

CASE ANALYSIS OF KUNJ BEHARI LAL BUTAIL and Ors. v. STATE OF HIMACHAL PRADESH and Ors. [(2000) 3 SCC 40]

by

Meher Mansi

ABSTRACT

Delegated legislation is one of the most important branches of administrative law. Half of the cases on administrative law are related to issues regarding delegated legislation. There is a lot of scope for delegated legislations where the legislative power is delegated to the executive. This delegation makes it difficult for the different constitutional organs to function smoothly without any turf, but delegated legislation is the necessary evil. The Indian Constitution provides for separation of powers, so that all the three organs functions separately on their own. But there is encroachment of powers very so often. According to separation of powers all the three organs of governance, the legislative, executive and the judiciary shall be kept separate and distinct from each other. They function together but are not dependent on each other. India does not follow separation of powers in its rigidity there are checks and balances, one of which is delegated legislation. Delegated legislation fills the vacuum left by the legislature. The flesh and blood of the main legislation is filled in by the executive. Delegated legislation is necessary for better administration of rules and regulations.

Kunj Behari Lal Butail and Ors. v. State Of Himachal Pradesh and Ors. [(2000) 3 SCC**401:**

Before the Hon'ble Supreme Court of India decided by a three judge bench consisting of S. Saghir Ahmad, R.C, Lahoti, Y.K. Sabharwal, JJ.

FACTS:

In the instant case, a law to regulate ceiling on land holdings in the state of Himachal Pradesh was enacted by the State Government. The law is called the Himachal Pradesh Ceiling on Land Holdings Act, 1972. The State Government was given the power to make rules “for carrying out the purposes of the act” under section 26 of the impugned act. The pertinent act excluded “tea estate” from the operation of act, and section 5 of the 1972 Act provides for the same. But the rules made under section 26 of the act, sought to include tea plantations and prohibited transfer of such land. There was complete restraint on the registrar to register any sale deed of land which was exempted from the 1972 Act. And in cases where there was sale of land exempted from the provisions of the 1972 Act, the registrar was supposed to report it and take action under the impugned act. This action arises as a result of a land owner aggrieved by the rules. The land owner was selling a piece of land considered to be subservient to tea estate and the transaction was put in jeopardy due to the rules. The case was filed as a writ petition.

ISSUE: Whether the amendment made in the Rules by notification dated 4.4.86 (published on 26.4.86) and the circular order dated 21.8.90 are constitutionally valid?

LAWS APPLICABLE:

- **Constitution of India:** Article 14- Equality and Administrative Discretion, it is applicable in cases where wide and arbitrary powers granted. Equality is the antithesis of arbitrariness.¹ Article 14 strikes arbitrariness in the administrative and executive actions.² Article 19- it provides for various freedoms to the citizens of country like freedom of speech and expression, trade, profession. The rules infringe those freedoms especially that of article 19(1)(g) which talks about freedom to carry on any profession trade or business.
- **Himachal Pradesh Ceiling on Land Holdings Act, 1972:** Section 4 provides for the permissible land which can be possessed; Section 5 provides for exemptions which includes “tea estate”; Section 6 provides for a ceiling on the permitted land to be held; section 26 gives the power to make rules to the state government; the interpretation clause gives for the definition of the term “tea estate”.

¹ EP Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

² Maneka Gandhi v. Union of India, AIR 1978 SC 597.

- Himachal Pradesh Ceiling on Land Holdings Rules, 1973: Rule 3 provides for areas to be treated as subservient to tea plantation. The amendment to the rules puts an embargo on transfer of such land although such land is exempted from the Act.
- **Case Laws:**

1. Supreme Court Employees Welfare Association v. Union of India,³ was followed in this case. In this case the Supreme Court held that: "A delegated legislation or a subordinate legislation must confirm exactly to the power granted." "Rules whether made under Constitution or a statute, must be intra vires the parent law under which power has been delegated."

2. The case of General Officer Commanding-in-chief & Anr. v. Dr. Subhash Candra Yadav & Anr.,⁴ was also followed in this case. It has been held in the present case that two conditions are to be followed for a delegated legislation to be valid: (1) it must conform with the parent act, (2) it must be within the scope and purview of the rule making authority granted by the parent act. It is common for the statutes to delegate rule making power to fulfill the purpose of the act. But for the validity of such authority it is required for the rules to conform and be within the scope of the act.

3. The case of Sant Saran Lal & Anr. v. Parsuram Sahu & Ors.⁵ was relied on in this instant case. The Court held that "From the provisions of the Act we cannot spell out any legislative intent delegating expressly, or by necessary implication, the power to enact any prohibition on transfer of land."

Another case that was followed is the case of Maharao Sahib Shri Bhim Singhji v. Union of India Ors.,⁶ which gave the same rulings as the above cases.

ARGUMENTS ADVANCED:

The counsel for the appellant argued that the act is not applicable to the said land and there cannot be any restriction on transfer of the same. The counsel has also brought to notice to the court that the embargo infringed the fundamental rights guaranteed under constitution one of which is article 19(1)(g) which talks about freedom of trade and business. The counsel for the appellants pleaded for the following:

(i) the Act is not applicable to land subservient to tea estates and therefore rules made in this regard on a subject excluded from within the purview of the Act is ultra vires of the provisions of the Act;

(ii) the prohibition imposed by the amended rule suffers from the vice of arbitrariness and unreasonableness as the alienation is not prohibited by the act but the amended rules provide for the same.

³ AIR (1990) SC 334.

⁴ AIR (1988) SC 876.

⁵ AIR (1966) SC 1852.

⁶ [1981] 1 SCC 166.

JUDGEMENT:

The three judge bench was in consonance with the appellants pleas. They agreed to the fact the complete prohibition on lands exempted from the act serves no “purpose to be fulfilled by the act”. This restriction advances the scope of the act and such prohibition cannot be sustained. The bench mentions that they “fail to understand how a restriction on transfer of such land is going to carry out any purpose of the Act.” The judges also opined that the restrictions infringe article 19(1)(g) of the Constitution. The Hon’ble bench was not satisfied with the learned counsel for the State of Himachal Pradesh as to how this prohibition will help in achieving the object of the act. They were of the opinion that power to make rules is a general delegation without any specific guidelines but it cannot be exercised to bring in substantial rights and duties or obligations or disabilities not discussed in the Act itself. Therefore the court held that the impugned rules are beyond the scope of the act and set aside the lower court’s decision. The court declared that the rule 3 and amendment are invalid and ultra vires of the 1972 Act.

ANALYSIS:

The instant case is regarding delegated legislation and the issue of delegated legislation being beyond the scope of the parent act. Delegated legislation has been in place for years now. It was a necessary evil for the smooth functioning of the governance. For several years it was considered an ‘evil’ by many jurisdictions. But over the decades it has been increasing tremendously. Delegated legislation has reached a state where it neither can be revamped nor prohibited. Delegated legislation has come to stay. Now it is not only a necessary evil but the requirement of the day. One of the reasons for the tremendous growth is the complex roles assumed by the government. The complexity of the modern administration makes it a requirement, a necessity. The many hats donned by the state, make delegated legislation a necessary which cannot be ignored. But care should be taken to not expand the scope of delegated legislation. As one of the jurists Justice Mukherjea defines: “*Delegated legislation is an expression which covers a multitude of confusion. It is an excuse for the legislators, a shield for the administrators and a provocation to the constitutional jurists.*” It is all that and much more, but the jurist’s observation is to be noted where he says it is a shield for administrators. This is the most prior concern regarding delegated legislation which has been discussed in the instant case.

At present most of the countries follow the technique of delegated legislation where legislature delegates some powers to the executive. But there is still the inherent danger of abuse of the said power by the executive authorities. The basic problem in the whole system of delegated legislation is that of controlling the delegate in exercising his legislative powers. Our concern and concentration should be on the controls and safeguards on delegated legislation rather than debating on the fact whether it delegated legislation is required or not. It has been rightly pointed out by the Supreme Court in one of the cases that one has to find out a middle course

between two conflicting principles: one permitting very wide powers of delegation for practical reasons while the other that no new legislative bodies should be set up by transferring essential legislative functions to administrative authorities.⁷ Delegated legislation has become inevitable but the question of control has become crucial.⁸ The control must be introduced at two stages: firstly, at the source, i.e. the safeguards must be provided when the legislature confers the legislative power on the executive; secondly, some safeguards must be provided in case of misuse or abuse of power by the executive. Controls over the delegated legislation may be divided into three categories: (a) judicial control, (b) legislative control and (c) other controls.

This case discusses judicial control over delegated legislation. No delegated legislation is beyond the scrutiny of judicial review. Judicial control can be exercised if the delegated legislation is ultra vires either in a substantive or procedural way. This case talks about the substantial ultra vires concept where the delegated legislation is inconsistent with the parent act. There are many other circumstances under which a delegated legislation is ultra vires but this case discusses one of those scenarios. When the parent act does not give any guideline regarding the implementation of the act through the rules, then the powers delegated would be very wide and to limit them is the concern which is addressed by this case. This case signifies that no substantial rights and obligation can be created by the administrators through delegated legislation which is done in the present case. The executive is given huge powers, this discretion infringes some of the fundamental rights like article 14 guaranteed under Constitution. Therefore it is important to limit arbitrariness as it would violate principles of natural justice if wide discretion is given to the administrative actions.

CONCLUSION:

To conclude, this case is an addition to the plethora of judgements available under the head of delegated legislation. This case reiterates that no substantial legislative function can be delegated only ancillary and subordinate functions can be delegated. Nothing other than ancillary functions can be delegated in the name of advancing the purpose of the act. To advance the purpose of the act is not to expand the scope of the act. Only when all the conditions are met the delegated legislation can be upheld and sustained. On the whole Delegated legislation is a very important link in the cycle of governance, it might be troubled waters at some points but it should be tread carefully with the already established principles and case laws so that both administrative and constitutional principles are upheld.

⁷ Delhi Laws Act, 1912. Re, AIR 1951 SC 332.

⁸ Committee on Ministers' Powers Report, 1932.

REFERENCES:

- M.P. JAIN, INDIAN CONSTITUTIONAL LAW (LexisNexis 2019)
- C.K. TAKWANI, LECTURES ON ADMINISTRATIVE LAW (EBC 2018)
- SCC Online.



Journal of Multi-Disciplinary
Legal Research