

the spot and the original purpose thus also subsists. The straw upon which the respondent-landlord wished to clutch was the mere addition of a small carding machine not occupying a space of more than 4 feet×4 feet on the premises. It is the concurrent finding of the Courts below that this carding machine merely converts old cloth into thread which again is the basic wherewithal for running the handlooms. Can it, therefore, be said that carding of thread here would not be part of the business of handlooms? To my mind, the answer seems to be clearly in the affirmative. In this context, one has to recall afresh the observations in the *Maharaj Kishan Kessar's case* (supra). If it could be authoritatively held therein that the setting up of a petrol pump was a part of the business of an automobile workshop, it would follow inexorably that the making of thread by a carding machine is equally a part and parcel of the handloom business. Not once that is so, it is plain that what is part and parcel of the original specified purpose cannot possibly amount to a change of user or being a purpose other than that for which it was originally leased. There is thus no infraction of section 13(2)(ii)(b) of the Act and the reasoning of the lower Appellate Authority cannot be sustained. The revision petition, therefore, is hereby allowed and the appellate order is set aside and that of the Rent Controller restored. There would, however, be no order as to costs.

Prem Chand Jain, J.—I agree.

J. M. Tandon, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhwalia, C.J., S. C. Mital and S. S. Kang JJ.

SOM DUTT,—Petitioner.

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 2231 of 1983

November 25, 1983.

Constitution of India 1950—Article 16—Qualifications prescribed for a post—Applicants seeking employment possessing higher qualifications but not the prescribed minimum—Higher or superior

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qualifications—Meaning of—Qualifications in a different field or branch—Whether could be deemed superior—Employer—Whether could still insist on strict adherence to the prescribed minimum qualifications—J.B.T./Diploma in Education Training Course prescribed as minimum qualification for a post—Applicant possessing degree in Bachelor of Education—Such applicant—Whether could insist for being considered for the post.

Held, that higher or superior qualification would mean a qualification which either by way of comparison or assessment may be deemed or construed to be superior without the claimant having the basic minimal qualification *in strictitude*. Where a candidate possesses the prescribed or basic qualification, he would not become ineligible or in any way disqualified by the mere fact that after having acquired the same, he later secures either higher or additional qualifications. Obviously, in such cases, the principle that larger includes the smaller and the whole includes the part would become applicable. Consequently, hereinafter higher or superior qualifications necessarily imply a qualification in a different field or branch which might be deemed or construed as technically superior but where the claimant does not possess the basic or the minimum prescribed qualification in strictness.

(Para 5).

Held, that the employer State should in law, be entitled to prescribe the qualifications which it may think necessary as tailored to the peculiar needs of the particular post or service. Generally, it seems somewhat elementary that the employer alone would know what are the specialities and conditions of service or post for which the incumbent is required. Therefore, it would follow that its discretion in seeking the right man for the right job should be left relatively unfettered. Consequently, no doctrinaire rule can be laid down that a technically higher educational qualification is necessarily better or more advantageous for the peculiar needs of a post for which the employer State has prescribed lower qualifications. Where the qualifications are prescribed by an Act itself or by statutory rules framed thereunder, the State would have the added ground of claiming that a literal or strict compliance with the statute be adhered to. It is an ordinary and indeed a sound canon of construction that one should not add or subtract from a statutory prescription. In the matter of academic qualifications even in the absence of a statutory rule, the Courts would naturally hesitate to intervene particularly when the matter has been duly considered by the persons authorised to do so. Therefore, once qualifications have been laid down by statutory provisions, then the concept of strict compliance therewith would entitle the State to insist that these be meticulously satisfied and extraneous considerations like qualifications other than those prescribed being either the exact equivalents, or technically higher than those, would be irrelevant

to the issue and indeed may well be contrary to the statutory prescription. It is, therefore, held that where the qualifications, for a post are spelt out by a statute or precisely prescribed by the employer, it can insist on a literal strict adherence thereto irrespective of either an unprescribed equivalent or a higher academic qualification therefrom possessed by applicants seeking appointments to those posts.

(Paras 9, 10 and 15).

Held, that where one of the prescribed minimal qualification was a two years J.B.T./Diploma in Education Training Course from the Haryana Education Department and the applicant did not possess the said Diploma nor the Education Department recognised the Bachelor of Education Degree of a University as an equivalent to the said Diploma, it is not for the High Court to enter into the thicket of determining whether the Bachelor of Education Degree is a higher or superior qualification than the prescribed Diploma in Junior Basic Training and proceed to hold that the applicant would be mandatorily eligible for consideration to the post.

(Para 16).

Shyam Sunder v. The State of Punjab and Others. C.W.P. No. 810 of 1983 decided on March 11, 1983.

Dharam Pal and others v. The State of Haryana and another, C.W.P. No. 1676 of 1982, decided on December 3, 1982.

Narinder Kumar vs. The State of Punjab and others, 1981(1) S.L.R. 575

Kewal Singh vs. The State of Punjab and others, 1980(3) S.L.R. 776.

OVERRULED.

Case referred by Division Bench consisting of Hon'ble Mr. Justice S. S. Kang and Hon'ble Mr. Justice B. S. Yadav to a larger Bench on 3rd June, 1983 for decision of an important question of law involved in the case. The larger Bench consisting of Hon'ble The Chief Justice Mr. S. S. Sandhwalia, Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice S. S. Kana returned the case to a Single Judge for decision on merits on 25th November, 1983.

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

(i) *record of the case may be called for ;*

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- (ii) *services of advance notices upon the respondents may be dispensed with;*
- (iii) *filing of the certified copies of the annexures may be dispensed with;*
- (iv) *that a writ in the nature of mandamus be issued to consider the petitioner for the posts of J.B.T. Teacher.*
- (v) *that this Hon'ble Court may also pass any order which this Hon'ble Court deem fit in the peculiar circumstances of the case.*
- (vi) *costs of the petition be awarded to the petitioner.*

It is further prayed that during the pendency of this writ petition the respondent No. 2 be directed not to fill up one post of J.B.T. Teacher till the case of the petitioner is decided.

R. K. Malik Advocate, for the Petitioner.

Harbhagwan Singh, A.G. (Haryana) with P. S. Duhan, D.A.G. (Haryana) and Arun Walia Advocate, for the Respondents.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Where the qualifications for a post are spelt out by a statute, or precisely prescribed by the employer-State, can it insist on literal adherence thereto irrespective of either an unprescribed equivalent or a higher academic qualification therefrom possessed by applicants seeking appointments to the said post? This is the common core question in this set of five petitions referred for an authoritative decision by the Full Bench.

2. The matrix of somewhat similar facts may be taken from C.W.P. No. 2231 of 1983 (*Som Datt v. State of Haryana*). The petitioner therein had secured his M.A. degree from the Agra University and later had passed the Bachelor of Education Examination from the Kurukshetra University. In response to an advertisement made by respondent-2 Director of School Education, Haryana for 1679 posts of J.B.T. Teachers, he applied for appointment thereto. Admittedly, the prescribed qualifications for

the said posts were as under:—

- “(i) Matric (Full) with English as one of the subjects,
- (ii) Pass in two year J.B.T./Diploma in Education Training Course from the Haryana Education Department or equivalent qualification recognised by the Haryana Education Department.”

The petitioner received a communication from respondent No. 2 that since he did not possess the minimum prescribed qualifications aforesaid for the post, his application was to be rejected, but if he has any grievance with regard thereto, he may appear before the Selection Committee. Consequently, the writ petitioner, on July 30, 1982 appeared before the Selection Committee and claimed that he possessed higher qualifications than the prescribed qualifications and therefore, should be deemed to be eligible and could not be excluded from consideration. The petitioner was interviewed by the Selection Committee but was later informed that his case could not be considered since he did not possess the minimum prescribed qualification of two years' J.B.T. Diploma from the Haryana Education Department. The primary grievance of the petitioner is that though he did not literally possess the prescribed qualification of two-years J.B.T. Diploma, yet he had a degree in Bachelor of Education, and thus in fact higher qualifications than those prescribed, and his claim cannot be ignored in the eye of law.

3. The firm stand taken on behalf of the respondents is that the possession of allegedly higher qualifications of Bachelor of Education is of no significance because the courses of J.B.T. are different and of different duration and therefore, the possession of Bachelor of Education qualification would not render the petitioner eligible to be appointed against J.B.T. posts meant to teach the lower primary classes. It is the stand that possession of J.B.T. Diploma is a pre-requisite for the post of such a teacher. It is particularised that the J.B.T. is a professional training which is done after passing Matric or Higher Secondary Examination and its duration is of two years and training is given for the teaching of primary classes whereas B.A., B.Ed. is a training of one year's duration done after graduation and is general in nature. The syllabi for the J.B.T. Training is specially focussed on teaching the primary classes and tailored to the needs of small children. On the other hand, in B.Ed. training, the same is directed to teaching higher secondary classes and no specialised training for teaching children is given. The J.B.T. training has provisions of teaching elementary

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psychology which is an important ingredient for primary school teachers, whereas in case of Bachelor of Education, there is no such provision. In sum, the firm stand is that it is for the respondent-State to insist on the particular qualifications prescribed and it is not obliged to consider persons supposedly of higher qualifications or even equivalent qualifications unless specially recognised as such already.

4. At the very motion stage after notice to respondents, a conflict of precedent was brought to the notice of the Bench and it was observed that this could only be resolved by a larger Bench and that is how the matter is now before us.

5. Without pretending to be exhaustive, the question posed at the out-set would arise at least in two distinct, though somewhat analogous situations:—

- (i) Where the minimum qualifications for the post are, in terms, prescribed by statutory rules having the force of law; and
- (ii) where no binding provisions govern the qualifications, but the same are precisely prescribed by the employer-State or expressly advertised for inviting applications thereto.

It would appear that somewhat similar legal considerations would be applicable to both the situations barring some distinction which would be noticed in detail hereafter. However, to clear the decks straightaway, for a consideration of the matter, it is necessary for purposes of terminological exactitude to clarify what is indicated by a higher or superior qualification than the minimum prescribed for the post. It deserves pointing out that herein higher or superior qualification would mean a qualification which either by way of comparison or assessment may be deemed or construed to be superior without the claimant having the basic minimal qualification *in strictitude*. It seems elementary but nevertheless deserves highlighting that where a candidate possesses the prescribed or basic qualification, he would not become ineligible or in any way disqualified by the mere fact that after having acquired the same, he later secures either higher or additional qualifications. This may be concretised by illustration. Thus, if the minimum prescribed qualification is Bachelor of Arts and a claimant fulfills the said qualification but has also got his Master of Arts Degree or a Doctorate thereafter, he would not become ineligible or disqualified.

Therefore, in such a case, the question of deciding—whether the claimant has a higher qualification does not at all arise. Similarly, if a Second Class Degree is prescribed as a minimum qualification for a post, a person possessing a first class degree cannot be regarded as ineligible because such a candidate in addition to securing the marks required for obtaining a second class has the distinction of obtaining a large number of marks. Obviously, in such cases, the principle that larger includes the smaller and the whole includes the part, would become applicable. Consequently, hereinafter higher superior qualifications, when referred to, necessarily imply a qualification in a different field or branch which might be deemed or construed as technically superior, but where the claimant does not possess the basic or the minimum prescribed qualification in strictness.

6. Equally, it deserves notice that not unoften whilst prescribing qualifications it is also laid down that equivalent recognised qualifications would also be permissible. This, indeed, is the case herein also where it is expressly stated that the equivalent qualification must be recognised by the Haryana Education Department. In such cases, the duly recognised qualification also becomes virtually the prescribed qualification. The essence, however, is the factum of recognition by the authority specified to do so. Consequently, when reference is made to an equivalent qualification, it necessarily connotes a qualification which has not been recognised as an equivalent. This clarification, at the very threshold, seems somewhat necessary in view of the subsequent discussion.

7. Now, in the present case of C.W.P. No. 2231 of 1983 (*Som Dutt v. State of Haryana & Ors.*) which is illustrative, the rival academic qualifications are those of Junior Basic Training or Diploma in Education Training Course from the Haryana Education Department, on one hand and the Bachelor of Education Degree of the Kurukshetra University on the other. In concrete terms, therefore, the question is whether a person having a degree or the Bachelor of Education can insist and claim eligibility for employment to a post for which the prescribed qualification is a Junior Basic Teacher or Diploma in Education Training Course. The core of the stand on behalf of the writ petitioners is that, in essence, the Bachelor of Education Degree is a higher and a superior academic qualification, somewhat in the same line and, therefore, they cannot be denied the eligibility and consideration on the ground merely that they do not possess the Diploma of Junior Basic Training.

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8. On the other hand, the categorical stand of the respondent-State is that the employer is and possibly can be the only judge of the requirements of the service or the post, and the necessity or otherwise of conforming strictly to the qualifications either prescribed by the statute or clearly laid out by the State. It is the case that the employer-State alone is competent to lay down, whether a certain qualification should either be treated equivalent or be given parity therefor and it is not for any other body to take on itself the burdensome and virtually unmanageable task of determining as to whether a particular qualification is the exact equivalent of the prescribed one or whether it should be deemed superior in nature, so that persons not possessing the prescribed qualification should nevertheless be considered against the post.

9. I am inclined to take the view that broadly the stand taken on behalf of the respondent-State is not devoid of merit and is indeed plausible. There appears to be wide variety of reasons for holding that the employer-State should in law, be entitled to prescribe the qualifications which it may think necessary as tailored to the peculiar needs of the particular post or service. Generally, it seems somewhat elementary that the employer alone would know what are the specialities and conditions of service or post for which the incumbent is required. Therefore, it would follow that its discretion in seeking the right man for the right job should be left relatively unfettered. Consequently, no doctrinaire rule can be laid down that a technically higher educational qualification is necessarily better or more advantageous for the peculiar needs of a post for which the employer-State has prescribed lower qualifications. The learned Advocate General argued and not without plausibility that a Doctorate of Literature even from the most prestigious universities though undoubtedly a higher educational qualification may not only be irrelevant, but might prove counter-productive in a teacher who has to teach at the primary or even *kinder garten* levels in schools. On the larger perspective it was submitted, and in our view rightly, that superlatively higher qualified individuals may not have requisite job satisfaction or motivation in holding a post disquietingly below their academic rank though circumstances for the time being may compel them to accept such a job. The respondent-State, apart from qualifications may have the larger interest of the service in mind in having persons to man posts who value them and would have enough job satisfaction to hold on to them as well. It seems unnecessary to dilate on the various administrative exigencies and other practical considerations which necessarily would come in for appraisal by the

empolyer-State when prescribing minimal qualifications for a particular post or service generally.

10. Now what has been said above would apply equally and indeed with greater force where the qualifications are prescribed by an Act itself or by statutory rules framed thereunder. In such a situation, the respondent-State would have the added ground of claiming that a literal or strict compliance with the statute be adhered to. It is an ordinary and indeed a sound cannon of construction that one should not normally add or subtract from a statutory prescription. The wisdom or the policy of both the legislature and their delegates in the framing of rules thereunder (which on the authority of *State of Uttar Pradesh & Ors. v. Babu Ram Upadhya* (1) become part and parcel of the Act) is not to be easily questioned and overridden and therefore, it is not for the court to intrude into this somewhat sensitive field. Way back in *Banarsi Das and others v. The State of Uttar Pradesh and others* (2) it was held as axiomatic that it is clear that the government is within its rights to lay down certain qualifications for the new recruits, and again in *University of Mysore v. C. D. Govinda Rao & another* (3) their Lordships even in the absence of statutory rules had observed that on the aspect of academic qualifications, the courts would naturally hesitate to intervene particularly when the matter has been duly considered by the persons authorised to do so. Therefore, once qualifications have been laid down by binding statutory provisions, then the concept of strict compliance therewith would entitle the State to insist that these be meticulously satisfied and extraneous considerations like qualifications other than those prescribed being either the exact equivalents, or technically higher than those, would be irrelevant to the issue and indeed may well be contrary to the statutory prescription.

11. The view we are inclined to take receives massive support from the observations of the Full Bench in *The Karnataka Public Service Commission by its Chairman Bangalore and others v. N. C. Hugar* (4), in the following terms:—

“— — — The power of prescribing the qualification being with the rule making authority, it not having prescribed ‘B’ as

- (1) A.I.R. 1961 S.C. 75.
- (2) 1956 S.C.R. 357.
- (3) A.I.R. 1965 S.C. 491.
- (4) 1981(1) S.L.R. 469.

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one of the qualifications for the post, the said qualification cannot be taken into consideration. To hold otherwise would lead to innumerable problems and difficulties. In respect of a particular subject, education may be imparted and qualifications conferred by several institutions in the State, in India and in several parts of the world. If persons possessing different qualifications conferred by different institutions in the world come and assert before the Public Service Commission that the qualifications possessed by them though they are not the expressly prescribed qualifications, are qualifications higher than those prescribed can it be said that the Public Service Commission is required to make an investigation about the course of study and the nature of qualifications conferred by various institutions. This is a difficult and complicated process which is bound to take enormous amount of time. This task in the very nature of things, cannot be satisfactorily discharged by the Public Service Commission whose duty is to scrutinize the application and proceed to the next stage of notifying the candidates for interview or for written examination without undue waste of time. The task of determining as to whether a particular qualification is higher than the prescribed qualification is not an easy one. One cannot go by the mere name or description of the qualification. It is not correct to assume that degrees are higher than diplomas or certificates for it is well known that Diplomas or Certificates conferred by some institutions enjoy higher status in the academic world than the degrees conferred by other institutions. Even among degrees conferred by different institutions, there may not be uniformity. As the qualifications are prescribed having regard to the needs and requirements of the particular post, it cannot be said that a higher academic qualification is necessarily a higher qualification from the point of view of the requirements of the concerned post.....”

I am inclined to concur with the aforesaid observations and it seems to have been rightly held that an enquiry by the court for determining as to whether a particular qualification is an exact equivalent or is higher or superior to the prescribed one, would open a Pandora's Box on which the lid cannot easily be replaced.

12. In the aforesaid light, the case in hand is indeed illustrative of these somewhat anomalous results which might ensue by the courts' intrusion into this somewhat sensitive field. To highlight the peculiar requirements of the respondent-State with regard to the teachers, which it wishes to recruit, and the equally significant difference betwixt, and the equally difference betwixt the degree of Bachelor of Education on one hand and the Diploma in Junior Basic Training on the other, the learned Advocate General forcefully pin-pointed how the same are matched to or tailored to particular requirements. It was first pin-pointed that the State is looking for teachers for primary and relatively junior classes. The qualifications are prescribed with that end in view and are tailored to the peculiar requirements of the post. A technically higher qualification may be high sounding and superior, but in actual practice may be wholly wasteful and indeed counter-productive when it comes to teaching at the basic primary level or even at the *kinder garten* level in rural schools. The factual difference between the syllabi and the nature of training in the Bachelor of Education Degree and the two-year Diploma Course in Junior Basic Training, is best highlighted by being tabulated and juxtaposed against each other:—

Bachelor of Education Degree. Diploma in Junior Basic Training.

- | | |
|--|--|
| <p>1. Basic qualification is Graduation and the training is directed to teach primarily higher school from the IX Class onwards.</p> | <p>1. Basic qualification is Matriculation or below graduation and the training is directed to teach primary classes in school from I to V only.</p> |
| <p>2. The training as a teacher is general in character.</p> | <p>2. The training in teaching is special in character.</p> |
| <p>3. The syllabus for the Bachelor of Education Degree is significantly different from that for the Diploma in Junior Basic Training.</p> | <p>3. The syllabus in the Diploma in Junior Basic Training is significantly different from that prescribed for Bachelor of Education Degree.</p> |
| <p>4. The period of training is one year.</p> | <p>4. The period of training is two years.</p> |

The afore-noticed significant difference betwixt the degree of Bachelor of Education and a Diploma in Junior Basic Training would highlight the fact that even though an educational qualification may be higher,

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it may not be necessarily suited to or particularly tailored to the needs of the post. As in the present case where teachers are being recruited for teaching primary classes or even at the levels lower thereto its insistence on a literal satisfaction of the prescribed qualifications of Junior Basic Training or Diploma in Education Training course, seems to be obviously well-merited.

13. However, there is no gain saying the fact that there has been a clear discordance of view within the Court which indeed has necessitated this reference. It would be unnecessary to advert in great detail to every judgment taking a contrary view and it suffices to refer to the Division Bench judgment in (*Shyam Sunder v. The State of Punjab & Ors*) (5). Though the judgment therein is a reasoned one, it was recorded at the motion stage (albeit after notice to the respondents) and a reference thereto would indicate that the issues were not canvassed exhaustively from all angles. The conflict therein was betwixt the Degree of a Shiksha Shastri as against a Diploma for the Oriental Training Course. The specialised nature of these different sets of training, the one being directed particularly to languages and the other being a generalist course, as also the requirements of teaching lower and higher classes, were not at all brought to the notice of the Bench. In passing, it was observed that the duration of the Degree Course was longer than that of the Diploma. It was then assumed that Shiksha Shastri teaching being a Degree was inevitably a higher qualification than a Diploma. This is not necessarily so and cannot in any way be conclusive, as is apparent from the afore-quoted observations of the Full Bench in *The Karnataka Public Service Commission by its Chairman Bangalore and others' case* (supra). The larger question of the statutory qualifications being adhered to as a matter of construction and the difficulty if not the impossibility for the Court to enter thicket of determining the equivalent of various academic Degrees or to decide whether one is technically higher or superior to the other was not taken of. That prescribed qualification may be specially tailored to a post, was not highlighted before the Bench. The view of the Full Bench in *The Karnataka Public Service Commission by its Chairman Bangalore & Or's case* (supra) was equally not brought to the notice of the Division Bench. Reference and reliance was made on the somewhat brief earlier Single Bench judgments in *Narinder Kumar, Hindi Teacher v. The State of Punjab and others* (6) and, *Dharam Pal*

(5) C.W. 810/83 decided on 11-3-83.

(6) 1981(1)S.L.R. 575.

and others v. The State of Haryana (7) in which the matter was not considered from its different facets which have been discussed in the earlier part of this Judgment. For all these reasons and with the greatest humility, I am inclined to take the view that *Shyam Sunder's case* (supra) is not correctly decided and is hereby overruled.

14. As a necessary consequence and for somewhat similar reasons, *Dharam Pal and others' case* (supra); *Narinder Kumar's case* (supra) and, *Kewal Snigh v. The State of Punjab and others* (8) are not good law and with respect are hereby overruled.

15. To conclude, the answer to the question posed at the out-set is rendered in the affirmative and it is held that where the qualifications for a post are spelt out by a statute, or precisely prescribed by the employer-State, it can insist on a literal adherence thereto irrespective of either an unprescribed equivalent or a higher academic qualification therefrom possessed by applicants seeking appointments to those posts.

16. Now applying the above, it is common ground in *Som Dutt's case* (supra), that one of the prescribed minimal qualification was a two-year J.B.T./Diploma in Education Training Course from the Haryana Education Department. Admittedly, the writ petitioner did not possess the said Diploma. Equally, the Haryana Education Department has not recognised the Bachelor of Education Degree of the Kurukshetra University as an equivalent to the said Diploma. In this context, it is not for his Court to enter into the thicket of determining-whether the Bachelor of Education Degree is a higher or superior qualification than the prescribed Diploma in Junior Basic Training and proceed to hold on this ground that the writ petitioner would be mandatorily eligible for consideration to the post. Inevitably, it has to be held that the primary and indeed the sole ground pressed before us is without merit and this writ petition is consequently dismissed leaving the parties to bear their own costs.

17. In the connected writ petitions, it may be that questions other than what stands decided above, may arise. Consequently, whilst holding as above on the legal question, we direct that these be

(7) C.W. 1676/82 decided on 3-12-82.

(8) 1980(3) S.L.R. 776.

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placed before a learned Single Judge for a decision on merits, in accordance with the law laid down.

S. C. Mittal, J.—I agree.

S. S. Kang, J.—I too agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital, JJ.

GURBJAJAN SINGH AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 4414 of 1983.

November 25, 1983.

Punjab Gram Pranchayats Act (IV of 1953)—Section 5(2)—Constitution of India 1950—Articles 40, 246 and Seventh Schedule List II Entry 5—Representation of the People Act (XLIII of 1950)—Section 21—Elections to the Gram Panchayat—Electoral rolls of the State Legislative Assembly adopted under section 5(2) to determine membership of the Sabha—State Legislature—Whether could validly adopt such electoral rolls for elections to the Gram Panchayat—Section 5(2)—Whether suffers from the vice of abdication of the functions of the State Legislature—Right of franchise—Whether an inherent or a fundamental right of a citizen—Elections held on the basis of unrevised electoral rolls—Whether valid.

Held, that the right to franchise is not inherent or fundamental and any law supposedly running contrary thereto cannot be treated as void. There is no inherent or inalienable right beyond or above the statute conferring the rights of franchise. No legal grievance can arise if the statute conferring the right of franchise is validly varied or amended. An electoral statute cannot be struck down or voided on the ground of being contrary to any supposed fundamental right of franchise.

(Para 15).

Held, that the proviso to section 21(2) of the Representation of the People Act, 1950 in terms lays down that if the electoral roll is not revised as prescribed, the validity or the continued operation of the said electoral roll shall not thereby be affected. Once that provision holds, an election held on the basis of unrevised rolls cannot be said to be illegal or void.

(Para 15).