period of two months and the result of the successful candidates be declared within a month thereafter. The parties to bear their own costs.

R.N.R.

Full Bench

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

RAMESH BIRCH AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 736 *of* 1987.

May 25, 1988.

Punjab Reorganisation Act, 1966—*Section* 87—*East Punjab Urban Rent Restriction (Amendment) Act (Punjab Act II of* 1985)—*Indian Stamp (Punjab Amendment) Act*, 1981—*Scope of Section* 87—*Power of Centre Government to extend amendment Act to Union Territory of Chandigarh—Amendment act—Post appointed date—Extension of such Acts by notification—Validity of such extension.*

Held, that Section 87 of the Punjab Reorganisation Act, 1966 does not limit the power of the Central Government to extend only such enactments which were in force on November 1, 1966, which had not been repealed at the date of the notification. Any enactment, which is in force at the date of the notification could be extended with such restrictions or modifications to the Union Territory of Chandigarh. That the provisions of Section 87 enable the Central Government to extend any enactment which came into force after the appointed day and, in our opinion, the section clearly authorises the Central Government to extend all enactments which came into force after the appointed day and which were still in force at the date of the notification.

(Paras 9 and 11).

Held, further that Section 87 does not suffer from the vice of impermissible delegation of legislative power and is not unconstitutional.

(Para 16).

Held, that we are unable to agree that the extension in any way amounts to an amendment of the existing law by the delegate. The amendment has been done by the legislature of the original enactment and it is that enactment that was extended and the notification by itself does not amend the existing law.

(Para 31).

Chander Bhan *vs.* Maha Singh and another.
A.I.R. 1965 Pb. 279.

(*Over-ruled*).

(*This case alongwith C.W.P.* 1754 *of* 1987, *was referred to Full Bench of Three Judges by the Division Bench consisting of Hon'ble the Chief Justice Mr. H. N. Seth and Hon'ble Mr. Justice M. S. Liberhan*,—vide *order dated* 1st *September*, 1987 *for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. V. Ramaswami, the Hon'ble Mr. Justice Ujagar Singh and Hon'ble Mr. Justice G. R. Majithia finally decided the case on* 25*th May*, 1988).

Petition under Articles 226/227 *of the Constitution of India praying that*:—

(*i*) *a writ in the nature of Certiorari quashing the Notification No. G.S.R.* 1287(*E*) *dated* 15*th December*, 1986 *contained in Annexure P-3 and the notice issued by the Rent Controller contained in Annexure P-2 be quashed.*

(*ii*) *a writ in the nature of Mandamus or any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case, be issued.*

(*iii*) *in view of the peculiar circumstances of the case, and urgency of the matter, the issuance of prior notices to the respondents, be dispensed with.*

(*iv*) *filing of certified copies of the Annexures be dispensed with as the same are not readily available with the petitioners.*

(*v*) *costs of the petition be awarded to the petitioners.*

It is further prayed that the proceedings started against the petitioners on the basis of Annexure P-2 may kindly be stayed during the pendency of the writ petition and the implementation of the notification contained in Annexures P-3 may also be stayed till the final disposal of the writ petition.

Amrit Lal Jain, Advocate, *for the Petitioners.*

Ashok Bhan, Senior Advocate, A. K. Mittal and Rakesh Garg Advocates with him, *for the Respondents.*

JUDGMENT

V. Ramaswami, C.J.—

(1) In C.W.P. 736 of 1987, the petitioners, who are the tenants of the ground floor portion of H. No. 2135, Sector 38-C, Chandigarh, have filed this writ petition praying for quashing of the Notification No. GSR-1287 (E), dated December 15, 1986 by which the Central Government in exercise of the powers conferred by section 87 of the Punjab Reorganisation Act, 1966 (Act No. 31 of 1966) have extended to the Union Territory of Chandigarh the East Punjab Urban Rent Restriction (Amendment) Act, 1983, (Punjab Act 2 of 1985) as in force in the State of Punjab at the date of the notification subject to the modifications mentioned in the said notification. This Amendment Act 2 of 1985, which was extended to the Union Territory of Chandigarh incorporated section 13-A in the East Punjab Urban Rent Restriction Act 3 of 1949, which conferred certain special rights in favour of "specified landlord" which expression means "a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held on appointment in public service or post in connection with the affairs of the Union or of a State" in the matter of recovery of possession of residential or scheduled buildings.

(2) In the other writ petition (C.W.P. No. 1754 of 1987), the petitioner who agreed to purchase a residential plot No. 239-P, Sector 33-A, Chandigarh, has prayed for quashing of the notification No. GSR (E)-1339, dated December 30, 1986, by which the Central Government in exercise of the powers conferred by section 87 extended to the Union Territory of Chandigarh the Indian Stamp (Punjab Amendment) Act, 1981 (Punjab Act No. 27 of 1981), by which the stamp duty payable on deeds of conveyance had been increased.

(3) Since in both these writ petitions, the petitioners have raised almost identical constitutional question, they were directed to be clubbed together.

(4) The validity of the two notifications were questioned by the learned counsel for the petitioners mainly on the following three grounds :—

1. Section 87 of the Punjab Reorganisation Act, 1966, authorises the Central Government to extend to the Union

Territory of Chandigarh only such enactments as were in existence on the date (1st November, 1966) on which the Act was enforced. Both the *East Punjab Urban Rent Restriction (Amendment) Act (Punjab Act 2 of 1985) and the Indian Stamp (Punjab Amendment) Act, 1981, were enacted, much after November* 1, 1966. As none of these two Acts were in force in the territory of Punjab on the relevant date, the Central Government had no jurisdiction to, in exercise of its powers under section 87 of the Punjab Reorganisation Act, 1966, extend the same to the Union Territory of Chandigarh.

2. In case it is held that the section empowers the Central Government to extend the enactments enacted after the said day as well, it would suffer from the vive of impermissible delegation of legislative powers and would be rendered unconstitutional.

3. The section does not permit the Central Government to, either directly or indirectly, amend or modify a Central Act already in force in the Union Territory of Chandigarh.

The Division Bench before whom the two writ petitions were first listed for hearing, came to the conclusion that in their view section 87 clearly authorises the Government to extend to the Union Territory of Chandigarh enactments brought into force in any State after November 1, 1966, as well. They did not also accept the contention that the conferment of said power on the Executive amounted to impermissible delegation of legislative power rendering the same unconstitutional. However, on the third point raised, finding a conflict of views in *Chander Bhan* v. *Maha Singh and another* (1), which is a decision of a Division Bench of this Court and two decisions of the Delhi High Court in *Smt. Marchi* v. *Mathu Ram* (2) *and Faqir Chand Sharma* v. *C.P.W.D. Work-Charged Staff Consumers Cooperative Society Ltd., and others*, (3), (F.B.) and in the view that the decision of this Court in *Chander Bhan's case* (supra) requires further consideration by a larger Bench, the learned Chief Justice referred these two writ petitions for decision by a Full Bench. That is how the matter is before us.

(1) A.I.R. 1965 Punjab 279.
(2) A.I.R. 1969, Delhi 267.
(3) A.I.R. 1972, Delhi 135.

(5) Before dealing with the constitutional questions raised in this case, in order to appreciate the submissions made by the learned counsel, it is necessary to trace the history of the notifications. The Punjab Reorganisation Act, 1966 (Act No. 31 of 1966) was enacted by the Parliament with a view to reorganize the existing State of Punjab on linguistic basis so as to constitute two separate States of Punjab and Haryana and a new Union Territory in the name of Chandigarh. In the process, the Act also provided for transfer of certain areas of the existing State of Punjab to the then Union Territory of Himachal Pradesh as well. The new State of Haryana and the Union Territory of Chandigarh were formed on or from the appointed day, namely, first day of November 1966. The first schedule to the Constitution was also amended on and from November 1, 1966, including Punjab and Haryana as two independent States and Chandigarh as a Union Territory. After providing for various matters connected with reorganisation of the States, the Act contained three material provisions relating to adaptation of laws, extension of laws and the application of laws. The three sections relating to these are sections 87, 88 and 89 and they read as follows:—

"87. *Power to extend enactments to Chandigarh.*—The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to the Union Territory of Chandigarh any enactment which is in force in a State at the date of the notification.

88. *Territorial extent of laws.*—The provisions of Part II shall not be deemed to have affected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that state immediately before the appointed day.

"89. *Power to adapt laws.*—For the purpose of facilitating the application in relation to the State of Punjab or Haryana or the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of

two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority."

In exercise of the power conferred under section 89 of the Act, the Central Government issued the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968, which was published in the Gazette on October 30, 1968. This Adaptation Order came into force with effect from the first day of November 1966. Paras 3 and 4 of this order provided :—

"3. As from the appointed day, the existing laws and the Central Acts mentioned in the Schedule to this Order shall, until altered, repealed or amended by a competent Legislature or other competent authority have effect subject to the adaptations and modifications directed by the Schedule or, if it is so directed, shall stand repealed.

"4. Whenever an expression mentioned in column 1 of the Table hereunder printed, occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in an existing law, whether an Act mentioned in the Schedule to this Order or not, then, in the application of that law to the Union Territory of Chandigarh, or as the case may, to any part thereof, unless that expression is by this Order expressly directed to be otherwise adapted or modified or to be omitted, or unless the extent otherwise requires, there shall be substituted therefor the expression set opposite to it in column 2 of the said Table, and there shall also be made in any sentence in which

that expression occurs, such consequential amendments as the rules of grammar may require.

TABLE

1	2
(1) Punjab State; State of Punjab; whole of Punjab State; whole of State of Punjab or Punjab where it refers to the State of Punjab.	Union Territory of Chandigarh.
(2) Punjab Government; Government of Punjab; Government of the State of Punjab; State Government; State Government of Punjab.	Central Government
(3) High Court of Punjab; Punjab High Court.	High Court of Punjab and Haryana.

Para 2(1) (b) and (c) of this Order define "existing law" and "law" as follows :—

> " 'existing law' means any State Act or Provincial Act in force immediately before the appointed day in the whole or any part of the territories now comprised in the Union territory of Chandigarh and includes any rule, order, bye-law, scheme, notification or other instrument made under such State Act or Provincial Act, but does not include any law relating to a matter enumerated in the Union List; 'law' has the same meaning as in clause (g) of section 2 of the Punjab Reorganisation Act, 1966.

The Schedule to this Order refers to Indian Stamp Act, 1899, among others, but not the East Punjab Urban Rent Restriction (Act 3 of 1949) applied to all urban areas in Punjab. Section 2(j) of that

Act defined "urban area" as meaning any area administered by a municipal committee, a cantonment board, a town committee or a notified area committee or any area declared by the State Government by notification to be urban for the purpose of this Act. After the Adaptation Order was made, the Central Government in exercise of the powers conferred by clause (j) of section 2 of the Punjab Act 3 of 1949, issued Notification No. S.O. 3639, dated October 13, 1972, published in the Gazette of India dated November 4, 1972, declaring the area comprised in Chandigarh to be 'urban area' for the purposes of the East Punjab Urban Rent Restriction Act, 1949. Under section 13 of this Act, a tenant in possession of a building or rented land shall not be evicted therefore in execution of a decree passed before or after the commencement of the Act except in accordance with the provisions of that section.

6. On the ground that the notification brought into force by section 13 of the East Punjab Urban Rent Restriction Act in the Union Territory of Chandigarh, and, therefore, a decree for eviction made by a Civil Court could not be executed against a tenant against whom a decree for eviction was made by the Civil Court, the tenant filed an application before the learned District Judge objecting to the execution of the decree of eviction. This objection was upheld and the execution application was dismissed on the ground that the decree had become inexecutable under section 13 of the Act. The landlords-decree holder filed C.W.P. No. 266 of 1974 challenging the validity of the notification declaring the Union Territory of Chandigarh as 'urban area' for the purposes of the Act. One of the contentions was that in view of the provisions of sections 88 and 89 of the Punjab Reorganisation Act and in particular the definition of "existing law" in para 2(1) (b) of the Adaptation Order, 1968, the East Punjab Urban Rent Restriction Act, 1949, could not have been adopted for application to the Union Territory of Chandigarh and that, therefore, the notification was illegal. This case was considered and accepted by a Full Bench of this Court in *Dr. Harkishan Singh* v. *Union of India and others,* (4). The learned Judges held:—

> "From para 4 of the Adaptation Order, it is quite clear that only 'existing law' as defined in para 2 (1) (b) of the Order, could be adapted for application to the Union Territory of Chandigarh. It is, therefore, to be determined whether

(4) A.I.R. 1975 Pb. and Hry. 160.

the Act was in force in the whole or any part of the territories now comprised in the Union Territory of Chandigarh immediately before the appointed day, that is, November 1, 1966. There is no manner of doubt that according to Section 1(2) of the Act, it extended to all urban areas in the 'existing State of Punjab', as defined in section 2(j) of the Act, and came into force therein at once, that is, on March 25, 1949, when it was published in the Punjab Government Gazette, under Section 1(3) of the Act. The Act was capable of being brought into force in any other urban area of the State by a notification issued by the State Government. No such notification was ever issued before November 1, 1966, enforcing the Act in the whole or any part of the territories now comprised in the Union Territory of Chandigarh by declaring the same as urban area under section 2(i) of the Act or by constituting a municipal committee or a town committee or a notified area committee for these territories. The Act was, therefore, not in force in the whole or any part of the territories now comprised in the Union Territory of Chandigarh immediately before the appointed day. Under Section 88 of the Reorganisation Act, any law in force immediately before the appointed day in any territory forming part of the 'existing State of Punjab' was to continue to apply to that part of the territory even after reorganisation so as to maintain the continuity of the laws that were applicable in the territories of the 'existing State of Punjab', which were being divided into four successor States. 'Law' has been defined in section 2(g) of the Reorganisation Act as any Act, Rule, Regulation, etc. having the force of law in the whole or any part of the territories of the 'exsiting State of Punjab'. As I understand section 88 of the Reorganisation Act, it maintains the continuity of the laws which were in force in any part of the territory and does not enact that any law which applied to a part of the territories of the 'existing State of Punjab' was to extend to the entire territories comprised in the 'existing State of Punjab' and thus to all the successor States because of reorganisation. Section 88 only continued the laws in force in such territories in which they were in force immediately before the appointed day and did not enact them for any other territory of the 'existing State of Punjab' wherein they were

not in force before the reorganisation. In other words S. 88 did not enact any law; it only continued the laws in the territories in which they were already in force immediately before the appointed day."

7. In view of the decision of the Full Bench, the Parliament enacted the East Punjab Urban Rent Restriction Act (Extension to Chandigarh) Act, 1974 (No. 54 of 1974). Section 3 of this Act provided:—

"3. Extension of East Punjab Act III of 1949 to Chandigarh.

Notwithstanding anything contained in any judgment, decree or order of any court, the Act shall subject to the modifications specified in the Schedule, be in force in, and be deemed to have been in force with effect from 4th day of November, 1972 in the Union Territory of Chandigarh, as if the provisions of the Act so as modified had been included in and formed part of this section and as if this section had been in force at all material times."

The reference to 4th day of November, 1972, is to the date on which Notification No. S.O. 3639, dated October 13, 1972, was published and on which date the Punjab Act 3 of 1949 was sought to be enforced in Chandigarh. In the Schedule, apart from making certain verbal modifications, in substitute defined "urban area" as meaning the area comprised in Chandigarh as defined in clause (d) of section 2 of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act XXVII of 1952) and also including such other area comprised in the Union Territory of Chandigarh as the Central Government may by notification declare to be urban for the purposes of Act. For section 20 in the original Act, a new section 20 was also to be substituted. This Act also validated acts done or taken under the said notification. We may notice another enactment for the purpose of completeness, i.e., the Act made by the Parliament known as the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 (42 of 1982). By this amendment, in the short title to the Act, the word "East" is omitted and, therefore, the short title of the Act now is Punjab Urban Rent Restriction Act, 1949. This Act was enforced in the Union Territory of Chandigarh with effect from November 4, 1972.

8. The legislature of the State of Punjab enacted Punjab Act 2 of 1985 and amended Punjab Act 3 of 1949 by inserting new sections 13-A, 18-A and 18-B, in addition to making certain other amendment of sections 13, 19 and other provisions in the Act. This amendment came into force with effect from November 16, 1985. By the impugned Notification No. GSR 1287(E), dated December 15, 1986 the Central Government in exercise of the power under section 87 of the Punjab Reorganisation Act extended to the Union Territory of Chandigarh the provisions of Punjab Act No. 2 of 1985 as in force in the State of Punjab at the date of the Notification. Invoking the provisions of section 13A, as a "specified landlord" the third respondent in C.W.P. 736 of 1987 filed an application for ejectment of the petitioners in the writ petition, in the Court of the Rent Controller, Union Territory, Chandigarh. The petitioners (who are the tenants), therefore, have filed this writ petition questioning the constitutional validity of the notification made under section 87 extending the Amending Act No. 2 of 1985 to the Union Territory of Chandigarh.

9. The legislature of the State of Punjab enacted the Indian Stamp (Punjab Amendment) Act, 1981 (Act 27 of 1981) amending Schedule 1-A in its application to the State of Punjab in so far as it related to stamp duty payable on deeds of conveyance, increasing the duty substantially. This Act came into force with effect from June 1, 1981. By Notification No. GSR (E), 1339, dated December 30, 1986, impugned in C.W.P. No. 1754 of 1987, the Central Government in exercise of the powers under section 87, extended Punjab Act 27 of 1981 as in force in the State of Punjab at the date of the notifiaction to the Union Territory of Chandigarh. It is in these circumstances that the two writ petitions came to be filed.

10. Elaborating the first point referred to earlier, Mr. K. T. S. Tulsi, learned counsel for the petitioner, contended that section 87 of the Punjab Reorganisation Act permits application of only those laws to the Union Territory of Chandigarh as were in existence on the appointed day, i.e., November 1, 1966 and that the words "any enactment which is in force in a State at the date of the notification" in section 87 do not necesarily permit the application of post-existing laws. These words in the section only enabled the Central Government to apply such laws as were in force not only on the appointed day but also continue to be in force in a State at the date of the notification. It was merely to prevent the application

of such laws as might have been repealed by the erstwhile State since the appointed day, but before the notification, these illustrative words have been used in section 87. On a plain reading of section 87 we are unable to give any such restricted meaning. The word "notification" in the portion of section 87, which states "any enactment which is in force in a State at the date of notification refers to the notification in the official gazette mentioned in the earlier portion of the section and not the appointed day. It may be that even with reference to an enactment, which was in force on November 1, 1966, could not be extended under section 87 unless it has not been repealed on the date of the notification, but it is not correct to state that these words in any way imply that the Act shall have been in force both on November 1, 1966 as also on the date when the notification is made. The section does not limit the power of the Central Government to extend only such enactments which were in force on November 1, 1966, which had not been repealed at the date of the notification. Any enactment, which is in force at the date of the notification, could be extended with such restrictions or modifications, to the Union Territory of Chandigarh. This was the view expressed by the Bench in the refering order with which we respectfully agree. This is also the view, in our opinion, of the Supreme Court in *re. Art. 143, Constitution of India and Delhi Laws Act* (1912) *etc.* (5). The provisions of section 7 of Delhi Laws Act, 1912, section 2 of Aimer-Merwara (Extension of Laws) Act, 1947 and first part of section 2 of Part C States (Laws) Act, 1950, the validity of which was considered in that judgment, are almost identical in terms. The three questions referred for the opinion of the Supreme Court under Article 143(1) related to the vires of these provisions. The majority view was that the power conferred on the Central Government and the Provincial Government at their discretion to select and apply any Central Act or a provincial Act in existence at the date of the notification, was valid. Similarly, where the Government was permitted to select future Central or provincial laws, as the case may, which were in force at the date of the notification, and apply them in a similar way as above, is also valid. This decision was on the basis that relevant provisions considered by the Supreme Court included a power to extend all future laws also and not entitled to give the power of extension of only these Acts, which were already in existence on the date when the provisions were enacted.

(5) A.I.R. 1951 S.C. 332.

11. Mr. Amrit Lal Jain, learned counsel appearing for the writ petitioners in C.W.P. No. 736 of 1987, contended that this power under section 87 was given to the Central Government in order to give effect to the reorganisation provided under the Act and, therefore, the meaning will have to be restricted with reference to the object of the Act and in relation to matters connected with reorganisation and shall not to be considered as a general power conferred on the administration to extend the laws of any State to Union Territory. Though this provisions is contained in the Punjab Reorganisation Act, is to be read along with sections 88 and 89, relating to extension of laws, we are unable to restrict the meaning as contended for by the learned counsel. Section 88 kept the laws in force immediately before the appointed day intact and effective even after the reorganisation. They were made applicable and effective without any change in the territories in which they were in force immediately before the appointed day. The Central Government was enabled under section 89 to make such adaptations and modifications of the laws as may be necessary and expedient and the Courts are also enjoined under section 90 to construe the law in such manner without affecting the substance as may be necessary or proper even if no provision or insufficient provision has been made under section 89 for the adaptation of a law made before the appointed day. Having extended the laws in force on the appointed day, the Parliament has conferred power on the Central Government under section 87 to extend any other enactment which is in force in a State to the Union Territory of Chandigarh. Even restricting the meaning of the words "in force in a State" as that "in force in Punjab" still in the present case, since we are not concerned with the extension of any law of another State, the impugned notifications could not be questioned as not falling under section 87. If, as contended by the learned counsel for the petitioners, this provision under section 87 is intended to extend only these enactments, which were in force on the appointed day and which have not been repealed, there was no need for such a power, as sections 88 and 89 cover the same. We are, therefore, unable to agree with the learned counsel that the provisions of section 87 do not enable the Central Government to extend any enactment which came into force after the appointed day, and, in our opinon, the section clearly authorises the Central Government to extend all enactments which came into force after the appointed day and which were still in force at the date of the notification.

12. In *re. Delhi Laws Act case.*—A.I.R. 1951 S.C. 332, which is the leading case on delegated legislation, the Supreme Court considered similar provisions to that contained in section 87. Those provisions are contained in section 7 of the Delhi Laws Act, 1912, section 2 of the Ajmer Merwara (Extension of Laws) Act, 1947 and first part of section 2 of the Part C States (Laws) Act, 1950. These provisions are as follows :—

1. *Delhi Laws Act,* 1912.

Section 7.—The Provincial Government may, by notification in the official Gazette, extend with such restrictions and modifications as it thinks fit, to the Province of Delhi or any part thereof, any enactment which is in force in any part of British India at the date of such notification.

2. *Ajmer-Merwara (Extension of Laws) Act,* 1947

Section 2.—The Central Government may, by notification in the official Gazette, extend to the province of Ajmer-Merwara with such restrictions and modifications as it thinks fit any enactment which is in force in any other Province at the date of such notification.

3. *Part C States (Laws) Act,* 1950.

Section 2.—The Central Government may, by notification in the official Gazette extend to any Part C State (other than Coorg and the Andaman and Nicobar Islands) or any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State at the date of the notification; and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State."

The majority of the Judges held that so far as the provisions contained in section 7 of the Delhi Laws Act, 1912, section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947 and first part of section 2 of Part C States (Laws) Act, 1950, which empowered the Provincial and the Central Governments to, by notification in the official Gazette, extend the enactments made by various legislatures

to a particular area (new area) with restrictions and modifications, were concerned, they were valid and permitted by the Constitution. However, they held that the later part of section 2 of Part C States (Laws) Act, 1950, which enabled the Executive authority to repeal or amend any law, which is for the time being applicable to a Part C State was invalid and since that is severable, it does not affect the other valid part. The decision in *Delhi Laws Act case* (supra) was considered by the Supreme Court in *Rajnarain Singh* v. *Chairman, Patna Administraiton Committee, and another* (6), and after an analysis of each of the judgments delivered in that case, Bose J. speaking for the Court, observed:—

> "The Court had before it the following problems. In each case, the Central Legislature had empowered an executive authority under its legislative control to apply, at its discretion, laws to an area which was also under the legislative sway of the Centre. The variations occur in the type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows :—
>
> 1. Where the executive authority was permitted at its discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the legislative sway of the Centre to the new area;
>
> This was upheld by a majority of six to one.
>
> 2. Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances;
>
> This was also upheld, but this time by a majority of five to two.
>
> 3 . Where the executive authority was permitted to select future Central laws and apply them in a similar way;
>
> This was upheld by five to two.
>
> 4. Where the authorisation was to select future Provincial law and apply them as above;
>
> This was upheld by five to two.

(6) A.I.R. 1954 S.C. 569.

5. Where the authorisation was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial with or without modification;

This was held to be *ultra vires* by a majority of four to three.

6. Where the authorisation was to apply existing laws, either Central or Provincial, with alteration and modifications; and

7. Where the authorisation was to apply future laws under the same conditions.

The views of the various members of the bench were not as clear cut here as in the first five cases, so it will be necessary to analyse what each Judge said."

After an analysis of the view of the judgments of different Judges of the *In re. Delhi Laws Act case* (supra), in regard to Variation Nos. 6 and 7, the learned Judge concluded :—

"In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former cases, but this much is clear from the opinions set out above; it cannot include a change of policy."

These two decisions are clear authority, therefore, for the position that authorising the Central Government or the State Government to apply or extent the laws that exist on the date on which notification was made, is not unconstitutional and that Constitution permits the legislature to authorise the Executive to apply to new areas not only the laws that exist on the date on which the legislation containing such authorisation is enacted, but also these laws which are enacted thereafter and that such enactments can be extended with or without modification which does not entail any change in legislative policy.

13. In *N. K. Papiah and Sons* v. *The Excise Commissioner and another,* (7) one of the provisions that was impugned on the ground of impermissible dalegation of legislative power was section 22 of the Karnataka Excise Act, 1966. That section conferred on the Government a power to fix the rates of excise duty. It was contended that there was no guidance in the Act for fixing the rate and that amounted to abdication of essential legislative function of the legislature and, therefore, the section is bad. Rejecting this contention, the Supreme Court observed :—

> "We are not certain whether the preamble of the Act gives any guidance for fixing the rate of excise duty. But that does not mean that the legislature here has no control over the delegate. The legislative control over delegated legislation may take many forms."

On the various forms of control over the delegated legislation, they referred to a number of judgments and then ultimately concluded that when the legislature had preserved its capacity and retained its control over the delegate at any time to repeal the legislation and withdraw the authority and discretion it had vested in the delegate, the legislature could not be said to have abdicated its essential functions. This decision, in our opinion, is clear authority for the position that when the legislature can be said to retain control over its delegate, even confering a power to amend or modify would not amount to impermissible delegation of legislative power.

14. In between *In re. Delhi Laws Act case* (supra) and *N. K. Papiah's case* (supra), a numbtr of judgments of the Supreme Court had considered the doctrine of delegated legislation. Though various facts of delegation were considered and decided with reference to the proposition whether there was any delegation in essential feature which would amount to abdication of power, none of these decisions have held that provisions like section 87 or these that were considered and held valid in *re. Delhi Laws Act case* (supra) were treated as impermissible delegation of legislative power. All the decisions have held that provision like section 87 was intra vires and does not amount impermissible delegation of legislative power.

(7) A.I.R. 1975 S.C. 1007

15. Learned counsel for the petitioners, however, relying on the decision of *B. Shama Rao* v. *Union Territory of Pondicherry*, (8) contended that a statutory provision authorising the Executive to extend future laws to the new territories would be unconstitutional. As may be seen from the judgment, the question that came up for consideration before the Supreme Court was entirely different. On the *de jure* transfer of Pondicherry and vesting the same in the Central Government, a legislative assembly was constituted by the Parliament for the Union Territory of Pondicherry under the Union Territory Act, 1963. Under that Act, the Assembly acquired power of enacting laws in respect of items in List II and List III of the Seventh Schedule. The Assembly passed the Pondicherry General Sales Tax Act X of 1965, hereinafter referred to as the principal Act, which was published on June 3, 1965, after receiving the assent of the President on May 25, 1965, Section 1 (2) of that Act provided that the Act would come into force on such date as the Government may by notification appoint. Section 2(1) provided that "the Madras General Sales Tax Act, 1959 (Act No. 1 of 1959) as in force in the State of Madras immediately before the commencement of the Act shall extend to and come into force in the Union Territory of Pondicherry subject to the following modifications and adaptations." In exercise of the powers under section 1(2), the Pondicherry Government issued a notification dated March 1, 1966, bringing into force the Madras Act as extended by the Act to Pondicherry with effect from April 1, 1966, but in the meantime, the Madras Legislature had amended the Madras Act and consequently it was the Madras Act, as amended upto April 1, 1966, which was brought into force under the said notification. The contention of the petitioner in that case was that the principal Act was void and was a still-born legislation by reason of the Pondicherry legislature having abdicated its legislative function in favour of the Madras State Legislature, that such abdication resulted from the wholesale adoption of the Madras Act as in force in the State of Madras immediately before the commencement of the principal Act and that section 2(1) read with section 1(2) thereof meant that the legislature adopted not only the Madras Act as it was when it enacted the principal Act but also such amendment or amendments in that Act which might be passed by the Madras Legislature up to the time of the commencement of

(8) A.I.R. 1967 S.C. 1480.

the Act, i.e., upto April 1, 1966. This submission was accepted by the Supreme Court, by holding :—

> "The question then is whether in extending the Madras Act in the manner and to the extent it did under S. 2 (1) of the Principal Act the Pondicherry legislature abdicated its legislative power in favour of the Madras legislature. It is manifest that the Assembly refused to perform its legislative function entrusted under the Act constituting it. It may be that a mere refusal may not amount to abdication if the legislature instead or going through the full formality of legislation apolies its mind to an existing statute enacted by another legislature for another jurisdiction, adopts such an Act and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act and directs the executive to apply and implement such an Act. But when it not only adopts such an Act but also provides that the Act applicable to its territory shall be the Act amended in future by the other legislature, there is nothing for it to predicate what the Amended Act would be. Such a case would be clearly one of non-application of mind and one of refusal to discharge the function entrusted to it by the instrument constituting it. It is difficult to see how such a case is not one of abdication or effacement in favour of another legislature at least in regard to that particular matter."

(16) We are, however, unable to agree with the learned counsel on the second submission and hold that section 87 does not suffer from the vice of impermissible delegation of legislative power and it is not unconstitutional.

(17) That takes us to a consideration of the exact scope of section 87 and whether the impugned notifications in these cases would amount to amendment or alteration of an existing law which is impermissible under the Constitution. The argument on behalf of the petitioners was that the Supreme Court in *Re. Delhi Laws Act case* (supra) have specifically held that the later portion of section 2 of Part C States (Laws) Act, 1950 which stated that "provision

may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to the Part C State" was to be unconstitutional and, therefore, we cannot read into section 87 any power to amend, repeal or modify an existing law and since the impugned notifications amount to such an amendment and repeal, they are unconstitutional. The argument, in effect, was that once you extend the Act of a different legislature to Chandigarh and that had become the law of Chandigarh, an amendment of that law could not be made even if the original Act had suffered an amendment in the State where it was originally enacted and the power of extension in relation to that enactment is exhausted the moment the original Act was extended to Chandigarh. As stated above, since on this point, there appeared to be an apparent conflict between a Division Bench of this Court in *Chander Bhan's case* (supra) and two judgments of the Delhi High Court in *Smt. Marchi's case* (supra) and *Faqir Chand Sharma's case* (supra), the matter has been referred to the Full Bench.

18. Before we deal with the actual point that arose for consideration in *Chander Bhan's case* (supra) we may note some legislative history of the Stamp Act that was applicable to the Union Territory of Delhi. In exercise of the powers under section 7 of the Delhi Laws Act, 1912, by notification No. 189/38, dated May 30, 1939, and in supersession of all previous notifications under that section, the Central Government extended to the province of Delhi, the Indian Stamp (Punjab Amendment) Act, 1922 (Punjab Act 8 of 1922). In the year 1949, the Indian Stamp (East Punjab Amendment) Act, 1949 (Act 27 of 1949) was passed. This brought about various amendments to the Indian Stamp Act. This Act 27 of 1949 was extended to Delhi by Notification No. SRO 422, dated March 21, 1951, published in the Gazette on March 21, 1951, in exercise of the powers under section 2 of the Part C States (Laws) Act, 1950. The amendment made by this Punjab Act 27 of 1949, in the Indian Stamp Act as applicable to Punjab, which was extended to Delhi, so far as it is relevant to us are these :

Under the relevant entry in the original Act, an acknowledgment shall be stamped with one anna stamp. By the amendment, the requisite stamp has been raised to two annas. In the proviso to section 35, an amendment was introduced incorporating the words "or acknowledgement or delivery order" after the words "promissory note" and before the words "shall subject to all just exceptions". The effect of this amendment was not only the rates were

revised, but insufficiently stamped acknowledgment became inadmissible in evidence, whereas under the original provision and insufficiently stamped acknowledgment could have been admitted on payment of the deficit stamp and penalty as provided in the main part of section 35. This notification extending Act 27 of 1949 to the Union Territory of Delhi was questioned in the decision reported in *Chander Bhan* v. *Maha Singh and another,* (9). The argument on behalf of the petitioner was that in view of the later portion of section 2 of Part C States (Laws) Act, 1950, the Central Government could not repeal or amend the Central Act and if the Central Government is denied this power, it could not achieve that result indirectly by extending the laws prevailing in another State which has also modified or amended the Central Act applicable to that State. The extention of any such laws or Central enactments indirectly replaces the existing laws which are far the time being applicable to Part C States. The Division Bench observed :—

> "..... The scheme of section 2 of the Part C States (Laws) Act is that Central Acts applicable to Part C States have to be left alone. The Central Government is not given the power by the Parliament, in any way, to amend or modify the Central Acts applicable to Part C States. Parliament is the legislature for Part C States and is competent to make laws for such States. It appears that, for this reason, no power was conferred on the Central Government, either to amend or alter a Central Act. That power was with the Parliament and it remained with it. If the Central Government cannot amend or modify a Central Act, which is applicable to a Part C State, it cannot, in my view, achieve that result by an indirect method, that is by extending a law prevailing in Part A State which has modified or amended the Central Act."

The learned Judges noted that regarding acknowledgments, the State legislature was competent to increase the rate of stamp duty within the limits of its own jurisdiction as it would fall under Item 63 of List II. The learned Judges were also of the view that an increase in the rate of duty could have been given effect to in a

(9) A.I.R. 1965 Punjab 279.

Part C State under the provisions of section 2 of the Part C States (Laws) Act, 1950 on the ground that such an extension of the increase in rate would not offend the majority view in *re : Delhi Laws Act case,* but, however, since the amendment to section 35 made insufficiently stamped acknowledgment as inadmissible in evidence, it amounts to a substantial amendment and section 35 which forms part of a Central Act could not be amended or modified by recourse to the powers conferred on the Central Government by section 2 of Part C States (Laws) Act, 1950. For one thing, even on the basis of the reasoning of the learned Judges, since the power to legislate about the rates of stamp duty is vested in the State legislature in List II of the Seventh Schedule and the amendment by Punjab Act 27 of 1981, which is impugned in this case, related to only the rates or stamp duty payable on conveyance, on the ratio of the judgment in *Chander Bhan's case* (supra) itself, the extension of Punjab Act 27 of 1981, to the Union Territory of Chandigarh is not unconstitutional. We are not concerned with a case where any substantive provision in the Indian Stamp Act was amended by such extension. There can be no doubt that the Schedule to the Indian Stamp Act could be amended by the State Legislature and in fact almost each of the States have omitted Schedule 1 and introduced Schedule 1A in their application to those States in exercise of the legislative power in Entry 63 of List II. Therefore, neither the amendment nor the extension can be considered to be an amendment of the Central Act enforced in the Union Territory of Chandigarh. In fact the Indian Stamp (Punjab Amendment) Act, 1922 (Act 8 of 1922) amended the Indian Stamp Act. By that amendment new Schedule 1-A was introduced and the stamp duty is chargeable on instruments at the rate indicated in Schedule 1-A only and not Schedule I. It is this Amending Act that was extended by the notification dated May 30, 1939, above-referred to. Thus, far from supporting the contention of the petitioners, we are of the view that the decision in *Chander Bhan's case* (supra) is against the proposition contended for by the petitioners and is in favour of the validity of the impugned notification in this case.

19. In the case reported in *Smt. Marchi's case* (supra), the validity of the notification of the Central Government extending the Punjab Pre-emption (Amendment) Act, 1960, in exercise of the powers under section 2 of Part C States (Laws) Act, 1950, to Himachal Pradesh, was questioned. The facts leading to the filing of the petition were these : The Punjab Pre-emption Act, 1913,

was extended to Himachal Pradesh by a notification of the Central Government in 1949 acting under the Himachal Pradesh (Application of Laws) Order, 1948, Under section 15 of the Punjab Pre-emption Act, 1913, a sister was not entitled to pre-empt a sale by her brother. The Hindu Law of Inheritance (Amendment) Act (No. 2 of 1929), however, introduced the sister in the order of succession to separate property of a Hindu male who dies intestate. The effect was, the sister thereafter became entitled to pre-empt a sale by her brother under section 15. The Punjab legislature amended the Pre-emption Act by the Punjab Pre-emption (Amendment) Act, 1960. In exercise of the power conferred by section 2 of the Part C States (Laws) Act, 1950, which by then came to be known as Union Territories (Laws) Act, 1950 by a notification dated May 17, 1963, the Central Government extended the Punjab Pre-emption (Amendment) Act, 1960, to Himachal Pradesh. The effect of the extension of this amendment was that the sister of the vendor lost her right to preemption, which she had got by the Hindu Law of Inheritance (Amendment) Act 2 of 1929. The contention of the appellant in that case was that section 2 did not give the Central Government power to extend the Amendment Act to Himachal Predesh, inasmuch as, the Central Government could not amend the existing law, i.e., Punjab Preemption Act, 1913, which already applied to Himachal Pradesh. If it is construed that the section gave that power, then the section itself would be unconstitutional. Overruling this objection, the learned Judges held :—

> "Learned counsel for the appellant argued that the delegated legislation embodied in the Delhi Laws Act and the Part C States Act was upheld by the Supreme Court only because the legislature in enacting those Acts was guided by the policy that in small areas like the Union Territories which did not have legislatures established by the Constitution, it would be difficult for the Parliament to legislate each time on matters in the State list in the 7th Schedule to the Constitution. This is why Parliament entrusted the task of applying suitable enactments from Part A States to the Part C States and Union Territories to the Central Government. It was argued for the appellant that the Punjab Pre-emption Act, 1913, was applied to Himachal Pradesh by the Central Government in pursuance of the Legislative policy. Once this was done, the Central Government could not invoke the same

legislative policy in applying the Amendment Act to Himachal Predesh. For, Himachal Predesh already had a pre-existing law and it was not necessary for the Central Government to apply another law to Himachal Pradesh on the same subject. This argument is fallacious, If accepted, it would mean that a legislature can legislate on one subject only once. If so, there would be no such thing as an amending Act.

20. If a State legislature can amend prospectively or retrospectively a previous enactment passed by itself, it must follow that the Central Government can extend such an amending Act to an Union Territory in exercise of the power conferred on it by Section 2 of the Union Territories (Laws) Act, 1950. The legislative policy of the Parliament remains the same The policy is that the Union Territories should get the benefit of laws passed by State Legislatures. Such laws include not only the original enactments but also the amending Acts. The irresistible conclusion therefore is that it is the Central Government which is debarred from repealing or amending an existing law. Therefore, if a notification issued by the Central Government purports to do so, it would be invalid. But a notification which itself does not repeal or amend any pre-existing law, cannot be invalid merely because it extends to the Union Territory an enactment which has the effect of amending or repealing a preexisting law in the Union Territory.

Thus, this clearly is an authority for the position that the Central Government is empowered to extend to the Union Territory not only the original enactments of the State Legislature but also the amendments there to made by the State Legislatures.

21. A similar question came up for consideration again before a Full Bench of the Delhi High Court in *Faqir Chand Sharma's case* (supra). The facts in that case were these : The Cooperative Societies Act, 1912, was enforced in the Union Territory Delhi. Section 73 of the Bombay Cooperative Societies Act, 1925 repealed the Cooperative Societies Act, 1912, in so far as it applied to the province of Delhi. In exercise of the powers under section 7 of the Delhi Laws Act, 1912, the Central Government by a notification dated January 8, 1949, extended the Bombay Cooperative Societies Act, 1925, to Delhi subject to certain modifications.

One of the modifications was the substitution of section 73 by a new section 73 and that read :—

> "The Cooperative Societies Act, 1912, in so far as it applied to the Province of Delhi is hereby repealed."

The constitutional validity of this notification dated January 8, 1949, was questioned before the Full Bench. The contention was that the Central Government had no power to repeal the Co-operative Societies Act, 1912, which is a Central Act while extending the Bombay Cooperative Societies Act, which is a provincial enactment. The extending of the Bombay Act to Delhi was, therefore, void. There was no dispute that the provincial legislature of Bombay could repeal the Cooperative Societies Act, 1912, in so far as it applied to the province of Bombay. One of the contentions of the petitioner in that case was that it is only when there is no law at all in the Union Territory of Delhi on a particular subject that the Central Government can exercise its power under section 7 of the Delhi Laws Act, 1912, to extend a provincial law to Delhi and that the intention of the legislature in enacting section 7 was to save the central legislature the time and trouble involved in enacting such laws for application to the Union Territory of Delhi as were already in force in the other provinces. This contention was overruled with the following reasoning :—

> "There is nothing in the language of section 7 to show that in enactment in force in a province could not be extended thereunder to Delhi if some other law already existed in Delhi on the same subject. If the legislature had intended to so restrict the power, it would have said so. For instance, the spheres of legislative power assigned to Parliament and State legislatures have been defined in Article 246 of the Constitution. Section 7 does not follow the pattern of Article 246 and does not say that enactment relating to particular subjects only can be extended to Delhi thereunder. Nor does it say that an improvement on the laws existing in the Chief Commissioner's provinces cannot be made by the Central Government by extending laws in force in the Governor's provinces to Delhi. Only a moment's reflection is sufficient to show that the legislature could

never have intended to put such a restriction in section 7.

Firstly, such a restriction would have led to stagnation. An existing law in Delhi on a particular subject may be inadequate. A new law enacted in a province may be fuller and better. It is common sense that the legislature must have intended to empower the Central Government to extend the fuller and better law from the provinces to Delhi even if an older inadequate law on the same subject existed there.

Secondly, such a restriction would have been unworkable. It would be impossible to decide whether an existing law relates to a particular subject which is covered by a provincial law. The existing law may cover only a part of the subject while the provincial law may cover more of it or certain new aspects of it. If only such parts of the provincial law were to be extended as were not dealt with by existing law then the legal system in the Chief Commissioner's province would be a crazy quilt of patches. Part of the law on the same subject would be in the existing law while the rest of it would have to be found in those portions of the provincial law which are extended to Delhi. Thirdly, the authority conferred on the Central Government by section 7 was by an Act of legislature. It reflected the policy of legislature. The Central Government was only carrying out the will and policy of the legislature in acting under section 7.

...Lastly, even before the Delhi Laws Act, 1912 was enacted the laws made by the Central Legislature were in force in the Governor's provinces side by side with the laws made by the provincial legislatures. In case of any repugnancy between the two or any parts of the two, the one which was competent to legislate on the particular subject and in the particular area or who had privacy (sic) over the other in case of conflict would have prevailed.

The Cooperative Societies Act, 1912, was a Central Act only in the sense that it was enacted by a Central legislature. In 1912, however, there was legislative dyarchy but no federal distribution of legislative powers. This was why even the provincial legislature could make a law on the same subject. But after the passing of the Government of India Act, 1935, and the Constitution of India, 1950, the subject of cooperative societies became an exclusive State subject. The Corporative Societies Act, 1912, therefore, became by its nature law relating to the State List in the Seventh Schedule of the Constitution. It could be amended or repealed by the State Legislatures. Of course, the Central legislature could legislate for cooperative societies only in respect of the Chief Commissioner's province But it was precisely to avoid this that Section 7 of the Delhi Laws Act, 1912, was enacted.

The impugned notification does not repeal the Cooperative Societies Act, 1912, while extending the Bombay Cooperative Societies Act, 1925 to Delhi. Had it done so, it would have been invalid to that extent. On the contrary the notifications merely extends the Bombay Law to Delhi with suitable modifications. One of the modifications is to substitute Delhi for Bombay. This is all that has been done in section 73. The repeal of the Cooperative Societies Act, 1912, had already been made long age by the Bombay Legislature by enacting section 73. The Central Government did not do so while extending the Bombay Law to Delhi."

22. We are in respectful agreement with this reasoning of the Full Bench and those reasonings are applicable to the two cases on hand.

23. It will be useful at this stage to refer to a few decisions of the Supreme Court which have considered the provisions in taxing statutes which leave to the Executive a wide range of liberty in the matter of selection of persons on whom the tax is to be laid, the rate at which it is to be charged in respect of different classes of cases and the like. In *Pandit Banarsi Dass Bhanot etc.* v. *The*

State of Madhya Pradesh and others, (10) the Supreme Court upheld the provisions of section 6(2) of C. P. and Berar Sales Tax Act, 1947, on the ground that "it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like", and that "the power conferred on the State Government by section 6(2) to amend the schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic, and is not unconstitutional". We may note that the contention in the case was that the grant of power to an outside authority to repeal or modify a provision in a statute passed by the legislature was unconstitutional and that in consequence the impugned notification made in exercise of the powers under section 6(2) was bad.

24 In *Western India Theatres Ltd.* v. *Municipal Corporation of the City of Poona,* (11) the Supreme Court upheld the provisions of section 60 of the Bombay Municipal Boroughs Act, 1925, which authorised the Municipality to suspend, modify or abolish any existing tax on the ground that the purpose of the Act afforded sufficient guidance.

25. In upholding the validity of section 548(2) of the Calcutta Municipal Act (33 of 1951) which enabled the Corporation to levy fee at such rate as may from time to time be fixed by the Corporation, the majority of the judgment of the Supreme Court in *The Corporation of Calcutta and another* v. *Liberty Cinema,* (12) observed :—

> "The fixation of rates of taxes may be legitimately left by a statute to a non-legislative authority, for there is no distinction in principle between delegation of power to fix rates of taxes to be charged on different of goods and power to fix rates simpliciter, if power to fix rates in some cases can be delegated then equally the power to fix rates generally can be delegated."

On the question whether the Act provided sufficient guidance, the Supreme Court observed that "the needs of taxing body for

(10) A.I.R. 1958 S.C. 909
(11) A.I.R. 1959 S.C. 586
(12) A.I.R. 1965 S.C. 1107

carrying out its functions under the statute for which alone the taxing power was conferred on it may afiord sufficient guidance to make the power to fix the rate of tax valid".

26. Again, in *The Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills, Delhi and another* (13), the Supreme Court held that the power conferred on the Delhi Municipal Corporation under section 150 to levy any of the optional taxes by prescribing the maximum rates of tax to be levied; to class or classes of persons or the description or descriptions of articles and properties to be taxed and to lay down the system of assessment and exemptions, if any, to be granted, is not unguided and cannot be said to be unguided or impermissible delegation of power.

27. A very instructive passage on the subject found in *M/s Sitaram Bishambar Dayal etc.* v. *State of U. P.*, (14) in the words of Justice Hegde is :—

> "It is true that the power to fix the rate of a tax is a legislative power but if the legislature lays down the legislative policy and provides the necessary guidelines, that power can be delegated to the executive. Though a tax is levied primarily for the purpose of gathering revenue, in selecting the objects to be taxed and in determining the rate of tax, various economic and social aspects such as the availability of the goods, administrative convenience, the extent of evasion, the effect of tax levied on the various sections of the society, etc. have to be considered. In a modern society taxation is an instrument of planning. It can be used to achieve the economic and social goals of the State. For that reason, the power to tax must be a flexible power. It must be capable of being modulated to meet the exigencies of the situation. In a Cabinet form of Government, the executive is expected to reflect the views of the legislatures. In fact in most matters it gives the lead to the legislature. However, much one might deplore the New Despotism of the executive, the very complexity of the modern society and the demand it makes on its Government, have set

(13) A.I.R. 1968 S.C. 1232
(14) A.I.R. 1972 S.C. 1168.

> in motion forces which have made it absolutely necessary for the legislatures to entrust more and more powers to the executive. Text book doctrines evolved in the nineteenth century have become out of date. Present position as regards delegation of legislative power may not be ideal, but in the presence of any better alernative, there is no escape from it. The legislatures have neither the time nor the required detailed information nor even the mobility to deal in detail with the innumerable problems arising time and again. In certain matters they can only lay down the policy and guidelines is as clear as manner as possible.

It is not necessary to further multiply except to state that in several decisions, the Supreme Court had considered the provisions in non-taxing statutes also and we may usefully quote one judgment reported in The *Registrar of Cooperative Societies and another* v. *K. Kunjamu and others* (15). Section 60 of the Madras Cooperative Societies Act, 1932, provided that the State Government may, by general or special order, exempt any registered Society from any, of the provisions of the Act or may direct that such provision shall apply to such Society with such modification as may be specified in the order. This provision was impugned as unconstitutional delegation of legislative power, but the Supreme Court rejected the same on the ground that the Act contained sufficient guidelines in the exercise of that power though the Supreme Court described the section as " a near Henry VIIIth clause". In spite of this characterisation, the fact that the provision was upheld, is exhibitive of the liberal attitude of the Supreme Court in recent years towards delegation of legislative power to the executive though the Act is still tested with regard to the guidelines provided therein and the need for declaration of the legislative policy.

28. These authorities clearly establish that merely on the ground that the legislature has entrusted the power to alter, modify or vary the tax, the provision cannot be held to be impermissible delegation provided the legislature has given its policy and the Act provides for sufficient guidelines. In fact that Supreme Court in *N. K. Papiah's case* (supra) went a little further and held that there the legislature has reserved to itself control over the delegatee, the legislature had preserved its capacity in tact as it could

(15) A.I.R. 1980 S.C. 350.

at any time repeal the legislation and withdraw the authority and discretion it had vested in the delegate and, therefore, the legislature had not abdicated its functions or created a parallel legislature. Justice Mathew further remarked :—

> "The dilution of Parliamentary watch-dogging of delegated legislation may be deplored but, in the compulsions and complexities of modern life, cannot be helped."

29. In fact we see as a legislative practice, the extensions of the type, which are impugned in this case, had been the legislative practice, the extensions of the type, which are impugned in this case, had been the legislative practice throughout the century. To set a few examples, The Punjab Municipal Act, 1911, was enforced in Delhi. That Act was amended by Punjab Acts 1 of 1922, 2 of 1923, 1 of 1925, 15 of 1926, 3 of 1933, 1 of 1937 and 3 of 1935. All these amendments were extended to Delhi by notifications issued from time to time under section 7 of the Delhi Laws Act, 1912. Similarly, the Court Fee (Punjab Amendment) Act 7 of 1922 and Punjab Courts (Second Amendment) Act, 1926, were extended to Delhi again under section 7 of the Delhi Laws Act, 1912. The Indian Stamp (Punjab Amendment) Act, 1912, which amended the Indian Stamp Act, 1899, the Punjab District Boards (Amendment) Act, 1912, which amended the Punjab District Boards Act, 1883, and a number of such amendments which had the effect of amending the laws that were in force in Delhi were extended under the provisions of section 7 of the Delhi Laws Act, 1912. The provisions of sections 54, 107 and 123 of the Transfer of Property Act were originally extended to Delhi by notification dated January, 15, 1937, but it was cancelled by another notification dated May 30, 1939, probably in the view that section 7 of the Delhi Laws Act could not be invoked in exercise of the powers conferred by the fourth paragraph of section 1 of the Transfer of Property Act, 1882. It is in these circumstances, by another notification sections 54, 107 and 123 of the Transfer of Property Act were again brought into force in the Union Territory of Delhi with effect from May 30, 1939. We have given only a few examples of such extensions under the delegated power in order to show that it had been the uniform legislative practice to extend the provisions of the Amending Act whenever the original enactment already extended is amended by the parent legislative authority.

30. There is yet another way of reaching the same conclusion. In the system of parliamentary democracy, which we have adopted for our country, the legislative control over the delegate is implicit and the impermissible delegation could rarely be found. In the parliamentary democracy, it is also true to say that it is the executive wing plays the pivital role inside and outside the parliament or the legislature. Since the executive wing has majority in the parliament, virtually nothing is possible to be accomplished inside the parliament unless it has the backing of the executive. The two wings, namely legislative and the executive, to a great extent thus overlap and this itself is a sufficient safeguard against the arbitrary exercise of power by the delegate.

31. In the instant cases, we are also unable to agree that the extension in any way amounts to an amendment of the existing law by the delegate. The amendment has been done by the legislature of the original enactment and it is that enactment that was extended and the notification by itself does not amend the existing law.

32. For the foregoing reasons, we are of the view that the third contention of the petitioners is also not acceptable. Further, if *Chander Bhan's case* (supra) is considered to be in any way supporting the case of the petitioners, that decision cannot be said to have been rightly decided and accordingly that portion of the judgment is overruled.

33. In the result, the writ petition fail and they are dismissed. However, there will be no order as to costs.

S.C.K.

29732 HC—Govt. Press, U.T., Chd.