

Supreme Court of India

The Registrar Of Co-Operative ... vs K. Kunjabmu And Ors. on 27 November, 1979

Equivalent citations: AIR 1980 SC 350, (1980) 1 SCC 340, 1980 2 SCR 260, 1980 (12) UJ 272 SC

Author: O C Reddy

Bench: O C Reddy, R Sarkaria

JUDGMENT O. Chinnappa Reddy, J.

1. The perennial, nagging problem of delegated legislation and the so-called Henry VIII clause have again come up for decision in this appeal by the State of Kerala. Section 60 of the Madras Cooperative Societies Act 1932 and a notification issued under that provision were struck down by the High Court of Kerala on the ground of unconstitutional delegation of legislative power. Certain consequential directions were issued by the High Court. Those directions have long since worked themselves out and so the party who invoked the jurisdiction of the High Court under Article 226 of the Constitution has no longer any surviving interest. The State of Kerala is, however, interested in sustaining the validity of Section 60 and has filed this appeal.

2. Lawyers and judges have never ceased to be interested in the question of delegated legislation and since the Delhi Laws Act case, we have been blessed(?) by an abundance of authority, the blessing not necessarily unmixed. We do not wish, in this case, to search for the precise principles decided in the Delhi Laws Act case, nor to consider whether N.K. Papiiah & Sons v. Excise Commissioner beats the final retreat from the earlier position. For the purposes of this case we are content to accept the "policy" and "guidelines" theory and seek such assistance as we may derive from cases where near identical provisions have been considered.

3. It is trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure to its citizens 'Social, economic and political justice', to preserve 'liberty of thought, expression, belief, faith and worship,' and to ensure 'equity of status and of opportunity' and 'the dignity of the individual' and the 'unity of the nation'. That is what the Preamble to our Constitution says and that is what is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of State Policy. The desire to attain these objectives has necessarily resulted in intense legislative activity touching every aspect of the life of the citizen and the nation. Executive activity in the field of delegated or subordinate legislation has increased in direct, geometric progression. It has to be and it is as it should be. The Parliament and the State Legislatures are not bodies of experts or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the articulation of the views of the people whom they represent. They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. Nor can Parliament and the State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. That is the *raison d'être* for delegated legislation. That is what makes delegated legislation inevitable and

indispensable. The Indian Parliament and the State Legislatures are endowed with plenary power to legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislation must be by laying down policy and principle and delegate it may fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy.

4. In *Harishankar Bagla and Anr. v. The State of Madhya Pradesh*, the question arose whether Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, which empowered the Central Government to make orders providing for the regulation or prohibition of the production, supply and distribution of essential commodities and trade and commerce therein was void for excessive delegation. The Court said it was not and observed:

...the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. The principle is clear and offers sufficient guidance to the Central Government in exercising its powers under Section 3.

5. In *The Edward Mills Co. Ltd., Beawar v. The State of Ajmer* [1959] 1 S.C.R. 735, this Court considered the question whether Section 27 of the Minimum Wages Act under which power was given to the Government to add another part of the schedule any employment in respect of which it in its opinion that minimum wages should be fixed exceeded the limits of permissible delegation and was, therefore, unconstitutional. The Court held that the legislative policy was apparent on the face of the enactment which aimed at the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The intention of the Legislature was not to apply the Act to all industries but only to those industries where by reason of unorganised labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. In enacting Section 27 there was, therefore, no delegation of essential legislative power.

6. In *Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh* [1959] S.C.R. 427, this Court held that it was not unconstitutional for the Legislature to leave it to the Executive to determine details

relating to the working of taxation laws such as the selection, of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods and the selection of goods in respect of which exemption from taxation might be granted etc. etc.

7. In *Sardar Inder Singh v. The State of Rajasthan* [1957] S.C.R. 605, the validity of Section 15 of the Rajasthan (Protection of Tenants) Ordinance which authorised the Government to exempt any person or class of persons from the operation of the Act was upheld and the argument that there was impermissible delegation of legislative power was repelled on the ground that the Preamble to the Ordinance set out with sufficient clarity the policy of the Legislature.

8. In *Vasantlal Maganbhai Sanjanwala v. The State of Bombay*, Section 6(2) of the Bombay Tenancy & Agricultural Lands Act was challenged as permitting excessive delegation of legislative power as it enabled the Government to fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or to fix such rate on any suitable cases as it thought fit. This Court noticed that the Act was undoubtedly a beneficent measure, as shown by the Preamble which stated that the object of the Act was to improve the economic and social conditions of peasants and ensure the full and efficient use of land for agricultural. Bearing in mind the Preamble and the material provisions of the Act, it was held that the power delegate was within permissible limits.

9. In *Jyoti Pershad v. The Administrator for the Union Territories of Delhi*, Rajagopala Ayyangar, J. made some useful observations which may be extracted here:

In regard to this matter we desire to make two observations. In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provisions for them. The Legislature therefore is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a *carte blanche* to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law.

10. In *Mohammad Hussain Gulam Mohammad v. The State of Bombay*, the question was about the vires of Section 29 of the Bombay Agricultural Produce Markets Act. It gave power to the State Government to add to, or amend, or cancel any of the items of agricultural produce specified in the schedule in accordance with prevailing local conditions. The attack was on the ground that legislative power had been delegated to an extent not permissible. The Court while noticing that Section 29 itself did not provide for any criterion for determining which item of agricultural produce should be put into the schedule, nevertheless upheld its vires on the ground that guidance was writ

large in the various provisions and the scheme of the Act. It was observed that in each case the State Government had to consider whether the volume of trade in the produce was of such a nature as to give rise to wholesale trade so as to merit inclusion in the schedule.

11. Let us now turn to Section 60 of the Madras Cooperative Societies Act, 1932 whose vires is in question and which is as follows:

Section 60: The State Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

The provision is a near Henry VIII clause. But to give it a name is not to hang it. We must examine the preamble, the scheme and other available material to see if there are any discernible guidelines. Surely the Cooperative Societies Act is a welfare legislation. Its preamble proclaims:

Whereas it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the State of Madras.

12. The policy of the Act is there and so are the guidelines. Why the legislation? "To facilitate the formation and working of Cooperative Societies". Cooperative Societies, for what purpose? "For the promotion of thrift, self-help and mutual aid". Amongst whom? "Among agriculturists and other persons with common economic needs". To what end? "To bring about better living, better business and better methods of production". The objectives are clear; the guidelines are there. There are numerous provisions of the Act dealing with registration of societies, rights and liabilities of members, duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committees of societies, dissolution of societies, surcharge and attachment, arbitration etc. We refrain from referring to the details of the provisions except to say that they are generally designed to further the objectives set out in the preamble. But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies. In fact, the too rigorous application of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the Government under Section 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.

13. We are therefore of the view that Section 60 is not void on the ground of excessive delegation of legislative power. We so declare and otherwise dismiss the appeal.