** (2016) S.C.C. 445.

Likewise, the arguments of the petitioners that after the creation of the University, the University Grants Commission would have control over the University with the Legislature having no say, has also been strenuously contested by arguing that the University Grants Commission is merely a Regulatory Body intended to ensure and achieve the high standards of education through its regulatory regime but having no say in so far as the establishment of a University is concerned.

It has also been argued that there would be no vested right with the Society in view of Section 6(e) of the General Clauses Act after a repeal as whatever rights were created during its subsistence being co-habited rights would stand nullified or obliterated.

Reliance has also been placed on the following decisions :-

- (1) **Executive Committee of Vaish Degree College v. Lakshmi Narain** (1976) 2 SCC 58.
- (2) **Gajraj Singh v. STAT** (1997) 1 SCC 650.
- (3) **Divl. Forest Officer v. Bishwanath Tea Co. Ltd.**(1981) 3 SCC 238.
- (4) **Krishna Kumar Singh and ors. v. State of Bihar**(2017) 2 SCC 1.
- (5) **State of U.P. v. Hindustan Aluminium Corpn. & others** (1979) 3 SCC 229.
- (6) **Mylapore Club v. State of T.N. & another** (2005) 12 SCC 752.
- (7) **K.C.Gajapati Narayan Deo v. State of Orissa** AIR 1953 SC 375.

- (8) **Subramanian Swamy v. C.B.I.** (2014) 3 SCC 682.
- (9) **Prof. Yashpal and another v. State of Chhatisgarh and others** (2005) 5 SCC 420.
- (10) **Dharam Dutt and others v. Union of India and others** (2004) 1 SCC 712.

After hearing the learned counsel for the parties, we are of the opinion that the foremost question that needs to be addressed by us is of the power of the Legislature to repeal an enactment. The other issues that have been raised would be rendered insignificant if we conclude about the absolute power of the Legislature to enact or annul a legislation and its resultant impact.

Learned counsel for the petitioners has relied extensively on the content of objects and reasons and the statement made by the present Chief Minister during the election process. It has been very vocally contended before us that once a proclamation or a declaration is made such as the one made qua the scrapping of the Khalsa University Act, 2016, the same should be viewed as a pre-determined act that would betray lack of deliberation which finds support from a perusal of the objects and reasons that seek to preserve the non-existent heritage status of the Khalsa College in the absence of any declaration to that effect by any authority.

We are afraid that such arguments lack penetrative depth and thus have to be repelled outrightly.

The power of the Legislature to create or annul a statute cannot be tested on such considerations as the one thrown up in the arguments of the petitioner which do not even breach the subcutaneous.

The Legislature draws its powers from the Constitution and political declaration of an intent to do a thing or undo it can hardly be considered relevant to exercise of such a power that is not only well entrenched in the provisions of the Constitution, but has been adequately cemented by the observations of the Hon'ble

Supreme Court whenever an occasion to examine such a question arose. To quote from **State of U.P. and others v. Hindustan Aluminum Corpn. and others** (1979) 3 SCC 229 (supra) :-

“65. Craies on Statute Law, seventh edition, has mentioned six different classes of enactments at pages 357-8 which are considered as having ceased to be in force :-

1. Expired – that is, enactment which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had for their object in the continuance of previous temporary enactments for periods now gone by effluxion of time ;
2. Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required ;
3. Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms as distinguished from an enactment specifying the Acts on which it is to operate ;
4. Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one;
5. Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise ;

6. Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

These six have been mentioned as the enactment which are selected for inclusion in the Statute Law Revision Acts of England as having ceased to be in force otherwise than by express repeal, or having by the lapse of time or otherwise become unnecessary. It is quite an exhaustive list and the question is whether the Order could be said to have “spent” itself or become “obsolete”, for the other four categories are inapplicable to the present case. But whether a piece of legislation has spent itself or exhausted in operation by the accomplishment of the purpose for which it was passed, or whether the state of things contemplated by the enactment has ceased to exist, are essentially questions of fact for the Legislature to examine, and no vested right exists in a citizen to ask for a declaration that the law has been impliedly repealed on any such ground.

66. It has to be appreciated that the power to legislate is both positive in the sense of making a law, and negative in the sense of repealing a law or making it inoperative. In either case, it is a power of the Legislature, and should lie where it belongs. Any other view will be hazardous and may well be said to be an encroachment on the legislative field. In an extreme and a clear case, no doubt, an antiquated law may be said to have become obsolete – the

more so if it is a penal law and has become incapable of user by a drastic change in the circumstances. But the judge of the change should be the Legislature, and courts are not expected to undertake that duty unless that becomes unavoidable and the circumstances are so apparent as to lead to one and only one conclusion. This is equally so in regard to the delegated or subordinate legislation.”

The Khalsa University was created by an Act of Legislature which is evident from the following reproduced provisions of Section 3 :-

(1) There shall be an established private University by the name of Khalsa University in the State of Punjab.

(2) Section 2 of the Repeal Act reads as under :-

“Khalsa University Act, 2016 (Punjab Act No.44 of 2016) is hereby repelled.”

In Subramannian Swamy v. Director, Central Bureau of Investigation and another (2014) 8 S.C.C. 682, it was said that where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognized by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application

to legislation and rendering legislation invalid are now well recognized and these are (i) discrimination, based on an impermissible or invalid classification and (ii) excessive delegation of powers ; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders – if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.

In **Rajbala and others v. State of Haryana and others** (2016) 2 S.C.C. 445, the Supreme Court said that the courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is "arbitrary" since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. To undertake such an examination, it was further said, would amount to virtually importing the doctrine of "substantive due process" employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. It was concluded that it was not permissible for Hon'ble the Supreme Court to declare a statute unconstitutional on the ground that it is 'arbitrary'.

What flows from the above is an unambiguous picture of the University being a creation of the statute owing its very existence to it. It is not a Body that has been created under a statute. The distinction between the two i.e. the Body owing its existence to a statute and the one created under a statute has been very finely brought about in **Executive Committee of Vaish Degree College v. Lakshmi Narain** (1976) 2 SCC 58, wherein it was observed as

follows:-

“10. We would first deal with the important question, which has been the sheet-anchor of the arguments of the learned counsel for the respondent as also the main basis of the judgment of the Full Bench of the Allahabad High Court, as to whether or not the appellant Executive Committee can be said to be a statutory body in the circumstances of the present case. **It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established.** Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself, is not, in our opinion, sufficient to clothe the institution with a statutory character. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331, 1339) this Court clearly pointed out as to what constitutes a statutory body. In this connection My Lord A.N.Ray, C.J. observed as follows : (SCC p.435 : (L&S) p.115, para 25).

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the

provisions of the statute.”

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. **In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence.** If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body ...”

It is thus, evident that the power of the Legislature to enact and repeal a statute flows from well defined legislative power which, of course, can be questioned in courts by invoking its power of judicial review but on grounds such as being in conflict with any of the provisions of the Constitution amongst others. The settled law is that the presumption of legislation's validity would exist unless the contrary declaration by the courts on well entrenched principles of jurisprudence is made.

Hence, the plea of the petitioners that the declaration made by an incumbent from a political platform or the stated intent in objects and reasons being non existent can be the basis of questioning a legislation, has to be discarded outrightly as no legislation can be questioned on the issue of malafides. In **Sri Sri Sri K.C.Gajapati Narayan Deo v. State of Orissa**, 1954 SCR 1 : AIR 1953 SC

375, the Hon'ble Supreme Court observed as under :-

“9. It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. **If the legislature is competent to pass a particular law, the motives which impelled it to act are really relevant.** On the other hand, if the legislature lacks competency, the question of motive does not arise at all.”

The next question that has to be seen is the effect of repeal, and to our mind, a repeal without any savings would mean obliterating the earlier legislation altogether. Section 6 of the General Clauses Act, 1897 which talks of the effect of repeal is extracted here below :-

“6. **Effect of repeal.-** Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

- (a) revive anything not in force or existing at the time of which the repeal takes effect ; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
- (c) **affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or**
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any

enactment so repealed ; or

- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

Therefore, the effect of repealing a statute is as if the earlier statute never existed. In **Gajraj Singh v. STAT** (1997) 1 S.C.C. 650 it was observed by the Hon'ble Supreme Court as under :-

“22. Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed ; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law ...

23. In Crawford's Interpretation of Law (1989) at p.626, it is stated that :

“An express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as saving clause. Even existing rights and pending litigation, both civil and criminal, may be affected although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation.”

Section 6 of the GC Act enumerates, inter alia, that where the Act repeals any enactment, unless a different intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect ; or (b) affect the previous operation of any enactment so replaced or anything duly done or suffered thereunder ; or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. In *India Tobacco Co.Ltd. v. CTO* (1975) 3 SCC 512 :1975 SCC (Tax) 49 (SCC at p.517) in paras 6 and 11, a Bench of three Judges had held **that appeal connotes abrogation and obliteration of one statute by another from the statute-book as completely as if it had never been passed. When an Act is repealed, it must be considered, except as to transactions past and closed, as if it had never existed. Repeal is not a matter of mere form but is of substance, depending on the intention of the legislature. If the intention indicated either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a case of total or pro tanto repeal.**

...

25. On “Savings of rights acquired”, in the *Principles of Statutory Interpretation* by G.P.Singh (6th Edn.) - 1996) at p.413, the learned author has stated that the effect of clause (c) to (e) of section 6 of the GC Act is, speaking briefly, to prevent the obliteration of a statute in spite of its repeal to

keep intact rights acquired or accrued and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such rights and liabilities. **At p.418, the learned author has stated that the privilege to get an extension of a license under an enactment is not an accrued right and no application can be filed after the repeal of the enactment for renewal of the licence.** In Legislation and Interpretation by Jagdish Swarup (1974 Edn.) at p.539 **it is stated that the power to take advantage of an enactment may without impropriety be termed as a 'right', but the question is whether it is a “right accrued”.** A mere right (assuming it to be properly so called) existing in the members of the community or any of them to take advantage of an amendment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a “right accrued”.

27.... In Crawford's Statutory Interpretation it is stated under Section 322 at p.657 thus :

“Often the legislature instead of simply amending a pre-existing statute, will repeal the old statute in its entirety and by the same enactment re-enact all or certain portions of the pre-existing law. **Of course, the problem created by this sort of legislative action involves mainly the effect of the repeal upon rights and liabilities which accrued under the original statute. Are those rights and liabilities destroyed or**

preserved ? The authorities are divided as to the effect of simultaneous repeals and re-enactments. Some adhere to the view that the rights and liabilities accruing under the Repealed Act are destroyed, since the statute from which they sprung has actually terminated, even though for only a very short period of time. Others, and they seem to be in the majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the re-enactment neutralizes the repeal, thereby continuing the law in force without interruption. **Logically, the former attitude is correct, for the old statute does cease to exist as an independent enactment,** but all practical considerations favour the majority view. This is so even where the statute involved is a penal act.”

29. In Sutherland Statutory Construction (3rd Edn.) Vol.I by Horack, in paras 2043 to 2045, it is stated that :

“Under common law principles of construction and interpretation all rights, liabilities, penalties, forfeitures and offences which are of purely statutory derivation and unknown to the common law are effaced by the repeal of the statute which granted them, irrespective of their accrual. Likewise, where a common law principle is abrogated, its effective existence is destroyed both as to past actions and to pending proceedings.

However, a right of a common law nature which is further embodied in statutory terms exists as an enforceable right exclusive of the statute declaratory of it, and therefore the right is not expunged by the repeal of the statute.

Since the effect of a repeal is to obliterate the statute and to destroy its effective operation in futuro, or to suspend the operation of the common law when it is a common law principle which is abrogated, any proceedings which have not culminated in a final judgment prior to the repeal are abated at the consummation **of the repeal**. When, however, the repeal does not contemplate either a substantive common law or statutory right, but merely the procedure prescribed to secure the enforcement of the right, the right itself is not annulled but remains in existence enforced by applying the new procedure.

Effect on vested rights

Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceedings not concluded prior to the appeal. **However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an independent existence.** Consequently, the repeal of the statute or the

abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.

In order to become vested, the right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition.

Effect upon inchoate rights

Rights of action which are dependent upon a statute, and which are still inchoate and not reduced to possession or perfected by final judgments, are lost by the repeal of the statute from which they stem. This rule of construction is simply a restatement of the common law principle of construction that the repeal of a statute operates to divest all rights accruing under the repealed statute and all proceedings not concluded prior to the repeal, since inchoate rights are by definition not vested rights such as to escape the common law rule of effacement. The inchoate rights are but an incident to the statute and fall with its repeal.”

In our view, when we test the observations made by the Hon'ble Supreme Court by applying it to the facts of the case, there would be an inescapable conclusion that resultant situation from the Repealed Act would be a complete negation of the one existing earlier when the Act was subsisting with no

rights being saved thereafter. In fact, it would even obliterate the identity of the institution altogether to mean that the Khalsa University never existed. Even otherwise, we notice from the assertion of the petitioners themselves that the Khalsa College which existed on the very same premise offering different courses i.e. Khalsa College of Pharmacy, Khalsa College of education and Khalsa College of Women were amalgamated to create the Khalsa University which itself can be described as a hurriedly cobbled contraption not befitting the setting up of a higher centre of learning.

We now come to the argument raised by the petitioners that once the Khalsa University Act had created the University, it would spin out of the State's control to come under the purview of the University Grants Commission.

Learned counsel for the petitioners has referred to the University Grants Commission Act, 1956 and the Regulations framed thereunder appended to the petition as Annexure P-25. We are of the opinion that this does not advance the case of the petitioners at all. The University Grants Commission was set up to maintain standards of higher education. It can regulate in certain spheres, matters aimed at enhancing higher education, but it does not imply that control of University itself passes on to the University Grants Commission so as to deprive the State of its Legislative powers or even control over the University – a power that will flow from the statute.

Entry-66 of List-I of the Constitution lays down spheres of operation expected from the University Grants Commission. At the cost of repetition, the same is again extracted here below :-

“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

Entry 25 of List III is also extracted here below :-

“Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I ; vocational and technical training of labour.”

It would empower the State to deal with matters of education including technical education and medical education.

In **Prof.Yashpal v. State of Chhatisgarh** (2005) 5 SCC 420, the Hon'ble Supreme Court had the occasion to consider the scope and inter play of the above Entries and it was held as under :-

“28. **Though incorporation of a university as a legislative head in a State subject (Entry 32 List II)** but basically a university is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union. The interplay of various entries in this regard in the three lists of the Seventh Schedule and the real import of Entry 66 of List I have been examined in several decisions of this Court. In *Gujarat University v. Krishna Ranganath Mudhalkar* a decision by a Constitution Bench rendered prior to the Forty-second Amendment when Entry 11 of List II was in existence, it was held that Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislative is vested exclusively in Parliament. The use of the expression “subject to” in Item 11 of List II of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State

Legislatures. In AIR para 23, the Court held as under : (SCR pp.137-38).

“Power of the State to legislate in respect of education including universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by Items 63 to 66 even if it otherwise falls within the larger field of 'education including universities' power to legislate on that subject must lie with Parliament. ... Item 11 of Item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap : but to the extent of overlapping, the power conferred by Item 66 List I must prevail over the power of the State under Item 11 of List II. It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour.”

33. **The consistent and settled view of this Court, therefore, is that inspite of incorporation of universities as a legislative head being in the State List,** the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specify entry on coordination and determination of standards in institutions for higher education

or research and scientific and technical education being in the Union List for which Parliament alone is competent. It is the responsibility of Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

34. In order to achieve the aforesaid purpose, Parliament has enacted the University Grants Commission Act. First Para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short :the UGC Act”) is illustrative and consequently it is being reproduced below.”

We are of the opinion that the plea of the petitioners questioning the power of the Legislature to repeal an enactment cuts into its own argument somewhat. The Society has not questioned the creation of the University, by an act of the Legislature but merely questioned the repeal by disputing the power of the Legislature on grounds that we term untenable.

We, therefore, do not find any merit in the petition and the same is dismissed.

C.M. Nos.11360 & 11386 of 2017 stand disposed of.

Office is directed to list C.M. Nos.11361-CWP-2017 & 11387-CWP of 2017 on 14.11.2017 for consideration.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

November 1, 2017
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No