

## **Subhash Photographics Etc. Etc vs Union Of India And Ors on 11 May, 1993**

**Equivalent citations: 1993 SCR (3) 654, 1993 SCC SUPL. (3) 323, 1993 AIR SCW 2871, (1993) 3 SCR 654 (SC), (1993) 48 ECR 234, 1993 SCC (SUPP) 3 323, (1993) 66 ELT 3, (1994) 46 ECC 10, (1993) 2 CURCRIR 234, (1993) 4 JT 116 (SC)**

**Author: B.P. Jeevan Reddy**

**Bench: B.P. Jeevan Reddy, N Venkatachala**

PETITIONER:

SUBHASH PHOTOGRAPHICS ETC. ETC.

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 11/05/1993

BENCH:

JEEVAN REDDY, B.P. (J)

BENCH:

JEEVAN REDDY, B.P. (J)

VENKATACHALA N. (J)

CITATION:

1993 SCR (3) 654

1993 SCC Supl. (3) 323

JT 1993 (4) 116

1993 SCALE (2) 909

ACT:

Customs Act, 1962/Customs Tariff Act, 1975/Project Imports Regulations, 1986:

Ss. 156, 157, 159/First Schedule, Second Schedule, Chapter 90, Chapter 98. Heading 98.01, Chapter Notes (1) and (2) Regulation/(3)-"Industrial Plant"-Meaning of-Photographic machinery does not fall within the purview of "industrial plant".

Administrative Law:

Delegated Legislation-Chapter 98 of Customs Tariff Act, 1975-Concessional rate of duty on certain articles including "industrial plant"--Chapter Note (2) conferring power on Central Board of Customs and Excise to define expressions used in Chapter 98--Project imports Regulations made Board defining "industrial plant"-- Exclusion of industrial systems meant for establishments designed to offer services

of any description such as photographic studios, photographic film processing laboratory etc. from the purview of "industrial plant" - Held - Regulation making power conferred on Board by s. 157 of Customs Act, 1962 is same as rule-making power conferred on Central Government under s. 156 - Regulations should not be contrary, to rules made under s. 156 - Project Import Regulations cannot be said to have travelled beyond purview of statute - Board by defining "industrial plant" has not travelled beyond its brief - Chapter Note (2) does not amount to excessive delegation of Parliaments essential legislative function.

Words and Phrases:

"Industrial Plant" occurring in Chapter 98 of Customs Tariff Act, 1975 - Meaning of.

HEADNOTE:

The Customs Tariff Act 1975 by its First and Second Schedules provided the rates of and custom duties to be levied under the Customs Act, 1962. Chapter 98 introduced in Second Schedule prescribed a concessional rate of duty in respect of articles and items specified therein. As per Chapter

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Note (1), if a particular article mentioned in Chapter 98 also fell under some other Chapter/heading, still such item would be governed by Chapter 98 and not by that other chapter/heading.

Photographic machinery was covered under Chapter 90 wherein the rate of duty was far higher, but for purposes of duty it was claimed as "industrial plant" under Chapter 98.01. The expression "industrial plant" was defined neither in Customs Tariff Act nor in Customs Act.

Chapter Note (2) of Chapter 98 of the Customs Tariff Act laid down that Heading 98.01 would apply to all goods imported in accordance with the regulations made under. s. 157 of the Act and the expressions used in heading 98.01 should have the meaning assigned to them in the said regulations. Accordingly, the Project Import Regulations, 1986 were framed. Regulation (3) of said Regulations defined "industrial plant" exduding from its purview industrial systems meant for "establishments designed to offer services of any description" such as. photographic studios, photographic film processing laboratories etc.

On coming into force of the Project Import Regulations, the Customs authorities refused to treat the photographic equipment imported by the appellants as industrial plant falling under heading 98.01 and sought to levy duty thereon under Chapter 90 of the Customs Tariff Act, 1975.

The appellant filed writ petitions before the High Court challenging the validity of the Project Import Regulations, 1986. The writ petitions were dismissed. Hence the appeals

by special leave.

The appellant contended that regulations made by the Central Board of customs and Excise under s. 157 of the Customs Act 1962, not being subject to Parliament's scrutiny in the sense that they were not required to be laid on the floor of the Houses of Parliament under s. 159 stand on an inferior footing to rules made by the Central Government under s. 156, and therefore, the regulation making power was confined only to peripheral and procedural matters and not for making substantive provisions; the Act specified the articles and things subjected to duty as also the rates of duty and such a power was not left to be exercised by a delegate; the Parliament did not contemplate delegating to the Board the power to cut down the field and ambit occupied by the provisions of the Customs Act or the Customs Tariff Act and such a power, if delegated to the Board, would amount to excessive delegation of legislative power; Regulation (3) of the Project Imports Regu-

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lation defining "Industrial plant" was outside the purview of the regulation making power conferred by s. 157 as the same took away under the garb of defining the said expression the beneficial rate of duty provided by the Parliament in the interest of industrial progress of the country.

Dismissing the appeals, this Court,

HELD : 1. The regulation-making power conferred on the Central Board of Customs and Excise by s. 157 of the customs Act, 1962 is not confined only to peripheral and/or procedural matters. The Parliament has appointed the Central Government and the Board to make rules/regulations to carry out purposes of the Act. The character of Rules and of the Regulations made under ss. 156 and 157 of the Act respectively is the same-both constitute delegated legislation. The Regulations are subject to an additional limitation viz., they should not be contrary to the Rules made under s. 156. The purpose of sub-section (2) in both the sections is to allocate certain matters to each of them exclusively; subject to these sub-sections, both the delegates can exercise the power vested in them for carrying out the purposes of the Act. (662G-H, 663-G-H, 664-A)

2.1. It is not for the Court to question the wisdom of the Government's or for that matter, of Board's policy. Enactments like Customs Act and Customs Tariff Act are not merely taxing statutes but are also potent instruments in the hands of the Government for regulating the economy and the industrial development of the country. Power of taxation is one of the weapons in the Government's armoury to regulate the economy. A certain industry may require encouragement while another may not. Such legislations can be properly administered only by constantly adjusting them to the needs of the situation. This calls for a good amount of discretion to be allowed to the delegate. "Flexibility

is essential (in law-making) and it is one of the advantages of rules and regulations that they can be altered much more quickly and easily than can Acts of Parliament". Probably, it is for this reason that the Parliament has through Chapter Note (2) vested the power to define the expressions, occurring in Chapter 98, in the Board which is a part of the Government and is in immediate direct charge of the administration of the Act alongwith and subject to the guidance of the Central Government. Looked at from this angle, it cannot be said that Chapter Note (2) amounts to excessive delegation of the Parliament's essential legislative function. (665-D-, G).

2.2. Chapter 98 of the Customs Tariff Act provides a concessional tariff to industrial plant. The expression "industrial plant" is a term of wide

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connotation. All kinds of Industrial plants may not require to be encouraged. Some may; others may not. Decisions of this nature have to be made from time to time. Parliament cannot obviously do this. It has, therefore, rightly left the function to the Board. In 1986, the Government-which expression includes the Board-thought that import of 'industrial systems' meant for 'establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, etc need no encouragement in the shape of concessional custom tariff and they said so through the Project Imports Regulations, 1986 which cannot be said to have travelled beyond the purview of the statute. Nor can it be said that the Board has travelled beyond its brief by excluding the "Establishments designed to offer services of any description" from the preview of "industrial plant" as defined under Regulation (3) of the Project Imports Regulations. Accordingly, photographic equipment does not fall within the ambit of "industrial plant". (665-G-H, 666-A, 668-E)

2.3. It cannot be said that the Parliament has, by empowering the Board to define the expression "industrial plant" occurring in Chapter 98, delegated its essential legislative function. There is, indeed, no self-abnegation on the part of the Parliament. The express power conferred by Chapter Note (2) of Chapter 98 of Customs Tariff Act is undoubtedly different from the power of exemption conferred by Section 25. It makes little difference in principle that while an exception notification is required to be laid on the floor of the parliament, Regulations made under Section 157 are not so required. Absence of such requirement does not mean absence of control by the Parliament over the acts of the delegate. (661-G-H)

Supreme Court Employee Welfare Association v. Union of India [1989] 4 S.C.C. 187. Avinder Singh v. Punjab [1979] 1 S.C.R. 845 & State of Tamil Nadu v. Hind Stone [1981] 2 S.C.R. 742, relied on.

Vasantlal Maganbhai Sanjanwala v. State of Bombay, [1961] 1 S.C.R. 341 & Devidas v. State of Punjab [1967] 3 S.C.R. 557, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2684 (NM) /93 etc. etc. From the Judgment and Order dated 2.4. 92/ 27.4. 92 of the Bombay High Court in W.P. No. 27 of 1990.

Harish N. Salve, R.P. Bhatt, A.K. Ganguli, Dr. Nitin Kantawala, Ms. Hemantika Wahi, T.V.S.N. Chari, Ms Tanuja Sheel, Mrs. Sheela S. Rao, P. Parmeswar and E.C. Agrawala, Ranjit Kumar, R. Venkataramani, Mrs. M. Qamaruddin, Abhijat P. Medh for the appearing parties.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY,J. Leave granted. Heard counsel for the parties.

These appeals arise from the common judgment and order of the Bombay High Court in a batch of writ petitions. The question is whether the photographic machinery imported by the appellants falls under Customs Tariff Heading No. 98.01. If it falls under it, it is entitled to a concessional rate of duty. If not, it is chargeable to a higher duty. The Customs Tariff Act, 1975 was enacted by Parliament with a view to consolidate and amend the law relating to customs duties. It repealed the Indian Tariff Act, 1934 and Indian Tariff (Amendment) Act, 1949. Section 2 says that the rates at which duties and customs shall be levied under the Customs Act, 1962 are those specified in the First and Second Schedules. Section 3 levies additional duty equal to excise duty. Chapter 98 was introduced in the Schedule with effect from February 28, 1986. It relates to "Project Imports; Laboratory Chemicals; Passengers Baggage, Personal Importation by air or post; Ship Stores". Chapter 98 provides a concessional rate of duty in respect of articles and items specified therein. Chapter Note (1) declares, "this chapter is to be taken to apply to all goods which satisfy the conditions prescribed therein, even though they may be covered by a more specific heading elsewhere in this Schedule." In other words, if a particular article mentioned in Chapter 98 also falls under some other chapter/ heading, still such item will be governed by chapter 98 and not by that other chapter/heading. So far as photographic machinery is concerned, it is not disputed that it falls under chapter 90 where the rate of duty is far higher. Chapter Note (2) which is of crucial relevance herein reads "Heading No. 98.01 is to be taken to apply to all goods which are imported in accordance with the regulations made under section 157 of the Customs Act, 1962 (52 of 1962) and expressions used in this heading shall have the meaning assigned to them in the said regulations.

(emphasis added) Heading 98.01 (Sub-Heading 9801.00), being relevant for our purpose, must also be set out:

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Heading No.	Sub heading	Description of article	Rate of duty Standard

----- 98.01 98.01.00 All items of machinery 60% including prime movers, instruments, apparatus and appliance, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, test and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified : (1) Industrial plant, (2) irrigation project, (3) power project, (4) mining project, (5) project for the exploration or oil or other minerals, and (6) such other projects as Central Government may, having regard to the economic development of the country notify in the official Gazette in this behalf;

and spare parts, other raw materials (including semifinished material) or consumable stores not exceeding 10% of the value of the goods specified. above provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in to 6 above."

(emphasis added) The expression "industrial plant" is not defined in the Customs Tariff Act, 1975 or, for that matter, in the Customs Act, 1962. Chapter Note (2) of Chapter 98, which it must be emphasized is apart of statute itself, says that the expressions used in heading No. 98.01 shall have the meaning assigned to them by the regulations made under Section 157 of the Customs Act and further that heading No. 98.01 shall apply to all goods which are imported in accordance with such regulations.

As contemplated by Chapter Note (2) of Chapter 98 of the Customs Tariff Act, the Central Government framed the Project Imports Regulations under Section 157 of the Customs Act, contained in notification No. 230/86-Cus. dated April 3, 1986. They came into force on the same day. Regulation (1) of these Regulations says that they shall be called "Project Imports Regulations, 1986" and shall come into force on April 3, 1986. Regulation (2) says that the said Regulations shall apply for assessment and clearance of goods falling under heading No. 98.01. Regulation (3) defines certain expressions including the expression "industrial Plant". The definition reads as follows:

"Industrial Plant" means an industrial system designed to be employed directly in the performance of any process or series of processes necessary for manufacture production or extraction of a commodity, but does not include-

(i) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film pro-

cessing laboratories, photocopying studios, laundries, garages and workshops; or

(ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to

section XVI of the said First Schedule."

A perusal of the definition of "industrial plant" makes it clear that it seeks to exclude industrial systems meant for "establishment designed to offer services of any description". It mentions certain service establishments by way of illustration. Photographic studios and photographic film processing laboratories happen to be mentioned specifically as some of the establishments designed to offer services.

Once the Project Imports Regulations came into force, the Customs authorities refused to treat the photographic equipment imported by the appellants and others as "industrial plant" falling under heading 98.01 of the customs Tariff Act. They sought to levy duty thereon under Chapter 90. In view of the refusal of the Customs authorities to treat the photographic machinery imported by them as "industrial plant" within the meaning of Chapter 98, the appellants approached the Bombay High Court by way of the batch of writ petitions. Their contention was that until April 3, 1986, photographic machinery was included within the expression "industrial plant" occurring in heading 98.01 as well as in tariff heading 84.66 of the old tariff. This fact was affirmed by the Government of India when a doubt was raised in their letter bearing No.F 526/52/83-Cus. (T.U.) dated November 4, 1988. Even according to the normal meaning and connotation of the expression "industrial plant", photographic machinery falls within its purview. This is the sense in which the said expression is used in the Tariff Entry 98.01. If so, the ambit and field of the said-expression cannot be cut-down by a regulation made under Section 157 of the Customs Act. If any particular machinery or equipment is to be excluded from the purview of the "industrial plant", it can and should be done only by the Act itself but not by a subordinate legislation like regulations. It was submitted that the 1986 regulations are outside the purview of Section 157 and are incompetent. The contentions were negatived and writ petitions dismissed by the Division Bench. In these appeals, S/Sri Harish Salve and Kantawaala urged the following contention :

(1) A perusal of the Customs Tariff Act discloses its scheme. The Act specifies the articles and things subjected to duty as also the rate of duty. Specification of articles is not left to be done by a delegate. It is true that power of exemption is conferred upon the Central government under Section 25 of the Customs Act, but it is relevant to notice that a notification of exemption issued under Section 25 is required to be laid on the floor of both the houses of parliament by Section 159 of the Act. This shows the close control which the Parliament intended to exercise over the specification of articles and the rate of duty thereon. The Regulations made under Section 157 are not subject to Parliament's scrutiny in the sense that they are not required to be laid on the floor of the houses of Parliament under Section 159. Evidently, Regulations were not supposed to deal with any matters of substance.

(2) While enacting Section 157, Parliament could never have contemplated delegating, to the Board, the power to cut-down the field and ambit occupied by the provisions of the Customs Act or Customs Tariff Act. Regulations made by the Board stand on an inferior footing to the rules made by the Central Government under Section 156. The regulation-making power was intended to be utilised for the purpose

of providing procedural and peripheral provisions but certainly not for making a substantive provision cutting down the content and ambit of the provisions of the Act. (3) Even if it is held for some reason that such a power was intended to be and was delegated to the Board, it would be bad since it amounts to excessive delegation of legislative power. Regulation (3) of the new. Regulations which defines the expression "industrial plant" is clearly outside the province of regulation-making power conferred by Section

157. The legislative history of tariff entry 98 militates against any such power being exercised by the Board. The Board cannot take away what the Parliament has given. The regulation in effect have the effect of amending the provision in the Act. They take away under the garb of defining the expression "industrial plant", the beneficial rate of duty provided by Parliament in the interest of industrial progress of the country. The Regulations are inconsistent with the provisions of the Customs Tariff Act.

S/Sri Ganguly and T.V.S.N. Chari, learned counsel appearing for the Central Government, on the other hand, fully supported the validity of the said regulations. They pointed out that the validity of chapter Note (2) was not questioned before the High Court has been expressly recorded in the judgment under appeal. They submitted that the appellants should not be permitted to do so at this stage. Once Chapter Note (2) is taken as good, the challenge to the 1986 Regulations must fail. The said note is not bad as amounting to excessive delegation of legislative power. In short, they refuted each and every submission made by the learned counsel for the appellants.

Customs Act, 1962 and Customs Tariff Act, 1975 are complimentary. to each other. Section 157 of the Customs Act confers upon the Central Board of Excise and Customs (constituted under the Central Boards of Revenue Act, 1963) the power to make regulations "consistent with this Act and Rules, generally to carry out the purposes of this Act". Sub-section (2) particularises certain matters with respect to which regulations can be made. The specification of certain matters in sub-section (2) is without prejudice to the generality of the power conferred by Sub-section (1). This is consistent with the standard legislative practice. Section 157 reads;

" 157. Central power to make regulations.

(1) Without prejudice to any power to make regulations contained elsewhere, in this Act, the Board may make regulations consistent with this Act and the rules,generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may provide for all or any of the following matters, namely-

(a) the form of a bill of entry, shipping bill, bill of export, import manifest, import reports, export manifest, export report, bill or transshipment, boat note and bill of coastal goods;



(b) the conditions subject to which the transshipment of all or any goods under sub-

section (3) of Section 54, the transportation of all or any goods under Section 56 and the removal of ware-housed goods from one warehouse to another under section 67 may be allowed without payment of duty,

(c) the conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under Section

65."

section 156 confers upon the Central Government the power to make rules "consistent with this Act generally, to carry out the purposes of this Act". SubSection (2) of Section 156 again Specifies certain matters with respect to which rules can be made. The specification in sub-section (2) is without prejudice to the generality of the power conferred by sub-section (1).

The Parliament has appointed two authorities i.e. central government and the Board to make rules/regulations to carry out the purposes of the Act generally. The character of Rules and of the Regulations made under Sections 156 and 157 respectively is the same both constitute delegated legislation. The Regulations are subject to an additional limitation viz., they should not be contrary to the Rules made under Section 156. The purpose of sub-section (2) in both the sections is inter alia to allocate certain matters to each of them exclusively; subject to these subsections, both the delegates can exercise the power vested in them for carrying out the purposes of the Act. No established legislative practice of any considerable duration has been brought to our notice to read any further limitation into the regulation-making power under Section 157, assuming that a legislative practice can be read as a limitation. We cannot, therefore, accept the contention that regulation- making power under Section 157 should be confined only to peripheral and/or procedural matters. It is not necessary for the purposes of this case to emphasis the need or the growing relevance of delegated legislation. Moreover, enactments like customs Act and Customs Tariff Act are not merely taxing statues but are also potent instruments in the hands of the Government for regulating the economy and the industrial development of the country. The 'economic' ministries had the establishments allied to them keep a close watch on the economy, closely monitoring its behaviour. Power of taxation is one of weapons in the Government's armoury to regulate the economy. A certain industry may require encouragement while another may not. Yet another sector may require to be controlled-nay, discouraged on some occasions. In an under-developed country like ours, the emphasis is bound to be more on capital goods industry rather than on consumer goods' industry. The domestic industry has also to be protected and encouraged in certain situations. In 1986, the government which expression in this discussion includes the Board-evidently thought that import of 'industrial systems' meant for 'establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories' etc. needs no encouragement in the shape of concessional custom tariff and they said so through the said Regulations made in April 1986. It is not for the court to question the wisdom of the government's or for that matter, of Board's policy. Board is a part of the government. It is in direct charge of the administration of the Act along with the

government. Probably, it is for this reason that the Parliament has, through Chapter Note (2), vested the power to define the expressions occurring in Chapter 98 in the Board. In this scheme of things, we cannot accept the argument of Sri Salve with respect to some kind of an inherent limitation upon the regulation-making power of the Board. We cannot say that the said power is confined only to, what the learned counsel calls, peripheral and/or procedural matters. There is another and perhaps more simpler answer to the attack upon the validity of the said Regulations. They are relatable not only to Section 157 of the Customs Act but more particularly to Chapter Note (2) of Chapter 98 of the Customs Tariff Act. Chapter Note (2) expressly states that the expressions used in Heading 98.01 shall have the meaning assigned to them in the said regulations. In accordance with the said Chapter Note, Project Imports Regulations have been made excluding "establishments designed to offer services of any description" from the purview of "industrial plant". If the said regulations are good any valid, there can be no escape from what they say; the photographic equipment does not fall within the ambit of "industrial plant". In this view of the matter, the relevance of the alleged legislative practice with respect to regulation-making power, or of the situation obtaining prior to the framing of the said regulations, is very little. The express power conferred by Chapter Note (2) of Chapter 98 cannot be curtailed or abridged with reference to alleged legislative practice relating to regulation-making power, assuming that such a practice is established and is relevant. The only question which really arises is whether Chapter Note (2) amounts to excessive delegation of legislative power.

As rightly pointed out by Thommen, J. In *Supreme Court Employees Welfare Association v. Union of India* [1989] 4 S.C.C. 187 "where the validity of a subordinate legislation (whether made directly under the constitution or statute) is in question, the court has to consider the nature, objects and scheme of the instrument as a whole, and on the basis of that examination, it has to consider what exactly was the area over which and the purposes for which power has been delegated by the governing law." In statutes like Customs Act and Customs Tariff Act one has also to keep in mind that such legislation can be properly administered only by constantly adjusting it to the needs of the situation. This calls for a good amount of discretion to be allowed to the delegate. As is often pointed out "flexibility is essential (in law-making) and it is one of the advantages of rules and regulations that they can be altered much more quickly and easily than can acts of Parliament." We have pointed out hereinbefore the necessity of constant and continuous monitoring of the nation's economy by the government (and its various institutions) and the relevance of these enactments as a means of ensuring a proper and healthy growth. Looked at from this angle, we are unable to see any substance in the argument that Chapter Note (2) amounts to excessive delegation of the Parliament's essential legislative function. Chapter 98 provides a concessional tariff inter alia to industrial plant. The expression "industrial plant" is a term of wide connotation. All kind of industrial plants may not require to be encouraged. Some may; others may not. Decisions of this nature have to be made from time to time. Parliament cannot obviously do this. It has, therefore, left the function to the Board which, as emphasised hereinbefore, is in immediate direct charge of the administration of the Act, along with and subject to the guidance of the central government.

In *Vasantlal Maganbhai Sanjanwala v. State of Bombay* [1961] 1 S.C.R. 341, it is observed by this Court that "self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation". At the same time, it is held, "it is for a court to

hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or a latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature". These words were quoted with approval in a subsequent decision of the Constitution Bench in *Devidas v. State of Punjab* [1967] 3 S.C.R. 557.

Krishna Iyer, J. emphasised this very aspect in the context of a taxing statute in *Avinder Singh v. Punjab* 1979] 1 S.C.R. 845. The learned Judge said:

"..... the legislature cannot self-efface its personality and make over, in terms plenary, the essential legislative functions. The legislature is responsible and responsive to the people and its representatives, the delegate may not be and that is why excessive delegation and legislative, *hara kiri* have been frowned upon by constitutional law. This is a trite proposition but the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislatures may not get off to a start if they must directly and comprehensively handle legislative business in all their plenitude, proliferation and particularisation. Delegation of such part of legislative power becomes a compulsive necessity for viability. If the 500-odd parliamentarians are to focus on every minuscule of legislative detail leaving nothing to subordinate agencies the annual output may be both unsatisfactory and negligible. The law-making is not a turnkey project, readymade in all detail and once this situation is grasped the dynamics of delegation easily follow. Thus, we reach the second constitutional rule that the essentials of legislative functions shall not be delegated but the inessentials, however, numerous and significant they be, may well be made over to appropriate agencies. Of course, every delegate is subject to the authority and control of the principal and exercise of delegated power can always be directed, corrected or cancelled by the principal."

Applying the principles aforesaid, we cannot say that the Parliament has, by empowering the Board to define the expression "industrial plant" occurring in Chapter 98, delegated its essential legislative function. Indeed, we see no self-abnegation on the part of the Parliament. The power conferred by Chapter Note (2) is undoubtedly different from the power of exemption conferred, by Section 25. It makes little difference in principle that while an exemption notification is required to be laid on the floor of the Parliament, Regulations made under Section 157 are not so required. Absence of such requirement does not mean absence of control by the Parliament over the acts of the delegate. Nor are we satisfied that by excluding the industrial systems meant for establishments designed to offer services of any description, the Board has travelled beyond its brief. Reference may be had, in this connection to the decision of this court in *State of Tamil Nadu v. Hind Stone* [1981] 2 S.C.R. 7421. Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 empowers the State Government to make rules for regulating the grant of quarry lease, mining lease and other mineral concessions in respect of minor minerals and purposes connected therewith. In exercise of the said

power, the Government of Tamil Nadu framed Tamil Nadu Minor Mineral concession Rules, 1959. Rule 8 of the Rules prescribed the procedure for lease of quarries to private persons. Rule 8(C), which was introduced in the year 1977, imposed a prohibition on the grant of lease of quarries in respect of black granite to private persons. The Rule provided that notwithstanding anything to the contrary contained in the said rules, no lease for quarrying black granite shall be granted to private persons on or after 7th December, 1977. It could be granted only to the State Government or to a corporation wholly owned by it. The validity of Rule 8(C) was challenged on the ground that it travels beyond the purview of the Act inasmuch as the power to make rules conferred upon the State Government by Section 15 was meant for regulating the grant of quarry leases in respect of minor minerals but not for prohibiting it for creating a monopoly in itself (State Government). It was also argued that since the decision contained in Rule 8(C) involved a major change of policy, it could be done only by the legislature and not by a subordinate legislative body. Both these arguments were rejected. Following observations are apposite:

"....It was pointed out by the Privy Council in *Commonwealth of Australia v. Bank of New South Wales*- and we agree with what was stated therein-that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration.... Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at same Stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation.

Another of the submission of the learned counsel was that the G.O.Ms. No. 1312 dated December 2, 1977 involved a major change of policy, which was a legislative function and therefore beyond the competence of a subordinate legislating body. We do not agree with the submission. Whenever there is a switch over from 'private sector' to 'public sector' it does not necessarily follow that a change of policy requiring express legislative sanction is involved. It depends on the subject and the statute. For example, if a decision is taken to impose a general and complete ban on private mining of all minor minerals, such a ban may involve the reversal of a major policy and so it may require Legislative sanction. But if a decision is taken to ban private mining of a single minor mineral for the purpose of conserving it, such a ban, if it is otherwise within the bounds of the authority Given to the Government by the Statute, cannot be said to involve any change of policy."

The statement of law is clear and we agree with it respectfully. We are, therefore, of the considered opinion that Chapter Note (2) cannot be faulted as an instance of excessive delegation of essential legislative function nor can the Project Imports Regulations be faulted on the ground of travelling beyond the purview of the statute. For the above reasons, the appeals fail and are dismissed. No costs.

RP.

Appeals failed.

