is not without substance. The appellant insurance company cannot be held liable to pay more than Rs. 20,000. To this extent, the award of the Tribunal needs to be modified. We order accordingly.

(19) For the reasons mentioned above, these three appeals are dismissed with this modification of the award that out of the amount of Rs. 25,562 awarded by the Tribunal to the respondents, the Vanguard Insurance Company, would be liable to pay only the amount of Rs. 20,000 and the other appellants for the remaining amount. There will be no order as to costs.

(20) I agree that the appeals should be dismissed with the modification that the Vanguard Insurance Company would be liable to pay the amount of Rs. 20,000 only.

O. Chinnappa Reddy, J.

M. R. Sharma, J.— I agree.

N. K. S.

FULL BENCH

MISCELLANEOUS CIVIL.

Before O. Chinnappa Reddy, S. S. Sidhu. A. S. Bains, Harbans Lal and Surinder Singh, JJ.

MEGHA SINGH AND COMPANY and others,—*Petitioners.*

versus

THE STATE OF PUNJAB and others,—*Respondents.*

Civil Writ No. 719 *of* 1977.

March 25, 1977.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)— *Sections* 65, 66, 67, 70 *and* 115(4)—*Punjab General Sales Tax Act (XLVI of* 1948)—*Section* 6 *and Schedule B, entry* 37—*Punjab Panchayat Samitis (Sale of Liquor) Rules* 1976—*Goods declared not taxable under the Sales Tax Act—Such goods—Whether can be notified as taxable under the Punjab Panchayat Samitis and Zila Parishads Act—Legislative policy if any—Whether discernible from entry* 37—*Panchayat Samiti—Whether a delegate of a delegate— Tax—Whether could be levied for the period prior to framing of*

the rules—Non-laying of the rules before the legislature—Effect of—Stated.

Held, that the legislature is competent to enact two laws providing for two taxes of the same kind though for different purpose. By one law, the legislature may itself impose and levy a tax to go into the Consolidated Fund of the State, and by another law it may authorise a local authority to impose and levy another tax of the same kind to augment the local authority's revenues. If an item is declared not taxable under the other, it cannot be said that there is any conflict between the two enactments merely on that account. The declaration under one enactment that 'no tax shall be levied....' only means that no tax shall be levied under that enactment. It does not and cannot bar the levy of a tax on the same item under a different validly enacted law. Now, each of the different enactments has to provide its own machinery for the imposition, the levy, the assessment and the collection of the tax. Under each enactment ancillary power to legislate within the limits of the legislative policy laid down by the legislature may be validly granted by the legislature to a delegate. If pursuant to validly delegated ancillary legislative power under one enactment, the delegate makes an item taxable and if in respect of that item the other enactment says "it shall not be taxable", there is no repugnancy since the declaration regarding non-taxability in the second Act is for the purposes of that Act only and not for the purposes of the other Act. The delegate is left free to operate under the other Act within the limits of his delegation. Thus goods declared not taxable under section 6 read with Entry 37 of Schedule B of the Punjab General Sales Tax Act, 1949, can be notified as taxable under section 67(5) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961.

(Para 7).

Held, that the legislature did not lay down any definite legislative policy when it originally included all goods on which duty may be levied under the Punjab Excise Act in Entry 37 of Schedule 3 of the Punjab General Sales Tax Act. The very power given to the Government under section 6(2) of the Punjab General Sales Tax Act to add to or delete from Schedule B clearly indicate that it is not permissible to glean any such legislative policy from the entries in the Second Schedule. (Para 8).

Held, that sections 65 to 67 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 constitutes a single scheme of taxation and must be read together. So read, it is clear that the Panchayat Samiti is empowered by the legislature to impose tax. Section 65 provides for the previous permission of the Deputy Commissioner while section 66 contemplates the conferment of power by the Government. The permission to be granted by the Deputy Commissioner and the conferment of power by the Government are the

prerequisites prescribed by the legislature for the exercise of the power of taxation by the Panchayat Samiti. They are apparently designed to check any abuse or misuse of taxing power by the Panchayat Samiti. It is a device adopted by the Legislature to keep its delegate within bounds. Merely because power has to be conferred by the Government; it does not mean that the Panchayat Samiti functions as a delegate of the Government. Under the Act, the Government is not authorised to impose any tax or to delegate that task to a Panchayat Samiti. What the Act does is to authorise the imposition of tax by a Panchayat Samiti on permission being granted by the Deputy Commissioner or power being conferred by Government. Section 67 does not permit delegation by a delegate and it is a provision which is intended to control the exercise of delegated power by the delegate, namely, the Panchayat Samiti. It is the Panchayat Samiti that is the delegate of the legislature, neither the Government nor the Deputy Commissioner. (Para 9).

Held, that section 67 (5) of the Punjab Panchayat Samitis and Zila Parishads Act 1961 empowers the Government to notify the date on which the tax should come into force. The Punjab Panchayat Samitis (Sale of Liquor) Rules, 1976 made by the Government in exercise of its powers under section 70 and 115 of the Act, are intended only to provide the machinery for the assessment and collection of the tax. Neither the failure to make rules nor the delay in making the rules can have the effect of keeping in abeyance the liability to tax or to give absolution to the tax payer from the liability to pay the tax until the rules are made. The imposition of tax becomes effective from the date fixed by the Government in that behalf.

(Para 12).

Held, that it is not for the Courts to declare delegated legislation as invalid on the ground of 'non-laying' when the legislature itself attaches or prescribes no consequence to the 'non-laying'. The question of parliamentary control of the executive is largely a political question, in that it is for the legislature to admonish or punish the erring Ministers and not for the judiciary to invalidate the subordinate legislation on the ground of 'non-laying'. The judiciary may enter the picture only if the legislature prescribes the consequence of 'non-laying' and not otherwise. Thus the Punjab Panchayat Samitis (Sale or Liquor) Rules, 1976 are not invalid merely because they were not laid before the legislature as prescribed by Section 115(4) of the Act (Paras 17 and 20).

Petition under Articles 226(1) (b) & (c) *of the Constitution of India praying that* :—

(a) *a writ in the nature of certiorari quashing the impugned demand slips annexure P-1 to P-18 be issued ;*

(b) *that any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the present case be issued ;*

(c) *the compliance of Article 38(4) (a) of the Constitution Amended Act of 1976 be dispensed with ;*

(d) *till the pendency of the writ petition recovery of proceedings relating to the tax be stayed.*

(e) *Costs of this writ petition be awarded to the petitioners against the respondents.*

H. L. Sibal Senior Advocate, Puran Chand Advocate, V. K. Vishishat, Advocate with him, *for the Petitioners.*

I. S. Tiwana, D.A.G. Punjab, *for respondent No.* 1.

O. Chinnappa Reddy, J.

(1) These cases raise common questions and may be disposed of by one judgment. The petitioners are licencees, having the right to vend country liquor, under the Punjab Excise Act and the Punjab Excise Rules. They object to the imposition of tax on the sale of country liquor by various Panchayat Samitis in the State of Punjab. They question the demands made on them for payment of the tax.

(2) The principal submission of Shri H. L. Sibal, learned counsel for the petitioners, was that the notifications issued by the Government of Punjab under section 67 (5) of the Punjab Panchayat Samitis and Zila Parishads Act notifying the imposition of tax on the sale of country liquor by Panchayat Samitis were contrary to the express provisions of section 6 read with Entry 37 of Schedule B of the Punjab General Sales Tax Act and the legislative policy underlying them. Shri Sibal urged that there was a legislative injunction, in Section 6, that 'no tax shall be payable on the sale of goods specified in the first column of Schedule B' and, since country liquor fell within Entry 37 of Schedule B, the notifications imposing tax on the sale of country liquor were in clear violation of the legislative mandate. Entry 37 was "All goods, except foreign liquor as defined in sub-paragraph (2) or paragraph (2) of the Punjab Excise Liquor

Definitions, 1954, on which duty is or may be levied under the Punjab Excise Act, 1914 or the Opium Act, 1878". Shri Sibal submitted that the general legislative policy discernible from Entry 37 was that goods on which excise duty was leviable was not to be subject to Sales tax. The notifications imposing tax on the sale of country liquor were contrary to this legislative policy. Shri Sibal argued that it was not for a delegate like the Government or for a sub-delegate like a Panchayat Samiti to contravene a legislative direction or known legislative policy. It was argued by Shri Sibal that there was an impermissible delegation by a delegate. According to him, the Government was the delegate and the Panchayat Samiti was the sub-delegate. Though he did not expressly say so, we take it that he meant to attack the very vires of section 66 of the Punjab Panchayat Samitis and Zila Parishads Act on the ground of improper delegation by a delegate. Shri Sibal referred us to the general principles laid down by the Supreme Court in *Raj Narain Singh* v. *Patna Administration Committee,* A.I.R. 1954 S.C. 1660. It was further contended that the Punjab Panchayat Samitis (Sale of Liquor) Rules, 1976 were not validly made as they were not laid before the Legislature as prescribed by section 115 (4) of the Punjab Panchayat Samitis and Zila Parishads Act.

(3) It will be useful to notice the relevant statutory provisions at this stage. Section 6 of the Punjab General Sales Tax Act is as follows:—

> "6. (1) No tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free from time to time under this section.
>
> (2) The State Government, after giving by notification not less than twenty days notice of its intention so to do, may by like notification add or delete from Schedule B and thereupon Schedule B shall be deemed to be amended accordingly."

We have already extracted Entry 37 of Schedule B. Chapter II of the Punjab Panchayat Samitis and Zila Parishads Act provides for the constitution of Panchayat Samitis and the conduct of their business. Section 3 declares that every Panchayat Samiti shall be a

body corporate having perpetual succession and a common seal. A Panchayat Samiti is constituted either for every Tehsil in a District or for every Block in a District. Chapter IV deals with the duties and powers of Panchayat Samitis. Every Panchayat Samiti has a multiplicity of duties to perform in relation to the requirements, the area under its jurisdiction, in the matter of Agriculture, Animal Husbandry, Health and Rural Sanitation, Communications, Social Education, Cooperation etc. It is to be the agent of the Government in formulating and executing the Community Development Programme. It is to exercise supervision and control over all Gram Panchayats within its area and to render such financial and technical assistance as may be necessary to the Gram Panchayat. It is to be one of the pivots of Local Self-Government. Chapter V deals with finance and taxation. We are primarily concerned with sections 65, 66 and 67 which are as follows :—

"65. *Power of taxation.*

Subject to the general direction and control of the Government, a Panchayat Samiti may with the previous permission of Deputy Commissioner concerned, impose any tax which the Legislature of the State has power to impose under the Constitution of India.

66. *Power to impose tax without sanction of Government.*

Notwithstanding anything contained in section 65, the Government may empower any Panchayat Samiti to impose without such permission any tax referred to in that section subject to such limitation as it may direct.

67. *Procedure in imposing taxes.*

(1) A Panchayat Samiti may at a special meeting pass a resolution to propose the imposition of any tax under section 65.

(2) When a resolution referred in sub-section (1) has been passed, the Panchayat Samiti shall publish a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the manner of assessment to be adopted.

(3) Any person likely to be affected by the proposed tax, and objecting to the same, may, within thirty days from the publication of the notice, send his objection in writing to the Panchayat Samiti, and the Samiti shall at a special meeting take his objection into consideration.

(4) If no objection is received within the said period of thirty days, or the objection received is considered to be unacceptable, the Panchayat Samiti shall—

(a) Where the proposed tax is a tax in respect of which the Government has empowered the Panchayat Samiti under section 66 to impose it without the permission of the Deputy Commissioner submit its proposal to the Government, and (b) in any other case, submit its proposal to the Deputy Commissioner concerned; with the objections, if any, which have been received along with its decision thereon.

(5) Where a proposal for the imposition of a tax has been received by the Government under clause (a) of sub-section (4), the Government may notify the imposition of the tax in accordance with the proposal and shall, in the notification, specify a date, not less than thirty days from the date of its publication, on which the tax shall come into force.

(6) On receiving the proposal under clause (b) of the sub-section (4), the Deputy Commissioner may within the prescribed period sanction or refuse to sanction it or return it to the Panchayat Samiti for further consideration.

(7) If the Deputy Commissioner permits the imposition of the proposed tax, it shall forward the proposal to the Government for taking action in accordance with the provision of sub-section (5).

(8) If the Deputy Commissioner refuses permission to impose the proposed tax or returns it to the Panchayat Samiti for further consideration, the Deputy Commissioner shall forward the proposal to the Panchayat Samiti in its original form or as further considered by the Panchayat Samiti, as the case may be, to the Government and the Government

may then decide whether a tax is or is not to be imposed or imposed in accordance with the proposal as further considered by the Panchayat Samiti.

(9) After a decision has been taken by the Government under sub-section (8) that the proposed tax is to be imposed as originally proposed or as proposed after further consideration, the Government shall take action in accordance with the provisions of sub-section (5).

(10) A notification for the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with law."

Section 70 and section 115(1) and (4) are also relevant. They are as follows :—

"70. Taxes how to be assessed and collected.

The Government may, by notification, determine the person by whom the case or any tax imposed under this Act shall be assessed and collected and make rules for the assessment and collection of the cess or tax and direct in what manner persons employed in the assessment or collection thereof shall be remunerated."

115. Power of Government to make rules.

(1) The Government may in the official Gazette make rules for carrying out the provisions of this Act.

(4))Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rules or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

(4) Now, Entry 5 of List II of Schedule 7 of the Constitution enables the State Legislature to legislate with respect to "Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration". A local self-government body needs sources of revenue through taxation, as much as a Government does on a larger scale, if it is to effectively serve the people and discharge the multiple tasks entrusted to it by the statute constituting it. The power to legislate with respect to local authorities for the purpose of local self-government necessarily implies the power of taxation. The legislature when constituting a local authority for the purpose of self-government may therefore entrust to the local authority the power of taxation also. That the Constitution contemplates and recognises statutory provision for the imposition of taxes by local authorities is clear from Articles 110(2) and 199(2) which refer to a Bill providing for 'the imposition, alteration, remission, alteration or regulation of any tax by a local authority or body for local purposes' and Art. 277 which saves taxes 'which, if immediately before the commencement of the Constitution, were being lawfully levied by any municipality or other local authority or body .....' The legislature has, therefore, the undoubted competence to authorise the levy of a tax by a local authority. The Punjab Panchayat Samitis and Zila Parishads Act is an Act which constitutes local authorities of self-government and authorises levy of taxes by the local authorities so constituted. While a legislature may not authorise the levy of a tax which the legislature itself is not competent to levy, the authorisation may be co-extensive with its own powers of taxation. In *Western India Theatres* v. *Municipal Corporation of Poona* (1), the Supreme Court upheld the validity of section 59 of the Bombay District Municipal Act 1901 which, after enumerating various specific heads of taxes which could be levied by a municipality, authorised the municipality to further levy "Any other tax to the nature and object of which the approval of the Governor in Council shall have been obtained ....." It was not argued before us that section 65 of the Punjab Panchayat Samitis and Zila Parishads Act which provides for the imposition by a Panchayat Samiti of 'any tax which the legislature of the State has power to impose' was beyond the competence of the State legislature or that it suffered from the vice of excessive delegation.

(1) A.I.R. 1959 S.C. 586.

(5) It was also not disputed before us that the Legislature was competent to levy simultaneously two taxes of the same kind for different purposes. In *Mathra Parshad* v. *State of Punjab* (2), the Supreme Court held that there was no illegality in the East Punjab General Sales Tax Act and the Punjab Tobacco Ved Fees Act, both of which provide for the levy of tax on the sale of manufactured tobacco, being simultaneously in force or in the simultaneous levy of both the taxes. They observed :—

> "..... There can be two taxes on the same commodity or goods without the one law repealing the other. No repeal can be implied unless there is an express repeal of the earlier Act by the later Act or unless two Acts cannot stand together."

(6) In *Cantonment Board* v. *Western India Theatres* (3), it was pointed out by the Bombay High Court that the previous levy of a tax on entertainments by the Government under one Act would not bar the levy of a tax on enterainments by a local authority under a different Act. The decision was affirmed by the Supreme Court in *Western Indian Theatres* v. *Cantonment Board* (4).

(7) In *Kamta Prasad Aggarwal* v. *The Executive Officer, Ballabgarh* (5), the question arose whether levy of a professional tax on a graded scale by the State of Haryana barred a Panchayat Samiti from levying a similar professional tax under the Punjab Panchayat Samitis and Zila Parishads Act and, whether Article 276 of the Constitution was contravened. The Supreme Court observed as follows:—

> "The power of the State to levy tax is derived from Entry 60 of List II in the Seventh Schedule of the Constitution. The entry speaks of taxes on professions, trades, callings and employments. The State legislature may also by law confer similar authority on a Municipality, District Board, Local Board or other local authority".

The legislature is thus competent to enact two laws providing for two taxes of the same kind though for different purposes. By one

(2) A.I.R. 1962 S.C. 745.
(3) A.I.R. 1954 Bombay 261.
(4) A.I.R. 1959 S.C. 582.
(5) A.I.R. 1974 S.C. 685.

law, the legislature may itself impose and levy a tax to go into the Consolidated Fund of the State, and by another law, it may authorise a local authority to impose and levy another tax of the same kind to augment the local authority's revenues. If an item is declared not taxable under one enactment but is declared taxable under the other, it cannot be said that there is any conflict between the two enactments merely on that account. The declaration under one enactment that 'no tax shall be levied.....' only means that no tax shall be levied under that enactment. It does not and cannot bar the levy of a tax on the same item under a different validly enacted law. Now, each of the different enactments has to provide its own machinery for the imposition, the levy, the assessment and the collection of the tax. Under each enactment ancillary power to legislate within the limits of the legislative policy laid down by the legislature may be validly granted by the legislature to a delegate. If pursuant to validly delegated ancillary legislative power under one enactment, the delegate makes an item taxable and if in respect of that item the other enactment says "it shall not be taxable", in our view, there is no repugnancy since the declaration regarding non-taxability in the second Act is for the purposes of that Act only and not for the purposes of the other Act. The delegate is left free to operate under the other Act within the limits of his delegation. We, therefore, reject the submission of Shri Sibal that because it is declared by section 6 read with Entry 37 of Schedule B of Punjab General Sales Tax Act that sale of country liquor shall not be taxed; the sale of country liquor cannot be notified as taxable under the Punjab Panchayat Samitis and Zila Parishads Act also.

(8) We are not also impressed with the submission that the legislature laid down any definite legislative policy when it originally included all goods on which duty may be levied under the Punjab Excise Act in Entry 37 of Schedule B of the Punjab General Sales Tax Act. The very power given to the Government under section 6(2) of the Punjab General Sales Tax Act to add to or delete from Schedule B clearly indicates that it is not permissible to glean any such legislative policy from the entries in the Second Schedule.

(9) Nor do we find any force in the submission that the Panchayat Samiti is a delegate of a delegate and that sub-delegation to the Panchayat Samiti is not permissible in law. The argument is that under section 66, the Government is the delegate of the Legislature

and the Panchayat Samiti is the delegate of the Government. We do not agree. Sections 65 to 67 constitute a single Scheme of taxation and must be read together. So read, it will be noticed that under section 65 and section 66 of the Punjab Panchayat Samitis and Zila Parishads Act, it is the Panchayat Samiti that is empowered by the legislature to impose tax. Section 65 provides for the previous permission of the Deputy Commissioner while section 66 contemplates the conferment of power by the Government. The permission to be granted by the Deputy Commissioner and the conferment of power by the Government are the prerequisites prescribed by the legislature for the exercise of the power of taxation by the Panchayat Samiti. They are apparently designed to check any abuse or misuse of taxing power by the Panchayat Samiti. It is a device adopted by the Legislature to keep its delegate within bounds. Merely because power has to be conferred by the Government, it does not mean that the Panchayat Samiti functions as a delegate of the Government. Under the Act, the Government is not authorised to impose any tax or to delegate that task to a Panchayat Samiti. What the Act does is to authorise the imposition of tax by a Panchayat Samiti on permission being granted by the Deputy Commissioner or power being conferred by the Government. We are unable to read section 67 as permitting delegation by a delegate. It is a provision which is intended to control the exercise of delegated power by the delegate, namely, the Panchayat Samiti. It is the Panchayat Samiti that is the delegate of the legislature, neither the Government nor the Deputy Commissioner.

(10) It was then argued that the notification issued by the Government under section 67(10) in each of these cases was not in conformity with the provisions of section 67 of the Punjab Panchayat Samitis and Zila Parishads Act, inasmuch as, it was not specified who was liable to pay the tax. It is true that the final notification published by the Government under section 67(5) of the Act does not expressly specify the person who is liable to pay the tax. But the notification has to be read along with the resolution of the Panchayat Samiti proposing to impose the tax. Section 67(5) is intended only to notify the imposition of the tax in accordance with the proposal and to specify the date on which the tax shall come into force. A perusal of the provisions of section 67 shows that the Government is not empowered to notify a proposal as modified by the Government. If the Government wishes a proposal to be modified it can only return

it to the Panchayat Samiti for further consideration. The Panchayat may thereafter submit a fresh proposal to the Government. Thus the imposition of the tax has always to be in accordance with the proposal of the Panchayat Samiti. In every one of the proposals with which we are concerned, the Panchayat Samiti has clearly specified the 'country liquor vendors' as the persons responsible for the payment of tax. The very circumstances that the tax is on sale of country liquor necessarily indicates that the persons who may lawfully sell country liquor, that is, those holding the requisite licenses under the Liqoor Rules are the persons responsible for payment of the tax. There is no possibility of any ambiguity as to who is to pay the tax. The notification of the Government under section 67(5) cannot therefore be quashed on that ground.

(11) It was also argued that the notification did not specify the persons who was to make assessment and that this was a contravention of section 70 of the Punjab Panchayat Samitis and Zila Parishads Act which requires the Government to notify the person by who any tax imposed under the Act shall be assessed and to make rules for the assessment and collection of the tax. The proposal of the Panchayat Samiti itself specifies the Executive Officer of the Panchayat Samiti as the assessing authority. The rules made by the Government in exercise of its powers under section 70 of the Act were duly notified by the Punjab Government in the official Gazette on 1st December, 1976 and they prescribe the Executive Officer of the Panchayat Samiti as the assessing authority. There is, therefore, no contravention of section 70 of the Act.

(12) It was said that since the rules were made on 1st December, 1976, the tax could not be levied for the period prior to 1st December, 1976. We do not see any force in the submission. Section 67(5) of the Act empowers the Government to notify the date on which the tax shall come into force and the Government in exercise of that power has notified 4th July, 1976, as the date on which the tax shall come into force. The rules made by the Government, in exercise of its powers under sections 70 and 115 of the Act, are intended only to provide the machinery for the assessment and collection of the tax. Neither the failure to make rules nor the delay in making the rules can have the effect of keeping in abeyance the liability to tax or to give absolution to the tax payer from the liability to pay the tax until the rules are made. The imposition of the tax was effective from 4th July, 1976 and the liability to pay

the tax arose from that date. In *M & S. Railway Co.* v. *Bazwada Municipality* (6), it was held that the ommission of the rule-making authority to frame rules could not take away the right of the Municipal Council to levy tax. The decision of the Madras High Court was affirmed by the Privy Council in (7).

(13) It was said that in some cases, demand slips had been issued without assessments being made. If it is so, the person on whom the demand is made may file an appeal to the appellate authority under section 73 of the Act, which provides for an appeal against any order of any person authorised to make assessment or collection of tax.

(14) Another important question which was raised by Shri H. L. Sibal and Munjral was that the Rules made on 1st December, 1976, were not laid before the legislature as prescribed by section 115(4) and, therefore, were not effctive.

(15) The failure of the Executive to lay the rules before the Legislature is indeed a very serious matter. One of us had occasion to express his individual views in an article written in 1970 for the Andhra Pradesh Law Journal. Another of us (Harbans Lal, J.) whom we are very fortunate to have with us on this Bench, was a Speaker of the Punjab Legislative Assembly and is keenly alive to the importance of the question. In England the matter is considered so serious that when it was discovered that certain regulations were not laid before the Parliament as required by the Fire Services Emergency Provisions) Act, 1941, the Secretary of State threw himself at the mercy of the House. The House showed him mercy and proceeded to pass an Act of Indemnity by which the Secretary of State was "freed, discharged and indemnifed" from and against all consequences flowing from the omission to lay the regulations before Parliament and the regulations themselves were deemed to have been duly laid before Parliament. The implication of the Act of Indemnity was that the regulations might otherwise be considered invalid. Recently, in *Regina* v. *Immigration Appeals Tribunal* (1), the question arose whether certain immigration rules had been laid before Parliament as required by the Immigration Appeal Act. The Lord Chief Justice of England and two of his companion Judges

(6) A.I.R. 1941 Madras 641=ILR 1941 Madras 897.
(7) I.L.R. 1945 Madras 1 at 8.

went into the matter and, on the evidence, held that there was compliance with the requirement regarding laying. The question was not brushed aside on the ground that non-laying was of no consequence. In a case which came before the Court of Error of Barbados, Collymore, C.J., was reported by Megarry to have said:—

> "Where the Legislature delegates its law-making power to a subordinate authority and reserves the right to review the regulations made by such subordinate body, and if necessary to disallow them, and attaches conditions to secure that it shall have the opportunity to exercise its power of review as the supreme legislative authority, such conditions are mandatory."

(16) In India, at least on one occasion, the matter has been treated as a matter of grave concern. A few years ago the Speaker of the Legislative Assembly of Andhra Pradesh resigned as a protest against the persistent default of the executive in laying the Rules made by it before the House.

(17) Academic Lawyers like Sir C. K. Allen, Barnard Schwartz, R. R. Megarry (now Justice Megarry) and Prof. Karsel have all been greatly agitated about the problem of 'non-laying' and very rightly too. One of the major problems of any liberal democracy, particularly a modern welfare state, is that of controlling excessive executive action. The desire to attain the objective of securing 'social, economic and political justice' necessarily results in intense activity in the legislative and the executive fields. Unable to deal with matters of detail, the Legislature is too often content to lay down the guidelines and leave the details to be worked out by expert executives. It may perhaps be said that in recent years subordinate legislation has grown in geometrical progression to legislation as such. With the growth of subordinate legislation has grown the possibility of abuse in the making of such subordinate legislation, not because of any evil design on the part of the executive but because of the well known tendency on the part of the executive to get on with the job without any possible interference. In fact a well intentioned executive armed with power may turn out to be the most arbitrary of men. There is thus a danger of the expert executives becoming masters of the people they are employed to serve. There is an even greater danger of indifferently made delegated legislation wrecking parent legislation as effectively as by design. We are quite familiar with such delegated legislation. So it is necessary for the Legislature to control the executive

and 'laying before the Legislature' is one of the devices by which such control is exercised. But then is it for the Courts to declare legislation as invalid on the ground of 'non-laying' when the Legislature itself attached or prescribed no consequence to the 'non-laying'? Apparently not, and so it has been held by Andhra Pradesh High Court in *Krishan* v. *R. T. O. Chittoor* (8), *and Madhava Rao* v. *State of Andhra Pradesh* (9). In the first case, with much misgiving and reluctance, Subba Rao, C.J., came to the conclusion that 'non-laying' before the Legislature would not invalidate delegated legislation. The learned Chief Justice was greatly influenced by the thought that many innocent parties might have acted on the basis of the delegated legislation and they should not be allowed to suffer because of the negligence of a Minister or other officer. In the second case there was in fact no non-compliance with the directive to lay before the Legislature, but it was argued that the rules took effect not from the time when they were made but only after the expiry of the period of laying. The learned Judges expressed the view that the condition regarding laying was a condition subsequent and not a condition precedent and, therefore, the rules took after effect from the time when they were made. Once they took effect it would followed that they could not become ineffective by mere non-laying. They could become ineffective by repeal or modification only.

(18) There is, however, one decision of the Supreme Court which requires to be examined. It is *Narendra Kumar* v. *Union of India* (10). In exercise of the powers given by section 3 of the Essential Commodities Act, the Non-ferrous Metal Control Order was promulgated by the Government of India. Clause 4 of the Control Order prescribed that no person shall acquire or agree to acquire any non-ferrous metal except under and in accordance with a permit issued by the Controller in accordance with such principles as the Central Government might specify from time to time. No principles were specified at that time but a year after the promulgation of the Order, certain principles were specified in a letter addressed by the Deputy Secretary to the Government of India to the Chief Industrial Adviser to the Government of India. The Supreme Court held that in order that the 'principles' might have validity in the same manner as

(8) I.L.R. 1966 Andhra 800.
(9) 1967 (2) An. W.R. 366.
(10) 1960 S.C.J. 214.

clause 4 of the Control Order, they should be notified in the Official Gazette and laid before both the Houses of Parliament in the maner indicated in sub-sections 5 and 6 of section 3 of the Essential Commodities Act. The 'principles' were not notified or laid before both the Houses of Parliament. They were, therefore, ineffective. If they were not effective, clause 4 also was not effective. They said:

> "All that is necessary to make clause 4 effective is that some principles should be specified, and these notified in the Gazette, and laid before the Houses of Parliament. It may be necessary from time to time to specify new principles in view of the changed circumstances; these have again to be notified in the Gazette and laid before the Houses of Parliament in order to be effective."

The Supreme Court was dealing with a case where the parliamentary legislation stipulated that the subordinate legislation made by the subordinate legislating authority should be published in the Official Gazette. It is one of the well-known principles of subordinate legislation that in order to be effective the subordinate legislation must be published in the prescribed manner. That apparently was the basis of the decision of the Supreme Court. True, the Supreme Court said that the principles should be published as well as laid before Parliament in order to be effective. We do not think that the Supreme Court was deciding that if there had been publication but no laying before Parliament, the 'principles' would have continued to remain in-effective. That was not the question at all before the Supreme Court.

(19) The matter, however, is now beyond controversy in view of the decision of the Supreme Court in *Jan Mohammed* v. *State of Gujarat* (11), where Shah, J., observed :—

> "It was urged by the petitioner that the rules framed under the Bombay Act 22 of 1939 were not placed before the Legislative Assembly or the Legislative Council at the first session and therefore they had no legal validity..... S. 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under section 26(1). It is true that the Legislature has

(11) A.I.R. 1966 S.C. 385.

prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not effect the validity of the rules, merely because they have not been laid before the Houses of Legislature. Granting that the provisions of sub-section (5) of section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-section (5) of section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory".

(20) Perhaps the question of parliamentary control of the executive is also largely a political question, in that it is for the Legislature to admonish or punish the erring Ministers and not for the judiciary to invalidate the subordinate legislation on the ground of 'non-laying'. The judiciary may enter the picture only if the Legislature prescribes the consequence of non-laying and not otherwise. Whatever it is, we are bound by the decision of the Supreme Court wherever our own personal incliations are likely to lead us.

(21) In the light of the foregoing discussion, we are unable to hold that the 'non-laying' of the rules before the Legislature invalidated the rules.

(22) The result of the above discussion is that all the Writ Petitions are dismissed with costs.

N.K.S.

FULL BENCH

APPELLATE CIVIL

Before O Chinnappa Reddy, R. N. Mittal and K. S. Tiwana. JJ.

JASWANT KAUR,—*Defendant-Appellant.*

versus

MAJOR HARPAL SINGH and others—*Respondents.*

Regular Second Appeal No. 253 *of* 1964

April 4, 1977.

Hindu Succession Act (XXX *of* 1956)—*Female acquiring a restricted estate under a will—Sub-section* (2) *of section* 14—*Whether applicable—Such female—Whether becomes a full owner on the enforcement of the Act.*