VASANTLAL MAGANBHAI SANJANWALA

v.

THE STATE OF BOMBAY AND OTHERS.
(AND CONNECTED APPEAL)

1960

August 25.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Agricultural Tenancy, Regulation of—Enactment empowering Government to fix lower rate of maximum rent by notification—If vitiated by excessive delegation—Notification, validity of—Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), s. 6(2).

Section 6(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), provided that the maximum rent payable by a tenant shall not in the case of irrigated land exceed one-fourth and in the case of any other land exceed one third of the crop of such land or its value as determined by the prescribed manner. Section 6(2) of the Act read as follows,—

"The Provincial Government may, by notification in the Official Gazette, fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as it thinks fit."

By a notification under that section the Government of Bombay, in supersession of all other notifications prescribed a rate of maximum rent which was very much lower than the one previously fixed. The petitioners challenged the vires of the said section and the validity of the notification under Art. 226 of the Constitution, but the High Court found against them. The question for determination in these appeals was whether s. 6(2) conferred unguided power on the Government and was void by reason of excessive delegation of legislative power.

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Held (per Sinha, C. J., Kapur, Gajendragadkar and Wanchoo, JJ.) that although the power of delegation is a constituent element of the legislative power, it is well-settled that a legislature cannot delegate its essential legislative function in any case and before it can delegate any subsidiary or ancillary powers to a delegate of its choice, it must lay down the legislative policy and principle so as to afford the delegate proper guidance in implementing the same. A statute challenged on the ground of excessive delegation must, therefore, be subjected to two tests, (1) whether it delegates essential legislative function or power and (2) whether the legislature has enunciated its policy and principle for the guidance of the delegate. It is in that light that the preamble of the statute and its provisions relating to delegation should be considered.

Harishankar Bagla v. *The State of Madhya Pradesh*, [1955] 1 S. C. R. 288 and *The Edward Mills Co. Ltd., Beawar* v. *State of Ajmer*, [1955] 1 S.C.R. 735, referred to.

The preamble and the material provisions of the Act show that it seeks to improve the economic and social condition of the peasants and with that end in view fixes maximum rent payable by the tenants and provides a speedy machinery for fixation of reasonable rent. This being the legislative policy and regard being had to the specific provisions laid down by s. 12(3) of the Act for determining reasonable rent, it is impossible to hold that the power delegated to the Provincial Government by s. 6(2) was vitiated by excessive delegation. The fact that no minimum was prescribed by the section could not alter the position.

Held, further, that since the Act itself is within the protection of Art. 31-B of the Constitution and there can be no question as to the validity of s. 6(2), the notification issued in exercise of the power conferred by that section cannot be challenged as infringing Art. 31 of the Constitution.

Nor was it correct to say that the power delegated by s. 6(2) could be used only once and no more.

Per Subba Rao, J.—The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously the legislature cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive, it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency

either in whole or in part is beyond the permissible limits of delegation. 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 latent legislative policy to sustain an arbitrary power conferred on executive authorities.

In re The Delhi Laws Act, 1912, [1951] S.C.R. 747, *Rajnarain Singh* v. *The Chairman, Patna Administration Committee, Patna*, [1955] 1 S. C. R. 290, *Harishankar Bagla* v. *The State of Madhya Pradesh*, [1955] 1 S. C. R. 380, *The Edward Mills Co., Ltd., Beawar* v. *The State of Ajmer*, [1955] 1 S. C. R. 735 and *Hamdard Dawakhana* v. *Union of India*, [1960] 2 S.C.R. 671, referred to.

The whole scheme of the Bombay Tenancy and Agricultural Lands Act, 1948 (LXVII of 1948), excluding s. 6(2), is a self-contained and integrated one. The legislature fixes the maximum rent linked with crop having regard to the nature of the land, and the other provisions enable the appropriate authorities to fix reasonable rent subject to that maximum. But under s. 6(2) the legislature in clearest terms abdicated its essential functions in favour of the executive authority without laying down any standard for its guidance. In effect it permitted the Government to amend s. 6(1) of the Act. While s. 6(1) overrides other provisions of the Act, s. 6(2) derogates from s. 6(1) itself. Section 6(2) is capable of being exercised in such a way that the object of s. 6(1) is itself frustrated. Section 6(1) in effect is made subject to s. 6(2). This is clearly an abdication by the legislature of its essential legislative function and the delegation must be held void.

It was not correct to say that the factors specified by s. 12(3) afforded a standard for fixing the maximum rent. It was not permissible to read them into s. 6(2) of the Act.

No legislature can be legally permitted to lay down a broad policy in general terms and confer arbitrary powers on the executive for carrying it out. Such a law must obviously be contrary to the decisions of this Court and cannot be valid.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 147 & 148 of 1955.

Appeals from the judgment and order dated September 30, 1953, of the former Bombay High Court in Special Civil Applications Nos. 1008 and 1611 of 1953.

V. M. Limaye, Mrs. E. Udayaratnam and *S. S. Shukla*, for the appellants (in both the appeals).

H. N. Sanyal, Additional Solicitor-General of India, R. Ganapathy Iyer, K. L. Hathi and *R. H. Dhebar*, for the respondent.

1960

Vasantlal Maganbhai Sanjanwala
v.
The State of Bombay & Others

Gajendragadkar J.

1960. August 25. The Judgment of Sinha, C. J., Kapur, Gajendragadkar and Wanchoo, JJ., was delivered by Gajendragadkar, J. Subba Rao, J., delivered a separate judgment.

GAJENDRAGADKAR J.—The appellants in these two appeals had filed two separate petitions under Art. 226 of the Constitution in the Bombay High Court in which they had challenged the vires of s. 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (LXVII of 1948) (hereafter called the Act) and the validity of the notification issued by the Government on October 17, 1952, under the provisions of the said s. 6(2). It appears that on June 23, 1949, in exercise of the powers conferred by s. 6(2) of the Act, the Government had issued a notification fixing "in the case of an irrigated land 1/5 and in the case of any other land 1/4 of the crops of such land or its value as determined in the prescribed manner as the maximum rent payable by the tenants of the lands situate in the areas specified in the schedule appended thereto". Amongst the areas thus specified was the area in which the appellants' lands are situated. Subsequently, on October 17, 1952, by virtue of the same powers and in supersession of all other earlier notifications issued in that behalf the Government purported to prescribe a rate as the lower rate of maximum rent at which the rent shall be payable by the tenants in respect of the lands situate in the areas specified in Schedule I appended to it. It is unnecessary to set out the rates thus prescribed; it would be enough to state that the rate of maximum rent prescribed by this notification is very much lower than the rate which had been fixed by the earlier one. By their petitions filed in the Bombay High Court the appellants contended that s. 6(2) was ultra vires, and that even if s. 6(2) was valid the impugned notification was invalid. Accordingly they prayed for a writ of mandamus or a writ in the nature of mandamus or any other appropriate direction or order against the Government, the Mamlatdar of the area concerned and their respective tenants prohibiting them or any one of them from giving effect to the said notification.

They also claimed a direction or order to the opponents directing them to cancel or withdraw the impugned notification. These two petitions were heard by the High Court along with other companion matters in which the same points were raised, and in the result the High Court dismissed the petitions. It held that s. 6(2) was intra vires and the impugned notification was legal and valid. The appellants then applied for and obtained a certificate from the High Court, and it is with the said certificate that they have come to this Court by their two appeals.

At the outset it may be relevant to state that, subsequent to the decision under appeal, in 1956 the Act has been substantialy amended and now s. 8 of the new Act provides for the rent and its maximum and minimum. Shortly stated this section incorporates the provisions of the impugned notification and adds to it the further provision that in no case shall the rent be less than twice the assessment. In consequence the point raised in the present appeals has ceased to be of any importance; at best it may affect just a few cases between landlords and tenants that may be pending in respect of the rent payable by the latter to the former for a period prior to 1956. At the time when the certificate was granted the questions raised by the appellants were undoubtedly of general importance.

We would first read s. 6 of the Act. Section 6(1) provides that notwithstanding any agreement, usage, decree or order of a court or any law the maximum rent payable by a tenant for the lease of any land shall not in the case of an irrigated land exceed one-fourth and in the case of any other land exceed one-third of the crop of such land or its value as determined in the prescribed manner. Section 6(2) provides that the Provincial Government may by notification in the official gazette fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as it thinks fit. For the appellants Mr. Limaye has contended that s. 6(2) suffers from the vice of excessive delegation. His argument is that

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Gajendragadkar J.

the power delegated to the Provincial Government is unfettered and uncanalised and no guidance has been afforded to it for exercising the said power. He has also relied on the fact that while giving such wide powers to the delegate in fixing the lower rate of the maximum rent the Legislature has not prescribed any minimum as it should have done. The High Court has held that the delegation involved in s. 6(2) is within permissible limits and as such the challenge to the vires of the said provision cannot succeed.

It is now well-established by the decisions of this Court that the power of delegation is a constituent element of the legislative power as a whole, and that in modern times when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well-settled. The Legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. As has been observed by Mahajan, C.J., in *Harishankar Bagla* v. *The State of Madhya Pradesh* (1) " 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 ". In dealing with the challenge to the vires of any statute on the ground of excessive delegation it is, therefore, necessary to enquire whether the impugned delegation involves the delegation of an essential legislative function or power and whether the Legislature has enunciated its policy and principle and given guidance to the delegate or not. As the decision in *Bagla's case* (1) shows, in applying this test this Court has taken into

(1) [1955] 1 S.C.R. 381, 388.

account the statements in the preamble to the Act, and if the said statements afford a satisfactory basis for holding that the legislative policy and principle has been enunciated with sufficient accuracy and clarity the preamble itself has been held to satisfy the requirements of the relevant tests. In every case it would be necessary to consider the relevant provisions of the Act in relation to the delegation made and the question as to whether the delegation is intra vires or not will have to be decided by the application of the relevant tests.

In this connection we may also refer to the decision of this Court in *The Edward Mills Co. Ltd., Beawar* v. *State of Ajmer* (1), where the validity of the notification issued under the provisions of the Minimum Wages Act XI of 1948 was impeached, and the said challenge raised the question about the validity of the delegation provided for by s. 27 of the said Act. The scheme of the Act was that a schedule had been attached to it which gave a list of employments to which the provisions of the Act applied; and s. 27 gave power to the appropriate Government to add to either part of the schedule any employment in respect of which it was of opinion that the minimum wages shall be fixed and this the appropriate Government was authorised to do by giving notification in a broad manner, and thereupon the schedule shall, in its application to the State, be deemed to be amended accordingly. The argument was that the Act had nowhere formulated a legislative policy according to which an employment should be chosen for being included in the schedule; no principles had been prescribed and no standards laid down in that behalf, and so the delegation was unfettered and uncanalised. This argument was rejected by this Court on the broad consideration that the legislative policy was apparent on the face of the Act itself. "What the Act aims at", observed Mukherjea, J., as he then was, "is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour.

(1) [1955] 1 S.C.R. 735, 750.

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Gajendragadkar J.

The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only 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". The learned Judge then pointed out that conditions of labour vary under different circumstances and from State to State, and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are not uniform and which can best be ascertained by the person who is placed in charge of administration of a particular State. It is with a view to carry out the particular purpose of the Act that power is delegated to the appropriate Government by s. 27. That is how the challenge to the vires of s. 27 was repelled.

The present Act is undoubtedly a benificent measure. It has enacted provisions for agrarian reform which the Legislature thought was overdue. The preamble shows that the object of the Act, inter alia, was to improve the economic and social condition of peasants and ensure the full and efficient use of land for agriculture. With that object the Act has made several provisions to safeguard the interests of the tenants. Let us consider some of these provisions. Section 6 which we have already set out prescribes the maximum rent payable by a tenant, and provides for the reduction of the said maximum by reference to particular areas. Section 7 lays down that the rent payable by tenants shall, subject to the maximum rate fixed under s. 6, be the rent agreed between the parties, or in the absence of any agreement or usage, or where there is a dispute as regards the reasonableness of the rent payable according to the agreement or usage, the reasonable rent. It is thus clear that even in regard to an agreed rent or a rent fixed by usage, if a tenant raises a dispute about its reasonableness that dispute has to be settled in the manner prescribed by the Act and the amount of reasonable rent determined. Section 8 provides for commutation of crop-share rent into cash. Section 9 prohibits a landlord from receiving from his tenant any rent in terms of service or

labour; and it requires him to apply to the Mamlatdar for commuting such rent into cash. Section 10 provides for refund of excess rent recovered by the landlord from his tenant. Section 11 prohibits the recovery by the landlord of any cess, rate, vero, huk or tax or service of any description from the tenant other than the rent lawfully due from such land. Section 12 provides for enquiries in regard to the fixation of reasonable rent. On an application made by the tenant or the landlord in that behalf the Mamlatdar has to determine the reasonable rent under s. 12(3) having regard to the factors specified in the said sub-section. These factors are (a) the rental values of lands used for similar purposes in the locality, (b) the profits of agriculture of similar lands in the locality, (c) the prices of crops and commodities in the locality, (d) the improvements made in the land by the landlord or the tenant, (e) the assessment payable in respect of the land, and (f) such other factors as may be prescribed. There is no doubt that the last clause which refers to other factors must be construed as referring to factors *ejusdem generis* with those that have been previously enumerated. Section 13 provides for the suspension or remission of rent, and the conditions under which the said remission or suspension can be granted. It would thus be seen that the material provisions of the Act aim at giving relief to the tenants by fixing the maximum rent payable by them and by providing for a speedy machinery to consider their complaints about the unreasonableness of the rent claimed from them by their respective landlords. It is in the light of this policy of the Act which is writ large on the face of these provisions that we have to consider the question as to whether the delegation made by s. 6(2) suffers from the infirmity of excessive delegation.

Broadly stated s. 6(2) seeks to provide for the fixation of a lower rate of maximum rent area-wise. We have already seen that individual tenants are given the right to apply for the fixation of reasonable rent by s. 12, and specific factors have been specified which the Mamlatdar must consider in fixing a reasonable rent. The Legislature realised that a large number of

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Gajendragadkar J.

tenants in the State were poor, ignorant and in many cases helpless, and it was thought that many of them may not be able to make individual applications for the fixation of a reasonable rent under s. 12. That is why it was thought necessary to confer upon the Provincial Government the power to fix a lower rate of the maximum rent payable by tenants in respect of particular areas. In a sense what could be done by the Mamlatdar in individual cases can be achieved by the Provincial Government in respect of a large number of cases covered in a particular area. If that be so, the legislative policy having been clearly expressed in the relevant provisions and the factors for determining reasonable rent also having been specified in s. 12(3), it is difficult to accept the argument that the Provincial Government has been given uncanalised or unfettered powers by s. 6(2) to do what it likes without any guidance. The relevent factors having been specified by s. 12(3) when the Provincial Government considers the question of fixing a lower rate of the maximum rent payable in any particular area it is expected to adopt a basis which is suitable to that particular area. The relevant conditions of agriculture would not be uniform in different areas and the problem of fixing a reduced maximum rent payable in the respective areas would have to be tackled in the light of the special features and conditions of that area; that is why a certain amount of latitude had to be left to the Government in fixing the lower rate of the maximum rent in the respective areas, and that is intended to be achieved by giving it liberty to adopt a basis which it thinks is suitable for the area in question. The word "suitable" in the context must mean 'suitable to the area' having regard to the other provisions of the Act such as s. 6(1) and s. 12. It is true that the power to fix a reasonable rent conferred on the Mamlatdar under s. 12 is subject to the power of the Provincial Government under s. 6(2). Even so we think it would be difficult to hold that the factors prescribed for the guidance of the Mamlatdar would have no relevance at all when the Provincial Government acts under

s. 6(2). In our opinion, therefore, having regard to the legislative policy laid down by the Act in its preamble and in the other relevant sections to which we have referred, and having regard to the guidance which has been provided for fixing a reasonable rent under s. 12(3), it would not be possible to hold that the power delegated to the Provincial Government by s. 6(2) suffers from the infirmity of excessive delegation. The fact that no minimum has been prescribed would not materially affect this position.

Mr. Limaye has then contended that even if s. 6(2) is valid the impugned notification is invalid because it offends against Art. 31 of the Constitution. He concedes that the Act itself is saved under Art. 31B since it is one of the Acts enumerated in the Ninth Schedule; but his argument is that the notification has in substance amended the provisions of s. 6(1) and thus it amounts to a fresh legislation to which Art. 31B cannot apply. There is no substance in this argument. If s. 6(2) is valid then the exercise of the power validly conferred on the Provincial Government cannot be treated as fresh legislation which offends against Art. 31. If the Act is saved by Art. 31B s. 6(2) is also saved, and the power must be held to be validly conferred on the Provincial Government, and a notification issued by virtue of the said powers cannot be challenged on the ground that it violates Art. 31.

The next argument is that the notification is invalid because the power to issue a notification conferred by s. 6(2) was exhausted as soon as the Government issued the first notification on June 23, 1949. This argument proceeds on the assumption that the power conferred on the Government by s. 6(2) can be exercised only once, and it seeks to derive support from the fact that the words "from time to time" which were used in the corresponding section of the earlier tenancy legislation in the State have not been used in s. 6(2). Reliance is also placed on the fact that the said words have been used in s. 8(1) of the Act. The omission of the said words from s. 6(2) as contrasted with their inclusion in s. 8(1), says Mr. Limaye, indicates that the power delegated under s. 6(2) was

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Gajendragadkar J.

intended to be used only once. This argument is fallacious. Why the Legislature did not use the words "from time to time" in s. 6(2) when it used them in s. 8(1) it is difficult to understand; but in construing s. 6(2) it is obviously necessary to apply the provisions of s. 14 of the Bombay General Clauses Act, 1904 (I of 1904). Section 14 provides that where by any Bombay Act made after the commencement of this Act any power is conferred on any Government then that power may be exercised from time to time as occasion requires. Quite clearly if s. 6(2) is read in the light of s. 14 of the Bombay General Clauses Act it must follow that the power to issue a notification can be exercised from time to time as occasion requires. It is true that s. 14 of the General Clauses Act, 1897 (X of 1897), provides that where any power is conferred by any Central Act or Regulation then, unless a different intention appears, that power may be exercised from time to time as occasion requires. Since there is a specific provision of the Bombay General Clauses Act relevant on the point it is unnecessary to take recourse to s. 14 of the Central General Clauses Act; but even if we were to assume that the power in question can be exercised from time to time unless a different intention appears we would feel no difficulty in holding that no such different intention can be attributed to the Legislature when it enacted s. 6(2). It is obvious that having prescribed for a maximum by s. 6(1) the Legislature has deliberately provided for a modification of the said maximum rent and that itself shows that the fixation of any maximum rent was not treated as immutable. If it was necessary to issue one notification under s. 6(2) it would follow by force of the same logic that circumstances may require the issue of a further notification. The fixation of agricultural rent depends upon so many uncertain factors which may vary from time to time and from place to place that it would be idle to contend that the Legislature wanted to fix the maximum only once, or, as Mr. Limaye concedes, twice. Therefore the argument that the power to issue a notification has been exhausted cannot be sustained.

The last argument which Mr. Limaye faintly attempted to place before us was that the expression "any particular area" would not be applicable to the areas in which the appellants' lands are situated because, according to him, the expression should be construed in the light of the same expression used in s. 298(2)(a) of the Government of India Act, 1935. This argument is far fetched and fatuous and need not be considered.

In the result the appeals fail and are dismissed with costs.

Subba Rao J.

SUBBA RAO J.—I have had the advantage of perusing the judgment prepared by Gajendragadkar, J. I regret my inability to agree with my learned brother on the question of the *vires* of s. 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (LXVII of 1948) (hereinafter called the Act).

The facts have been fully stated in the judgment of my learned brother and I need not restate them here. It would be enough if I expressed my opinion on the said question.

Learned counsel for the appellants attacks the constitutional validity of s. 6(2) on the ground that the said sub-section exceeds the limits of permissible delegated legislation. Before considering the validity of s. 6(2), it would be convenient to notice briefly the relevant aspects of the law of the doctrine of delegated legislation.

The scope of the doctrine of delegation of legislation has been so authoritatively laid down by this Court in more than one decision that it would be pedantic to attempt to resurvey the field over again. I would, therefore, be content to collate the relevant passages from the decisions of this Court to ascertain the principle underlying the doctrine.

The leading decision on this subject is *In re The Delhi Laws Act, 1912* (1). There the Central Legislature had empowered the executive authority under its legislative control to apply at its discretion the laws to an area which was also under the legislative sway of the Centre. The validity of the laws was questioned

(1) [1951] S.C.R. 747.

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Subba Rao J.

on the ground that the legislature had no power to delegate legislative powers to executive authorities. As many as seven Judges dealt with the question and wrote seven separate judgments considering elaborately the different aspects of the question raised. I am relieved of the duty to ascertain the core of the decision as that has been done by Bose, J., with clarity in *Rajnarain Singh* v. *The Chairman, Patna Administration Committee, Patna* (1). Bose, J., after pointing out the seven variations of the authority given to the executive in the *Delhi Laws Act Case* (2), summarized the majority view on the relevant aspect of the question now raised at p. 301 thus:

"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."

Rajnarain Singh's Case (1) dealt with s. 3(1) of the Patna Administration Act, 1915, (Bihar and Orissa Act 1 of 1915) as amended by Patna Administration (Amendment) Act, 1928 (Bihar and Orissa Act IV of 1928) and with a notification issued by the Governor of Bihar picking out s. 194 out of the Bihar and Orissa Municipal Act of 1922, modifying it and extending it in its modified form to the Patna Administration and Patna Village areas. Bose, J., after pointing out the difference between *Rajnarain Singh's Case* (1) and the *Delhi Laws Act Case* (2) observed at p. 303 thus:

"But even as the modification of the whole cannot be permitted to effect any essential change in the Act or an alteration in its policy, so also a modification of a part cannot be permitted to do that either."

This Court again in *Harishankar Bagla* v. *The State of Madhya Pradesh* (3) considered the scope of the *Delhi Laws Act Case* (2). Mahajan, C. J., stated at p. 388 thus:

(1) [1955] 1 S.C.R. 290. (2) [1951] S.C.R. 747.
(3) [1955] 1 S.C.R. 380.

"It was settled by the majority judgment in the *Delhi Laws Act Case* (1) that essential powers of legislation cannot be delegated. In other words, 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 Edward Mills Co., Ltd., Beawar* v. *The State of Ajmer* (2), Mukherjea, J., as he then was, speaking for the Court stated the principle thus at p. 749:

"A Legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the Legislature itself but delegation may be resorted to as a subsidiary or an ancillary measure."

The latest decision on the point is that in *Hamdard Dawakhana* v. *Union of India* (3). One of the questions raised in that case was whether s. 3(d) of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, exceeded the permissible limits of delegated legislation. The principle has been restated by Kapur, J., at p. 566 thus:

"This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external

(1) [1951] S.C.R. 747. (2) [1955] 1 S.C.R. 735.
(3) [1960] 2 S.C.R. 671.

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Subba Rao J.

authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend."

Applying the principle to the facts of that case, the learned Judge observed at p. 568 thus:

"In our view the words impugned are vague. Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule. It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying diseases and conditions as given in s. 3(d) must therefore be held to be going beyond permissible boundaries of valid delegation.

It is not necessary to multiply decisions; nor is it necessary to point out the subtle distinction between delegated legislation and conditional legislation. The law on the subject may be briefly stated thus: The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. 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 latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of this Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature.

Bearing the aforesaid principles in mind, I shall look at the provisions of the Act to ascertain whether s. 6(2) is in conformity with the law laid down by this Court. I shall for the present ignore s. 6(2) and briefly and broadly notice the scheme of the Act. The preamble shows that the object of the Act was mainly to improve the economic and social conditions of peasants and to ensure the full and efficient use of land for agriculture. It also indicates that the Act was not intended to be a confiscatory one, but was enacted to regulate the relationship between land-lord and tenant, particularly in respect of rent payable by the tenant to the land-lord. In s. 6(1) the legislature in clear terms fixes the maximum rent payable by a tenant, having regard to the nature of the land: in the case of irrigated land it fixes one-fourth and in the case of other land one-third of the crop of such land or its value as determined in the prescribed manner as the maximum rent. The rest of the Act is to be worked out subject to the maximum rent fixed under s. 6(1). Section 7 enables the land-lord and tenant to agree upon the rate of rent. Section 8 gives power to the Provincial Government to issue notifications providing for the commutation of the rent in kind into cash rent. It also, if no rate of commutation has been so fixed by the State Government, enables the Mamlatdar to fix the amount of commutation in the manner prescribed. Sub-section (3) of s. 6 prohibits a land-lord from recovering any rent by way of crop-share or in excess of the commuted cash rent. Section 9 compels the land-lord to apply to the Mamlatdar, if the land-lord is receiving rent from any tenant in terms of service or labour, for commuting such rent into

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Subba Rao J.

cash. Section 10 makes the landlord liable to pay compensation to the tenant if he contravenes the provisions of ss. 6, 7, 8 or 9. Section 11 prohibits the land-lord from collecting any cesses other than the rent lawfully payable in respect of the land. Section 12 enables the tenant to apply to the Mamlatdar for the fixation of reasonable rent in respect of the land in his possession and s. 12(3) lays down the factors the Mamlatdar has to take into consideration in fixing a reasonable rent. After fixing the rent, the Mamlatdar makes an order for payment of the rent to the land-lord and the rent so fixed shall hold good for a period of five years. There is also a provision for reduction of rent, if during the said period on account of deterioration of the land by floods or other causes beyond the control of the tenant the land has been wholly or partially rendered unfit for cultivation. Section 13 enjoins on the land-lord to suspend or remit the rent payable by the tenant to him if the payment of land revenue by him to the Government is suspended or remitted. A right of appeal is provided against the order of the Mamlatdar to the Collector. Shortly stated, this Act provides for the fixation of maximum rent by the Government, a reasonable rent by Mamlatdar and an agreed rent by the parties. But both the agreed rent and the reasonable rent cannot exceed the maximum rent. There are express provisions for reduction or remission of rent in appropriate circumstances. The Act does not provide for an appeal or revision to the Government and the Government has, therefore, no say in the matter of fixation of reasonable rent. The whole scheme of the Act, therefore, excluding s. 6(2), is a self-contained and integrated one. The legislature fixes the maximum rent linked with crop having regard to the nature of the land, and the other provisions enable the appropriate authorities to fix reasonable rent subject to that maximum.

Now let us see the impact of s. 6(2) on this scheme. Section 6(2) reads :

"The Provincial Government may, by notification in the Official Gazette, fix a lower rate of the

maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as it thinks fit."

Under this section the Provincial Government may fix a lower rate of the maximum in any particular area or to fix such rate on any other suitable basis. Three elastic words are used in s. 6(2), namely, (1) lower rate; (2) particular area; and (3) on any other suitable basis. Prima facie in s. 6(2) the legislature has not laid down any policy or any standard to enable the Provincial Government to reduce the maximum rent fixed under s. 6(1). What is the limit of the lower rate the Government is empowered to fix? What is the extent of the area with reference to which that rate can be fixed? What are the conditions prevailing in a particular area which require the reduction of the maximum rent? Even if there are conditions justifiable for reduction of the maximum rent, what is the basis for that reduction? The disjunctive "or" between "particular area" and "may fix" and the word "other" qualifying "suitable basis" indicate that the situation of the land in a particular area may also be a basis for fixing a lower rent. The situation of a land in a particular area cannot in itself afford a basis for fixing a specified rate of maximum rent. The words "suitable basis" in the alternative clause is so vague that in effect and substance they confer absolute and arbitrary discretion on the Provincial Government. What is the standard of suitability? The standard of suitability is only what the Government thinks suitable. In this section the legislature in clearest terms abdicated its essential functions in favour of the executive authority without laying down any standard for its guidance. In effect it permitted the Government to amend s. 6(1) of the Act. To illustrate, the legislature fixes the maximum rent payable by a tenant to his landlord at X; the Mamlatdar after enquiry fixes Y as reasonable rent which is less than X; the Government in exercise of the power conferred under s. 6(2) can arbitrarily fix Z which is far less than the reasonable rent; with the result that the entire scheme

1960

Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Others

Subba Rao J.

promulgated by the legislature breaks. The Government also may select any small area containing a few landlords and reduce the maximum rent to the lowest level with the result the Act can be worked out as an expropriatory measure which is contrary to the intention of the legislature. Learned counsel for the respondents realising that arbitrariness is writ large on the face of s. 6(2) attempted to evolve the legislative formula from the preamble to s. 6(1) and s. 12(3) of the Act. I cannot find any indication of the legislative policy in the manner of fixation of the lower rate of maximum rent in the preamble. Nor can I discover any such in s. 6(1). Section 6(1) contains a clear legislative policy in fixing the maximum rent on certain identifiable basis. The legislature says in effect in s. 6(2), "I have fixed the maximum rent in respect of irrigated lands and other lands on the basis of a definite share of the crop of such lands, but you can reduce that maximum rent on any basis you like". While s. 6(1) overrides other provisions of the Act, s. 6(2) derogates from s. 6(1) itself. Section 6(2) is capable of being exercised in such a way that the object of s. 6(1) is itself frustrated. Section 6(1) in effect is made subject to s. 6(2).

Now coming to s. 12(3), it is contended that the factors mentioned in s. 12(3) afford a standard for the Government for fixing the maximum rent. To put it differently the suitable basis is one or other of the factors in s. 12(3). The Act does not say so, either expressly or by necessary implication. The criteria for fixing rent in s. 13 are to afford a guide to Mamlatdar for fixing reasonable rent. Indeed the sub-clause is subject to s. 6 indicating thereby that the maximum rent fixed by the Government is not the same as the reasonable rent. Indeed if the reasonable rent determined on the basis of all or some of the factors in s. 12(3) is more than the maximum rent fixed by the Government on a suitable basis, the latter prevails over the former. As the maximum rent supersedes reasonable rent, the factors governing reasonable rent need not necessarily govern the fixation of maximum rent. To attempt to read the factors in s. 12(3) into

s. 6(2) is, in my view, not permissible. On a fair reading of the provisions of the Act, I find it not possible to discover any standard laid down by the legislature to enable the Provincial Government to fix a lower rate of the maximum rent. The section conferring such arbitrary power on the Provincial Government without laying down any legislative standard is in excess of the permissible limits of delegation.

The learned Additional Solicitor-General broadly contended that the policy of the legislature is to prevent rackrenting and to fix a reasonable rent and, therefore, any exercise of the power under s. 6(2) is guided by that policy. This is an extreme contention and, if accepted, will enable Parliament and legislatures to confer absolute and unguided powers on the executive. If a legislature can legally be permitted to lay down a broad policy in general terms and confer arbitrary powers on the executive for carrying it out, there will be an end of the doctrine of the rule of law. If the contention be correct, the legislature in the present case could have stated in the preamble that they were making the law for fixing the maximum rent and could have conferred an absolute power on the Government to fix suitable rents having regard to the circumstances of each case. Such a law cannot obviously be valid. When the decisions say that the legislature shall lay down the legislative policy and its formulation as a rule of conduct, they do not mean vague and general declaration of policy, but a definite policy controlling and regulating the powers conferred on the executive for carrying into effect that policy.

I must, therefore, hold that s. 6(2) of the Act is void inasmuch as it exceeded the permissible limits of legislative delegation.

In the result the appeals are allowed with costs.

BY COURT: In view of the majority judgment, the appeals are dismissed with costs.