Brij Sunder Kapoor

Vs

I Additional District Judge and Others

Dr. Goverdhan Dass Agarwal

Vs

Rattan Lal Agarwal

Smt. Usha Sharma

Vs

III Additional District Judge and Others

Rameshwar Dayal

Vs

IV Additional District Judge, Meerut and Others

Civil Appeals Nos. 2606 of 1980, 6944 of 1983 and 3779 and 3780 of 1988

(S. Ranganathan, Sabyasachi Mukharji JJ)

27.10.1988

JUDGMENT

RANGANATHAN, J. –

1. The civil appeals as well as the special leave petitions raise a common question as to whether the provisions of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P.) Act 13 of 1972, (hereinafter referred to as 'the Act') are applicable to cantonments situated in the State of Uttar Pradesh. Since the two civil appeals are already pending on the issue, we grant special leave in the special leave petitions as well and proceed to dispose of all the four matters by this common judgment. The main judgment of the High Court under consideration is that in the case of Brij Sunder Kapoor v. Additional District Judge (1980 All India 319) which answered the question in the affirmative. The Allahabad High Court has reiterated the same view in its later decision in Lekh Raj v. 4th Addl. Distt. Judge, Meerut (AIR 1982 All 265 : 1982 All RC 337 : 1983 UP RCC 357), which, we are told, is also under appeal to this Court.

2. It is sufficient to set out certain brief facts in the matter of Brij Sunder Kapoor (C.A. 2606 of 1980) in order to appreciate the question of law that arises for consideration. Jhansi is a cantonment in Uttar Pradesh. Brij Sunder Kapoor is a tenant of premises No. 103, Sadar Bazar, Jhansi of which respondent 3 Bhagwan Das Gupta is the landlord. In 1975, the landlord Bhagwan Das Gupta filed an application before the prescribed authority under Section 21 of the Act praying that he needed

the above premises for his personal occupation and that the same may be released to him. The tenant contested the application. The application was dismissed by the prescribed authority but allowed, on appeal, by the Additional District Judge. The tenant preferred a writ petition which has been dismissed by a learned Single Judge of the Allahabad High Court and hence the present appeal. We are not concerned with the factual aspects of the controversy between the parties. The short point urged by learned counsel before us, which is common to all these appeals and which was also argued unsuccessfully before the High Court, was that the Act did not apply to cantonments in Uttar Pradesh and that, therefore, the order of release made by the appellate authority under Section 21 of the said Act was a nullity.

3. In order to appreciate the point urged by the learned counsel for the appellants, it is necessary to set out at some length the history of tenancy legislation in the State of Uttar Pradesh. In this State, rent and eviction control legislation was initiated by the United Provinces (Temporary) Control of Rent and Eviction Ordinance promulgated on October 1, 1946. This Ordinance was followed by U.P. Act 3 of 1947 which was made retrospective with effect from October 1, 1946. Both the Act and the Ordinance applied to cantonment areas as well as other parts of the State. Subsequently, the above Act was amended by U.P. (Amendment) Act 44 of 1948. By this Act, cantonment areas were excluded from the purview of U.P. Act 3 of 1947. This amendment was introduced perhaps as it was felt that the cantonment areas were to be governed by the Cantonments (House Accommodation) Act, 1923 and that the simultaneous application of U.P. Act 3 of 1947 to cantonment areas may create problems.

4. It appears that, subsequently, a number of representations were made by residents of cantonments for extending the provisions of U.P. Act 3 of 1947 to cantonment areas as well. Perhaps because of such representations, U.P. Ordinance 5 of 1949 was promulgated on September 26, 1949. But this Ordinance was allowed to lapse. In the meantime the Allahabad High Court in Smt. Ahmadi Begam v. District Magistrate, Agra (1951 All LJ 669 : AIR 1951 All 830) took the view that the State legislature was incompetent to regulate accommodation lying in cantonments since that was a subject on which Parliament alone was competent to legislate, a view which has subsequently been approved by this Court in Indu Bhushan Bose v. Rama Sundari Devi ((1969) 2 SCC 289 : (1970) 1 SCR 443). Thereupon, Parliament enacted the U.P. Cantonments (Control of Rent and Eviction) Act, 1952 (Act 10 of 1952). Though this was an Act of Parliament, its operation was confined to cantonments in Uttar Pradesh.

5. In 1957, Parliament enacted the Cantonments (Extension of Rent Control Laws) Act, 1957 (Act 46 of 1957). Central Act 22 of 1972 gave it retrospective effect from January 26, 1950. It provided for the extension, to cantonments in each State, of laws relating to the control of rent and regulation of house accommodation prevalent in the particular State in respect of areas other than cantonments. The Statement of Objects and Reasons of this Act specifically states that the Act became necessary because the power to make laws with respect to rent control and house accommodation in cantonment areas is exclusively vested in Parliament. Section 3 of this Act originally read thus :

> The Central Government may, by notification in the official Gazette, extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force on the date of the notification in the State in which the cantonment is situated.

The words "on the date of the notification" in the section were omitted by Section 3 of Central Act 22 of 1972 with full retrospective effect.

6. The promulgation of this Act created a somewhat anomalous position so far as the State of U.P. was concerned. As we have already mentioned, Act 10 of 1952 was already in force in the cantonment areas of the State and the issue of a notification by the Central Government purporting to apply U.P. Act 3 of 1947 also to the cantonments in U.P. would create complications. If U.P. Act 3 of 1947 had to be extended to cantonment areas in U.P. in place of Act 10 of 1952, it was necessary that the provisions of Act 10 of 1952 should be repealed by a parliamentary enactment. This was done by enacting the U.P. Cantonments (Control of Rent and Eviction) (Repeal) Act, 1971 (Act 68 of 1971). The object of passing the Act, as given in its long title, was to provide for the repeal of Act 10 of 1952. Section 2 of this Act reads as under :

> On and from the date on which the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 is extended by notification under Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 to the cantonments in the State of Uttar Pradesh, the Uttar Pradesh Cantonments (Control of Rent and Eviction) Act, 1952, Act 10 of 1952 shall stand repealed.

7. It was only on April 3, 1972 that a notification was issued by the Central Government under Section 3 of Act 46 of 1957 extending the provisions of U.P. Act 3 of 1947 to the cantonments in the State of Uttar Pradesh. But soon after above notification was issued, U.P. Act 3 of 1947 itself was repealed and replaced by U.P. Act 13 of 1972, which came into force on July 15, 1972. This necessitated the issue of another notification under Section 3 of Act 46 of 1957 extending the provisions of U.P. Act 13 of 1972 to the cantonments in Uttar Pradesh. This notification dated September 1, 1973, and gazetted on September 29, 1973, reads as follows :

> In exercise of the powers conferred by Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 (Act 46 of 1957), and in supersession of the notification of the Government of India in the Ministry of Defence, No. S.R.O. 8, dated April 3, 1972, the Central Government hereby extends to all the cantonments in the State of Uttar Pradesh the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act 13 of 1972) as in force on the date of this notification, in the State of Uttar Pradesh with the following modifications, namely, ...

8. It was in view of the above notification that respondent 3 filed his application under Section 21 of the said Act, which has given rise to the present proceedings.

9. Three questions were posed by Shri S. N. Kacker who opened the arguments for the appellants (but unfortunately could not complete them due to his unexpected demise) and Shri Agarwal who followed him. These were :

> (i) Does Act 46 of 1957 apply to the State of U.P. at all in view of the fact that Act 10 of 1952, which was a detailed and elaborate enactment, contained special provisions applicable to cantonments in this State ?
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> (ii) Did not the power of the Central Government under Section 3 of Act 46 of 1957 get exhausted when the notification dated April 3, 1972 was issued, by which the provisions of U.P. Act 3 of 1947 were extended to cantonments in U.P. ? If yes, was not the second notification dated September 1, 1973 purporting to extend the provisions of Act 13 of 1972 to cantonments in U.P. illegal and non est ?

(iii) Does not Section 3 of Act 46 of 1957 suffer from the vice of excessive delegation of legislative powers and it is not consequently void and inoperative ?

Apart from these principal questions, it was pointed out by Shri Tandon (appearing for the petitioner in SLP No. 6944 of 1983) that, in his case, the landlord was trying to resort to provisions of U.P. Act 13 of 1972 as amended by U.P. Act 28 of 1976. It was submitted that, while U.P. Act 13 of 1972 as in force on September 1, 1973 was extended to U.P. cantonments by the notification dated September 1, 1973, there was no further notification applying the provisions of the Acts amending the same to the cantonments till February 17, 1982. It was therefore contended that in any event the amended provisions would not be applicable to the cantonment areas of U.P.

10. So far as the first contention is concerned, we do not think there is any substance in it. It is true that Act 10 of 1952 was a detailed statute, which was applicable to cantonments in the State of U.P. It is also true that this enactment which was a Central enactment could not be rendered inoperative by the mere issue of a notification under Section 3 of Act 46 of 1957 and that it could be repealed or made inoperative only by an Act of Parliament. But in this case there is a parliamentary legislation which terminates the applicability of Act 10 of 1952 in Uttar Pradesh cantonments. This is Act 68 of 1971. Section 2 of this Act has already been reproduced. It enacts that Act 10 of 1952 shall stand repealed in its application to the State of U.P. on and from the date on which U.P. Act 3 of 1947 was extended to the cantonment areas in the State by a notification under Section 3 of Act 46 of 1957. As we have already mentioned, a notification was issued on April 3, 1972 under Section 3 of Act 46 of 1957, extending the provisions of U.P. Act 3 of 1947, with certain modifications set out therein, to cantonments in the State of Uttar Pradesh. On and from April 3, 1972, therefore, Act 10 of 1952 ceased to apply to cantonments in the State of Uttar Pradesh. In view of this, there was, at least on and after that date, no obstacle in the way of U.P. Act 3 of 1947 being operative in the cantonments of the State of U.P. as well. Perhaps realising this, a contention was put forward that Act 46 of 1957, promulgated at a time when Act 10 of 1952 was in force in U.P., should be construed as an enactment applicable to all States in India other than the State of Uttar Pradesh. It is not possible to accept this contention for two reasons. In the first place the language of the Act does not justify any such restriction. Secondly, since the Act has been given retrospective effect from January 26, 1950, it should be deemed to have been in force from that date. On that date Act 10 of 1952 was not in force in the State of U.P. and so the terms of Act 46 of 1957 would be applicable to cantonments in all States including U.P. This takes away the entire basis of the argument. Again, there might have been some difficulty if, by a notification under Section 3 of this Act, the Central Government had sought to apply U.P. Act 3 of 1947 to cantonments in the State of Uttar Pradesh, without there being a repeal of Act 10 of 1952. But this possible repugnancy between two legislations operating in the State of Uttar Pradesh (one by virtue of the notification under Section 3 of Act 46 of 1957 and the other by virtue of the provisions of Act 10 of 1952) has been obviated by the provisions of Central Act 68 of 1971. These provisions have rendered Act 10 of 1952 inoperative as and from April 3, 1972 leaving the provisions of U.P. Act 3 of 1947 in the field only until it was replaced by U.P. Act 13 of 1972.

11. One more, somewhat different, argument which seems to have been addressed before the High Court on the basis of Act 68 of 1971 is that, on the issue of the notification dated April 3, 1972, the provisions of U.P. Act 3 of 1947, subject to the modifications mentioned in the notification, stood bodily lifted and incorporated in Act 68 of 1971 and that the repeal thereafter, of U.P. Act 3 of 1947 did not have any bearing in respect of cantonments in the State of Uttar Pradesh. In other words, the arguments is that U.P. Act 3 of 1947 continues to be in operation in the cantonment areas even now. The appellants obviously have in mind the principles of referential legislation by incorporation

outlined in Mahindra & Mahindra Ltd. v. Union of India ((1979) 2 SCC 529 : (1979) 2 SCR 1038 : AIR 1979 SC 798) and other cases. We agree, however, with the High Court that Section 2 of Act 68 of 1971 is not an instance of legislation by incorporation. The only purpose of that Act was to repeal Act 10 of 1952. The power to extend U.P. Act 3 of 1947 to cantonment areas was already there in Act 46 of 1957. But there was a hurdle in the issue of a notification under Section 3 of that Act in that Act 10 of 1952 was already in force in such areas. Act 68 of 1971 merely removed this obstacle and enacted that Act 10 of 1952 would stand repealed on the date of issue of the notification under Section 3. Once such a notification was issued, Act 68 of 1971 had served its purpose out and had no further impact. It did not have the further effect of incorporating within itself the provisions of the extended law. If that had been the intention, Section 2 of Act 68 of 1971, as pointed out by the High Court, would have read something like this :

> On and from the date of commencement of this Act, the provisions of U.P. Act 3 of 1947 shall be applicable to the cantonments in the State of Uttar Pradesh and Act 10 of 1952 shall stand repealed.

12. It will be noticed that the above argument also overlooks the effect of later notifications under Section 3 which have superseded the effect of the one dated April 3, 1972. To get over this difficulty, it is urged that Section 3 empowers the government to issue a notification thereunder only once and that, once the notification dated April 3, 1972 was issued, the power got exhausted. The further notifications dated September 1, 1973 and February 17, 1982 are, it is said, null and void. The argument is based on a short passage in Lachmi Narain v. Union of India ((1976) 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 2 SCR 785). This case has a relevance on the third contention also to which we shall advert later. So far as the aspect presently under discussion is concerned, its relevance arises in this way. In that case, Section 2 of the Part C States (Laws) Act, 1950 empowered the Central Government to extend, by notification in the official Gazette, to any Part C State or part of it, any enactment in a Part A State. The Central Government, in exercise of this power, issued a notification in 1951, extending the provisions of the Bengal Finance (Sales Tax) Act, 1941 to the then Part C State of Delhi with certain modifications set out in Section 6. In 1957, the Central Government issued another notification, again in purported exercise of the powers conferred by Section 2, by which an additional modification of Section 6 of the Bengal Act was introduced in the 1951 notification as a result of which certain exemptions available to the petitioner were withdrawn at shorter notice than was permissible under the modifications notified in 1951. The notification of 1957 was held to be invalid and ineffective on several grounds, one of which was thus stated at page 801 : [SCC p. 966, SCC (Tax) p. 226, para 60]

The power given by Section 2 exhausts itself on extension of the enactment; it cannot be exercised repeatedly or subsequently to such extension. It can be exercised only once, simultaneously with the extension of the enactment. This is one dimension of the statutory limits which circumscribe the power.

13. This was elaborated further by the learned Judge, Sarkaria, J. at p. 802, contrasting a clause of the kind under consideration with a "Removal of Difficulty Clause" which permits removal of difficulties felt in the operation of an Act from time to time. The learned Judge observed; [SCC pp. 967-68, SCC (Tax) pp. 227-28, para 63-66]

Firstly, the power has not been exercised contemporaneously with the extension or for the purposes of the extension of the Bengal Act to Delhi. The power given by Section 2 of the Laws Act had exhausted itself when the Bengal Act was extended, with some alterations, to Delhi by notification,

dated April 28, 1951. The impugned notification has been issued on December 7, 1957, more than six-and-a-half years after the extension.

There is nothing in the opinion of this Court rendered in Re Delhi Laws Act (1951 SCR 747 : AIR 1951 SC 332) to support Mr. B. Sen's contention that the power given by Section 2 could be validly exercised within one year after the extension. What appears in the opinion of Fazl Ali J. at page 850, is merely a quotation from the report of the Committee on Minister's Powers which considered the propriety of the legislative practice of inserting a "Removal of Difficulty Clause" in Acts of British Parliament, empowering the executive to modify the Act itself so far as necessary for bringing it into operation. This device was adversely commented upon. While some critics conceded that this device is "partly a draftsman's insurance policy, in case he has overlooked something", (e.g. Sir Thomas Carr, page 44 of his book Concerning English Administrative Law), others frowned upon it, and nicknamed it as "Henry VIII clause" after the British monarch who was a notorious personification of absolute despotism. It was in this perspective that the Committee on Ministers' Powers examined this practice and recommended :

> .... first, that the adoption of such a clause ought on each occasion when it is, on the initiative of the Minister in charge of the Bill, proposed to Parliament to be justified by him up to the essential. It can only be essential for the limited purpose of bringing an Act into operation and it should accordingly be in most precise language restricted to those purely machinery arrangements vitally requisite for that purpose; and the clause should always contain a maximum time limit of one year after which the power should lapse.

It may be seen that the time limit of one year within which the power under a 'Henry VIII clause' should be exercisable, was only a recommendation, and is not an inherent attribute of such power. In one sense, the power of extension-cum-modification given under Section 2 of the Laws Act and the power of modification and adaptation conferred under a usual Henry VIII clause are kindred powers of fractional legislation, delegated by the legislature within narrow circumscribed limits. But there is one significant difference between the two. While the power under Section 2 can be exercised only once when the Act is extended, that under a 'Henry VIII clause' can be invoked, if there is nothing to the contrary in the clause - more than once, on the arising of a difficulty when the Act is operative. That is to say, the power under such a clause can be exercised whenever a difficulty arises in the working of the Act after its enforcement, subject of course to the time limit, if any, for its exercise specified in the statute.

Thus, anything said in Re Delhi Laws Act (1951 SCR 747 : AIR 1951 SC 332), in regard to the time limit for the exercise of power under a 'Henry VIII clause', does not hold good in the case of the power given by Section 2 of the Laws Act. Fazal Ali, J., did not say anything indicating that the power in question can be exercised within one year of the extension. On the contrary, the learned Judge expressed in unequivocal terms, at page 849 :

> Once the Act became operative any defect in its provision cannot be removed until amending legislation is passed.

14. Basing himself on this passage, learned counsel contended that, once the notification dated April 3, 1972 was issued, the power under Section 3 had got exhausted, and the section could not have been invoked by the Central Government once again to issue the notification of September 1, 1973 extending U.P. Act 13 of 1972 to the cantonments of U.P.

15. It will be at once clear that there is a basic difference between the situation in Lachmi Narain ((1976) 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 2 SCR 785) and that in the present case. In both cases, the power conferred is to extend the provisions of another Act with modifications considered necessary. In Lachmi Narain ((1976) 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 2 SCR 785) this had been done by the 1951 notification. The Bengal Finance (Sales Tax) Act, had been extended to Delhi with certain modifications. The object of the 1957 notification was not to extend a Part A legislation to Delhi; it was to modify the terms of an extension notified earlier. This was held to be impermissive inasmuch as all that the section permitted was an extension of the laws of a Part A State to Delhi, which, ex facie, had already been done in 1951. Here the nature of the legislation in question is totally different. As we shall explain later, the whole purpose of Act 46 of 1947 was to ensure that the cantonment areas in a State have the same rent laws as the other areas thereof. Thus when U.P. Act 3 of 1947 ceased to be in force in the rest of the State, no purpose would be served by its continuing in force in the cantonment areas alone. So also when the provisions of the law in force in the State got amended, there should be a power to extend the amended law in the cantonment. This was, obviously, the reason why Act 22 of 1972 amended Section 3 of Act 46 of 1957 to omit the words "on the date of the notification" retrospectively. The provisions of Section 3 of Act 46 of 1957 should, in the circumstances be construed so as to achieve this purpose and as enabling the Central Government to issue notifications from time to time and not as exhausted by a single invocation as in the case of the statute considered in the Delhi Laws Act case (1951 SCR 747 : AIR 1951 SC 332). Section 3 could, therefore, be invoked from time to time as occasion arises and the notifications dated September 1, 1973 and February 17, 1982 are valid and intra vires. In such a situation, we think, the limitation suggested in the above decision will not operate. On the other hand, the provisions of Section 14 and Section 21 of the General Clauses Act will apply and it will be open to the government to extend another legislation or further legislations to cantonments in place of the one that had been repealed.

16. The above conclusion can also be supported on the ratio of decision in Gurcharan Singh v. V. K. Kaushal ((1980) 4 SCC 244), also a case concerned with notifications under Section 3 of Act 46 of 1957. In exercise of this power the Central Government issued on November 21, 1969 a notification extending the East Punjab Rent Restriction Act, 1949, to cantonments in the State of Punjab and Haryana. Subsequently, after the amendment of Section 3 of Act 46 of 1957 by Act 22 of 1972, another notification was issued, on January 24, 1974, superseding the earlier notification and extending the East Punjab Act afresh to cantonments in the State of Punjab and Haryana with a modification of Section 1(3) of the said Act with retrospective effect from January 26, 1950. Upholding the validity of this notification and repelling an argument similar to the one now advanced before us, the court observed : (SCC p. 250, paras 11 and 12)

Two points are raised on behalf of the appellants against that conclusion. The first is that the power under Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 having been exercised once, that is to say, by the notification dated November 21, 1969, the power of extension stood exhausted and could not be availed of again, and therefore the notification dated January 24, 1974 was without statutory sanction and invalid. We are referred to Lachmi Narain v. Union of India ((1976) 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 2 SCR 785). That was a case where this Court held that a notification under Section 2 Part C States (Laws) Act, 1950 having been issued in 1951 by the Central Government extending the Bengal Finance (Sales Tax) Act, 1941 to the State of Delhi, the power given by Section 2 exhausted itself on the extension of the enactment and could not be exercised again to enable the issue of a fresh notification modifying the terms in which the Bengal Act was extended. The case is clearly distinguishable. The power under which the notification dated January 24, 1974 has been issued is a separate and distinct power from that under

which the notification dated November 21, 1969 was made. The power now exercised passed into the Cantonments (Extension of Rent Control Laws) Act, 1957 when it was amended in 1972. In its nature and quality it is not identifiable with the power vested under the unamended Act. A power conferred by statute is distinguished by the character and content of its essential components. If one or more material components characterising the power cannot be identified with the material components of another, they are two different and distinct powers. Although broadly the power envisaged in Section 3 of the amended Cantonments (Extension of Rent Control Laws) Act, 1957 is a power of extension even as it was under the unamended Act, there is a vital qualitative difference between the two. The power under the unamended Act was a limited power. It could operate prospectively only. There was no choice in the matter. After amendment, the Act provided for a power which could be exercised retrospectively. The power extended to giving retrospective effect to an enactment in force in the State in the form in which that enactment was in force on the date on which the extension was made. It was a power whose reach and cover extended far beyond what the power under the unamended Act could achieve.

We are of the view that in issuing the notification dated January 24, 1974 and thereby extending the East Punjab Urban Rent Restriction Act to the Ambala Cantonment retrospectively with effect from January 26, 1950, the Central Government exercised a power not available to it when it issued the notification dated November 21, 1969. The contention that the issue of the notification of January 24, 1974 amounted to a further exercise of power conferred by Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957, under which the earlier notification was issued is without force and must be rejected.

This principle will also apply in the present case for, while the notification dated April 3, 1972 was issued in exercise of the power under the unamended Section 3, the one dated September 1, 1973 was issued in exercise of the new power available after the amendment of Act 22 of 1972 which came into force on June 2, 1972, though there is a distinction between the two cases in that the latter notification, unlike the second notification in the other case, did not purport to give any retrospective effect to the extended legislation.

17. It should be mentioned here that notification dated September 1, 1973 extended to the cantonment areas only the provisions of Act 13 of 1972 as they stood on that date. It was only on February 17, 1982 that a further notification was issued superseding the notification dated September 1, 1973 by which the provisions of U.P. Act 13 of 1972 as in force in the State of Uttar Pradesh were also extended to the cantonment areas. The purpose of this notification obviously was that, since there had been amendments to U.P. Act 13 of 1972 in 1974 and again in 1976, it was necessary and desirable that the amended provisions should also be extended to the cantonment areas. The question raised above on behalf of the appellants regarding the validity of the notification dated September 1, 1973, has to be considered also in the context of this notification dated December 17, 1982. For the reasons discussed above, we are of the opinion that the Central Government acted within its powers in issuing the subsequent notification dated February 17, 1982 as well. This also is not a case like the one in Lachmi Narain v. Union of India ((1976) 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 2 SCR 785), where the purpose of the second notification was to modify without any provocation the contents of the first notification issued for the purposes of extension. Here the subsequent notification became necessary because subsequently the enactments had amended the provisions of the Act, which had been extended previously. Moreover, as the original U.P. Act 13 of 1972 has already been extended, the real purpose of this notification was to extend the provisions of U.P. Act 19 of 1974 and U.P. Act 28 of 1976 also to those areas. In our view, the provisions of Sections 14 and 21 of the General Clauses Act, 1987, clearly apply for this

reason as well as for the reason given in Gurcharan Singh case ((1980) 4 SCC 244). The validity of the notification dated February 17, 1982 is, therefore, upheld.

18. Shri S. K. Mehta also contended that, even if the notification of September 1, 1973 is left out of account, the notification of April 3, 1972 was itself sufficient to achieve the present purpose. He submitted that, since U.P. Act 13 of 1972 repealed and re-enacted the provisions of U.P. Act 3 of 1947, all references in Act 28 of 1971 as well as in the notification dated April 3, 1972 to U.P. Act 3 of 1947 and its provisions should be construed as references to U.P. Act 13 of 1972 and its corresponding provisions as amended from time to time. He relied on Section 8 of the General Clauses Act. In the view we have taken above, we consider it unnecessary to deal with this contention or express any opinion thereon.

19. Now to turn to the principal contention in the case : the contention is that Act 46 of 1957 does not itself enact any provisions in respect of house accommodation in the cantonment areas of U.P. Section 3 of Act 46 of 1957 purports only to empower the Central Government to legislate for such areas. It is true that the Central Government is not given carte blanche to do whatever it likes in this respect and that its power of notification is restricted to merely extending to cantonment areas the provisions of the corresponding laws in force in the other areas of the State of Uttar Pradesh. But this itself amounts to excessive delegation of legislative power for three reasons :

> (a) On the date of the enactment of Act 46 of 1957, Parliament could not predicate what type of provisions will be in operation in the other areas of the States on some future date(s) on which the Central Government may issue notifications under Section 3 in respect of various States. Section 3 thus authorises the introduction, on a government notification, of a law to the provisions of which Parliament has had no occasion to apply its mind at all;
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> (b) There is a further vitiating element in that the Central Government under Section 3 is empowered to direct not merely that the provisions of the State enactment, which may be in force in the State on the date of such notification, should apply to the cantonment areas in the State as well. The amendment to Section 3 by Act 22 of 1972 goes one step further to make it clear that the Central Government can make a general notification that any State enactment in force in the State would apply to cantonments as well. This means that, on a mere notification by the Central Government, not merely the provisions of an enactment which are in force on the date of the notification but also all future enactments on this topic that may come into force from time to time in the State would automatically apply to cantonment areas as well. Thus, even the notifying authority may not have had occasion to apply its mind at all to the provisions of the law that are to be made applicable to the cantonments. Thus, for instance, the amendments in 1976 to U.P. Act 13 of 1972 can be sought to be made applicable though, on the date of issue of the notification under Section 3, the Central Government could not at all have anticipated that there would be such an amendment; and
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> (c) The Central Government has been empowered to apply such laws, with such restrictions and modifications, as it thinks fit. Such an unrestricted power may well result in the notification modifying the State law in material respects and enacting a law of its own for cantonment areas, which is not permissible. Learned counsel submitted that there is not even a broad indication in the principal statue viz. Act 46

> of 1957 as to the nature of the provisions of the enactment which it would like to be applied to cantonments. A mandate to the government for a blind application, at its choice, of an enactment, existing or future, to cantonment areas within a State merely because such an enactment happens to be operative in respect of other areas in the State, it is said, amounts to a complete abdication of legislative power by Parliament which is not permissible under our Constitution.

20. We may at once deal with limb (c) of the above contention, a direct answer to which is furnished by the decision in Lachmi Narain case ((1976) 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 2 SCR 785) already discussed. Referring to the judgments in the Delhi Laws Act case (1951 SCR 747 : AIR 1951 SC 332) and Rajnarain Singh case (Rajnarain Singh v. Chairman, Patna Administration Company, (1955) 1 SCR 291 : AIR 1954 SC 569) on the scope of expressions such as "subject to such restrictions and modifications as it thinks fit", Sarkaria, J. observed : [SCC pp. 966-67, SCC (Tax) pp. 226-27, paras 59-61]

Bearing in mind the principles and the scope and meaning of the expression "restrictions and modifications" explained in Re Delhi Laws Act (1951 SCR 747 : AIR 1951 SC 332), let us now have a close look at Section 2. It will be clear that the primary power bestowed by the section on the Central Government, is one of extension, that is, bringing into operation and effect, in a Union territory, an enactment already in force in a State. The discretion conferred by the section to make 'restrictions and modifications' in the enactment sought to be extended, is not a separate and independent power. It is an integral constituent of the powers of extension. It cannot be exercised apart from the power of extension. This is indubitably clear from the preposition "with" which immediately precedes the phrase 'such restrictions and modifications' and conjoins it to the principal clause of the section which gives the power of extension. According to the Shorter Oxford Dictionary, one meaning of the word "with" (which accords here with the context), is "part of the same whole".

The power given by Section 2 exhausts itself on extension of the enactment; it cannot be exercised repeatedly or subsequently to such extension. It can be exercised only once, simultaneously with the extension of the enactment. This is one dimension of the statutory limits which circumscribe the power. The second is that the power cannot be used for a purpose other than that of extension. In the exercise of this power, only such "restrictions and modifications" can be validity engrafted in the enactment sought to be extended, which are necessary to bring it into operation and effect in the Union territory. "Modifications" which are not necessary for, or ancillary and subservient to the purpose of extension, are not permissible. And, only such 'modifications' can be legitimately necessary for such purpose as are required to adjust, adapt and make the enactment suitable to the peculiar local conditions of the Union territory for carrying it into operation and effect. In the context of the section, the words "restrictions and modifications" do not cover such alterations as involve a change in any essential feature, of the enactment or the legislative policy built into it. This is the third dimension of the limits that circumscribe the power.

It is true that the words "such restrictions and modifications as it thinks fit", if construed literally and in isolation, appear to give unfettered power of amending and modifying the enactment sought to be extended. Such a wide construction must be eschewed lest the very validity of the section becomes vulnerable on account of the view of excessive delegation. Moreover, such a construction would be repugnant to the context and the content of the section, read as a whole, and the statutory limits and conditions attaching to the exercise of the power. We must, therefore, confine the scope of the words "restrictions and modifications" to alterations of such a character which keep the

inbuilt policy, essence and substance of the enactment sought to be extended, intact, and introduce only such peripheral or insubstantial changes which are appropriate and necessary to adapt and adjust it to the local conditions of the Union Territory.

These observations make it clear that, though apparently wide in scope, the power of the Central Government for the extension of laws is a very limited one and cannot change the basic essential structure or the material provisions of the law sought to be extended to cantonment areas.

21. The principal decision on which counsel for the appellants placed reliance in support of the other limbs of his contention is the decision of this Court in B. Shama Rao v. Union Territory of Pondicherry ((1967) 2 SCR 650 : AIR 1967 SC 1489 : (1967) 20 STC 215). In that case the legislative assembly for the Union territory of Pondicherry passed the Pondicherry General Sales Tax Act (10 of 1965) which was published on June 30, 1965. Section 1(2) of the Act provided that it would come into force on such date as the Pondicherry Government may by notification appoint. Section 2(1) of the Act provided that the Madras General Sales Tax Act, 1959, as in force in the State of Madras immediately before the commencement of the Pondicherry Act, shall be extended to Pondicherry subject to certain modifications. The Pondicherry Government issued a notification under Section 1(2) on March 1, 1966, appointing April 1, 1966 as the date of commencement of the Act. It so happened that, between June 30, 1965 when the Pondicherry Act was published and April 1, 1966, which was the notified date for its commencement, the Madras legislature had substantially amended the Madras Act. It was the Madras Act, as amended up to April 1, 1966, which was brought into force in Pondicherry. When the Act came into force the petitioner was called upon to register himself as a dealer under the Act. He filed a writ petition challenging the validity of the Act. After the petition was filed, the Pondicherry legislature passed an amendment Act whereby Section 1(2) of the principal Act was amended to read that the principal Act shall come into force on April 1, 1966 and also contained a validating provision in respect of all proceedings taken in between. The majority of the Constitution Bench, which heard the matter, held (Shah and Bhargava. JJ. dissenting) that the Act of 1965 was void and stillborn and could not be revived even by the amendment Act passed in 1966. The dissenting Judges did not express any view on the contention that the principal Act was bad for excessive delegation of powers when it was enacted and published as they were of the view that the subsequent amendment Act passed by the Pondicherry legislature had the effect of bringing into force in Pondicherry a valid Act under which the proceedings sought to be taken against the petitioner were fully justified. We are here concerned with the majority view on the question of abdication of legislative functions. After referring to certain earlier decisions of the court and in particular the decision in the case of Delhi Laws Act (1951 SCR 747 : AIR 1951 SC 332), Shelat, J., speaking for the court observed as follows : (SCR pp. 659-61)

The question then is whether in extending the Madras Act in the manner and to the extent it did under Section 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 of going through the full formality of legislation applies 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.

But Mr. Setalvad contended that the validity of such legislation has been accepted in Delhi Laws Act case (1951 SCR 747 : AIR 1951 SC 332), and particularly in the matter of heading No. 4 as summarised by Bose, J. in Rajnarain Singh case (Rajnarain Singh v. Chairman, Patna Administration Company, (1955) 1 SCR 291 : AIR 1954 SC 569). In respect of that heading the majority conclusion no doubt was that authorisation in favour of the executive to adopt laws passed by another legislature or legislatures including future laws would not be invalid. So far as that conclusion goes Mr. Setalvad is right. But as already stated, in arriving at that conclusion each learned Judge adopted a different reasoning. Whereas Patanjali Sastri and Das, JJ. accepted the contention that the plenary legislative power includes power of delegation and held that since such a power means that the legislature can make laws in the manner it liked if it delegates that power short of an abdication there can be no objection. On the other hand, Fazl Ali, J. upheld the laws on the ground that they contained a complete and precise policy and the legislation being thus conditional the question of excessive delegating did not arise. Mukherjea, J. held that abdication need not be total but can be partial and even in respect of a particular matter and if so the impugned legislation would be bad. Bose, J. expressed in frank language his displeasure at such legislation but accepted its validity on the ground of practice recognised ever since Burah case (Queen v. Burah, 5 IA 178 : ILR 4 Cal 172), and thought that that practice was accepted by the Constitution-makers and incorporated in the concept of legislative function. There was thus no unanimity as regards the principles upon which those laws were upheld.

All of them however appear to agree on one principle, viz., that where there is abdication or effacement the legislature concerned in truth and in fact acts contrary to the instrument which constituted it and the statute in question would be void and stillborn.

In the present case it is clear that the Pondicherry legislature not only adopted the Madras Act as it stood at the date when it passed the principal Act but also enacted that if the Madras legislature were to amend its Act prior to the date when the Pondicherry government would issue its notification it would be the amended Act which would apply. The legislature at that stage could not anticipate that the Madras Act would not be amended nor could it predicate what amendment or amendments would be carried out or whether they would be of a sweeping character or whether they would be suitable in Pondicherry. In point of fact the Madras Act was amended and by reason of Section 2(1) read with Section 1(2) of the principal Act it was the amended Act which was brought into operation in Pondicherry. The result was that the Pondicherry legislature accepted the amended Act though it was not and could not be aware what the provisions of the amended Act would be. There was in these circumstances a total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras legislature and for that reason we must agree with Mr. Desai that the Act was void or as is often said 'stillborn'.

It was however argued that the Act cannot be said to be stillborn as it contained certain provisions independent of the Madras Act, viz., the section which provides for the Appellate Tribunal and the said schedule. But the core of a taxing statute is in the charging section and the provisions levying such a tax and defining persons who are liable to pay such tax. If that core disappears the remaining provisions have no efficacy. In our view, Act 10 of 1965 was for the reasons aforesaid void and stillborn.

22. It may appear that there is a great similarity between the facts in Shama Rao ((1967) 2 SCR 650

: AIR 1967 SC 1489 : (1967) 20 STC 215) and in the cases before us. In each of them, the p__rovisions of the enactment of one legislature enact that the provisions of an enactment of another legislature should apply within the territory subject to its jurisdiction, on the issue of a government notification and the first legislature does not know the details of the provisions of the enactment of the second legislature that will become applicable in consequence of the government notification. We are not, however, able to accept the contention that the ratio of Shama Rao case ((1967) 2 SCR 650 : AIR 1967 SC 1489 : (1967) 20 STC 215) will govern the situation in the present case also. We say this for two reasons. 23. In the first place, the principles regarding delegation of legislative powers have been discussed in several decisions of this Court, the leading decision being the one in the case of Delhi Laws Act (1951 SCR 747 : AIR 1951 SC 332). In the last mentioned authority separate judgments were delivered by the varis learned Judges of this Court and, instead of referring to each of them individually, the best course would be to adopt the summary of Vivian Bose, J. at page 298 in Rajnarain Singh case (Rajnarain Singh v. Chairman, Patna Administration Company, (1955) 1 SCR 291 : AIR 1954 SC 569). That case concerned a Bihar Act which permitted the extension of the provisions of another existing Bihar Act to a certain areas by notification. The validity of this statutory provision was upheld but the notification issued was held to be ultra vires the provision. In the course of the discussion, the learned Judge said : (SCR pp. 298-99)

The court (in the Delhi Laws Act case (1951 SCR 747 : AIR 1951 SC 332)) 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 laws and apply them as above :
>
> This was also upheld by five to two.
>
> (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 alterations 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 as in the first five cases, so it will be necessary to analyse what each Judge said.

As to categories (6) and (7) mentioned above, Bose, J., after referring to the opinion of each of the other learned Judges in the Delhi Laws Act case (1951 SCR 747 : AIR 1951 SC 332), concluded with a reference to his own observations in the earlier decision : (SCR p. 301)

Bose, J. contended himself at page 1121 by saying that the delegation cannot extend to the "altering in essential particulars of laws which are already in force in the area in question". But he added at page 1124 :

> My answers are, however, subject to this qualification. The power to 'restrict and modify' does not import the power to make essential changes. It is confined to alterations of a minor character such as are necessary to make an Act intended for one area applicable to another and to bring it into harmony with laws already in being in the State, or to delete portions which are meant solely for another area. To alter the essential character of an Act or to change it in material particulars is to legislate, and that, namely the power to legislate, all authorities are agreed, cannot be delegated by a legislature which is not unfettered.

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 case, but this much is clear from the opinions set out above : it cannot include a change of policy.

In other words, the delegation of a power to extend even future laws of another State will not be bad so long as they are laws which are already in force in the said area and so long as, in the process and under the guise of alteration and modification, an alteration of the essential character of the law or a change of it in essential particulars is not permitted. This interpretation of the Delhi Laws Act case (1951 SCR 747 : AIR 1951 SC 332) was placed before the Bench which decided Shama Rao ((1967) 2 SCR 650 : AIR 1967 SC 1489 : (1967) 20 STC 215) but, without dissenting from this approach, the learned Judges did not choose to apply it perhaps as they felt that the Pondicherry legislature, in the case before them, had completely abdicated its functions to the Madras legislature. There was also, it should be remembered, a substantial difference between the Madras Act to which the Pondicherry legislature had applied its mind and the Madras Act which actually became applicable by a deferment of the date of commencement. Such a vast change, within a short time, could not at all have been in the contemplation of the Pondicherry legislature and this is perhaps what heavily weighed with the judges. This decision has been distinguished in the Gwalior Rayon case (Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Asstt. C. S. T., (1974) 4 SCC 98 : 1974 SCC (Tax) 226 : (1974) 2 SCR 879) by Khanna, J. and Mathew, J. who delivered separate but concurring judgments. Khanna, J. observed : (SCC p. 105, SCC (Tax) p. 233, paras 7 and 8)

It would appear from the above that the reason which prevailed with the majority in striking down the Pondicherry Act was the total surrender in the matter of sales tax legislation by the Pondicherry legislature in favour of the Madras legislature. No such surrender is involved in the present case because of the Parliament having adopted in one particular respect the rate of local sales tax for the purpose of central sales tax. Indeed, as mentioned earlier, the adoption of the local sales tax is in pursuance of a legislative policy induced by the desire to prevent evasion of the payment of central sales tax by discouraging inter-State sales to unregistered dealers. No such policy could be discerned in the Pondicherry Act which was struck down by this Court.

Another distinction, though not very material, is that in the Pondicherry case ((1967) 2 SCR 650 : AIR 1967 SC 1489 : (1967) 20 STC 215) the provisions of the Madras Act along with the subsequent amendments were made applicable to an area which was within the Union territory of Pondicherry and not in Madras State. As against that, in the present case we find that the Parliament has adopted the rate of local sales tax for certain purposes of the Central Sales Tax Act only for the territory of the State for which the legislature of that State had prescribed the rate of sales tax. The central sales tax in respect of the territory of a State is ultimately assigned to that State under Article 269 of the Constitution and is imposed for the benefit of that State. We would, therefore, hold that the appellants cannot derive much assistance from the abovementioned decision of this court.

24. Mathew J. had this to say : [SCC p. 124, SCC (Tax) p. 252, para 64]

We think that the principle of the ruling in Shama Rao v. Pondicherry ((1967) 2 SCR 650 : AIR 1967 SC 1489 : (1967) 20 STC 215) must be confined to the facts of the case. It is doubtful whether there is any general principle which precludes either Parliament or a State legislature from adopting a law and the future amendments to the law passed respectively by a State legislature or Parliament and incorporating them in its legislation. At any rate, there can be no such prohibition when the adoption is not of the entire corpus of law on a subject but only of a provision and its future amendments and that for a special reason or purpose.

25. Secondly, we think that the facts of the present case are also distinguishable from those in Shama Rao ((1967) 2 SCR 650 : AIR 1967 SC 1489 : (1967) 20 STC 215). Parliament was faced with the problems of enacting laws relating to house accommodation in cantonments in various States. Earlier an attempt had been made to have a separate Act for U.P. cantonments but it was then considered that it would be better to have a uniform policy of legislation in respect of all cantonments in India. These cantonments were located in the heart of various cities in the different States and unlike the position that prevailed in early years, had ceased to be a separate and exclusive colony for army personnel. It was, therefore, but natural for Parliament to decide, as a matter of policy, that there should be no difference, in the matter of housing accommodation, between persons residing in cantonment areas of a State and those residing in other parts of the State and it is this policy that was given effect to by Act 46 of 1957. Having decided upon this policy, it was open to Parliament to do one of two things : pass a separate enactment in respect of the cantonment areas in each State or to merely extend the statutes prevalent in other parts of the respective States by a single enactment. The second course was opted upon but there was one difficulty. The enactments in force in the various States may need some modifications or changes before they could be fitted to the requirements of the cantonments. We have already explained that the expression 'restrictions and modifications' has a very limited connotation. If this is borne in mind, it will be clear that the nature of modifications or restrictions each statute would require can only be a matter of detail of drafting, of not much significance or importance, once the general policy was clear. It is only this matter of detail that has been delegated to the Central Government to be attended to while passing appropriate

notifications in each case. As pointed out in Sita Ram Bishambhar Dayal v. State of U. P. ((1972) 4 SCC 485 : 1974 SCC (Tax) 294 : (1972) 2 SCR 141) in the context of a tax legislation : [SCC p. 487, SCC (Tax) p. 296, para 5]

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 in motion forces which have made it absolutely necessary for the legislatures to entrust more and more powers to the executive. Textbook 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 absence of any better alternative, 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 in as clear a manner as possible.

For the same reasons the scope of delegation in a measure like this should have a degree of flexibility to deal with minor variations and details of statutory adoption having regard to the situation differing from State to State. The legislature hardly has the time to enter into this arena. We, therefore, think that there was no infirmity in the delegation of power contained in Section 3 of Act 46 of 1957.

26. The further argument that, in any event, the 1976 amendments of U.P. Act 13 of 1972 will not get attracted has to be rejected on the same line of reasoning as has been indicated above. Once it is the avowed policy of Parliament that cantonment areas in a State should be subject to the same tenancy legislation as the other areas therein, it follows that the decision involves also that future amendments in such State legislation should become effective in cantonment areas as well. In some rare case where Parliament feels that such subsequent amendments need not apply to cantonment areas or should apply with more than the limited restrictions and modifications permitted by Section 3, it is open to Parliament to legislate independently for such cantonment areas. But the decision that, in the main, such State legislation should apply is unexceptionable and cannot be said to constitute an abdication of its legislative function by Parliament.

27. But here the difficulty arises not so much because of the language of Section 3 of Act 46 of 1957 as on account of the language of the notification issued on September 1, 1973. The wording of this notification has been set out earlier. It reads that, in supersession of the earlier notification of April 3, 1972, the Central Government extends to the cantonments in the State of Uttar Pradesh the "Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act 13 of 1972) as in force on the date of this notification in the State of Uttar Pradesh with the following modifications ...." It must be pointed out in this connection that this notification was issued after Act 46 of 1957 had been amended by Act 22 of 1972 and a power had been conferred on the Central Government to issue the notification without the restriction previously contained in Section 3(1) that the statute proposed to be extended should be as in force on the date of the notification. In other words despite the enlarged power conferred by amending Act 22 of 1972 the notification is couched in the same way as the earlier notification of April 3, 1972 and purports to extend to the cantonments only the provisions of U.P. Act 13 of 1972 as in force on the date of the notification, that is, as on September 1, 1973. The restricted language of the notification, therefore, makes applicable to cantonments only the provisions of U.P. Act 13 of 1972 as they stood on September 1, 1973 and not its subsequent amendments.

28. U.P. Act 13 of 1972, as initially enacted, required an application under Section 21 to be made before the prescribed Authority. "Prescribed Authority" was defined by Section 3(e) to mean :

> a Magistrate of the First Class, having three years experience as such, duly authorised by the District Magistrate to exercise, perform and discharge all or any of the powers, functions and duties of the Prescribed Authority under this Act ...

U.P. Act 19 of 1974 amended this definition w.e.f. July 20, 1974 to mean :

> an officer having not less than three years experience as a Munsif or as Magistrate of the first class or as Executive Magistrate authorised by general or special order of the State Government to exercise, perform and discharge all or any of the powers, functions and duties of the prescribed authority under this Act, and different officers may be so authorised in respect of different areas or cases, or classes of cases";

Still later on July 5, 1976, U.P. Act 28 of 1976 substituted a new clause (e) for previous one. Under the new clause, the definition read :

> Prescribed Authority means a Civil Judicial Officer or Judicial Magistrate authorised by the District Judge to exercise, perform and discharge all or any of the powers, functions and duties of the Prescribed Authority under this Act ....

As explained in the judgment of the District Judge in the case under appeal, different types of officers were contemplated under the different definitions. Initially the Prescribed Authority had to be a Magistrate of the First Class under the old Code of Criminal Procedure and had also to be a nominee of the District Magistrate. This had to change because First Class Magistrates subordinate to the District Magistrate had ceased to exist after March 31, 1974. Thereafter there were only Executive Magistrates subordinate to the District Magistrates and Judicial Magistrates of the First and Second Class under the District Judges. Therefore, the amended section gave power to the State Government to authorise Munsifs, Judicial Magistrates or Executive Magistrates to discharge duties of a Prescribed Authority. This must have meant a very heavy load on the State Government and hence a third change was effected w.e.f. July 5, 1976. Thereafter, a nominee and subordinate of the District Judge was to be the prescribed Authority.

29. In Civil Appeal No. 6944 of 1983, to which we have made reference earlier, the landlord had made his application under Section 21 of U.P. Act 13 of 1972 before the Prescribed Authority on December 20, 1975. It was made before Shri Khem Karan, who had been appointed as the Prescribed Authority on September 11, 1975. However, when the definition was amended by Act 28 of 1976, Shri S. C. Srivastava was appointed as the Prescribed Authority and the application of the landlord was transferred to him and he disposed it of by his order dated September 27, 1977. It may be mentioned that both Shri Khem Karan and Shri Srivastava were Munsifs. While Shri Khem Karan was a Prescribed Authority appointed by the State Government under Section 3(e) as amended in 1974, Shri Srivastava was a Prescribed Authority authorised by the District Judge after July 5, 1976.

30. In this state of facts the argument urged on behalf of the tenant before the High Court, in addition to the principal argument that U.P. Act 13 of 1972 was not at all applicable to cantonment areas, was that Shri Srivastava, appointed in pursuance of the amendment Act U.P. Act No. 22 of 1976, was not the Prescribed Authority authorised in accordance with the provisions of the Act as

they stood on September 1, 1973, and therefore had no jurisdiction to entertain the application made by the landlord under Section 21 of the Act. Though the dates and facts of other cases were also similar, this point was taken only in this case at the earlier stages. This argument was accepted by the learned District Judge, who set aside the order of the Prescribed Authority on February 2, 1981. The High Court, in the writ petition filed by the tenant, did not, however, accept this argument. The learned Single Judge who heard the writ petition was of the opinion that the District Judge was in error and that the argument put forward on behalf of the tenant was not tenable. He observed :

> Section 3 of Act 22 of 1972 inter alia provided that Section 3 of the principal Act, namely, Act 46 of 1957 shall be re-numbered as sub-section (1) thereof, and in sub-section (1) as so re-numbered the words "on the date of the notification" shall be, and shall be deemed always to have been omitted. The effect of the words "on the date of the notification" being omitted from Section 3 of Act 46 of 1957 in the manner contemplated by Section 3 of Act 22 of 1972 was that the aforesaid words would be deemed not to have been in existence in Section 3 of the Act 46 of 1957 from the very inception. As such Section 3 of Act 46 of 1957 did not confer on the Central Government the power to issue a notification under that section to extend to any cantonment an enactment relating to the control of rent and regulation of house accommodation which was in force "on the date of the notification" in the State in which the cantonment is situated. The use of the words "on the date of this notification" after the words "as in force" and before the words "in the State of Uttar Pradesh" in the notification dated September 1, 1973, were, therefore, beyond the power conferred on the Central Government by Section 3 of Act 46 of 1957 and will accordingly be deemed to be not in existence in the aforesaid notification and have to be ignored.

31. After referring to the decision of the Supreme Court in Bhajya v. Smt. Gopikabai ((1978) 2 SCC 542 : (1978) 3 SCR 561), the learned Judge observed :

> Section 3 of Act 46 of 1957 after its amendment by Act 22 of 1972 as aforesaid on the face of it comes in the latter category referred to in the decision of Bhajya ((1978) 2 SCC 542 : (1978) 3 SCR 561). Consequently, the definition of the term "Prescribed Authority" as it was subsequently amended by U.P. Act 28 of 1976 is applicable for finding out as to who is the Prescribed Authority to entertain an application under Section 21 of the Act even in regard to those buildings which are situated within a cantonment area. The view taken to the contrary by the District Judge in the impugned order suffers from a manifest error of law and deserves to be quashed.

He, therefore, held that the application preferred by the landlord had rightly been dealt with by Shri Srivastava and therefore remanded the matter to the learned District Judge for disposing of the appeal filed before him by the tenant on its merits.

32. It is against the order of the learned Single Judge that C.A. No. 6944 of 1983 has been preferred. We are unable to support the line of reasoning adopted by the learned Judge to uphold the order passed by Shri Srivastava. We have already expressed our opinion that amended Section 3 of Act 46 of 1957, on a proper construction, validly empowers the Central Government, by notification, to extend the provisions of U.P. Act 13 of 1972 to the cantonments in the State of Uttar Pradesh, not only in the form in which it stood on the date of the said notification but also along with its

subsequent amendments. But, for the Central Government to have such power is one thing and for the Central Government to exercise such power is a totally different thing. Despite the fact that Act 22 of 1972 with full retrospective effect omitted the words "as on the date of the notification" from Section 3 of Act 46 of 1957, the term of the actual notification on September 1, 1973 purported to extend only the provisions of U.P. Act 13 of 1972 as on the date of such notification. We are unable to agree with the learned Single Judge that this restricted notification was ultra vires or travelled beyond the provisions of Section 3 of Act 46 of 1957. What happened was that the section in the statute conferred a larger power on the Central Government but the Central Government utilised the said power in a limited manner. That was perfectly within the scope of the power delegated to it under Section 3. We cannot uphold the view that the words "as on the date of this notification" in the notification dated September 1, 1973 can be ignored or be deemed to have been omitted merely because those words had been omitted from the section.

33. Nonetheless, we are of the opinion that the conclusion reached by the learned Single Judge has to be upheld. For this, there are two reasons. The first is the effect of Section 3 of Act 46 of 1957 as amended by Act 22 of 1972. This Act amended Section 3 in more respects than one. Apart from omitting the words "as on the date of the notification" in Section 3 and re-numbering Section 3 as 3(1), it added to Section 3 certain other sub-sections so that after the amendment, Section 3 read as follows :

> 3. Power to extend to cantonments laws relating to control of rents and regulation of house accommodation. - (1) The Central Government may, by notification in the official Gazette, extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force in the State in which the cantonment is situated :
>
> Provided that nothing contained in any enactment so extended shall apply to -
>
> (a) any premises within the cantonment belonging to the government;
>
> (b) any tenancy or other like relationship created by a grant from the government in respect of premises within the cantonment taken on lease or requisitioned by the government; or
>
> any house within the cantonment which is, or may be, appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923.
>
> (2) The extension of any enactment under sub-section (1) may be made from such earlier or future date as the Central Government may think fit :
>
> Provided that no such extension shall be made from a date earlier than -
>
> (a) the commencement of such enactment, or
>
> (b) the establishment of the cantonment, or
>
> (c) the commencement of this Act,
>
> whichever is later.

(3) Where any enactment in force in any State relating to the control of rent and regulation of house accommodation is extended to a cantonment from a date earlier than the date on which such extension is made (hereafter referred to as the "earlier date"), such enactment, as in force on such earlier date, shall apply to such cantonment, and, where any such enactment has been amended at any time after the earlier date but before the commencement of the Cantonments (Extension of Rent Control Laws) Amendment Act, 1972, such enactment, as amended, shall apply to the cantonment on and from the date on which the enactment by which such amendment was made came into force.

(4) Where, before the extension to a cantonment of any enactment relating to the control of rent and regulation of house accommodation therein (hereafter referred to as the "Rent Control Act"),

(i) any decree or order for the regulation of, or for eviction from, any house accommodation in that cantonment, or

(ii) any order in the proceedings for the execution of such decree or order, or

(iii) any order relating to the control of rent or other incident of such house accommodation,

was made by any court, tribunal or other authority in accordance with any law for the control of rent and regulation of house accommodation for the time being in force in the State in which such cantonment is situated, such decree or order shall, on and from the date on which the Rent Control Act is extended to that cantonment, be deemed to have been made under the corresponding provisions of the Rent Control Act, as extended to that cantonment, as if the said Rent Control Act, as so extended, were in force in the cantonment, on the date on which such decree or order was made.

It has been mentioned earlier that, on February 17, 1982, the Central Government issued a further notification under Section 3 of Act 46 of 1957 in supersession of its earlier notification dated September 1, 1973. By this notification the Central Government extended to all cantonments in the State of Uttar Pradesh provisions of U.P. Act 13 of 1972 as in force in the State of Uttar Pradesh with certain modifications. Considering that U.P. Act 13 of 1972 had already been extended, this really meant the extension of U.P. Act 19 of 1974 and U.P. Act 28 of 1976 to cantonment areas. If, in the light of this fact, we read Section 3(4) of Act 46 of 1957 it will be seen that the order of Shri Srivastava has to be upheld. The provisions of U.P. Act 13 of 1972 as amended by U.P. Act 28 of 1976 have been extended to the cantonments in the State of Uttar Pradesh only with effect from February 17, 1982. But notwithstanding this, the order passed by Shri Srivastava on September 27, 1977 was passed by an authority in accordance with the law which was, for the time being (i.e. as on September 27, 1977), in force in the State of Uttar Pradesh. Under Section 3(4), it should, therefore, be deemed to have been made under the corresponding provision of the Rent Control Act (as extended by that notification i.e. as amended in 1976) as if the said amended Rent Control Act as so extended were in force in that cantonment on the date on which such order was made. That this will be the position is clear from the decision of this court in the case of Jaisingh Jairam Tyagi v. Mamanchand Ratilal Agarwal ((1980) 3 SCC 162 : (1980) 3 SCR 224). It is not necessary to refer to the decision in detail. It is sufficient to refer to the following passage from the judgment : (SCC p. 167, para 8)

Shri V. M. Tarkunde, the learned counsel for the appellant urged that sub-section (4) had to be read in the context of sub-sections (2) and (3) and that it was to be applied only to cases where a notification issued under sub-section (1) was given retrospective effect under the provisions of sub-section (2). We see no justification for confining the applicability of sub-section (4) to cases where notifications are issued with retrospective effect under sub-section (2), sub-section (4) in terms is not as confined. It applies to all cases of decrees or orders made before the extension of a State legislation to a cantonment area irrespective of the question whether such extension is retrospective or not. The essential condition to be fulfilled is that the decree or order must have been made as if the State legislation was already in force, although, strictly speaking, it was not so in force. In our view sub-section (4) is wide enough to save all decrees and orders made by the wrong application of a State rent control and house accommodation legislation to a cantonment area, though such State legislation could not in law have been applied to cantonment areas at the time of the passing of the decrees or order. We, therefore, hold that the decree obtained by the respondents is saved by the provisions of Section 3, sub-section (4) of the Cantonments (Extension of Rent Control Laws) Act of 1957, as amended by Act 22 of 1972.

From the above decision it will be seen that sub-section (4) is independent of sub-sections (2) and (3) and has effect whether or not the extension of laws made to the cantonment is made retrospective. Even though the extension of Act 22 of 1972 (sic U.P. Act 13 of 1972) as amended by U.P. Act 28 of 1976 is not retrospective and will be effective only from July 5, 1976, the effect of Section 3(4) of Act 46 of 1957 is that even orders passed prior to such extension should be deemed to have been passed under the extended amended Act. Judged by this test, the order passed by Shri Srivastava who was the Prescribed Authority after the amendment of U.P. Act 28 of 1976 will be valid.

34. We should also like to refer in this connection to the judgment of this Court in S. P. Jain v. Krishna Mohan Gupta ((1987) 1 SCC 191). In that case the landlord moved an application under Section 24-C of U.P. Act 13 of 1972. Section 24-C formed part of Chapter IV-A, which had been inserted in U.P. Act 13 of 1972 only by the amendment Act of 1976 (U.P. Act 28 of 1976). The application of the landlord was allowed on August 17, 1981 by what was then called the "Delegated Authority". Revision application to the District Judge failed. Thereupon the tenant filed a writ petition before the High Court and contended that since Chapter IV-A of the Act had been made applicable to cantonment areas only by the notification dated February 17, 1982 that is, after the filing of the application under Section 24-C by the landlord - Section 24-B and 24-C of the U.P. Rent Act were inapplicable. This contention was rejected by a Bench of this Court (which included one of us). After pointing out that on the date on which the application was filed as well as on the date on which the order was made, the cantonment area did not come within the ambit of the Act in question and that it was only by the date on which the revisional order was passed by the Additional District Judge that the building in question came within the purview of the Act by reason of the notification dated February 17, 1982, the Court observed : (SCC p. 199, para 13)

In view of the ratio of Jaisingh Jairam Tyagi v. Mamanchand Ratilal Agarwal ((1980) 3 SCC 162 : (1980) 3 SCR 224), it must be held that the provisions of Chapter IV-A of the Act would be applicable. The amending Act was passed for the express purpose of saving decrees which had already been passed. Therefore action under Section 24-C of the Act in this case was justified. The High Court did not decide this point because it was of the opinion that the second point which we shall note presently, the High Court was in favour of the respondent. We are, however, of the opinion that the first point urged on behalf of the respondent cannot be accepted in view of the position in law as discussed hereinbefore. It was submitted on behalf of the respondent that Section

24-B gave substantive rights to the appellant and Section 24-C was the procedure for enforcing those substantive rights. Therefore, these were not only procedural rights. Therefore, there was no question of retrospective operation to take away vested right. We are, however, of the opinion that it would be an exercise in futility if the application is dismissed on this ground, it can be filed again and in view of the subsequent legislation as noted hereinbefore it was bound to succeed on this point. In exercise of our discretionary power under under Article 136 of the Constitution, it would not be proper to interfere in the facts and circumstances of the case on this ground. In the premises in view of the ratio of the decision of this Court in Jaisingh case ((1980) 3 SCC 162 : (1980) 3 SCR 224) and reason mentioned hereinbefore this contention urged on behalf of the respondent must be rejected.

In our opinion the ratio of this case squarely applies to the facts of the case in C.A. No. 6944 of 1983.

35. We are therefore unable to accept any of the contentions urged on behalf of the appellants. The appeals are, therefore, dismissed but in the circumstances we make no order as to costs.

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