

CIVIL MISCELLANEOUS

Before Inder Dev Dua and H. R. Khanna, JJ.

MUKHTIAR CHAND AND ANOTHER,—*Petitioners.*

versus

MARKETING COMMITTEE, MALOUT MANDI AND

OTHERS,—*Respondents.*

Civil Writ No. 1353 of 1963.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—S. 43—Rules framed under—Punjab Agricultural Produce Markets (General) Rules, 1962—Rule 26—Prescribing the use of beam-scales for weighing and exclusion of hand scales—Whether valid—Bye-law made by Chairman, State Agricultural Marketing Board, Punjab, fixing remuneration of weighmen and palledars—Whether valid—Delegated legislation—Duty of delegate to observe procedure prescribed by the Legislature.

1964

March, 25th

Held, that Rule 26, of the Punjab Agricultural Produce Markets (General) Rules, 1962, prescribing the use of only beam-scales is valid as it is likely to reduce the chances of exploitation and constitutes a reasonable restriction on the right of trade or profession of weighmen. The broad object of the Punjab Agricultural Produce Markets Act, 1961, is mainly to protect the producer of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce. The legislation like the present has its roots in the attempt on the part of the nation to provide a fair deal to the growers of crops and also to find a market for its sale at proper rates without reasonable chances of exploitation. Rules 25 and 26 of the Punjab Agricultural Produce Markets (General) Rules, 1962 framed for this purpose clearly illustrate their usefulness and reasonableness. In attempting to construe Article 19(6) of the Constitution, it is essential to bear in mind the political, social and economic philosophy underlying the provision in question and this must, from its very nature,

involve the adoption of a liberal rather than a literal and mechanical approach to the problem. Unless, the restriction is clearly unreasonable, no Court will lightly declare it to be unconstitutional.

Held, that section 43(1) of the Punjab Agricultural Produce Markets Act, 1961, empowers the State Government by notification to make rules for carrying out the purposes of this Act and sub-section (2) without prejudice to the generality of the power contained in sub-section (1) illustrates what such rules may provide for; clause (x) of this sub-section shows that such rules may provide for the place or places at which agricultural produce shall be weighed, the kind and description of *bardana* to be used and the quantity of the produce to be filled and of the scales, not being hand-scales (Takri), weights and measures which alone may be used in transactions in agricultural produce in a notified market area. This provision fully discloses the legislative intent, in that, it expressly prohibits the use of hand-scales even from the subject-matter of rules which the State may frame for carrying out the purposes of the Act. Better regulation of purchase and sale of agricultural produce, clearly embraces within its fold regulation of the method of weighing the produce which would necessarily cover the exclusion of the use of hand-scales. It is, therefore, not inconsistent with the statutory object and purpose as disclosed in the preamble.

Held, that the by-law made by the Chairman, State Agricultural Marketing Board, Punjab, by notification dated 9th August, 1963, prescribing scale of fees for weighmen and palledars is not valid except for the Market Committee, Patti, as it was not made in accordance with the provisions of section 44 of the Act.

Held, that the Government under the Rule of law demands proper legal limits on the exercise of power and such power must be approved by the elected representatives of the people; in regard to the delegation of legislative power to the administrative wing of Government. It further demands that the delegated power must be exercised strictly in accordance with and within the four corners of the limits laid down by the delegating instrument,

for, even the Legislature is not empowered to abdicate its constitutional obligation. The Constitution, it must never be forgotten, is supreme to all wings of the Government. Material deviation in this respect, therefore, cannot be overlooked in our parliamentary democracy where every legislative measure must ultimately be traced to the nation's representatives elected for the purpose of making laws. The extent to which it is not so traceable may well be described to be usurpation. In the sphere of delegation of legislative power the manner prescribed for exercising the delegated power cannot be presumed to be directory and the delegated power must be exercised strictly as directed or not at all for there is a close connection between delegated legislation and Rule of law.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the remuneration fixed by the respondent No. 2 and also quashing its direction for using only beam-scale and also declaring the proviso to Rule 26(1) of the Punjab Agricultural Produce Markets (General) Rules, 1962, void and issuing a mandamus to respondent No. 1, declaring it to permit the petitioner No. 1, entitling him to work as a weighmen on the old remuneration and with the aid of hand-scales (Takri).

R. SACHAR, R. N. NARULA, AND MOHINDERJIT SETHI,
ADVOCATES, for the Petitioners.

H. R. SODHI, ADVOCATE, AND H. S. DOABIA, ADDL. ADVOCATE-GENERAL, for the Respondents.

ORDER

DUA, J.—These writ petitions (Civil Writs Nos. 1353, 1406, 1501, 1615 and 1826 of 1963) raise the same question of law and are, therefore, being disposed of by one judgment.

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In Civil Writ No. 1353 of 1963, Shri Mukhtiar Chand, Petitioner No. 1 claims to be an ordinary resident of Malout Mandi, District Ferozepore and

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is by profession a Tolla (weighman) being also a member of the Tolla Mazdoor Union, Malout Mandi (petitioner No. 2). He had been earning his livelihood by this profession for the last 8 years. Weighing by hand-scale, according to his allegations, requires "a special kind of skill and adeptness" which he has acquired during the period that he had been working as a weighman. The Punjab Agricultural Produce Markets Act of 1939 (hereinafter called the 1939 Act) "provided for taking out a licence for carrying out an occupation of a weighman" and the petitioner accordingly took out such licence which has been renewed every year ever since. The petitioner has been carrying out his profession as a weighman with the aid of hand scales (Takri). The remuneration fixed by the Market Committee under the 1939 Act for petitioner No. 1 and for 2 Paledars who assisted him in weighing was fixed at $8\frac{1}{2}$ annas on an out-turn of Rs. 100. It was split as under:—

1. $3\frac{1}{2}$ annas for the weighman like the petitioner, and
2. $2\frac{1}{2}$ annas for each Paledar.

The petitioner and his two Paledars used to weigh on an average between 700 and 800 maunds per day, with the result that petitioner No. 1 was in a position to earn about Rs. 11 per day, each Paledar earning about Rs. 7 per day. The season for such work of weighman and Paledar lasts for about 5 months in a year; 3 months after Rabi and 2 months after Kharif crops. The Punjab Legislature has now enacted the Punjab Agricultural Produce Markets Act of 1961 (hereinafter called the Act) which has repealed the 1939 Act. Since the enforcement of the Act, petitioner No. 1 and

other weighmen like him are required to take licences under this Act for working as a weighmen in the notified market area. The petitioner has a valid and subsisting licence to work as a weighman with hand-scales at the old rates but the Marketing Committee, the State Agricultural Marketing Board and the State of Punjab (respondents Nos. 1 to 3) are interfering with his work and are not permitting him to work under the said licence for reasons which are not warranted by law. The petitioner was from 18th July, 1963 stopped by the Marketing Committee, respondent No. 1 from carrying on his business as a weighman with hand-scales at old rates and even prosecution has been launched against the dealer at whose shop the petitioner works. This has resulted in complete stoppage of the petitioner's business, with the result that he is unable to earn his livelihood. As a matter of fact, the whole of the market has been paralysed by this illegal action of the part of the respondents. The State Agricultural Marketing Board, respondent No. 2, has, it is averred, sent a circular to respondent No. 1 and other Marketing Committees in the Punjab directing them that they should not permit any further use of hand-scales (Takri) by weighmen and they should be allowed to work on the following remuneration:—

- (a) 6 Naya Paise for a weighmen,
- (b) 19 Naye Paise for Paledars.

In clause (b) just mentioned, it has been averred that there will be at least five Paledars if beam-scale alone as demanded by the respondents is to be used. On this rate, the daily remuneration of petitioner No. 1 would be reduced to Rs. 2.50 nP. per day whereas the remuneration of a Paledar would be reduced to Rs. 1.25 nP. per day. This reduction in their earnings is attributed by the petitioners to low rates as also the lesser quantity which

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can be weighed by petitioner No. 1 by working with beam-scales, for he would only be able to weigh about 400 maunds by means of beam-scales as against 700 to 800 maunds which he can weigh with the help of hand-scales (Takri). It has been pleaded that the disparity in weighing, with the two different kinds of scales has actually been demonstrated by weighmen at the markets of Kurali and Chandigarh in the presence of the representatives of the State Marketing Board, respondent No. 2, and the Minister for Agriculture, Punjab Government. It is on these allegations that the present petition has been filed and the main challenge has been based on the argument that there is no reasonable basis or justification for excluding the use of hand-scales and thereby depriving petitioner No. 1 of his means of livelihood, the existence of rational relation of the object of the impugned act with the absolute prohibition of the use of hand-scales has also been emphatically questioned.

In the reply, on behalf of the respondents, it has been pleaded that weighing by hand-scales is an old crude method unsuited to modern progressive and changed conditions of markets established for the purpose and sale of agricultural produce. Experience has also shown that weighing by hand-scales leads to malpractices, corruption, inconvenience and wastage of time. A producer, who is generally an illiterate person coming from rural areas to sell his produce in the market is more likely to fall a prey to deceitful weighing by hand-scales, with the result that it has been considered in the interest of the producer to introduce an improved method of weighing by beam-scales. The remunerations, according to the reply have been fixed under the bye-laws framed under the statute and the suggestion that there must be more

than one Paledar in every case has been contro-
 verted. The petitioner has also been alleged to be
 hardly weighing more than 150—200 maunds per
 day and an average weighman, according to the
 reply, is estimated to be earning about Rs. 5 or
 Rs. 6 per day in peak season and lesser amount in
 slack season by hand-scales. The petitioner has been
 admitted to have taken out a licence to work as a
 weighman subject to the provisions of the Act but
 the licence does not carry any specific direction to
 the petitioner to work with any particular type of
 scales. The rates of remuneration were originally
 fixed under the bye-laws framed under the Act of
 1939. The Act of 1961 was enforced on 26th May,
 1961 but the rules made thereunder were enforced
 from 11th July, 1962. It is undoubtedly a condi-
 tion of the licence that the licensee would comply
 with the provisions of the Act and the Rules and
 the bye-laws framed thereunder. Under Rule 26,
 in transactions of sale and purchase of agricultural
 produce in principal market yards and sub-market
 yards of the notified market area, only beam-scales
 or platform scales can be used; it is accord-
 ingly incumbent on the petitioner to use a
 beam-scale or a platform scale from 11th
 July, 1962 onwards. The rates of remunera-
 tion for weighmen and other functionaries
 have also been modified to suit the prevailing con-
 ditions and circumstances. It is also admitted that
 the petitioner has been asked not to use hand-scales
 or change old rates because he is bound under the
 law to use beam or platform scales only and also to
 charge in accordance with the new rates. No pro-
 secutions have, however, been launched so far,
 against the petitioners or the dealer for non-use of
 beam-scales or for charging old rates, though the
 petitioner has rendered himself liable to such pro-
 secution. According to the reply, 76 weighmen
 had started using the beam-scales, but after the

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stay order obtained by the petitioners in these proceedings, others have also taken again to weighing by hand-scales. Even before the enforcement of the rules mentioned above, beam-scales were used for weighing all agricultural produce like *kapas* and dry and green fodder, as indeed the test weighing of the produce was also conducted by beam-scales or platform scales. The new rates of remuneration have, it is pleaded, been fixed at Government level after mutual agreement between the representatives of different functionaries in market areas and the Government. According to the reply not only there is a saving of time by adopting beam-scales but chances of malpractices, *inter alia*, in counting have also been reduced. The remuneration fixed has been claimed to be reasonable and equitable and its justiciable character is challenged. The right of the petitioner to use only hand-scales has been questioned and the system of licence to regulate the conduct of the petitioner's trade or occupation has been held to be lawful and in accordance with the Constitution. The principal market yards and sub-market yards are also claimed to have since been notified.

The learned counsel for the petitioners has, to begin with, questioned the right of the State to exclude the use of hand-scales and it is contended that the Act does not authorise such exclusion. The counsel has for this purpose emphasised that the Act has been enacted for the purpose of consolidating and amending the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and also for the establishment of markets for agricultural produce in the State of Punjab. This purpose according to the learned counsel, does not extend to a direction to the weighmen to use only hand-scales. He has taken us through the scheme of the Act and has

contended that provision relating to the use of hand-scales in outside the statute. I am unable to sustain this broad contention. Section 43(1) empowers the State Government by notification to make rules for carrying out the purposes of this Act and sub-section (2) without prejudice to the generality of the power contained in sub-section (1) illustrates what such rules may provide for; clause (x) of this sub-section shows that such rules may provide for the place or places at which agricultural produce shall be weighed, the kind and description of *bardana* to be used and the quantity of the produce to be filled and of the scales, not being hand-scales (Takri), weights and measures which alone may be used in transactions in agricultural produce in a notified market area. This provision, in my opinion, fully discloses the legislative intent, in that, it expressly prohibits the use of hand-scales even from the subject matter of rules which State may frame for carrying out the purposes of the Act. Our attention has not been invited to any provision of the statute nor to any principle of law which would lend support to the contention that the exclusion of the use of hand-scales from the markets is hit by or is obnoxious to the statutory scheme. The preamble of the Act on which reliance has been placed by the petitioners' learned counsel for supporting the contention that the object and purpose of the Act does not extend to the exclusion of the use of hand-scales is on the language of the preamble itself untenable, though I should like to make it clear that preamble of a statute cannot be used for limiting the clear and unambiguous language of the enacting provision. It is a recognised rule that a preamble cannot effect the meaning of the enacting part except for a compelling reason and it is not a compelling reason that the enacting words go somewhat further than the preamble indicates. Better regulation or

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purchase and sale of agricultural produce, in my opinion, clearly embraces within its fold regulation of the methods of weighing the produce which would necessarily cover the exclusion of the use of hand-scales. It is, therefore, not inconsistent with the statutory object and purpose as disclosed in the preamble. The authorities cited by the petitioners do not go against this view and, therefore, need not be discussed in detail.

The next attack is levelled against the *vires* of this provision and it has been eloquently urged that the exclusion of the use of hand-scales is not a reasonable restriction on the profession, trade, business or occupation of the petitioners. Reliance has been placed on *Chintamanrao and another v. The State of M.P.* (1), and it has been argued by reference to some observations at p. 119 that the impugned provision is so drastic in scope that it goes much in excess of the statutory object. The reported decision, in my opinion, is clearly distinguishable and is of little or no assistance to the petitioners. This would be clear from the following observations at p. 119:—

“Such a prohibition on the face of it is of an arbitrary nature inasmuch as it has no relation whatsoever to the object which the legislation seeks to achieve and as such cannot be said to be a reasonable restriction on the exercise of the right,”

Thus said Mahajan, J. (as he then was) in the reported case:—

“The phrase ‘reasonable restriction’ connotes that the limitation imposed on a person in enjoyment of the right should not

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(1) A.I.R.1951 S. C. 118.

be arbitrary or of an excessive nature; beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1) (g) and the "social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

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Abdul Hakim Quraishi v. State of Bihar (2), is equally unavailing to the petitioners. It is stated in the reported case that the test of reasonableness should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. After this test, the Court approved the passage quoted above from *Chintamanrao's case*. Applying the recognised test to the present case, in my view, if experience has shown to the authorities concerned that weighing by hand-scales has led to malpractices, corruption, wastage of time and inconvenience, then it would seem to me to be somewhat difficult to hold that the impugned provision does not fall within Article 19(6) of the Constitution and is unconstitutional being violative of Article 19(1) (g). It is true that this Court is fully empowered to come to its own decision whether or

(2) A.I.R. 1961 S. C. 448.

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not the restriction imposed is reasonable but unless the restriction is clearly unreasonable, this Court would not lightly declare it to be unconstitutional. In attempting to construe Article 19(6), it is essential to bear in mind the political, social and economic philosophy underlying the provision in question and this must, from its very nature, involve the adoption of a liberal rather than a literal and mechanical approach to the problem. In *M.C.V.S.A. Nadar v. State of Madras* (3), the Madras Commercial Crops Markets Act, 20 of 1963, was held to be the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops which was held to be constitutional. It is true that the question of using hand-scales did not arise there, but that would be a matter of detail rather than of substance.

The broad object of the legislation like the present is mainly to protect the producer of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce. The legislation like the present has its roots in the attempt on the part of the nation to provide a fair deal to the growers of crops and also to find a market for its sale at proper rates without reasonable chances of exploitation on the right of trade profession of weighmen. Produce Markets (General) Rules, 1962 framed for this purpose clearly illustrate their usefulness and reasonableness. Looked at in this background, prescribing under Rule 26, the use of only beam-scales (Kundas) is likely to reduce the chances of exploitation and constitutes a reasonable restriction on the right of trade profession of weighman.

Shri Sachar very forcefully urged that use of hand-scales by weighmen is a specialized art involving long training and these weighmen may

not be able easily to take to the beam-scales which are also no great improvement on hand-scales for purposes of exact weighment. On the material before us on the present record, I do not think it is possible to agree with the learned counsel. I am also inclined to take the view that changing over from hand-scales to beam-scales is not so difficult or so serious a hardship, as would justify the provision being struck down as unconstitutional. While determining the reasonableness of the restrictions imposed by law, the Court should not proceed on a general notion of what is reasonable in the abstract, or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. But for clause (6) of Article 19, sub-clause (g) of clause (1) would perhaps suggest an absolute right, it being expressed in general language. The person whose right is restricted may thus feel every restriction to be irksome, treating it as unreasonable. The question, however, cannot be decided exclusively from his point of view. It is to be considered whether the restriction is reasonable in the interests of the general public meaning thereby for achieving the object in the interests of the community. One has to remember that the task of declaring a legislative provision to be unconstitutional is a delicate task and involving, as it does, a reflection on the wisdom of the legislative wing, it has to be undertaken with a sense of responsibility and after a sufficiently deep probe into the challenge. The Legislature is normally presumed to know as to what is good for the community by whose suffrage it has come into existence, though I do not for a moment doubt that the ultimate responsibility is with the Court and the Court cannot and must not shirk that solemn duty cast on it, if it comes to the conclusion that the restriction is unreasonable. The impugned provision excluding the

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Mukhtiar Chand use of hand-scales would thus seem to me to be constitutional and valid.
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The next challenge has been directed to the fixation of rates to be paid to the weighmen. In order to appreciate this challenge, it is necessary to reproduce section 44 of the Act which empowers the Committee to make bye-laws, *inter alia*; for the remuneration of different functionaries:—

[His Lordship read section 44 and continued]

If as contemplated by sub-section (1) of this section, the Committee fails to make rules within the time prescribed by sub-section (2), the Board constituted under section 3 is authorised to make bye-laws as it may think fit. Sub-section (3) lays down the manner of amending, altering, rescinding or adopting a new bye-law by the Chairman of the Board. Such a bye-law takes effect only when confirmed by the Chairman and notified in the official gazette. Section 3(14) also empowers the Board with the approval of the State Government to frame bye-laws for regulating its business at meetings and for assignment of duties to its Chairman and Secretary, etc., and also for such other matters as may be prescribed, but this provision not having been relied upon by the respondents need not detain us. Rule 5 confers full powers on the Board for framing bye-laws on certain matters specified therein including the subject of better marketing of agricultural produce, etc., but this too is inconsequential for our purpose, having not been relied upon as a provision independently of section 44 constituting as a source validating the bye-laws in question.

The contentions raised by the petitioners briefly is that no bye-laws have been framed by the Committee nor have any bye-laws been framed by

the Board in accordance with law and, therefore, the direction regarding remuneration of weighmen is not valid and hence, not binding. Bye-laws being delegated legislation, must be made strictly in accordance with section 44 and if they are not shown to have been so made, they must be struck down as *ultra vires*, says Shri Sachar.

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In reply the respondents' learned counsel has referred us to bye-law No. 28(R-1) and has submitted that the bye-laws in order to be valid have merely to be confirmed by the Chairman as provided by section 44(4) and the bye-law in question has in fact been so confirmed. It has been urged that there can be no objection to the Chairman sending the suggested bye-laws to the various Market Committees in the State and after their adoption by the Committees to confirm them and thereafter to enforce them.

It may be pointed out at this stage that since the position had not been fully clarified in the return, after hearing the arguments for some time; we desired the counsel for the respondents to let us have fuller information as to the procedure adopted for framing the bye-laws in question. The respondents' learned counsel has as a result produced the relevant correspondence and the resolutions passed by the various Committees. From the material produced, it is clear that on 22nd July, 1963, the Chairman, State Agricultural Marketing Board, Punjab, Patiala, sent a Circular No. 60 to all the Chairmen of Market Committees in the Punjab State whereby amendments and additions in the new bye-laws were forwarded to them with a direction to adopt the same and intimate by 3rd August, 1963 without fail. It was recited therein that if it was not received within the specified period,

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it shall be deemed to have been adopted by the Market Committee as circulated and the bye-laws would be notified in the gazette accordingly. Any amendment or suggestion, according to this circular, could be considered later on after the bye-laws had once been notified and enforced. The Market Committee, Malout, adopted unanimously a resolution on 7th September, 1963 adopting bye-laws referred to in Circular letter No. 60. The Market Committee, Karnal did so on 22nd August, 1963. The Market Committee, Rayya, sanctioned them on 8th August, 1963 and the Tarn Taran Committee did so on 19th August, 1963 forwarding the same on 7th September, 1963. The Market Committee, Patti, however, was more prompt and adopted unanimously the said bye-laws on 27th July, 1963. In the resolution of this Committee, it is also stated that the Board be informed that these bye-laws be notified immediately. The said bye-laws, as is clear from a copy of the gazette notification, are the subject-matter of a notification dated 9th August, 1963, published in the Punjab Government Gazette Part III, dated 30th August, 1963. This notification shows that the bye-laws were confirmed and notified by the Chairman of the Board under the powers conferred by section 44 and all other powers enabling him in this behalf.

What is stated above makes it crystal clear that the Chairman merely complied with the provision of section 44(3)(a) and sub-sections (b), (c), (d) and (e) appear to have been clearly ignored by him. Bye-laws having been made under the delegated power of legislation under section 44, in order to be valid and to have the force of law, must be made strictly in accordance with the said section and in pursuance of the authority delegated thereby. In case of failure of the Committee to

amend, alter, rescind or adopt a new bye-law with-
 in the time specified by the Chairman of the Board,
 the Chairman could register such amendment, al-
 teration, rescission or such new bye-law only after
 giving the Committee an opportunity of being
 heard and even then had to issue a certified copy
 thereof to the Committee in default so as to enable
 it to prefer an appeal against the Chairman's order
 to the State Government within one month from
 the date of the issue of the order. In case an ap-
 peal is preferred by the Committee from an order
 registering the amendment, such amendment could
 not come into force till the order is confirmed by the
 State Government.

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From what has been stated above, it is clear that the bye-laws bear the date 9th August, 1963 and were actually published on 30th August, 1963 long before they were adopted by the Malout Market Committee. They were also issued about 13 days before they were approved by the Karnal Market Committee. The Rayya Market Committee sanctioned the bye-laws on 8th August, 1963 and were apparently forwarded on 13th August, 1963 as appears to be suggested from its attestation by the Secretary of this Market Committee. It is the Market Committee of Patti alone which adopted the bye-laws on 27th July, 1963 and which may be assumed to have been received by the Chairman of the Board before 9th August, 1963 the date on which they were sent to the press for publication, the Tarn Taran Committee having also adopted the bye-laws only on 19th August, 1963, and forwarded them on 7th September, 1963. In the case of the Market Committee Patti alone, therefore, it is possible to hold that the bye-laws were adopted before 3rd August, 1963, as desired and information sent to the Chairman, who confirmed them in accordance

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with law. No other Committee appears to have approved or adopted the bye-laws and forwarded them to the Chairman for confirmation and enforcement in accordance with law before 9th August, 1963, the date of the notification. In regard to those Committees, therefore, it cannot but be held that there was no compliance with section 44(3)(b), with the result that the bye-laws in regard to them must be held not to have been made in accordance with law delegating the power so as to be of binding effect.

It may here be pointed out that Government under the Rule of law demands proper legal limits on the exercise of power and such power must be approved by the elected representatives of the people; in regard to the delegation of legislative power to the administrative wing of Government, it further demands that the delegated power must be exercised strictly in accordance with and within the four corners of the limits laid down by the delegating instruments, for even the Legislature is not empowered to abdicate its constitutional obligation. The Constitution, it must never be forgotten, is supreme to all wings of the Government. Material deviation in this respect, therefore, cannot be overlooked in our parliamentary democracy where every legislative measure must ultimately be traced to the nation's representatives elected for the purpose of making laws. The extent to which it is not so traceable may well be described to be usurpation. It is not seriously argued that in the sphere of delegation of legislative power, the manner prescribed for exercising the delegated power can be presumed to be directory; and indeed, as at present advised, I am inclined to take the view that such delegated power must be exercised strictly as directed or not at all.

It may be remembered that there is close connection between delegated legislation and Rule of law.

The Chairman of the Board in the case in hand appears to have been dominated by the urge of administrative expediency or convenience, ignoring that dominance of expediency over Rule of law may tend to degrade it into an uncontrolled power and once an uncontrolled approach is allowed to function, it becomes difficult later to limit it or draw a line and the drift may unwittingly be undemocratic, with an incline towards authoritarianism.

Before concluding, it may be pointed out that democracy in India appears to some extent to have inherited, and to be tempered with, the bureaucratic authoritative tendencies assuming supremacy over the Rule of law. With this tendency taking root, there is a constant danger of the Rule of law getting unduly pushed in the background and possibly getting drowned in the clamour of real or supposed administrative and bureaucratic convenience or expediency. In order, therefore, speedily and successfully to eliminate and banish such tendencies, it is the solemn duty of all Republican citizens to protect the Rule of law—the sheet-anchor of our infant democracy; a duty which the citizens owe to themselves and to their posterity which will claim at their hands this, the best birth right and noblest inheritance of mankind; the duty of the administrator in this respect appears to be greater, for not only does he owe his office to the Rule of law but his official duty also enjoins him to act strictly in accordance with this Rule and thereby to sustain it. This duty postulates eternal vigilance by everyone if drift towards authoritarianism is to be arrested and avoided. Eternal vigilance, it must never be ignored, is the

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Marketing Com-
mittee, Malout
Mandi
and others

Dua, J.

Mukhtiar Chand
and another
v.
Marketing Com-
mittee, Malout
Mandi
and others

—
Dua, J.

price of freedom under the Rule of law and once this freedom is lost, it becomes somewhat difficult to regain it. The judiciary which, in a high sense, is the guardian of the conscience of the people as well as the upholder of the Constitution and the law of the land, is perhaps in this respect under a still more solemn obligation, for an administrator who is made to know that he must ultimately account to a judicial body for his actions, will tend to be a more responsible public official. This Court has thus from every point of view, a constitutional obligation to enforce the Rule of law and not lightly to ignore its breaches.

For the foregoing reasons, except in the case of the Market Committee, Patti, I would allow the writ petitions in part and quash the order fixing remuneration of the weighmen. In other respects, all the writ petitions fail. In the Patti Market Committee, the impugned order must, however, be held to be valid. On the facts and circumstances of the case there would be no order as to costs.

Khanna, J.

H. R. KHANNA J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and H. R. Khanna, JJ.

FIRM MESSRS. CHANAN RAM-JAGAN NATH,—
Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2031 of 1963.

Essential Commodities Act (X of 1955)—S. 3—Punjab Khandsari and Gur Dealers Licensing Order, 1963, issued under—Whether valid—Constitution of India (1950)—Art. 358—Rights under Art. 19—Whether suspended during period of Emergency—Test of reasonableness—How to be applied.

1964

March, 25th