(16) From the above discussion we conclude that the trial of the appellant is vitiated by reason of the learned Sessions Judge not complying with the provisions of section 465 of the Code of Criminal Procedure. Accordingly we accept the appeal, set aside the conviction and the sentence and direct that the learned Sessions Judge, Patiala, shall hold a fresh trial according to law which should commence with the procedure laid down by section 465 of the Code of Criminal Procedure to be followed by a formal finding as to the capacity of the appellant for making her defence. She will remain in detention and under medical observation until such fresh trial is held.

Gurdev Singh, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

KISHORE CHAND AND OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 395 of 1967.

January 24, 1969.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Section 44—Constitution of India (1950)—*Articles* 14 *and* 19(1)(*f*) *and* (*g*)—*Section* 44(1)(*vi*)—*Whether ultra vires the Constitution being violative of Articles* 14 *and* 19(1)(*f*) *and* (*g*).

Held, that section 44(1)(vi) of Punjab Agricultural Produce Markets Act, 1961, is a constitutionally valid piece of legislation and it cannot be struck down on the ground of either being discriminatory or conferring arbitrary power on the market committee. Enough guiding principles have been stated in the preamble and section 13 of the Act. Moreover, the members of the market Committees are elected representatives of various classes of persons who have any concern with the activities that take place in the market area. The weighmen, brokers and other functionaries have also the right to elect one or two members of each market committee according to its membership, who can represent their point of view and safeguard their interests. Marketing legislation is a well-settled feature of all commercial countries and the object of such legislation is to protect the producers from being exploited by the middlemen and profiteers and to see that they are not

charged excessively high rates for the services rendered to them in the market. It is not possible for the legislature to lay down any guiding principles for fixing the remunerations of weighmen or such other functionaries working in the market area. It will depend on various factors which prevail in a market committee. The members of the market committee are presumed to be fully conversant with the local conditions and to fix the rates of various functionaries in good faith at a proper level taking into consideration the time and the labour spent. The power is not entrusted to an individual but to a representative body of responsible persons elected by all those persons who have anything to do with the transactions which take place in a market area under the jurisdiction of a market committee. They cannot, therefore, be expected to fix the rates which are not properly remunerative to the functionaries with a view to harm them. The power to frame bye-laws is also not unfettered because it is subject to confirmation by the Chairman of the State Agricultural Marketing Board under section 44(4) of the Act and have to be notified in the gazette. The Chairman of the Board is a very high officer of the State Government, namely, the Director or Joint Director of Marketing for the State. The Chairman of the Board has to keep in view the conditions in the entire State and keep a uniformity in the rates as far as possible in all the market committees. Section 44(1)(*vi*) of the Act, therefore, does not suffer from any constitutional infirmity and is not *ultra vires* Articles 14 and 19(1) (f) and (g) of the Constitution. (Para 10)

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued restraining the respondents not to interfere in the profession of the petitioners by forcing them to weigh cotton with a measure of 40 kilograms in one unit and also to quash the arbitrary and illegal bye-law No. 28 which fixes the remunerations of the petitioners, which is extremely inadequate and is not even a bare living or subsistence wage and further declaring that section 44 of the Act is violative of Article 14 and 19(1)(g) of the Constitution of India and is not saved by sub-section 6 of Article 19.

N. L. Dhingra and S. K. Aggarwal, Advocates, for the Petitioners.

J. S. Rekhi Advocate for Advocate-General, Punjab, G. P. Jain, S. P. Jain and G. C. Garg, Advocates, for Respondent No. 2.

B. S. Shant for B. S. Dhillon, Advocate, for Respondent No. 3.

JUDGMENT

Tuli, J.—This judgment will dispose of Civil Writ No. 395 of 1967 (*Kishore Chand and others* v. *State of Punjab and others*) and Civil Writ No. 412 of 1967 (*Kundan Singh and others* v. *State of Punjab and others*), Civil Writ No. 395 of 1967 is by the weighmen of Market Committee, Abohar, while Civil Writ No. 412 of 1967 is by

the weighmen of Market Committee, Fazilka. As common questions of law and fact arise in both the petitions, they are being disposed of together.

(2) The petitioners are weighmen in the market areas of the respective market committees. They have obtained licences as weighmen under the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961), hereinafter referred to as the Act. Section 43(1) of the Act authorises the State Government to make rules by notification for carrying out the purposes of the Act. The State Government made the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the rules). By rule 25 the State Agricultural Marketing Board is authorised to fix standards of net weights of agricultural produce to be filled in a packing unit, such as a bag, a half bag or a *palli* within each notified market area. In exercise of that power the Board in its meeting held on 4th of April, 1963, fixed various standards of filling for several commodities. As regards cotton, *palli* (40 kilograms) and half *palli* (20 kilograms) were prescribed. On 31st of December, 1963, the Board issued another circular by which the half *palli* (20 kilograms) was abolished with effect from 7th of January, 1964. This circular abolishing half *palli* has been challenged as violative of the fundamental right of the petitioners under Article 19(1) (g) of the Constitution of India and a prayer has been made for quashing it. This matter was considered by me in [*Hakam Rai and others* v. *State of Punjab and others*] (1) and I held as under :—

> "In my opinion the framing of such a bye-law is within the power of the Board and under rule 25 the standard packing unit for an agricultural commodity can be prescribed. In the case of cotton, the standard of packing unit prescribed is a *palli* of 40 kilograms and if the weighmen are required to weigh cotton by that unit, it in no way interferes with the carrying on of their profession of weighing. It appears to me that the idea behind prescribing the unit of 40 kilograms is to lessen the chances of overweighment or underweighment so that the agriculturists who bring their produce to the Mandi do not suffer. If any agricultural commodity is weighed in small quantities, there is every chance of overweighment to the prejudice of the agriculturists. The weighment is to be made on a beam scale and the weight of

(1) C.W. 2551 of 1966 decided on 11th November, 1968.

40 kilograms is not a heavy weight, nor is it impossible for a labourer to carry it on to the top of the heap of cotton as has been represented. It may also be noted that there are not always huge heaps of cotton in the Mandis. The Act and the rules have been made in order to regulate the trading business carried on in the market committees and it is not possible for this Court to determine in minute details whether the unit prescribed is fair or not. It is primarily for the authorities under the Act who are experienced in the line to prescribe the units".

No new argument has been advanced by the learned counsel for the petitioners in support of his plea on this point. I, therefore, find no merit in this point in view of my judgment cited above.

(3) The other point canvassed in the petitions is that the remuneration prescribed for the petitioners is not reasonable and does not give a living wage to them. It has been contended that section 44 of the Act is *ultra vires the* Constitution as being violative of Articles 14 and 19(1) (f) and (g) of the Constitution. By this section a market committee has been given the power to make bye-laws, in respect of its notified market area for—

"(i) the regulation of its business;

(ii) the conditions of trading;

(iii) the appointment and punishment of its employees;

(iv) the payment of salaries, gratuities and leave allowances to such employees;

(v) the delegation of powers or duties, to the Sub-Committee or Joint-Committee or *ad hoc* Committee or any one or more of its members under section 19; and

(vi) the remuneration of different functionaries not specifically mentioned in this Act, working in the notified market area and rendering any service in connection with the sale, purchase, storage and processing of agricultural produce."

It has been contended by the learned counsel that the power given to a market committee to make bye-laws in respect of clause (vi) above

is arbitrary and no guide-lines have been prescribed as to how that power is to be exercised. No provision has been made to consult the weighmen, nor any right has been given to them to make a representation, nor have they been given any right of appeal or revision against the bye-laws that may be made by a market committee and, therefore, this power should be struck down. The second argument is that the remuneration fixed by the market committees in the two cases is so meagre that the petitioners cannot make their both ends meet and they will have perforce to leave this profession of weighing which they have been carryin on for generations. It is emphasised that the fixation of a remuneration by the committee is an interference with the carrying on of their profession of weighing by the petitioners and is not saved by clause (6) of Article 19 of the Constitution.

(4) With regard to the first argument that the power of making bye-laws prescribing the remuneration for different functionaries including the weighmen, is arbitrary and unguided, I may point out that the guidance is given in the preamble and section 13 of the Act. The preamble reads as under :—

> "An Act to consolidate and amend the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in the State of Punjab."

Section 13 of the Act is in the following terms:—

> "13(1) It shall be the duty of a Committee—
>
> *(a) to enforce the provisions of this Act and the rules and bye-laws made thereunder in the notified market area and when so required by the Chairman of the Board, to establish a market therein providing such facilities for persons visiting it in connection with the purchase of, sale, storage, weighment and processing of agricultural produce concerned, as the Chairman of the Board may from time to time direct;
>
> (b) to control and regulate the admission to the market, to determine the conditions for the use of the market and to prosecute or confiscate the agricultural produce belonging to a person trading without a valid licence;

(c) to bring, prosecute or defend or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration, on behalf of the Committee or otherwise when directed by the Board or the Chairman of the Board.

(2) Every person licensed under section 10 or section 13 and every person exempted under section 6 from taking out licence, shall on demand by the Committee or any person authorised by it in this behalf furnish such information and returns, as may be necessary for proper enforcement of the Act or the rules and bye-laws made thereunder.

(3) Subject to such rules as the State Government may make in this behalf, it shall be the duty of a Committee to issue licences to brokers, weighmen, measures, surveyors, godown-keepers and other functionaries for carrying on their occupation in the notified market area in respect of agricultural produce and to renew, suspend or cancel such licences.

(4) No broker, weighmen, measurer, surveyor, godown-keeper or other functionary shall, unless duly authorised by licence, carry on his occupation in a notified market area in respect of agricultural produce :

Provided that nothing in sub-sections (3) and (4) shall apply to a person carrying on the business of ware-houseman who is licensed under the Punjab Warehouses Act, 1957 (Punjab Act No. 2 of 1958)."

It is thus clear that the object of the Act is to establish markets for agricultural produce and to regulate the transactions therein, so that the producers do not suffer in any way. In *M.C.V.S. Arunachala Nadar* v. *State of Madras and others* (2), their Lordships observed with regard to Madras Commercial Crops Markets Act (20 of 1933), which corresponds to the Punjab Agricultural Produce Markets Act, 1961, as under :—

"(7) With a view to provide satisfactory conditions for the growers of commercial crops to sell their produce on equal terms and at reasonable prices, the Act was passed on 25th July, 1933. The preamble introduces the Act with the recital that it is expedient to provide for the better regulation of

(2) A.I.R. 1959 S.C. 300.

the buying and selling of commercial crops in the Presidency of Madras and for that purpose to establish markets and make rules for their proper administration. The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object to achieve which it is enacted.

9 * * * * * * * * * *

Shortly stated, the Act, Rules and the Bye-laws framed thereunder have a long-term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities.

13 * * * * * * * *

We, therefore, hold that having regard to the entire scheme of the Act, the impugned provisions of the Act constitute reasonable restrictions on a citizen's right to do business, and

therefore, they are valid." The prescribing of fees to be received by various functionaries for the services rendered by them is by way of regulation of the transactions relating to the agricultural produce brought to the market area. These rates are prescribed so that the growers, who are mostly illiterate, know it beforehand what they have to pay for the various services. The remuneration of the weighmen, if reasonable, cannot be considered to be a violation of a fundamental right guaranteed by Article 19(1)(f) and (g) of the Constitution.

(5) In support of his plea that section 44 of the Act is *ultra vires*, the learned counsel for the petitioners has relied upon various judgments which are noticed below :—

(1) *Khan Chand* v. *The State of Punjab and another* (3), in which it was held that "the East Punjab Movable Porperty (Requisitioning) Act, 1947, became void on January 26, 1950, by operation of Article 13(1) of the Constitution, as the main basic sections of the Act are inconsistent with the provisions of Article 14 of the Constitution, and the said main sections of the Act are not severable from the remaining provisions of the statute in question, which remaining sections are merely of ancillary character and cannot stand without the unconstitutional sections." Section 2 of the said Act was held unconstitutionl " as being violative of the rule of law on account of its involving excessive delegation of unfettered and unguided powers to the executive to interfere with the property rights of the citizens in an arbitrary manner. The Act does not lay down any principle or policy for guiding in any manner the exercise of wide discretion conferred by it on the executive authorities. All that the District Magistrate has to say to deprive a citizen of his movable property in purported exercise of the District Magistrate's power under section 2 of the Act is that it is necessary and expedient so to do. The Act does not require the authority to apply his mind to the nature of the purpose for which it is necessary or expedient to requisition a particular thing. Even if the authority applies his mind to that proposition, there is nothing in the Act which can guide him to a decision as to the propriety or legality of taking the

(3) I.L.R. (1966) 2 Pb. 794 (F.B.).

intended action. The Act does not even require the authority to state the purpose for which it has become 'necessary or expedient to requisition' a particular thing. Even the usual safeguard of power of requisitioning being exercised only for a public purpose is significantly missing from the impugned section. There is no indication either in the preamble of the Act or in any other part thereof about the circumstances in which power under the Act can be exercised. The Act does not even state that its provisions have to be invoked only in an emergency. As the Act stands, it is capable of being utilised for carrying out even the day to day functions of the Government or even at the whim of a particular District Magistrate for any purpose, whatsoever, only if the District Magistrate thinks that in his opinion it is necessary or expedient to do so. No provision is made in the Act for any opportunity to the owner of a movable article to show cause against its proposed requisitioning even in a case where there may be no extraordinary emergency for immediately taking over of the article. No time is allowed by the Act to the owner to hand over the article to the authorities in varying circumstances of the said requirement. Power under the Act is capable of being delegated to any of the officers of the State irrespective of his rank or position. The power conferred by section 2 appears to be too wide and vague to be conferred upon anybody. No provision is made for any appeal or revision against an order of the requisitioning authority. Nor is there any provision in the Act to provide for any suitable machinery for determination of compensation payable under section 4 of the Act. The Act does not even lay down the guiding principles for determining the compensation."

These observations of the learned Judges do not apply to the facts of the instant case, because the policy and the guiding principles are stated in the preamble and section 13 of the Act, and for the fixation of remuneration of various functionaries no guide lines can reasonably be prescribed by the Legislature. Perforce this power has to be left to the market committee which is presumed to exercise its power reasonably in accordance with the conditions prevailing in the market area and the labour and time of the functionaries involved. The members of the market committee are elected representatives of various classes of persons who transact business and take part in th

various activities connected therewith in the market area. The weighmen, brokers and other functionaries licensed under section 13 of the Act elect one representative to a market committee of which membership is ten and two members to a market committee of which the membership is sixteen. So that these representatives can safeguard their interests. The bye-laws which are framed by the market committee are subject to confirmation by the Chairman of the State Agriculutral Marketing Board under sub-section (4) of section 44 of the Act. The Chairman of the Board is the Director of Marketing for the State of Punjab, who is a very high officer of the State Government. There is, therefore, no analogy between the Act which was before the Full Bench and section 44 of the Act which is involved in these writ petitions.

(2) *The Corporation of Calcutta v. Calcutta Tramways Co. Ltd., Calcutta* (4). In that case the parenthetical clause in section 437(1)(b) of the Calcutta Municipal Act, 1951, was under consideration. Their Lordships observed—

> The parenthetical clause which makes the opinion of the Corporation conclusive and non-justiciable is in the nature of a procedural provision and we have to see whether in the circumstances of this case such a procedural provision is reasonable in the interest of the general public. It has been urged that the Corporation which is an elected body would exercise the power conferred on it under section 437(1)(b) reasonably and, therefore, the provision must be considered to be a reasonable proviso. This, in our opinion, is no answer to the question whether the provision is reasonable or not. It is of course true that *mala fide* exercise of the power conferred on the Corporation would be struck down on that ground alone; but it is not easy to prove *mala fide*, and in many cases it may be that the Corporation may act reasonably under the provision but it may equally be that knowing that its opinion is conclusive and non-justiciable, it may not so act, even though there may be no *mala fides*. The vice in the provision is that it makes the opinion of the Corporation, howsoever capricious or arbitrary it may be or howsoever unreasonable on the face of it may be, conclusive and non-justiciable. The conferment

(4) A.I.R. 1964 S.C. 1279.

of such a power on a municipal body which has the effect of imposing restrictions on carrying on trade, etc., cannot, in our opinion, be said to be a reasonable restriction within the meaning of Article 19(6). Such a provision puts carrying on trade by those residing within the limits of the municipal Corporation entirely at its mercy, if it chooses to exercise that power capriciously, arbitrarily or unreasonably, though not *mala fide*."

The provisions of section 437(1)(b) of the Calcutta Municipal Act, 1951, are not similar to the provisions of section 44 of the Act. No opinion of the market committee has been made conclusive and non-justiciable. The bye-laws are prescribed by the market committee which are confirmed by the Chairman of the State Agricultural Marketing Board and the weighmen can certainly represent their case through their representatives to the Committee and the Board.

(3) *Mohammad Yasin v. Town Area Committee, Jalalabad and another* (5), in which it was held that "the bye-laws do not, in terms, prohibit any body from dealing in vegetables and fruits. But although, in form, there is no prohibition against carrying on any wholesale business by any body, in effect and in substance the bye-laws have brought about a total stoppage of the wholesale dealers' business in a commercial sense." I fail to understand how this case can help the petitioners. It was held in that case on the consideration of the bye-laws involved that "the bye-laws which impose a charge on the wholesale dealer in the shape of the prescribed fee, irrespective of any use or occupation by him of immovable property vested in or entrusted to the management of the Town Area Committee including any public street, are obviously *ultra vires* the powers of the Committee and, therefore, the bye-laws cannot be said to constitute a valid law which alone may, under Article 19(6) of the Constitution, impose a restriction on the right conferred by Article 19(1)(g)."

(4) *Kunathat Thathunni Moopil Nair* v. *The State of Kerala and another* (6). In that case the constitutional validity of section 7 of the Travancore-Cochin Land Tax Act, 1955, was challenged on the ground that it gave arbitrary power to the Government to pick and choose in the matter of grant of total or partial exemption from the

(5) A.I.R. 1952 S.C. 115.
(6) (1961) 3 S.C.R. 77.

provisions of the Act. On this point it was held by majority as under :—

> "Section 7 of the Act which vested the Government with the power wholly or partially to exempt any land from the provisions of the Act did not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by the section, and was, therefore discriminatory in effect and offended Article 14. The section was not severable from the rest of the Act as both the charging sections, section 4 and section 7, authorising the Government to grant exemptions from the provisions of the Act were the main provisions of the statute."

The observations made by their Lordships in that case cannot be pressed into service by the petitioners because the Act under consideration in that case was a taxing statute and not a regulatory measure and on the consideration of the provisions of that Act it was held that section 7 gave arbitrary powers and, therefore, was invalid. No such question arises in the present case.

(5) *Dhirajlal Vithal Ji* v. *Dy. Custodian of Evacuee Property, South Kanara, Bangalore* (7), in which Clause (c) of section 40(4) of the Administration of Evacuee Property Act, 1950, was held to be void "as it confers an unfettered discretion on the Custodian to refuse to confirm any transaction." This case is also of no help to the petitioners because the words "any other reason" in that clause were held to be vague and, therefore, that clause was held to be bad.

(6) *Mohammad Ismail* v. *The District Magistrate and others* (8), in which the second proviso to para 63 of U.P. Gaon Samaj Manual was under consideration and it was held that —

> "the power conferred by the proviso appears to be an absolutely arbitrary and uncontrolled power leaving it open to the State Government or the Collector to follow one method in respect of transfer of one fishery right and a totally different method in respect of transfer of another fishery right. Apart from this, they may not follow any procedure at all

(7) A.I.R. 1955 Madras 75.
(8) A.I.R. 1957 All. 487.

and just say what they like at the spur of the moment. It would then be open to them to transfer a right for no rhyme or reason to the lowest bidder. Such a power cannot be held to be valid after the coming into force of the Constitution. It may be possible for the District Magistrate and the State Government to make some unimportant alterations in the rules of auction laid down in paragraph 63 of the Manual. But the proviso purports to say that the rules themselves would not apply where any directions are issued by the District Magistrate. The proviso nowhere says what those directions would be and with what object and for what purpose they should be issued. The directions may be of any kind and issued at any stage of the proceedings and the moment the directions are issued, the rule ceases to be in force with the result that there remains absolutely no rule for guidance if any directions have been issued under the proviso. Such an arbitrary and uncontrolled discretion is inconsistent with the provisions of Article 14 of the Constitution, and it also cannot be said to be a reasonable restriction on the right of a person to carry on the trade of fishery."

It is quite apparent that the language of second proviso to para 63 of the U.P. Goan Samaj Manual was entirely different from that of section 44(1)(vi) of the Act. This judgment also does not help the petitioners in any way.

(7) *Uttar Pradeshiya Shramik Maha Sangh, Lucknow and another* v. *State of Uttar Pradesh and others* (9). In that case Rule 40(4) of the U.P. Industrial Disputes Act, 1947 was under consideration and it was held that this sub-rule "vests the Labour Commissioner with an absolute power to approve a federation or reject its application, that this power is unguided by any principles or criteria and that discrimination is inherent in this provision. Accordingly this sub-rule is hit by Article 14 of the Constitution which also makes the provision an unreasonable restriction on the right to form an association. It is well settled that a power which is discriminatory under Article 14 cannot be reasonable under Article 19(4)." There is no quarrel with the proposition of law enunciated in this judgment but the same does not apply to the facts of the present case.

(9) A.I.R. 1960 All. 45.

(8) *Bhagwat Singh* v. *State of Rajasthan* (10), in which the validity of Section 9(3) of Rajasthan Court of Wards Act was being considered and it was held as under:—

> "Simply because a time limit has not been provided within which an enquiry under Section 9(1) shall be completed, it cannot be said that Section 9(3) is also hit by Article 19(1)(f), and is not saved by Article 19(5). Section 9(3), as it stands, is a reasonable provision, and is saved by Article 19(5)."

This case has not even the remotest application to the facts of the instant case.

(9) *M/S Dwarka Prasad Laxmi Narain* v. *State of Uttar Pradesh and others*, (11), *in* which the validity of clause 3(2)(b) of the U. P. Coal Control Order, 1953, was under consideration and it was held—

> "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 under Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in reasonableness. .....
>
> An unrestricted power has been given to the State Controller to make exemptions, and even if he acts arbitrarily or from improper motives, there is no check over it and no way of obtaining redress. Clause 3(2)(b) of the Control Order seems to us, therefore, 'prima facie' to be un-reasonable."

(6) I shall presently show that the power given to the Market Committee under Section 44(1)(b) of the Act is neither arbitrary nor discriminatory and, therefore, cannot be struck down as offending the provisions of Article 14 of the Constitution. The principles laid down in the various judgments have to be applied to the facts of each case in order to determine whether the provision under consideration is arbitrary or discriminatory and places unreasonable

(10) A.I.R. 1954 Raj. 131.
(11) A.I.R. 1954 S.C. 224.

restriction on the freedom to carry on profession or a trade as guaranteed by Article 19(1) (g) of the Constitution. It was held in *M/s Pannalal Binjraj and others* v. *Union of India and others*, (12), as under :—

> "It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessary discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law."

(7) In *A. Thangal Kunju Musaliar* v. *Venkatachalam Potti*, (13), it has been observed that "it is to be presumed, unless the contrary were shown, that the administration of a particular law would be done 'not with an evil eye and unequal hand' and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory." Referring to these observations, their Lordships said in *Pannalal Binjraj and others*, (supra), (12), as under :—

> "This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment. There may be cases where improper execution of power will result in justice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law. What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself."

(12) A.I.R. 1957 S.C. 397.
(13) (1955) 2 S.C.R. 1196.

(16) In *M. C. V. S. Arunachala Nadar* v. *State of Madras and others,* (supra), (2), it was held as under :—

> "In order to be reasonable, a restriction must have a rational relation to the object which the Legislature seeks to achieve and must not go in excess of that object."

(17) In *State of Madras* v. *V. G. Raw,* (14), (at page 607), it has been succinctly stated by Patanjali Sastry C. J. as under :—

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impuged, and no abstract standard, or general pattern of reasonableness can be laid down as applicable ot 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."

It is in the light of these principles that I have to determine the validity of Section 44(1) (b) of the Act and see whether the provision in that clause has any reasonable relation to the object which the legislation seeks to achieve.

(8) In *Corporation of Calcutta and another* v. *Liberty Cinema,* (15), it was contended that if Section 548 of the Calcutta Municipal Act authorised the levy of a tax, as distinct from a fee in return for service rendered, it was invalid, as it amounted to an illegal delegation of legislative functions to the Corporation to fix the amount of a tax without any guidance for the purpose. Dealing with this contention, their Lordships by majority held as under:—

> "(i) The fixing of the rate of a tax is not of the essence of legislative power and the fixing of rates may be left to a non-legislative body. When it is so left to another body, the legislature must provide guidance for such fixation. Since there is sufficient guidance in the Act as to how the rate of levy under Section 548 is to be fixed, the section is valid.

(14) 1952 S.C.R. 597.
(15) (1965) 2 S.C.R. 477.

(ii) The appellant is an autonomous body. It has to perform various statutory functions. It is given power to decide when and in what manner the functions are to be performed. For all this it needs money and its needs will vary from time to time with the prevailing exigencies. Its power to collect tax is necessarily limited by the expenses required to discharge the functions. It has, therefore, where rates have not been specified in the statute, to fix such rates as may be necessary to meet its needs, and that would be sufficient guidance to make the exercise of its power to fix the rate, valid."

Under Section 548(2), the Corporation could charge a fee from the cinema houses at a rate to be fixed by the Corporation. In 1948 the Corporation fixed fees on the basis of annual valuation of the cinema houses in accordance with which Liberty Cinema had to pay Rs. 400, per year. In 1958 the Corporation, by a resolution, changed the basis of assessment of the fee. Under the new method the fee was to be assessed at rates prescribed per show according to the sanctioned seating capacity of the cinema house and on that basis Liberty Cinema had to pay Rs. 6000, per year. The levy of the fee was held valid.

(9) A similar matter came up before their Lordships of the Supreme Court in the *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills, Delhi and another,* (16), and after reviewing the various authorities, it was held by majority as under:—

"A review of these authorities, therefore, leads to the conclusion that so far as this Court is concerned the principal is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any ultimated right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enuciated with sufficient clearness or a standard is laid down, the Courts should not interfere. What guidance

(16) A.I.R. 1968 S.C. 1232.

should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further, it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.

What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. The guidance may take the form of providing maximum rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consulation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are fixed by local bodies, whatever may be the method employed for this purpose—provided it is effective—, it may be said that there is guidance for the purpose of fixation of rates of taxation. The reasonableness of rates may be ensured by fixing a maximum beyond which the local bodies may not go. It may be ensured by providing safeguards laying down the procedure for consulting the wishes of the local inhabitants. It may consist in the supervision by Government of the rate of taxation by local bodies. So long as the law has provided a method by which the local body can be controlled and there is provision to see that reasonable rates are fixed, it

can be said that there is guidance in the matter of fixing rates for local taxation. As we have already said there is pre-eminently a case for delegating the fixation of rates of tax to the local body and so long as the legislature has provided a method for seeing that rates fixed are reasonable, be it in one form or another, it may be said that there is guidance for fixing rates of taxation and the power assigned to the local body for fixing the rates is not uncontrolled and uncanalised. It is on the basis of these principles that we have to consider the Act with which we are concerned."

(10) In the light of the authorities considered above, I am of the opinion that section 44(1)(vi) of the Act in a constitutionally valid piece of legislation and it cannot be struck down on the ground of either being discriminatory or conferring arbitrary power on the market committee. As I have said above, enough guidance is given by the preamble and Section 13 of the Act. The members of the market committee are elected representatives of various classes of persons who have any concern with the activities that take place in the market area. The weighmen, brokers and other functionaries have also the right to elect one or two members to each market committee according to its membership who can represent their point of view and safeguard their interests. Marketing legislation is a well-settled feature of all commercial countries and the object of such legislation is to protect the producers from being exploited by the middlemen and profiteers and to see that they are not charged excessively high rates for the services rendered to them in the market. It is a common ground that the rates for the weighmen had been fixd even under the earlier Act and in fact have always been fixed ever since the markets grew up. It is stated on behalf of the petitioners that previously they used to get annas 4 for weighing a commodity of the value of Rs. 100 and now the basis of their remuneration has been changed and it has been made 10 paise per packing unit out of which 6 paise go to the Labourers and 4 paise remain with the weighmen. The fact remains that these rates had not been fixed by the legislature but by the market committees for the functionaries of the market committees collectively. It is not possible for the legislature to lay down any guiding principles for fixing the remunerations of weighmen or such other functionaries working in the market area. It will depend on various factors which prevail in a market committee. The members of the market committee are

presumed to be fully conversant with the local conditions and to fix the rates of various functionaries in good faith at a proper level taking into consideration the time and the labour spent. The power is not entrusted to an individual but to a representative body of responsible persons elected by all those persons who have anything to do with the transactions which take place in a market area under the jurisdiction of a market committee. They cannot, therefore, be expected to fix the rates which are not properly remunerative to the functionaries with a view to harm them. The power to frame bye-laws is also not unfettered because it is subject to confirmation by the Chairman of the State Agricultural Marketing Board under section 44(4) of the Act and have to be notified in the gazette. The Chairman of the Board is a very high officer of the State Government, namely, the Director or Joint Director of Marketing for the State. The Chairman of the Board has to keep in view the conditions in the entire State and keep a uniformity in the rates as far as possible in all the market committees. There is, therefore, no force in the argument that Section 44(1) (vi) of the Act suffers from any unconstitutional infirmity and I hold that it is not *ultra vires* Article 14 of the Constitution.

(11) The next point to be considered is whether the exercise of power of fixing the rate of remuneration of the weighmen by the market committees is *bona fide* and reasonable. It has been held in *Kruse* v. *Johnson* (17), as under:—

> "In determining the validity of bye-laws made by public representative bodies, such as county councils, the Court ought to be slow to hold that a by-law is void for unreasonableness. A by-law so made ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it."

In *Mulchand Gulabchand* v. *Mukand Shivram Phide and another* (18), Chagla, C.J., speaking for the Court said:—

> "Mr. Kotwal has drawn our attention to various decisions of the English Courts where bye-laws have been held to be bad on the ground that they were unreasonable. Now, there is a clear distinction between statutory rules and by-laws. By-laws are usually framed by corporations under

(17) (1898) 2 Q.B. 91.
(18) A.I.R. 1952 Bom. 296.

> their inherent powers in order to carry out the purposes of the corporation or they are framed by public authorities set up by Parliament, and as it is left to the corporations or the public authorities to frame these by-laws and carry out their purposes, the Courts have retained certain amount of control over the by-laws by considering their reasonableness. But statutory rules stand on an entirely different footing. Parliament or Legislature, instead of incorporating the rules into the statute itself, ordinarily authorises Government to carry out the details of the policy laid down by the Legislature by framing the rules under the statute, and once the rules are framed, they are incorporated in the statute itself and become part of the statute, and the rules must be governed by the same principles as the statute itself. And, therefore, although a by-law may be challenged on the ground that it is unreasonable, a statutory rule cannot be so challenged.

It is thus clear that the by-laws can be scrutinized by the Court on the ground of unreasonableness. In order to prove that the by-law fixing the remuneration of the weighmen is unreasonable, the learned counsel for the petitioners has prepared a chart in which he has compared the remuneration now allowed and the remuneration previously allowed. The figures in these charts are based on the weighment of the packing unit now and the value of the commodity previously but it has committed to notice the very important factor of time and labour involved now and then. Previously the commodities were weighed with hand scales which consumed much greater time than is done now when the weighment is made on a beam scale. The weighman has to spend much less energy now than he had to do when the weighment was done with a hand scale. He can weigh many times more now on a beam scale than he used to do with a hand scale in the same time. The facts and figures given by the petitioners are not accepted by the respondents and in their written statements it has been stated that "under the new system, one weighman can weigh in a single day under the normal conditions about 400 to 500 units and, therefore, can easily earn a wage of Rs. 16 to 20 per day even if 4 paise per unit is received by him as contemplated by the petitioners themselves. The remuneration as now fixed is not unreasonable and arbitrary. The new rates had been fixed at Government level as a result of mutual discussion between the functionaries in the market areas of Punjab

and the Government. The new rates had been adopted according to the changed conditions and were agreed to be charged in future by the different functionaries including weighmen. These rates had been incorporated in the bye-laws." There is thus a very great divergence in the averments made by the petitioners and the respondents with regard to the amount that a weighman can earn during the course of a normal day under the present bye-laws. The learned counsel for the petitioners does not seem to doubt the figures of Rs. 16 to Rs. 20 stated by the respondents but he vehemently argues that a weighman does not remain busy for the whole year and it is only for about four months that he is fully engaged and for the remaining eight months in a year, he has to sit idle. This fact is not admitted by the respondents and even if that is so, the weighmen cannot be expected to earn in four months for the whole year. During the remaining eight months they can engage themselves in other remunerative pursuits. It has to be remembered that the remuneration of the weighmen has to be paid by the producers and not by the market committee from its own funds and the producers cannot be put under an excess burden and what they have to pay should be commensurate with the services rendered to them consistent with the labour and energy involved in rendering that service.

(12) The weighmen of Market Committee, Mansa, filed a similar writ petition in this Court *Mangu Ram and others* v. *Market Committee, Mansa, District Bhatinda* (19), which was dismissed by P. C. Pandit, J. The counsel for the petitioners in that case was also Shri N. L. Dhingra, who is counsel for the present petitioner. The same rates as are prevalent today were then in force. While dismissing the petition, the learned Judge observed as under:—

> "There is no merit in the contention of the petitioners. In the first place, it raises a disputed question of fact. The petitioners say that the new rates fixed for them are unreasonable, whereas the case of the respondents is that they are not. This Court cannot go into this matter in these proceedings. Secondly, the relevant part of Bye-law No. 28 runs thus:—
>
> '(All items if agricultural produce other than those detailed above.)
>
> Incidental Charges.
>
> (i) Unloading. .. 8 N.P. per quintal

(19) C.M. 849 of 1965 decided on 13th January, 1966.

(ii) Cleaning and dressing and sieving.	..	6 N.P. per quintal per sieve.
(iii) Weighing Market charges.	..	10 N.P. per unit.
(iv) Auction	..	5 N.P. per hundred rupees of the value.
(v) Filling.	..	4 N.P. per unit.
(3) Sewing.	..	2 N.P. per unit.
(4) Commission	.	Rs. 1.50 N.P. per hundred rupees of the value.
(5) Brokerage.	..	16 N.P. per hundred rupees of the value.

"Thus it would be seen that additional rates have been fixed for filling as well as sewing of the bags. The weighing charges are quite separate from them. Moreover, the new rates are for one unit, whereas the old ones were for an outturn of Rs. 100. The new rates, when calculated on outturn basis, will not in any way be less than the old ones."

I am in respectful agreement with the observations of Pandit, J., in that case and I hold that there is no material on this record to show that the rates fixed by the market committees are unreasonable.

(13) The learned counsel for the market committees have argued that the present petitions should be dismissed on the ground of *res judicata* as similar petitions were made by the petitioners (Civil Writ No. 1463 and 1465 of 1963), in which the validity of a circular issued by the State Agricultural Marketing Board, directing the Market Area Committees of Abohar and Fazilka, not to permit the weighmen to use any scales (Takris) and fixing their remuneration, was attacked. These writ petitions were dismissed by Gurdev Singh, J., with the following observations:—

"The fixing of remuneration for the weighmen has been defended by the respondents on the plea that this remuneration has been fixed by respondent No. 1, the market area committee concerned, in exercise of the power vested in it under Act 23 of 1961 and by means of the bye-laws

framed thereunder and not by the State Agricultural Marketing Board (respondent No. 2). In support of this contention, the relevant bye-law (marked Annexure R. 1) has been produced. In this situation, Shri N. L. Dhingra, appearing for the petitioner, concedes that his objection that the remuneration had not been fixed by the competent authority has no merit. He, however, contends that the remuneration as fixed by the Market Committee by its bye-law in question is inadequate and violative of the provisions of Article 19(1)(g) of the Constitution. Since the bye-laws of the market committee do not form the subject-matter of the writ petition, no opinion with regard to their validity can be expressed. The petitioners, if so advised, can challenge the validity of these bye-laws of the market committee by a separate writ petition."

I do not find any force in this submission of the learned counsel for the reason that the learned Judge had left it open to the petitioners to challenge the validity of the bye-laws of the market committees by a separate writ petition. While challenging the validity of the bye-laws, the petitioners can certainly challenge the authority of the market committees to frame those bye-laws. The petitioners cannot be dismissed on the ground of constructive *res judicata* as has been pleaded by the learned counsel for the market committees.

(14) In Civil Writ No. 412 of 1967, it has been alleged in para 15 of the petition that the Market Committee, Fazilka,—*vide* their Resolution No. 313, dated 20th July, 1963, recommended to the Marketing Board that the remuneration of the weighmen should at least be raised to 20 Naye Paise per unit. The Market Committee, Fazilka, has admitted the passing of this Resolution in its return but this recommendation of the market committee had to be approved or disapproved by the Marketing Board which has not been done. In the return filed by the Marketing Board, it has been admitted that the market committee passed such a Resolution but it is stated that the correspondence regarding the same is not available in its office. From these pleas it is quite evident that the Agricultural Marketing Board has not considered the recommendation made by the Market Committee, Fazilka, which was its duty to do.

(15) For the reasons given above, Writ petition No. 395 of 1967 is dismissed but without any order as to costs. Civil Writ No. 412 of

1967 is also dismissed without any order as to costs but respondent No. 2, the State Agricultural Marketing Board, Punjab, Chandigarh, is directed to consider the Resolution passed by the Market Committee, Fazilka, on 30th July, 1963, and either approve or disapprove the same within a period of three months.

K.S.K.

APPELLATE CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.

PIRBHU,—*Appellant.*

versus

BHIRKA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 372 of 1968.
Civil Miscellaneous 4451 of 1968.

January 29, 1969.

February 24, 1969.

Rules and Orders of Punjab High Court—Volume V, Chapter 1-A—Rule 4—Limitation Act (XXXVI of 1963)—Section 4—Combined effect of—Stated—Period of Limitation for a Letters Patent Appeal—Advantage of section 4—Whether can be taken twice over—Appellant applying for the certificates on the last day of limitation taking advantage of section 4—Such appellant—Whether can annex another set of holidays after getting the certificate to bring his appeal within limitation.

Held, that no Letters Patent Appeal under rule 4 of Chapter 1-A of Rules and Orders of Punjab High Court, Volume V can be entertained if presented after the expiration of 30 days from the date of the judgment appealed from. The time spent in obtaining the certificate from the Judge has to be excluded in computing this period of limitation. Section 4 of Limitation Act does not in any way extend the period of limitation nor does it furnish any data for computation of time. What it really does is that if the time allowed by a statute to do an act or to take a proceeding expires on a day when the court is closed it may be done on the next sitting of the Court. The combined effect of these two provisions of law is that the period of limitation has to be computed separately in the case of Letters Patent Appeal and the time will start running when the judgment of the Single Bench is delivered. The appellant cannot take advantage of the fact that the certificate is actually granted on a day followed by holidays. The cause of action arises to him when the judgment of the Single Bench is delivered. He has no doubt first to obtain the requisite certificate from the Judge for leave to appeal,