

petitioners on provisional price while reserving the right to charge the price fixed by the government. Thus, Shri Malhotra appears to be right in his submission that withdrawal of the petition for Special Leave to Appeal was manipulated to help some influential persons and this should not be made a ground to invalidate the impugned notice, which is otherwise in accordance with law.

- (iii) Secondly, the withdrawal of petition for Special Leave to Appeal by the State Government cannot be made basis for granting similar relief to the petitioner because such withdrawal cannot preclude the respondents from projecting their case in a correct perspective.

(21) The judgment of the Supreme Court in *Haryana Urban Development Authority V. Ranjan Dhamina* (5), relied upon by Shri Patwalia has no bearing on the facts of this case. A careful reading of that decision shows that the Apex Court was dealing with a case of demand of additional price and not the tentative price fixed by the government in terms of Rule 4 of 1965 Rules. Thus, that judgment cannot be of any assistance for deciding the question raised by the petitioner.

(22) We also find considerable force in the submission of Shri Malhotra that the petitioner does not have the *locus standi* to challenge the notice sent to Surinder Singh Bajaj because she has not filed the copy of power of attorney executed in favour of Smt. Iqbal Kaur in order to show that the allottee had authorised her to execute a sub power of attorney.

- (23) For the reasons mentioned above, the writ petition is dismissed.

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**R.N.R.**

*Before V.K. Bali & S.C. Malte, JJ*

JAGJIT SINGH SANGWAN & OTHERS—*Petitioners.*

*versus*

STATE OF HARYANA & OTHERS—*Respondents.*

*CWP 16098 of 1997*

17th July, 1998

*Constitution of India, 1950—Arts. 14 & 19—Haryana Co-operative Societies Act, 1984 (Amending Act No. 6 of 1995)—S. 28—Amendment*

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*of Act—Tenure increased from 3 to 5 years—Applicability of the Amending Act—Whether Act violates Articles 14 & 19 of the Constitution.*

*Held*, that the amending Act would violate Articles 14 & 19 of the Constitution only in a situation when it has taken away the existing right of a citizen. It is too well settled that legislature can amend prospectively as also retrospectively. Normally, the amendment is prospective in nature. However, it could be retrospective if the language implied in the amending Act specifically says so or it can be otherwise inferred by necessary intentment but while doing so, existing vested right cannot be taken away. No existing right of any one in the present case had been violated nor it was a case where life was inserted into a dead being. The amending Act would apply to all the Committees which had not come to an end on or after 2nd February, 1995 but the same shall not apply to the Committees whose tenure of three years had come to an end on 1st February, 1995 or prior thereto.

(Para 11 & 14)

Ashok Aggarwal, Sr. Advocate with M.L. Saggar, Advocate, *for the Petitioners*

H.S. Hooda, Advocate General Haryana with Madan Dev. Advocate, *for the respondents.*

### JUDGMENT

*V.K. Bali, J.*

(1) As common questions of law and facts are involved in all these petitions, we propose to decide the same by a common order. The learned Counsel representing the parties also suggest us likewise. Facts or deciding all these matters have, however, been extracted from CWP 16098 of 1997.

(2) Jagjit Singh Sangwan Director HAFED, Charkhi Dadri, District Bhiwani with six other directors of HAFED posted at various places in the State of Haryana through present petition filed by them under Article 226 of the Constitution of India seek issuance of writ in the nature of certiorari so as to quash order dated 15th October, 1997,—*vide* which the petitioners have been removed as Members/Directors of the Managing Committee of the Haryana State Cooperative Supply and Marketing Federation Ltd. Chandigarh by removing the Managing Committee as such. The order aforesaid has been styled by the petitioners to be illegal being contrary to the provisions of Haryana

Cooperative Societies Act, 1984 (hereinafter referred to as Act of 1984) as also contrary to the law laid down in *Mani Ram and others Vs. State of Haryana and others*(1).

(3) Before contentions raised in support of the petition are noticed, it shall be necessary to give a brief resume of the facts culminating into the filing of the present writ petition. All the petitioners are residents of Haryana and were elected members of the Managing Committee of Haryana State Cooperative Supply and Marketing Federation Ltd, (hereinafter referred to as the HAFED). For smooth running of the cooperative societies, an Act known as Punjab Cooperative Societies Act, 1961 (hereinafter referred to as Act of 1961) came into being. After the re-organisation of the State of Punjab, the Act was enforced in the State of Haryana as well. However, in 1984, the Government of Haryana framed Act of 1984 and made it applicable to territories forming part of Haryana State and the Punjab Cooperative Societies Act, 1961 and the Punjab Cooperative Agriculture Development Act, 1957 were repealed. Chapter-II of the Act of 1984 pertains to the registration of cooperative societies whereas Chapter-IV pertains to the management of cooperative societies. Section 28 of the Act pertains to election and tenure of the society and the same reads thus :—

“28. *Election and Tenure of Committee :*

- (1) The members of the Committee of a cooperative society shall be elected in the manner prescribed and no person shall be so elected unless he is member of the society.
- (2) The election process once started shall not be postponed and disputes, if any pertaining to the election, shall be entertained after the completion of the election process, in accordance with the provisions of this Act.

**Explanation** :— The election process shall be deemed to have started from the date of the order of the Registrar fixing the date of election.

- (3) The committee of each society shall before the expiry of the term of its committee arrange for the election of a committee in accordance with the bye-law, failing which the Registrar shall arrange to hold such elections.

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(1) 1996 (1) P.L.R. 45

(4) The committee shall unless removed earlier by the Registrar, hold office for a period of 3 years from the date of election:

Provided that the tenure of the committee of primary central and apex milk producers co-operative societies shall be as specified in the bye-laws of societies:

Provided further that if the tenure of a committee already constituted—

- (a) has not exceeded 3 years, it shall cease to function on the completion of 3 years tenure; and
- (b) has exceeded 3 years, it shall cease to function on the commencement of the Haryana Co-operative Societies (Amendment) Act, 1987.

(5) Notwithstanding anything contained in the bye-laws of a cooperative sugar mills, the members, who are employees in the mills, shall constitute one separate zone for the purpose of election to the members of the committee thereof. In case, no such member has been elected, the members of the committee shall co-opt one such member. If no such member is elected or—co-opted, as a member of the committee, the Registrar may nominate one such member as a member of the committee.

(6) No individual shall, at any time be a member of a committee of more than two primary societies, one central society and one apex society:

Provided that nothing in this sub section shall apply to a member nominated under sub section (1) of section 29 or to member of the committee of an apex or central society nominated to serve on the committee of another apex or central society, as the case may be, in accordance with the provisions of their Bye-Laws.”

Section 29 of the Act of 1984 which deals with nomination and co-option reads thus :—

“29. Nomination and co-option on committee:—

(1) Notwithstanding anything contained in sub-section (1) of section 28,—

- (a) Where the Government has—
  - (i) Subscribed to the share capital of a cooperative society; or

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- (ii) guaranteed the principal and interest in respect of debentures issued by the society; or
  - (iii) guaranteed the principal and interest in respect of loans and advance to the society; or
  - (iv) assisted the society with loans and granted, by not less than one lakh rupees, the government or any person authorised by it shall have the right to nominate on the managing committee of such society not more than three members or one third of the total number of elected members of such committee, whichever is less.
- (b) Where the Industrial Finance Corporation, the State Finance Corporation or any other financing institution of an employer notified in this behalf by the Government has provided finance to a cooperative society, the Industrial Finance Corporation, the State Finance Corporation or the other financing institution or the employer, as the case may be shall have the right to nominate one person on the committee.
- (2) A person nominated under sub-section (1) shall hold office during the pleasure of the authority who nominated him.
  - (3) Where a difference of opinion in respect of any matter arises between any member nominated by the government or the Managing Director appointed under section 31 and other members, thereof the matter shall be referred by the Society to the Government, whose decision thereon shall be final and deemed to be a decision taken by the committee.
  - (4) Notwithstanding anything contained in the bye-laws of a society, the Government may, by general or special order, direct that on the committee of such society or class of societies, as the Government may specify there shall be co-opted by members of the committee of such society one third members belonging to the weaker section out of whom atleast one such members shall belong to the scheduled caste:

Provided that such co-option shall not be made if one-third members belonging to the weaker section including that of scheduled caste have been elected on such committee.

Provided further that in case no such co-option is made, the Registrar may nominate such members.”

Section 34 that deals with removal of committee reads as follows :—

“34. Removal of Committee.—(1) If in the opinion of the Registrar, a committee persistently makes default or is negligent in the performance of duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society or its members, the Registrar may after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and order fresh election of the committee or appoint administrators in accordance with the provisions of section 33:

Provided that the appointment of Administrators shall be for a period of one year which may be extended, from time to time, upto three years.

(2) Where the Registrar, while proceeding to take action under sub-section (1) is of the opinion that suspension of the committee during the period of proceedings is necessary in the interest of the cooperative society, he may suspend the committee and make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed:

Provided that if the committee so suspended is not removed, it shall be reinstated and the period of suspension shall count towards its tenure :

Provided further that the period of suspension shall not exceed six months.

(3) The administrators appointed under sub-section(1) shall arrange, for the election of a committee in accordance with the bye-laws of the society failing which the Registrar shall arrange to hold the election.

(4) Before taking any action under sub section (1) in respect of a cooperative society, the Registrar shall consult the financing institution to which it is indebted.

(4) It is the case of the petitioners that section 28(4) of Act of 1984 provides that the committee shall, unless removed earlier by the Registrar, hold office for a period of three years from the date of election. The said section was amended.—vide Haryana Ordinance No. 3 of 1995 published in the Haryana Government Gazette on 2nd February, 1995 whereby the tenure of the Managing Society was enhanced from three to five years from 1st January, 1995 and the said Ordinance was replaced by Act No. 6 of 1995. Consequently, section 28 of the Act was amended and the amended sub-section (4) reads as follows :—

“The committee shall unless removed by the Registrar hold office for a period of five years from the date of election:

Provided that after the tenure of the committee already constituted has expired on first day of January, 1995 or till the promulgation of the Haryana Cooperative Societies (Amendment) Ordinance, 1995, it shall be demand to have been continued for a pered of five years from the date of election:

Provided further that the tenure of the Committee of a Primary Central and Apex Milk Producers Cooperative Societies shall be as specified in the bye-laws of such societies.”

(5) It is further the case of the petitioners that election to the Haryana State Cooperative Supply and Marketing Federation Ltd. (HAFED) takes place in indirect manner i.e. marketing cooperative societies in each district send their nominees to become members of the Haryana State Cooperative Supplying & Marketing Federation Ltd. (HAFED) Chandigarh. There are 67 marketing Cooperative societies in the State of Haryana which are members of the parent body i.e. Haryana State Cooperative Supply & Marketing Federation Ltd. There are 15 Directors of the parent body. These 15 Directors are to be elected from amongst 67 members of Marketing & Processing Cooperative Societies. One Director is to be taken from one zone. On 18th January, 1994, the Managing Committee of the Haryana State Cooperative Supply & Marketing Federation Ltd. was elected. Petitioners and one Ram Singh (who later died) and Deep Chand from district Sirsa were elected as members. Ram Singh expired and in his place Jasbir Singh petitioner was elected as a member in October, 1995. Similarly Surinder Nehra was elected in place of Deep Chand. As per unamended provisions of Act of 1984, period of society was to last for three years and in that case the period expired on 17th January, 1997. During the continuation of Managing Committee Section 28 of the Act was amended by Ordinance 3 of 1995 which later was replaced by Act 6 of 1995 and as

mentioned above, sub-section (4) was amended wherein it was provided that the committee shall unless removed earlier by the Registrar shall hold office for five years from the date of election. That being so, the term of managing committee was to expire on 18th January, 1999. It is further the case of the petitioners that managing Committee had been performing its duties in a legal and lawful manner. The petitioners are stated to be belonging to Congress (J) faction and some of them from Lok Dal. It is the case of the petitioners that respondent No. 3 Smt. Sakuntla Jakhu, IAS, Managing Director of Haryana State Cooperative Supply and Marketing Federation Ltd. taking advantage of political affiliation of the petitioners and the fact that ruling government was of Haryana Vikas Party and the Bharatiya Janta Party acted in a dictatorial manner and found out a way to remove the petitioners from the Managing Committee. With a view to achieve the said object, the petitioners were served with a Registered A.D. notice dated 15th October, 1997 informing them that the term of the Managing Committee has expired on 17th January, 1997 and that the Managing Committee had ceased to exist. It is further mentioned in the order that the Board of Administration is appointed to carry out day-to-day functioning till the next elections are held for constituting the committee. It is also mentioned that as per the judgment dated 20th August, 1996 in *Gian Chand Kalra Vs. State of Haryana* (2) the term of the committee would depend on as to when the election was held. It is this order which, as mentioned above, has been challenged in the present petition styling it to be against the provisions of Act of 1984.

(6) The learned Counsel representing the petitioners vehemently contends that respondent No. 2 while passing order dated 15th October, 1997 had intentionally and wilfully relied upon the judgment of this Court in *Gian Chand Kalra Vs. State of Haryana* (supra) which was not even remotely applicable to the facts of the present case. The controversy in this case was regarding the holding of election of the Vice-President under the Haryana Municipal Act. Section 18 was amended by Act 9 of 1995. By amending section 18(3), it was further provided that the term of office of Vice-President shall be five years whereas earlier the term of office of the Vice-President was one year. There is no dispute with regard to the term of the office of the Counsellors under Haryana Municipal Act as amended by Act 9 of 1995. In that context it was observed by this Court that as per the election of the Municipal Counsellors, the term of office of Vice-President was one year so that other Counsellors can also take part and hold the office of Vice-President of the Municipal Committee and the amendments of



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the Act could not have retrospective effect and it was held that then terms of office of Vice-President would be one year and not five years as provided in section 18 (3) as amended,—*vide* Act 9 of 1995. It is further being argued by the learned Counsel representing the petitioners that by no logic the provisions of this Act could apply to the societies which were governed by the Act of 1984. It is then argued that by virtue of amendment brought about in sub-section (4) of section 28 of the Act, the committee unless removed shall hold office for a period of five years from the date of election provided that till the tenure of the Committee already constituted had expired on 1st January, 1995 or till the promulgation of the Haryana Cooperative Societies (Amendment) Ordinance 1995, shall be deemed to have been continued for a period of five years from the date of election. The amendment in sub-section (4) of section 28 of Act of 1984 came into being during the period when the original period of three years had not expired and therefore, the terms of the petitioners was to continue upto five years from the date they were elected, further contends the learned Counsel.

(7) Pursuant to notice issued by this Court, respondents have entered defence and by filing the written statements contested the claim of the petitioners. It has been pleaded on behalf of respondents 1 and 2 by way of preliminary Objections that petitioners were elected to the Board of Directors of HAFED on 18th January, 1994 i.e. prior to promulgation of Haryana Cooperative Societies Amendment Ordinance 1995 on 2nd February, 1995 and accordingly their election was for a period of three years.—*Vide* Haryana Ordinance No. 3 of 1995 (subsequently replaced by Haryana Act No. 6 of 1995) section 28 (4) of Act 1984 was amended and the tenure of five years was substituted in place of three years. The said amendment was sought to be made retrospective by virtue of first proviso contemplating that the tenure of the committees even if already expired on 1st January, 1995 or till promulgation of Ordinance No. 3 of 1995 (later on replaced by Haryana Act No. 6 of 1995) shall be deemed to continue for a period of five years from the date of their election. The aforesaid proviso contemplating retrospectivity to tenure of five years in stead of pre-existing tenure of three years was questioned in this Court and,—*vide*,—judgment recorded in *Mani Ram v. State of Haryana* (3), a Division Bench of this Court had held that retrospectivity contemplated by the proviso was unconstitutional. The respondents also relied upon a Division Bench judgment of this Court in *Gian Chand Kalra v. State of Haryana* (supra) in opposing the cause of the petitioner. In so far as bare minimum facts of this case are concerned, the same have not been denied.

(8) In the context of the pleadings of the parties, the only question that needs determination in this case is as to whether amendment brought in section 28 (4) of the Act of 1984 would increase the initial tenure of the office of the petitioners from three years to five years as also how far the judgment relied upon by the respondents and mention whereof has also been made in the impugned order itself i.e. *Gian Chand Kalra v. State of Haryana* (supra), applies to the facts of the case.

(9) Before we might proceed in this matter any further, it is significant to mention here that impugned order Annexure P-6 has been passed by the Registrar Cooperative Societies, Haryana. The order derives its force from the judgment of this Court in *Gian Chand Kalra v. State of Haryana* (supra) by specifically saying that the term of committee would depend as to when election was held in view of the judgment in *Gian Chand Kalra v. State of Haryana* (supra). It was further mentioned that the term of the committee had expired on 17th January, 1997. Normally the government or the nominee of the government could not interpret amendment brought about in section 28 of the Act of 1984 to curtail the term from five to three years as that would amount to nullifying amendment in sub-section (4) of section 28 by the government itself which in turn had amended the provision aforesaid. In other words, government could not plead illegality of the provision or provisions made by itself and order like Annexure P-6, thus, could not be passed by the government or its nominee. However, if the order came to be passed as it appears to be, on the dint of judgment in *Gian Chand Kalra v. State of Haryana* (supra), then it is only in obedience to law laid down by the Court and therefore, order Annexure P-6 could be passed. The only question that then remains to be answered is as to whether the law laid down by this Court in *Gian Chand Kalra v. State of Haryana* (supra) or the one relied upon during the course of arguments in *Mani Ram v. State of Haryana* (supra) applies to the facts of this case. We may also mention at this stage that no arguments at all have been raised to show that the impugned order came to be passed on account of any extraneous considerations as has been pleaded in the writ petition. All that has been canvassed on behalf of the petitioners is that the Registrar clearly erred in interpreting and thus applying the judgment of this Court in *Gian Chand Kalra v. State of Haryana* (supra) while passing impugned order Annexure P-6. Time is now ripe to evaluate the contention of the learned counsel in context

of the judgment of this Court in *Gian Chand Kalra v. State of Haryana* (supra). It shall be useful to extract facts giving rise to filing of the writ petition culminating into the orders in *Gian Chand Kalra v. State of Haryana* (supra). The petitioners in the said case sought issuance of a writ in the nature of mandamus directing the respondents to hold the elections for the office of Vice-President of municipal committee, Shahbad in accordance with unamended section 18 (3) of the Haryana Municipal Act and further a writ in the nature of *quo warranto* against respondent No. 4 since she had ceased to be Vice-President of the municipal committee, Shahbad, with effect from 16th February, 1996, she should be removed from the said office. Elections to the said municipal committee were held in December, 1994. On 17th February, 1995, election of the President and Vice-President took place. Surinder Sharma was elected as President whereas Smt. Neelam Sahni was elected as Vice-President of the Municipal Committee, Shahbad. Under Section 18 (3) of the Act the term of the office of the Vice-President was one year. Subsequently,—*vide* Act No. 9 of 1995 (The Haryana Municipal Amendment) Act, 1995, the term of office of Vice-President was prescribed as five years. According to the petitioner, the amended provision could only have a prospective effect and inasmuch as respondent No. 4 was elected as Vice-President for a term of one year, which had already expired on 16th February, 1996, she had no right to hold the office and it was incumbent upon the municipal committee to hold fresh elections for the post of Vice-President. The claim of the petitioner was contested by the respondents in the said case and it was pleaded that the tenure of the office of Vice-President had now been fixed for five years instead of one year to have better results with regard to development and other activities and that the notification dated 17th April, 1995 was effective from the date of its publication i.e. from the same very day. It was further pleaded that amendment made will be applicable not only to the newly constituted committees but shall also be applicable to the existing municipal committees. On the pleadings, of the parties the sole question that came to be framed by the Division Bench was to what was the effect to the amendment effected,—*vide* notification dated 17th April, 1995 and as to whether the same was prospective or retrospective in its operation. Sub-section (3) of section 18 which came to be amended reads thus :

“The term of the office of Vice-President shall be for a period of five years or for the residue period of his office as a member, whichever is less.”

(10) The contention raised by the learned counsel representing the petitioner in the said case was that since it had not been mentioned that the amendment will be retrospective in nature, necessarily it had to be taken as prospective in the facts and circumstances of the case. The term of respondent No. 4 had expired on 16th February, 1996 and thus appropriate directions were required to be given to the municipal committee to hold the election of the office of Vice-President for the remaining period. The Division Bench dealing with the case held. "The Amending Act nowhere specifically states that the same is retrospective in its operation. Otherwise too, this amendment increases the tenure of the office of Vice-President from one year to five years, taking away rights of the members of the Municipal Committee to elect some one else as a Vice-President. Thus, such a provision cannot be construed to be retrospective in operation." The answer to the question framed with regard to the amendment being prospective or retrospective by the Division Bench clearly was that the same was prospective. No doubt, incidently it was also held that such a provision could not be construed to be retrospective in operation. As mentioned above, the only question that came to be decided by the Division Bench was as to whether the amendment was prospective or retrospective and therefore, anything said beyond the question framed and on which no arguments were addressed by either side have to be taken as *obiter dicta*. In our view, the judgment in *Gian Chand Kalra v. State of Haryana* could not be pressed into service while passing order Annexure P-6 or while defending the present case in as much as concededly the amendment brought about in section 28 (4) is retrospective in nature so specifically spelled out from the reading of the amended provision and it was for that precise reason that Mr. Hooda, learned Advocate General Haryana shifted his rational to the one directly dealing with the very amendment that has been questioned in the present case and that came to be discussed by a Division Bench of this Court in *Mani Ram v. State of Haryana* (supra). Once again it will be appropriate to extract the facts giving rise to the case aforesaid. In 1992 elections of the Managing Committee were held in terms of the provisions of the Haryana Cooperative Societies Act, 1984. The term of the Managing Committee was three years. It was to expire in January, 1995. The election programme of the managing committee was published in the month of December, 1994. The petitioners in the said case contested the elections

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which was listed for 7th January, 1995 and were declared elected by the Returning Officer. After the constitution of the Managing Committee a meeting was held on 15th February, 1995 which was followed by another meeting on 16th May, 1995. On 23rd May, 1995, the petitioners were served with a letter issued by the Assistant Registrar Cooperative Societies informing that the term of the former Managing Committee had been extended from 3 to 5 years and the present managing committee had ceased to exist. This was so written pursuant to amendment of section 28 of the Haryana Co-operative Societies Act and the earlier Ordinance issued on 2nd February, 1995. Those who were elected pursuant to election programme which was published in the month of December, 1994 challenged the order,—*vide* which they were asked to quit whereas the earlier managing committee was allowed to carry on for another two years. There was no dispute with regard to the nature of amendment being retrospective or prospective. It was conceded at all ends that the amendment was retrospective in nature. The only question that came to be mooted in the said case was as to whether the vested rights that accrued to the petitioners after the term of the earlier managing committee had come to an end and they were elected, could be taken away by retrospective amendment. After discussing various judgments of the Hon'ble Supreme Court, the Court came to the conclusion that life was injected to the erstwhile non-existing committees. The term of the committee had come to an end in January, 1995 and a new committee had since been constituted. Whereas non-existing committees were brought to life, the existing committees by this proviso was to become non-existing. It is not the spirit of Article 19 (4) of the Constitution because it is not concerned with the interest of the sovereignty and integrity of India or public order. It cannot be termed as a reasonable restriction. The association has been formed and in accordance with law, it came into being after elections were held. The amendment interfered in the right to carry on the association. The said amendment would be against the fundamental right conferred under Article 19 (1)(c) of the Constitution of India. It is beyond pale of controversy that the Division Bench held that vested rights could not be taken away by a retrospective amendment brought about in section 28 (4) of the Act of 1984.

(11) Some of the cases before us are such where the erstwhile period of three years had not expired when either ordinance or the Act

amending section 28 (4) of the Act of 1984 came into being. The facts of the very case being dealt with us clearly reveal that period of three years had not expired when section 28 (4) was amended. Naturally none else came to replace the petitioners by any elections. The question that then needs determination is as to whether the judgment of Division Bench in *Mani Ram v. State of Haryana* (supra) would apply to a case where the tenure of the managing committee had not come to an end and when the amendment was brought about in section 28 (4) and when naturally none came to replace the petitioners. We are of the firm view that no vested right of any one was involved or violated. Mr. Hooda, the learned Advocate General representing the State of Haryana, however, strongly relies upon the judgment of this Court in *Mani Ram v. State of Haryana* wherein it was held, "For these reasons, we allow the petition and hold that the amendment to the Act giving retrospective effect from 1st January, 1995 to the date of the Ordinance including first proviso to sub-section (4) of section 28 of the Haryana Co-operative Societies Act is illegal and violative of Article 19 (1) (c) read with Article 14 of the Constitution and the petitioners have right to complete their term prescribed under the Law." He contends that the Division Bench declared first proviso to sub-section (4) of section 28 of the Haryana Co-operative Societies Act as illegal and violative of Articles 19 and 14 of the Constitution and therefore, the said proviso is deemed to have been struck down. We, however, find no substance in the aforesaid submission made by the learned Advocate General, Haryana. With a view to find out *ratio decidendi* of the case one has really to go into question that came to be answered, submissions made on the said point and the findings recorded by the Court. Reading of judgment in *Mani Ram v. State of Haryana* (supra) would clearly demonstrate that the question that came to be debated was as to whether by retrospective amendment a vested right of a citizen can be taken away or not. The Division Bench dealing with the matter on the question aforesaid held as follows :—

"It is clear from the aforesaid without any pale of controversy that vested rights can be taken by the Legislature. When the Legislature extended the period of managing committee from 3 to 5 years, then only certain vested rights that had accrued could well be taken. No existing right could be taken."

It is in the context of the answer to the question given by the Division Bench that operative part of the judgment has to be read. That being so, the portion of the judgment relied upon by the Advocate General Haryana has to be read by interpreting the same to mean that first

proviso to sub-section (4) of section 28 of the Act of 1984 would violate Articles 19 and 14 of the Constitution in a situation when it has taken away the existing right of a citizen. It may be recalled at this stage that in *Mani Ram v. State of Haryana* (supra) not only that the tenure of the earlier management had expired but a new managing committee had also been constituted pursuant to elections held for that purpose. The existing rights had come into being and that the same taken away by the retrospective amendment made in section 28 (4) of the Act of 1984. It is too well settled a principle of law by now that Legislature can amend prospectively as also retrospectively. Normally, the amendment is prospective in nature. However, it could be retrospective if the language implied in the amending Act specifically says so or it can be otherwise inferred by necessary intentment, but while doing so, existing vested right cannot be taken away. We are of the clear view that there was no existing right of any one in the present case that might have been violated, nor it was a case where life was inserted into a dead being. What we have said above is fortified from the fact that very Bench which decided *Mani Ram v. State of Haryana* (supra) dismissed a petition challenging the same very provisions where no vested right had accrued to any one in C.W.P. No. 3070 of 1997 (*Ajmer Singh and others v. State of Haryana and others*). The order passed in the petition aforesaid reads as follows :—

“Dismissed in view of Preliminary Objection No. 2 and stand taken in para Nos. 6 and 8 of the written statement filed on behalf of respondent No. 4.”

(12) The Division Bench decided *Mani Ram's case* (supra) on 12th October, 1995 whereas Civil Writ Petition 3070 was decided on 27th August, 1997. Surely the very Bench which decided CWP 3070 of 1997 was conscious of its decision earlier rendered in *Mani Ram's case* (supra) and the difference between facts of these two cases. If one is to go through the written statement filed on behalf of respondent No. 4 mention whereof has been made in the order dated 27th August, 1997, it would transpire that earlier to the decision aforesaid the same very Bench decided some writ petitions upholding the vires of the amended provisions of section 28 (4).

(13) In view of what has been said above, we find considerable merit in the contentions raised by the learned Counsel for the petitioners and therefore, allow this petition by quashing order Annexure P-6 dated 15th October, 1997.

(14) All those petitions in which three years tenure of the Committee had not come to an end on or after 2nd February, 1995 shall, thus, stand allowed. However, writ petitions wherein the tenure or three years had come to an end on 1st February, 1995 or prior thereto, the said writ petitions shall stand dismissed.

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**S.C.K.**

*Before V. K. Bali & B. Rai, JJ*

MUKESH KUMAR & OTHERS,—*Petitioners*

*versus*

THE STATE OF HARYANA & ANOTHER,—*Respondents*

CWP 12353 of 1998

18th August, 1998

*Constitution of India, 1950—Art. 226/227—Haryana Rice Procurement (Levy) Second Amendment Order, 1996—Cls. 6 & 7(4)—Essential Commodities Act, 1955—Ss. 3, 6, 7 & 10—Rice seized by Collector—Samples taken and FIR lodged—Collector ordered auction of seized rice under the Essential Commodities Act—Challenge thereto as no seizure orders were passed by the Collector—Order quashed being without jurisdiction—As criminal case pending orders in regard to return of case property to be obtained under S. 451 Cr. P.C.*

*Held* that the impugned order could not be passed under Section 6E of the Essential Commodities Act. We find merit in the contention of the learned counsel representing the petitioners that section 451 of the Code of Criminal Procedure was applicable to the facts of the case particularly when concededly, criminal case has already since been registered under the Essential Commodities Act and some provisions of Indian Penal Code and investigation is going on.

(Para 7)

*Further held* that in totality of the facts and circumstances of the case while quashing order being without jurisdiction we direct the Investigating Officer to move an appropriate application under the provisions of Code of Criminal Procedure to obtain order with regard to case property from the concerned Magistrate.

(Para 9)

M.L. Sarin, Sr. Advocate with Ms. Jaishree Thakur, Advocate, for  
*the Petitioner.*

A. P. Manchanda, Additional A.G. Haryana, for *the Respondent.*