(8) The learned counsel for the appellant also argued that a question of law was referred to a Full Bench of this Court which was analogous to the question of law arising in the present writ petition, that is, whether Darbara Singh had a right to be transferred this house when he was not the allottee of that house. His case was considered by the Full Bench in *Smt. Jamna Bai and another* v. *Union of India and others*, (9), and it was held that a person in the position of Darbara Singh had no right to the transfer of the house. On the basis of that decision the learned counsel argues that Darbara Singh was no more a necessary party to the writ petition and even if his legal representatives were not brought on the record, the writ petition could not be dismissed. His submission is that on the basis of the Full Bench judgment the learned Single Judge had only to issue a direction to the Rehabilitation authorities to give effect to that decision. *Prima facie* there is force in the submission of the learned counsel but we do not propose to rest our decision of this appeal on this ground.

(9) For the reasons given above this appeal is accepted and the order of the learned Single Judge appealed against is set aside. The case is remitted to the learned Single Judge for decision on merit. There is no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KARNAIL SINGH DOAD ETC.—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 2939 of 1970

December 2, 1970.

Punjab Agricultural Produce Markets Act (XXIII of 1961 as amended by Ordinance 7 of 1970)—Section 3—Constitution of India (1950)—Articles 14, 213 and 254—Ordinance 7 of 1970—Whether unconstitutional having been passed without obtaining instructions from the President of India—Clause 7 of the Ordinance—Whether violative of Article 14, Constitution of

(9) 1965 P.L.R. 394.

India—No provision in the Ordinance of the date of its coming into force—Simultaneous publication of the Ordinance and the notification thereunder in the Government Gazettte—Such notification—Whether invalid.

Held, that the Punjab Agricultural Produce Markets Act, 1961, is to some extent repugnant to the provisions of the Land Acquisition Act, 1894, which had been passed by the Central Legislature, and was an existing law with respect to matters relating to land acquisition at the time when the former Act was passed. The law relating to acquisition of land can be made by the Parliament as well as by the State Legislature as the subject of land acquisition is covered by entry 42 in the Concurrent List. The Punjab Agricultural Produce Markets Act was, therefore, required to be reserved for the consideration of the President because of the provisions of Article 254(2) of the Constitution and would not have been valid without such assent. Any Act or Ordinance amending any provision of a principal Act which principal Act was required to be reserved for consideration of the President, must itself similarly conform to the requirements of clause (2) of Article 254 of the Constitution irrespective of whether the amendment itself is or is not repugnant to any provision of an existing Central Law. On account of the provisions of clause (2) of Article 254 read with proviso (c) to Article 213(1) of the Constitution the amending Punjab Ordinance 7 of 1970 must be held to be having no effect in the State of Punjab, and, therefore, void, as the same seeks to amend a law which could be passed by the State Legislature only in exercise of the power vested in it under an entry in the concurrent List. It was necessary to obtain instructions of the President under proviso (c) to Article 213(1) of the Constitution before the Governor of Punjab could promulgate Ordinance 7 of 1970, amending a law partly dealing with a subject relevant to entry 42 in the Concurrent List, which law is at least to some extent repugnant to the provisions of the Land Acquisition Act, 1894, which was an existing law and had been made by the Central Legislature. (Paras 10, 12 and 13).

Held, that clause 7 of Ordinance 7 of 1970 is violative of Article 14 of the Constitution of India and hence void.

Held, that where there is no provision in an Ordinance about the time when it will come into force, it is deemed to become effective from the date on which it is published in the official gazette. A notification under this Ordinance simultaneously published in the Government Gazette along with the Ordinance is invalid as having been issued without authority because the Ordinance had not yet come into force when the notification is issued. (Para 16).

Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, or any other appropriate writ, order or direction be issued declaring Sections 3 and 7 of the Ordinance No. 7 of 1970 to be ultra-vires of Constitution of India and quashing the Notification No. S.O. 26/P.A. 23/61/S-3/70 dated the 11th September, 1970 and further praying that during the pendency of the writ petition the operation of the Notification be stayed.

KULDIP SINGH, R. S. MONGIA AND JAGJIT SINGH NARANG ADVOCATES, for the petitioner.

MELA RAM SHARMA SENIOR DEPUTY ADVOCATE-GENERAL, PUNJAB, for the respondents.

JUDGMENT.

R. S. NARULA, J.—The constitutionality and validity of the Punjab Agricultural Produce Markets (Amendment) Ordinance No. 7 of 1970, whereby certain provisions of the Punjab Agricultural Produce Markets Act No. 23 of 1961 (hereinafter called the Act), were amended and the validity and legality of the Punjab Government Notification, dated September 11, 1970, constituting the new State Agricultural Marketing Board under the Act as amended by the Ordinance, have been questioned in this petition under Articles 226 and 227 of the Constitution in the circumstances hereinafter detailed.

(2) The Act received the assent of the President of India on May 18, 1961, and was first published in the Punjab Government Gazette (Extraordinary), dated May 26, 1961. Section 2(b) provided that "Board" means the State Agricultural Marketing Board constituted under section 3. Clause (g) of section 2 defined the "Director" to mean the Director of Marketing for the State of Punjab and included the Joint Director of Marketing. Section 3 of the Act authorised the State Government to establish and constitute a State Agricultural Marketing Board consisting of fifteen members of whom four shall be officials and eleven non-officials to be nominated by the State Government in the manner detailed in sub-section (1) of that section for exercising the powers conferred on and performing the functions and duties assigned to the Board by or under the Act. Sub-section (2) of section 3 stated that the Director and the Marketing Officer shall respectively be the *ex-officio* Chairman and Secretary of the Board. Under sub-section (3) the Board was made a body corporate as well as a local authority by the name of the State Agricultural Marketing Board having perpetual succession and a common seal. Under sub-section (4) the term of the office of the non-official members of the Board was fixed at 3 years. Sub-section (5) laid down disqualifications from becoming members of the Board. Sub-section (6) authorised a member to resign from the membership. Sub-section (7) empowered the State Government to remove any member of the Board who might have become subject

to any of the disqualifications specified in sub-section (5) or who, in the opinion of the State Government is remiss in the discharge of his duties. The same provision authorised the State Government to appoint another member in the place of a member removed under sub-section (7). The proviso to sub-section (7) enjoined on the State Government the duty of conveying to the member sought to be removed the reasons for the proposed action and call for his reply within the specified period which reply had to be duly considered. Sub-section (8) authorised the State Government to exercise superintendence and control over the Board and its officers and further empowered the Government to call for such information as it may deem necessary. In the event of the Government being satisfied that the Board was not functioning properly or was abusing its powers or was guilty of corruption or mismanagement, the State Government was authorised to suspend the Board and till such time as a new Board was constituted, make such arrangements for the exercise of its functions as it may think fit. The proviso to that sub-section made it imperative for the State Government to constitute a new Board within six months of the suspension of the original one. Sub-section (9) authorised the Board to exercise superintendence and control over the committees. All questions before a meeting of the Board are required by sub-section (16) of section 3 to be determined by a majority of votes of the members present and voting. In case of equality of votes, the Chairman is given the right to exercise a casting vote. Section 4 of the Act related to the constitution and working of Advisory Committees. Section 27 deals with Market Committee Fund. The other provisions of the Act are not relevant for our purpose. Section 3 of the Act was amended from time to time and the number of members of the Board, official and non-official, was varied from time to time. Some of the relevant amendments made in the principal Act by the Punjab Agricultural Produce Markets (Amendment) Act No. 40 of 1963 may now be noticed. Sub-section (2) of section 3 of the principal Act was amended so as to delete the provision for the Director to be an *ex-officio* Chairman of the Board. Under the amended sub-section, the Director was made only the *ex-officio* Secretary of the Board. The opening part of sub-section (1) of section 3 was modified so as to require the State Government to establish and constitute the Board consisting of a Chairman to be nominated by the State Government and fifteen members of whom four were to be officials and 11 non-officials to be nominated by the State Government. The manner in which the

non-official members were to be nominated and particulars of the official members are given in clauses (b) and (a) of the amended sub-section (1) of section 3. After the reorganisation of the State of Punjab, the Central Government issued the Punjab State Agricultural Marketing Board (Reconstitution and Reorganisation) Order, 1969, (which was published in the Government of India Gazette (Extraordinary), dated July 21, 1969) in exercise of its powers under section 4 of the Inter-State Corporations Act 38 of 1957 as the Board of the erstwhile composite State of Punjab had become the Inter-State Corporation consequent on the bifurcation of that State into the new States of Punjab and Haryana and the Union Territory of Chandigarh, etc. By the 1969 Order, the existing Board was dissolved and in its place the Government of Punjab was authorised to establish and constitute a Board for the State of Punjab called the Punjab State Agricultural Marketing Board and similarly the Government of Haryana was authorised to establish and constitute a Board for its own State. The other provisions of the 1969 Order related to the distributionof assets and liabilities of the erstwhile composite Board amongst the successor Boards and other allied matters.

(3) In exercise of the powers conferred on the State Government by sub-section (1) of section 3 of the Act and the above-mentioned 1969 Order, the Governor of Punjab by notification, dated January 7, 1970 (Annexure 'A' to the writ petition) constituted the Punjab State Agricultural Marketing Board (petitioner No. 2 before me) consisting of four official and seven non-official members as specified in the schedule annexed to the notification and directed that the Board should begin to function from the date of the publication of the notification. Karnail Singh Doad, petitioner No. 1, was appointed as the non-official Chairman of the Board and his name was mentioned as such in column No. 1 of the schedule annexed to the notification. In pursuance of that notification, petitioner No. 1 took charge of the office of Chairman of second petitioner Board on January 8, 1970.

(4) In exercise of the powers conferred by section 43 of the Act, the Punjab Government headed by Shri Gurnam Singh (during whose term the second petitioner Board had been constituted and the first petitioner had been appointed its Chairman) framed "The Punjab Agricultural Produce Markets (General) (Amendment) Rules, 1970, "in modification of the earlier 1962 Rules (Annexure 'B'). Under rule 15 of 1962 Rules, the members of the Board were entitled

to be paid travelling and daily allowances according to the scale fixed by the Government for Government servants of grade I for attending meetings or for doing any other work of the Board for which they might have been specially deputed. Rule 15A of the 1970 Amendment Rules provided that the Chairman of the Board shall be paid a monthly allowance not exceeding Rs. 1,800 as the State Government may fix. In addition to that, the Chairman was also to be provided with a free furnished house, the maintenance charges whereof had to be borne by the Board subject to the condition that electricity and water charges payable by the Board were not to exceed Rs. 1,500 per annum. In addition to that, the Chairman of the Board was to be provided with a motor car to be maintained by the Board. In exercise of the powers conferred on the State Government by sub-rule (1) of rule 15A, the notification, dated February 11, 1970 (Annexure 'C') was issued by the Governor of Punjab fixing the monthly allowance of the petitioner No. 1 as Chairman of the Board at Rs. 1,800 per mensem from the date on which he assumed charge of the post of the Chairman. The Gurnam Singh Government fell on March 26, 1970 and was succeeded by the present cabinet headed by Shri Parkash Singh Badal.

(5) Purporting to act under sub-section (8) of section 3 of the Act, the new Government suspended and abolished the Board under order, dated April 2, 1970. Petitioners 1 and 2 challenged the validity of that order in civil writ petition No. 1006 of 1970 on various grounds including that of *mala fides* of Shri Parkash Singh Badal, the new Chief Minister of Punjab. Operation of the impugned notification was suspended by the Motion Bench which admitted that writ petition. At the final hearing of the said writ petition, the State Governmen undertook to withdraw the impugned notification, dated April 2, 1970, and the petitioner agreed to withdraw all the personal allegations which had been made by him against the new Chief Minister as well as against the Agriculture Minister in the original petition as well as in the replication. The learned Advocate-General for the State of Punjab who was appearing for the Government assured the Bench hearing the previous petition that though the Government would be at liberty to annul, cancel or modify any resolution of the Board in accordance with law, it would not take any action against the Board under sub-section (8) of section 3 of the Act without first giving the Board an adequate opportunity to show-cause against the proposed action and that the show-cause notice

would not be of less than 15 days' duration. At the same time, the counsel for the petitioners stated that though he had withdrawn all the personal allegations against the Chief Minister and the concerned Minister, it would be open to him in the case of filing of any fresh petition (if it became necessary to do so) to allege *mala fides* against the Government, if in fact there would be an occasion for doing so. At the request of the learned Advocate-General, it was specifically stated in the order of the Division Bench that nothing stated by the parties or their counsel before the Court on that date would be understoood to abrogate the legal powers of the Government vested in it under the Act or the rules framed thereunder. In view of the statements and assurances made by the learned counsel for the parties, the previous writ petition was dismissed by the Division Bench as infructuous leaving the parties to bear their own costs. A copy of the order of the Division Bench (of which I happened to be a member), dated April 29, 1970, in the said previous writ petition is Annexure 'D' to the present writ petition.

(6) The subsequent events leading to the filing of the present petition commenced with a notification, dated June 20, 1970 (copy Annexure 'E') issued by the Governor of Punjab under section 43 of the Act amending the 1962 Rules (as subsequently amended in 1970) by deleting sub-rule (10-A) of rule 2 and rule 15A which had been introduced into the principal rules in 1970. This modification was achieved by the Punjab Agricultural Produce Markets (General) (Second Amendment) Rules, 1970. The result of these amendments was that the first petitioner was deprived of the monthly allowance and the other amenities which had been allowed to him under the 1962 Rules as amended by the First Amendment Rules 1970, on January 29, 1970. Petitioner No. 1 submitted a representation to the Government against the stoppage of payment of his monthly allowance, etc., to him on the plea that notwithstanding the repeal of rule 15-A, he was entitled to receive Rs. 1,800 per mensem by virtue of notification of the State Government, dated February 11, 1970 which should not be deemed to have been cancelled merely by the deletion of the rule 15-A. The said claim of the first petitioner was, however, negatived by the Punjab Government's letter, dated August, 1970 (copy Annexure 'F') wherein it was stated that the rule under which the facilities in question had been granted to the petitioner having been deleted, it was not legally permissible to provide those facilities after June 20, 1970.

(7) On September 4, 1970, the Governor of Punjab promulgated under clause (1) of Article 213 of the Constitution, the Punjab Agricultural Produce Markets (Amendment) Ordinance No. 7 of 1970 which was published in the Punjab Government Gazette (Extra-ordinary), dated September 11, 1970 (copy Annexure 'G'). By operation of paragraph 3 of the Ordinance, the following provisions were substituted in place of sub-sections (1) and (2) of section 3 of the Act as they existed prior to the promulgation of the Ordinance :—

"(1) The State Government may, for exercising the powers conferred on, and performing the functions and duties assigned to, the Board by or under this Act establish and constitute a State Agricultural Marketing Board consisting of nine members of whom five shall be officials and four non-officials, to be nominated by the State Government in the following manner—

(a) official members shall include the Secretary to Government, Punjab, Agriculture Department, the Director of Marketing, Punjab, and one representative each from the Agriculture Department, Co-operative Department and Animal Husbandry Department of the State of Punjab;

(b) of the non-official members—

(i) One shall be producer member of the Committees.

(ii) one shall be from amongst such persons licensed under section 10 as are members of the Committee;

(iii) one shall be a progressive producer of the State of Punjab; and

(iv) one shall be a member of a registered organisation of farmers of the State of Punjab."

The previous sub-section (2) of section 3 was substituted by a provision which states that 'the Secretary to Government, Punjab, Agriculture Department and the Director shall, respectively be the *ex-officio* Chairman and Secretary of the Board'. For the original proviso to sub-section (8) of section 3, a provision was substituted which enjoins upon the Government the duty to serve a notice stating the grounds of the proposed order and requires the Government to give reasonable period for submitting its reply to the Board before an order of its suspension can be made. Sub-section (8-A)

has been added to section 3 which requires the Board to be guided in the discharge of its functions under the Act by such directions in the matter of policy involving public interest as the State Government may, give to it in writing. Leaving aside the other amendments brought about in the Act by the Ordinance, the most controvertial and far-reaching change was effected by paragraph 7 of the Ordinance which provides as below :—

> "Notwithstanding anything contained in the principal Act, on and with effect from the date of constitution of the Board under sub-section (1) of section 3 as substituted by this Ordinance the Board as it existed immediately before such date shall stand dissolved."

In the same Gazette (Extraordinary), dated September 11, 1970 (in which the Ordinance was published) the Punjab Government notification of that date, viz., 11th September, 1970, under sub-section (1) of section 3 of the Act was published whereby the Governor of Punjab constituted with immediate effect a new State Agricultural Marketing Board consisting of 5 official and 4 non-official members. It is stated on behalf of the petitioners that three of the non-official members are the same who were members of the second petitioner Board. What is directly relevant is that the first petitioner has not been made a member of the new Board. Of course, he could not be appointed as a Chairman of the new Board in any circumstances as amended sub-section (2) of section 3 provides for the Secretary to the Punjab Government in the Agriculture Department being *ex-officio* Chairman of the Board. By operation of paragraph 7 of the Ordinance, the second petitioner Board as it existed immediately before the notification (Annexure 'G') stood dissolved. The petitioner Board had in the meantime passed a resolution, dated September 4, 1970 authorising the filing of the present petition. On September 14, 1970, therefore, this petition under Articles 226/227 of the Constitution was filed by Shri Karnail Singh Doad as the first petitioner and by the Punjab State Agricultural Marketing Board (as it existed prior to September 11, 1970) as the second petitioner challenging the validity and legality of the Government's reply declining to pay remuneration of the petitioner at Rs. 1,800 per mensem (Annexure 'F'), the Ordinance (Annexure 'G') and the notification of the Government (Annexure 'H'), dated September 11,

1970. The petitioners have claimed that Punjab Ordinance No. 7 of 1970 (Annexure 'G') be declared to be unconstitutional, the notification (Annexure 'H') and the order (Annexure 'F") be quashed and any other writ, order or direction may be issued as may be deemed fit and appropriate under the circumstances of the case. Serious allegations of *mala fides* have been made against the Chief Minister and the Agriculture Minister in paragraph 20 and some preceding paragraphs of the petition. The grounds on which the validity of the Ordinance has been attacked are contained in paragraph 21 of the petition. The notification, dated September 11, 1970 constituting the new Board has been claimed to be invalid for the reasons given in paragraph 22. The validity of the Government's order (Annexure 'F") refusing to pay the remuneration of the petitioner has been challenged on the grounds mentioned in paragraph 23. While admitting the writ petition, the operation of the impugned notification was stayed by the Motion Bench on September 15, 1970. The Court was, however, subsequently informed that before the issuing of the said stay order, the new Board had already commenced its functions.

(8) Mrs. Usha Vohra, Joint Secretary to Government, Punjab, Agriculture Department, has filed her affidavit, dated October 1, 1970 on behalf of respondents 1 and 2 (The State of Punjab and the Secretary to Government, Punjab, Agriculture Department) as their return. It has been stated therein that the petitioner Board had become defunct after the notification, dated September 11, 1970 and the Board had been recoonstituted to give impetus to development work and to ensure greater co-operation and co-ordination between the Government and the Board to implement policies and programmes for better marketing of agricultural produce. It has been emphasised that the petitioner No. 1 has not been removed but the Board has been reconstituted and, therefore, no opportunity was required to be given to the petitioner before superseding the Board. It has been explained that the proviso to clause 4 of sub-section (2) of section 3 relates to the suspension of the Board and is not applicable to a case under section 7 of the Ordinance. The Government's decision to decline to pay any remuneration to the first petitioner has also been supported on the ground that the petitioner cannot make any such claim after the deletion of rule 15A. Respondent No. 3 (the Director Marketing, Punjab, Chandigarh), respondent No. 11 (Shri Parkash Singh Badal, Chief Minister, Punjab, Chandigarh) and respondent No. 12 (Shri Radha Kishan, Agriculture

Minister, Punjab, Chandigarh) have filed their separate written statements. The Chief Minister and the Minister, Agriculture, have mainly denied the allegations of *mala fides* relating to them. With the leave of the Court, the petitioners filed a replication, dated October 19, 1970 in reply to the written statements of respondents 1 and 2. Certain facts stated by the Chief Minister in his affidavit have also been controverted therein. Those are related to the allegations of *mala fides*. It has been added that the impugned provisions of the Ordinance are discriminatory and violative of Article 14 of the Constitution. The grounds on which this claim has been made have been set out in paragraph 4 of the replication. The various other documents filed by some of the respondents and by the petitioner with his replication are not relevant for deciding the issues which have been pressed before me.

(9) The contentions raised and pressed by Shri Kuldip Singh, Bar-at-law, who appeared on behalf of the petitioners, may now be enumerated—

(1) Punjab Ordinance 7 of 1970 is unconstitutional (i) as it contravenes proviso (c) to Article 213 of the Constitution and (ii) as it is violative of Article 14 of the Constitution.

(2) The Government had no jurisdiction to issue the notification, dated September 11, 1970 (Annexure 'H') at the time when it was actually issued as (i) it was issued before coming into force of the Ordinance and (ii) it was issued without affordng the petitioners any opportunity to show-cause against the constitution of the new Board; and the said notification is invalid and unenforceable because—

(a) it has been issued in contravention of the undertaking given by the Government to this Court at the time of disposal of the previous writ petition (Annexure 'D') and

(b) the notification is *mala fide* as it has been issued by or at the instance of Shri Parkash Singh Badal, Chief Minister and Shri Radha Kishan, Agriculture Minister, for extraneous reasons.

(3) The petitioner is entitled to be paid the allowance of Rs. 1,800 per mensem as the notification, dated February 11, 1970 (Annexure 'C') fixing his remuneration at that figure, had never been cancelled.

(10) I will first take up the question of validity and constitutionality of Ordinance 7 of 1970. The authority conferred on the Governor of a State to promulgate an Ordinance under Article 213(1) of the Constitution is subject to provisos (a), (b) and (c) thereto. Proviso (c) states :—

> "Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if an Act of the Legislature of the State containing the same provisions would under this Costitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President."

It is admitted by the learned Deputy Advocate-General that the Ordinance in question was in fact promulgated without obtaining any instructions from the President. The only question relevant for decision in this connection, therefore, is whether an Act of the Legislature of the State containing the provisions which are contained in the Ordinance was or was not required to be reserved for the consideration of the President. The submission of Mr. Kuldip Singh in this regard is two-fold. Firstly, it is submitted by him that section 34 of the Act which provides as follows impliedly amends certain provisions of the Land Acquisition Act, 1894, which is a Central Act, and, therefore, any legislative enctment seeking to amend the Act would not be valid without having been reserved for the consideration of the President and without the President having assented thereto:—

> "(1) When any land is required for the purposes of this Act, the State Government may on the request of the Board or a Committee requiring it, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the Board or Committee of the compensation awarded under that Act and of all other charges incurred by the State Government on account of the acquisition, the land shall vest in the Board or Committee.
>
> (2) The Board or a Committee shall be deemed to be a local authority for the purposes of the Land Acquisition Act, 1894."

Under the Central Land Acquisition Act, the Punjab Agricultural Marketing Board or the Committee under the Act, is not a local

authority. The expression "local authority" used in sections 6 and 50 of the Land Acquisition Act is not defined in that Act, but the definition of "local authority" contained in section 2(31) of the General Clauses Act applies thereto. The special provision made in section 34(2) of the Act, therefore, impliedly amends the Central Land Acquisition Act. Again, the Board could not have invoked the provisions of the Land Acquisition Act, but for the enactment of section 34(1). It is, therefore, clear that the Act was required to be reserved for the consideration of the President because of the provisions of Article 254(2) of the Constitution and would not have been valid without such assent. Clause (2) of Article 254 provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. Mr. Kuldip Singh appears to be correct in submitting that the Act is at least to some extent repugnant to the provisions of the Land Acquisition Act, 1894, which had been passed by the Central Legislature, and was an existing law with respect to matters relating to land acquisition at the time when the Act was passed. It is also beyond doubt that the law relating to acquisition of land can be made by the Parliament as well as by the State Legislature as the subject of land acquisition is covered by entry 42 in the Concurrent List. Secondly, it was contended that the Act is such a law as is referred to in clause (2) of Article 31 of the Constitution because of the provisions for compulsory acquisition of land contained therein. On that basis it was submitted that clause (3) of Article 31 which states that no such law as is referred to in clause (2) made by the Legislature of a State shall have effect unlesss such law, having been reserved for the consideration of the President, has received his assent, brings the case within proviso (c) to clause (1) of Article 213. Counsel added that this is precisely why the principal Act was reserved for the consideration of the President and was first published in the Gazette of May 26, 1961, only after it had received the assent of the President of India on May 18, 1961. It is also significant that before promulgating Punjab Ordinance 2 of 1961, whereby section 47 of the Act was amended, the instructions of the President of India to promulgate the Ordinance had been obtained. Section 47 of the Act has by itself nothing to do

with the acquisition of land. The Punjab Agricultural Produce Markets (Amendment) Act (3 of 1962) was reserved for the assent of the President of India and was published in the Punjab Gazette (Extraordinary), dated April 25, 1962, only after it had received the assent of the President on April 24, 1962. That Act replaced Punjab Ordinance No. 2 of 1961. Again, the Punjab Agricultural Produce Markets (Second Amendment) Act (23 of 1962) was not published in the Gazette till it had received the assent of the President of India on November 26, 1962. Amendments to sections 26 and 28 of the Act were made by Act 23 of 1962. Once again it may be noticed that those provisions had nothing to do with the acquisition of land. Reference was then made to the Punjab Agricultural Produce Markets (Amendment) (Act 40 of 1963). It received the assent of the President of India on November 22, 1963, and was published in the official gazette on the next day. One of the amendments made by that Act was to section 3 of the principal Act which relates to the constitution of the Board and the appointment of its Chairman. Counsel submitted that any Act or Ordinance amending any provision of a principal Act which principal Act was required to be reserved for consideration of the President, must itself similarly conform to the requirements of clause (2) of Article 254 of the Constitution irrespective of whether the amendment itself is or is not repugnant to any provision of an existing Central Law. In the alternative it was submitted that even if all the amending Acts may or may not require such assent of the President, any legislative enactment amending section 3 of the Act would always require to be reserved for the consideration of the President as the State Government is authorised under section 34 of the Act to acquire land on the request of the Board constituted under the Act on payment of compensation by the Board, and section 3 deals with the constitution of the Board itself. In support of the proposition that all amending Acts of a principal Act which fall within the mischief of Article 254(2) of the Constitution must also be similarly reserved for the consideration of the President, reliance was placed on the Full Bench judgment of the Patna High Court in *Mangtulal and another* v. *Radha Shyam and anothrer,* (1). In that case it was held that the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1951, which extended the duration of the principal Act beyond the date originally fixed in that Act was void as it had not been

(1) A.I.R. 1953 Patna 14.

reserved for the consideration of the President, and it did not receive his assent under Article 254(2) of the Constitution. On the other aspect of the matter relating to article 31(3), reliance was placed on Division Bench judgment of the Orissa High Court in *Sankarsana Ramanuja Das* v. *State of Orissa and another* (2). The question that came up for decision before the Division Bench of the Orissa High Court related to the meaning of the word "law" contained in Article 31(3) and Article 31-A of the Constitution. It was held that the expression "law" is used in clause (3) of Article 31 somewhat loosely to include even a Bill which has not yet become law by being assented to by the President or Governor, as the case may be. The argument which is relevant for our purposes was noticed by the Orissa High Court in the following words:—

> "As regards the second point raised by Mr. Mohapatra, his argument is that the Orissa Estate Abolition (Amendment) Act, 1954, was not a self-contained "law providing for the acquisition of an Estate" and would not, therefore, get the benefit of Article 31 A. That amending Act consists of only three sections. The first section deals with short title and commencement. The second section merely says that clause (g) of section 2 of the parent Act shall be substituted by a new clause. Section 3 has already been quoted. In the Preamble it is made clear that it is an amendment to the Orissa Estate Abolition Act. Doubtless, if this amendment Act had stood alone it may not amount to a "law providing for acquisition of any Estate" because there is no specific mention, anywhere in that Act, about the acquisition of estates. According to Mr. Mohapatra, the amending Act, would get the protection of Article 31-A only if that Act, itself contains express provisions for the acquisition of an estate."

The submission about the amending Act getting the protection of Article 31-A only if the amending Act itself contained express provision for acquisition of an estate was repelled and was held to be based on a misconception about the legislative practice in India regarding amendment to a statute and the effect of an amending Act

(2) A.I.R. 1957 Orissa 96.

on the parent Act. It was then observed in that connection as below:—

> "This argument is based on a misconception about the legislative practice in India regarding amendments to statutes and the effect of an amending Act on the parent Act. It is well known that there are two methods of amending a statute. One method is to amend the parent Act by naming the omissions and insertions necessary to change the affected provision. The other method is to state the effected provision in full in its changed form. The Indian legislative practice all along has been to make textual amendments in the parent Act, leaving the Act to speak as so altered.
>
> In England, however, though such textual substitution is now becoming more and more common, most of the amending legislation takes the form of separate Acts by adding to or modifying the substance of the earlier enactments and many of the earlier provisions, instead of being textually altered, 'are deemed to extend', or 'are to have effect', so as to include new matter, or otherwise to have a modified effect. If the English legislative practice of making amendments to statutes had been in vogue in India all along, there may be some force in the contention of Mr. Mohapatra, that unless the amending Act also deals with acquisition of estates in express terms, it will not be a 'law providing for acquisition.'
>
> "But the Indian practice has been only to make textual amendments in the parent Act leaving that Act to speak as so altered; and when the framers of the Constitution used the expression 'law' in Article 31-A, it must be assumed that they knew this legislative practice in India. Hence as a matter of construction, it must be held that the words 'law providing for acquisition' occurring in Article 31-A(1) would include not only the parent Act providing for acquisition, but also the amending Act which should be deemed to have been incorporated in the parent Act even though the amending Act, in express terms, provides only for textual amendment of certain clauses. The amending Act cannot stand isolated and must be held to have been

read by the President, as forming part of the parent Act, when he gave his assent to it."

The decision of the Orissa High Court in *Sankarasana Ramanuja Das's case* (2) (supra) was upheld by their Lordships of the Supreme Court in *Mahant Sankarshan Ramanuja Das Goswami, etc., etc.* v. *State of Orissa and another* (3). Their Lordships of the Supreme Court held that the amending Act must be considered in relation to the old law which it sought to extend and to which the President assented (to such an extension) in the following passage:—

"The first argument is clearly untenable. It assumes that the benefit of Article 31-A is only available to those laws which by themselves provide for compulsory acquisition of property for public purposes and not to laws amending such laws, the assent of the President notwithstanding. This means that the whole of the law, original and amending, must be passed again, and be reserved for the consideration of the President, and must be freshly assented to by him. This is against the legislative practice in this country. It is to be presumed that the President gave his assent to the amending Act in its relation to the Act it sought to amend, and this is more so, when by the amending law the provisions of the earlier law relating to compulsory acquisition of property for public purposes were sought to be extended to new kinds of properties. In assenting to such law, the President assented to new categories of properties being brought within the operation of the existing law, and he, in effect, assented to a law for the compulsory acquisition of public purposes of these new categories of property. The assent of the President to the amending Act thus brought in the protection of Article 31-A as necessary consequence. The amending Act must be considered in relation the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purposes."

(11) Reference was then made by Mr. Kuldip Singh to *Rameshwar Kumar and others* v. *R. P. Mishra and others* (4). A Division Bench

(3) A.I.R. 1967 S.. 59.
(4) A.I.R. 1959 Patna 488.

of the Patna High Court held in that case that the Land Acquisition (Bihar Amendment) Act (11 of 1956) whereby section 35 of the Land Acquisition Act was amended had no legal effect in the State of Bihar as the Act had not been reserved for consideration of the President, and the President's assent had not been received. Section 35 of the Central Act provides for temporary acquisition of waste and arable land, and relates to the procedure when difference as to compensation exists. It was held that the amending Act required the assent of the President as much as the principal Act. The last case to which reference was made in this connection is *P. Achiah Chetty and others* v. *State of Mysore and others* (5). The City of Bangalore Improvement (Amendment) Act (13 of 1960) whereby section 27-A was introduced into the parent Mysore Act validating retrospectively acquisition of land under the parent Act was held to be invalid as it had not been reserved for the consideration of the President as required under clause (2) of Article 254 of the Constitution. It was held that the provisions of the Ordinance which preceded the amending Act as well as of the Amendment Act were repugnant to the provisions with respect to the same matter contained in the City of Bangalore Improvement Act, which was an existing law, and that no instructions of the President under the proviso to Article 213 having been received in respect of the Ordinance and the amending Act not having been reserved for the consideration of the President and not having received his assent, both the Ordinance and the amending Act were void.

(12) The only argument that could be advanced by Mr. Mela Ram Sharma, the learned Deputy Advocate-General for the State of Punjab, who appeared for the respondents, in reply to the abovementioned arguments of the petitioners was that the assent of the President was not necessary is the case of an amendment. In the face of the law laid down in the cases to which reference has already been made, there appears to be no force in this submission of Mr. Sharma. Regarding clause (3) of Article 31 of the Constitution Mr. Sharma had an additional argument to advance. He submitted that the only effect of the Ordinance not having been promulgated after obtaining instructions of the President was that it ceased to be immune to the attack for violation of Article 14 of the Constitution under Article 31A(1)(a). That may or may not be so, but the fact

(5) A.I.R. 1962 Mysore 218.

remains that on account of the provisions of clause (2) of Article 254 read with proviso (c) to Article 213(1) of the Constitution the amending Ordinance must be held to be having no effect in the State of Punjab, and, therefore, being void, as the same seeks to amend a law which could be passed by the State Legislature only in exercise of the power vested in it under an entry in the Concurrent List. Mr. Sharma pointed out that Article 254(2) does not relate to a legislative enactment as a whole, but is confined to the particular provision of law which may possibly be repugnant to the provisions of an earlier law. I am unable to agree with this submission. The opening words of clause (2) of Article 254 relate to "a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List." The expression "provisions" contained in that Article relates to the provisions of an earlier law or an existing law. If any part of the law made by a State Legislature under any entry in the Concurrent List is repugnant to any provision in an existing law or a Central law, the law made by the State Legislature will be void unless the law as such has been reserved for the consideration of the President and has received his assent. Mr. Sharma submitted that in contradistinction to the proviso to Article 304, which incapacitates the State from introducing a Bill or even an amendment of a Bill in the Legislature by making an express provision to that effect, no provision specifically relating to an amending Bill has been made in clause (2) of Article 254. Learned counsel placed reliance in this connection on a Division Bench judgment of the Andhra Pradesh High Court in *Sri Durga Rice and Baba Oil Mills Co., Nidubrole* v. *State of Andhra Pradesh and others* (6). In that case it was held that the Andhra Pradesh General Sales Tax (Second Amendment) Act (2 of 1959) had not become invalid merely because the parent Act had been assented to by the President and the amending Act had not been so assented. It was in that connection that it was observed that it was not every amendment that should be submitted for the assent of the President irrespective of whether the amendment involves anything which calls for the assent of the President or not, merely because the main Act was referred to him for his assent. That was a case under Article 304 of the Constitution and is not relevant for deciding the issue before me. Reference was then made to the judgment of the Kerala High Court in *Koteswar Vittal Kamath* v. *K. Rangappa*

(6) A.I.R. 1964 A.P. 266.

Baliga and Co. (7), in support of the proposition that the mere fact the parent Act had required assent would not by itself require the assent of the President to an amending Act. That case was also under Article 304(b) of the Constitution. An existing provision in the principal Act had been repealed by the amending Act. It was held that repealing was not imposing restrictions and so the proviso to Article 304(b) did not affect the validity of the repealing Act. That case is also, therefore, not relevant to the issue before me.

(13) After carefully considering the submissions made by the learned counsel for both sides, I am of the opinion that in view of the pronouncements of the various High Courts to which Mr. Kuldip Singh has referred, it was necessary to obtain instructions of the President under proviso (c) to Article 213(1) of the Constitution before the Governor of Punjab could promulgate Ordinance 7 of 1970, amending a law partly dealing with a subject relevant to entry 42 in the Concurrent List, which law is at least to some extent repugnant to the provisions of the Land Acquisition Act, 1894, which was an existing law and had been made by the Central Legislature.

(14) The second argument in support of the unconstitutionality of the Ordinance relates to the alleged violation of Article 14 of the Constitution. Learned counsel for the petitioners submitted that the second petitioner Board was constituted for a tenure of three years on January 7, 1970, and the first petitioner was appointed its Chairman for the same period. Allowances, etc., of petitioner No. 1 had been fixed for the duration of his appointment. According to Mr. Kuldip Singh, the State cannot make a law merely for the purpose of curtailing the life of this particular Board alone. It is then contended that whereas clause 3(iv) of the Ordinance provides for reasonable opportunity being afforded to all the Boards constituted under the Act before suspending them, no such opportunity was given to the second petitioner Board before it was superseded. Relying on the judgment of the Supreme Court in *Dinnapati Sadasiva Reddi, Vice-Chancellor, Osmania University* v. *Chancellor, Osmania University and others* (8), counsel submitted that the classification between the second petitioner Board on the one hand and all other Boards that may be constituted under the Act in future on the other hand,

(7) A.I.R. 1964 Kerala 92.
(8) A.I.R. 1967 S.C. 1305.

brought about by the Ordinance is not reasonable as the same is not based on an intelligible differentia distinguishing the second petitioner Board from the future Boards to be constituted under the Act. It was emphasised that clause 7 of the Ordinance is directed only against the petitioner Board denying it even the benefit of clause 3(iv) of the Ordinance which benefit would be available to all other Boards to be constituted under the Act. In the Osmania University *case* (supra) what happened was this. The Osmania University (Amendment) Act (II of 1966) amending the Osmania University Act of 1959 in certain particulars was passed in 1966. The said amendments were to the effect that the Vice-Chancellor of that University could not be removed from the office except as provided in section 12(2) of the Amended Act. The term of office was also fixed at three years under the Amended Act. The term of office of Dinnapati Sadasiva Reddi, who had been appointed as Vice-Chancellor on April 30, 1964, for a period of five years before the amendment of the Act was to expire in the end of April, 1969. He continued to be the Vice-Chancellor after the first amendment of the Act in 1966. Then came the Osmania University (Second Amendment) Act (11 of 1966) the validity of which was called in question, before the Andhra Pradesh High Court, and then in the Supreme Court. Section 13A of the Osmania University Act was enacted by the impugned amendment Act. The effect of that section was that the person holding the office of the Vice-Chancellor immediately before the commencement of the impugned Act was to hold office only until a new Vice-Chancellor was appointed. It was further provided that such appointment had to be made within 90 days after the commencement of the second amendment Act. The provision in the impugned Andhra Pradesh Act, which was analogous to the impugned clause 7 of the Punjab Ordinance was to the effect that on the appointment of such new Vice-Chancellor and on his entering upon his office, the person holding the office of Vice-Chancellor immediately before such appointment was to cease to hold that office. Section 33-A (introduced into the second amendment Act of 1966) made special provision as to the reconstitution of the Senate, Syndicate, Academic Council and the Finance Committee of the Osmania University. The attack made on the validity and constitutionality of the second amendment Act was repelled by the Andhra Pradesh High Court, and the writ petition of the Vice-Chancellor was dismissed. Against that order, the Vice-Chancellor went up in appeal by special leave to the Supreme Court. Their Lordships

struck down section 13-A of the impugned Act which provided for the automatic termination of the appointment of the Vice-Chancellor on the appointment of a new one as being violative of the guarantee of equal protection of laws. The arguments which prevailed with the Supreme Court are summed up in the following passages of their Lordships judgment:—

> "According to Mr. Setalvad, the appellant is entitled to take advantage of the provisions of section 12(2) of the Act. On the date of the passing of the First Amendment Act, the appellant was, admittedly, a Vice-Chancellor and he had been continuing as such. He cannot be removed from his office, except in accordance with the provisions of section 12(2) of the Act. But, in view of section 13-A of the Act, introduced by the Second Amendment Act, the appellant is forced out of his office, within 90 days of the passing of the Second Amendment Act. The creation of two classes of Vice-Chancellors, viz., of Vice-Chancellors appointed under the Act and the Vice-Chancellor who was in office on the commencement of the Second Amendment Act, is not on any rational basis. Persons appointed as Vice-Chancellors, constitute a group. and the impugned provision makes a differentiation between the person who is a Vice-Chancellor then and other persons who are to be appointed Vice-Chancellors thereafter, for which differentiation, there is absolutely no basis. Further, even if it can be stated that there is any basis for the said classification, nevertheless, there should be a nexus or connection between the basis of the classification and the object of the legislation, which again, is lacking in this case.
>
> Mr. Setalvad further urged that while the services of a Vice-Chancellor appointed under the Act, could be terminated only in accordance with the provisions contained in section 12(2) of the Act, the appellant's services could be terminated under section 13-A, without adopting the procedure laid down in section 12(2) of the Act. There was also no provision in the Act, Mr. Setalvad pointed out, making secion 13(2) (12)(2)? applicable to Vice-Chancellors to be appointed in future. Though the term of office for

a Vice-Chancellor has been fixed under the Act, even after the amendments, as three years, and that may apply to all the Vice-Chancellors, so far as the appellant is concerned, his term has been reduced or restricted to 90 days under section 13-A of the Act.

Mr. Setalvad again urges that even assuming that it is open to the Legislature, in an appropriate case, to make provisions applicable to only one individual or a group of individuals, nevertheless, it is well established, by this Court, that the classification that is effected by the statute must be a classification founded on an intelligible differentia and that differentia must have a rational relation to the object sought to be achieved by the statute. Applying these two tests learned counsel urges, that the impugned legislation must be considered to be violative of Artice 14 of the Constitution."

While striking down the impugned provision, the Supreme Court held as below:—

"There can be no controversy that section 13-A introduced by section 5 of the Second Amendment Act, deals only with the appellant. In fact, the stand taken on behalf of the respondents in the counter-affidavit filed before the High Court, was to the effect that the Legislature had chosen to treat the Vice-Chancellor holding office at the time of the commencement of the Second Amendment Act, as a class by himself and with a view to enable the Chancellor to make fresh appointments, section 13-A of the Act was enacted.

This is a clear case where the statute itself directs its provisions, by enacting section 13-A, against one individual, viz., the appellant; and, before it can be sustained as valid, this Court must be satisfied that there is a reasonable basis for grouping the appellant as a class by himself and that such reasonable basis must appear either in the statute itself or must be deducible from other surrounding circumstances. According to learned counsel for the appellant, all Vice-Chancellors of the Osmania University

come under one group and can be classified only as one unit and there is absolutely no justification for grouping the appellant under one class and the Vice-Chancellors to be appointed in future under a separate class. In any event, it is also urged that the said classification has no relation or nexus to the object of the enactment. * * *

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The appointment of the appellant in 1959 and again in 1964, under section 12(1) of the Act, as it stood prior to the two amendments, by the Chancellor, must have been, no doubt, from a panel of names submitted by a committee constituted under section 12(2). The appointment of a Vice-Chancellor after the passing of the First Amendment Act, is to be made exclusively by the Chancellor under section 12(1), as the section now stands. That is a circumstance, relied on by the respondent, for differentiating the appellant as an existing Vice-Chancellor from a Vice-Chancellor to be appointed under the Act, as amended. Another circumstances relied on is that the appellant has been a Vice-Chancellor for 7 years. In our opinion, these are not such vital or crucial factors which will justify treating the appellant as a class by himself, because the powers and duties of a Vice-Chancellor, either under the Act, prior to the amendment, or under the Act, after amendment, continue to be the same. To conclude, the classification of the appellant, as a class by himself, is not founded on any intelligible differentia, which distinguishes him from other Vice-Chancellors, and it has no rational relation to the object of the statute, and so section 13-A is hit by Article 14."

The appeal of the Vice-Chancellor was allowed and section 13-A was struck down on the finding that the differentia adopted in that provision and directed against the appellant Vice-Chancellor and the appellant alone could not be considered to have a rational relation to the object sought to be achieved by the Second Amendment Act. It was also held that while a Vice-Chancellor appointed under section 12 of the Act could be removed from office only by adopting the

procedure under section 12(2), the services of the appellant Vice-Chancellor, who was otherwise similarly situated, were sought to be terminated merely by enacting section 13-A of the Act underlying which provision no such policy could be detected as could justify this differential treatment accorded to him. The judgment of the Supreme Court in the *Osmania University case* (8), (supra) appears to me to completely cover the case of the petitioners. One has merely to read the provisions of the Second Amendment Osmania University Act on the one hand, and the provisions of the impugned Punjab Ordinance on the other to find out that the infirmity which was found in section 13-A of the Andhra Pradesh Act is present to the same extent and in the same manner in clause 7 of the impugned Punjab Ordinance.

(15) Reference was also made by counsel to the judgment of the Supreme Court in *Ram Dial and others* v. *The State of Punjab* (9), in support of the proposition that the provisions for automatic removal contained in the Ordinance for the petitioner Board as compared with the similar provisions contained for suspending all other Boards constituted under the Act were parallel and had been enacted for achieving the same object under the Act, viz., to oust the existing Board, but the machinery for achieving that object in the case of the petitioner Board was extremely drastic whereas the machinery for achieving the same object in respect of all other Boards constituted under the Act was normal and reasonable. In *Ram Dial's case* (9) (supra) which related to sections 14 and 16 of the Punjab Municipal Act (3 of 1911), it was held that even if section 14(e) of that Act was wider than section 16(1), there was no doubt that all the reasons given in clauses (a) to (g) were in the public interest, and, therefore, even if the State Government intended to remove a person for any reasons given in those clauses, it could take action under section 14(e), and then circumvent the provisions contained in the proviso to section 16(1) for hearing. According to Mr. Kuldip Singh, this is what has been achieved by enacting clause 7 of the Ordinance to circumvent the provisions contained in section 3(8) of the Act (as amended) for giving an opportunity to the Board to show cause against its suspension. For the same proposition reference was also made to the judgment of the Supreme Court in *Northern India Caterers (Private) Ltd. and another* v. *State of*

(9) A.I.R. 1965 S.C. 1518.

Punjab and another (10). The argument of the learned Deputy Advocate-General to the effect that the object of the different treatment meted out to the petitioner Board and the future Boards is clear from the change in the constitution of the Board brought about by the amendment of sub-section (8) of section 3 of the Act is fully met by the last passage of the judgment of the Supreme Court in *Osmania University's case* (8). I would, therefore, strike down clause 7 of Ordinance 7 of 1970, which provides that on and with effect from the date of constitution of the Board under sub-section (1) of section 3 as substituted by the Ordinance, the second petitioner Board which existed immediately before that day, and whose normal life was to continue till January, 1973, stood automatically dissolved.

(16) This takes me to the second main ground urged by Mr. Kuldip Singh, relating to the validity of the notification Annexure 'H' issued by the State Government on September 11, 1970. It is common ground between the parties that the notification in question could not possibly have been issued till the Ordinance came into force. In the absence of any provision having been made about the time when the Ordinance was to come into force, it is deemed to have become effective from September 11, 1970, the date on which it was published in the official gazette. Even if it could be assumed that the Ordinance came into force immediately after the midnight between September 10 and 11, 1970, the notification could only be signed and issued sometime after that. That impugned notification which has appeared in the same Gazette was obviously and admittedly signed by the Joint Secretary to the Punjab Government in the Agriculture Department, before the Ordinance was published, as it would otherwise have been humanly impossible to have it published in the same gazette. On that short ground, the notification (Annexure 'H') has to be struck down as having been issued without any authority. In this view of the matter, it is unnecessary to go into the question of *mala fides*. Even otherwise, on the material on the record of this case and in view of the withdrawal of the specific allegations of *mala fides* made by the petitioners on the earlier occasion against the present Chief Minister and the Agriculture Minister, it is not possible for me to hold that there was any malice in the minds of the Chief Minister and the Agriculture Minister which led to the issuing of this notification. The notification was

(10) A.I.R. 1967 S.C. 1581.

envisaged under the Ordinance which had been promulgated by the Governor. In promulgating the Ordinance, the Governor was acting in his individual judgment and was not bound by the advice of his Council of Ministers (*vide Jayantilal Amrat Lal Shodhan* v. *F. N. Rana and others* (11). The notification cannot, therefore, be held to be *mala fide*. Nor am I able to find any force in the submission of Mr. Kuldip Singh to the effect that it was necessary to serve any show-cause notice on either of the two petitioners before issuing the notification Annexure 'H' as section 3(1) of the Act as amended by the Ordinance read with clause 7 of the Ordinance does not envisage the affording of any opportunity to the Board which is automatically to cease on the issue of the notification. In fairness to Mr. Kuldip Singh, it may be noticed that he relied on the judgments of the Supreme Court in *State of Orissa* v. *Dr. (Miss) Binapani Dei and others* (12), and in *A. K. Kraipak and others* v. *Union of India and others* (13), in support of the proposition that it was necessary for the State Government to afford opportunity to both the petitioners before terminating their tenure by notification Annexure 'H' as their civil rights were likely to be and were in fact affected by the notification.

(17) I am also not able to agree with Mr. Kuldip Singh to the effect that the Government was bound to give 15 days notice to the petitioners before terminating their tenure in view of the undertaking given by the learned Advocate-General at the time of the dismissal of the previous writ petition. Such notice would have been necessary only if action was envisaged to be taken under the provisions of the unamended Act.

(18) The last submission of the counsel related to the validity of the order of the Government refusing to pay Rs. 1,800 per mensem as allowance to the first petitioner for the period June 20, 1970 (the date of notification Annexure 'E'), to September 11, 1970 (the date of notification Annexure 'H'). In the view that I have taken of the first two points urged by learned counsel, it is unnecessary to finally pronounce on this aspect of the case. The claim of the first petitioner

(11) A.I.R. 1964 S.C. 648.

(12) A.I.R. 1967 S.C. 1269.

(13) A.I.R. 1970 S.C. 150.

is based on clause (c) if section 4 of the Punjab General Clauses Act, which provides *inter alia* that where any Punjab Act repeals any enactment then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The argument of the learned counsel was that the mere repeal of rule 15-A (Annexure 'B') could not affect the rights accrued to the first petitioner under rule 15-A till the notification conferring those rights was itself cancelled. Though there does appear to be some force in this contention, it is not necessary to give any decision on this point for the reasons already assigned.

(19) For the foregoing reasons, this petition is allowed, clause 7 of the Punjab Ordinance 7 of 1970, is struck down as being violative of Artcile 14 of the Constitution and the whole of Ordinance 7 of 1970, is held to be unconstitutional and of no effect in the State of Punjab as it has been passed without obtaining instructions from the President of India under proviso (c) to Article 213(1) read with clause (2) of Article 254 of the Constitution. The notification (Annexure 'H') constituting the new Board automatically falls and is even otherwise struck down for the reasons already recorded. The result is that the new Board purporting to have been constituted by State Government under the Act as amended by the Ordinance has never come into existence in the eye of law, and the second petitioner Board is deemed to have continued to be in existence, and the first petitioner continues to be its Chairman.

(20) At one time I was thinking of referring this case to a Division Bench on account of important, constitutional and legal questions involved in it, but in view of the time taken by the counsel in arguing this case before me and the fact that statutory right of appeal against my judgment to a Division Bench is conferred by clause 10 of the Letters Patent on the party aggrieved of my judgment, I refrained from adopting that course. In these circumstances I do not think this to be a case for burdening any party with the costs of the other. The parties shall, therefore, bear the costs of this writ petition as incurred by them.

K. S. K.