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other accused should also be set aside and his appeal should also be re-heard in the manner indicated above. We therefore set aside the order of the High Court with respect to the retrial of the other accused and direct that his appeal will also be re-heard along with the appeal of the appellant.

Appeal allowed.

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v.

THE STATE OF PUNJAB

(And Connected Petition)

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

Delegated Legislation—Ceiling on land fixed—Exemption of efficiently managed farms—Part of rule going beyond rule-making power—Not severable—Whole rule ultra vires—The PEPSU Tenancy and Agricultural Lands Act, 1955 (Pepsu 13 of 1955), as amended by Act XV of 1956, ss. 32A, 32K—Rules, 1958, r.31.

The PEPSU Tenancy and Agricultural Lands Act was enacted in March, 1955. It was amended in October, 1956, and Chs. IV-A and IV-B were added. Chapter IV-A provides for ceiling on land and s. 32-A in that chapter fixes the permissible limit of land which could be owned or held by any person as landlord or tenant under his personal cultivation. Section 32K provides for exemption of efficiently managed farms consisting of compact blocks on which heavy investment or permanent structural improvements had been made, and whose break-up was likely to lead to a fall in production. Rules were framed in March, 1958, to carry out the purposes of the Act. Rule 31 lays down the procedure how the exemption of efficiently managed farms was to be determined. Sub-rule (2) provides that the PEPSU Land Commission, which was to be appointed to advise the State Government with regard to the exemption of lands from the

ceiling in accordance with the provisions of s. 32K, shall assign marks in the manner provided in sub-r. (4) in order to decide whether a farm was efficiently managed or not, and whether it consisted of compact blocks on which heavy investment or permanent structural improvements had been made and whose break-up was likely to lead to a fall in production. Farms were classified as Class A, Class B and Class C farms. Class A farm was to be deemed to be an efficiently managed farms, 50% of the area of a farm of Class B was to be deemed to be an efficiently managed farm, and no area under a farm of Class C was to be deemed to be an efficiently managed farm.

In writ petitions filed in this court, the petitioners did not challenge the constitutionality of Chs. IV-A and IV-B, but they challenged the constitutionlity of r. 31. Their contention was that the Commission when enquiring into their claim of exemption under s. 32K(i)(iv) of the Act was bound to follow the requirements of r. 31 in addition to the fulfilment of the conditions laid down in s 32K(i)(iv). The Petitioners contended that the standards of yields prescribed in Schedule C under r. 31 were arbitrary, obnoxious, unreasonable, hypothetical, completely unrealistic and unattainable in any modern farm and were repugnant to the provisions of the Act. The system of marking evolved under r. 31 was completely alien and foreign to the Act. Rule 31 went beyond the power conferred on the State Government under s. 32K and was *ultra vires* the Act. The rule was a colourable piece of legislation and the object of framing it was to defeat the purpose of the Act so that no exemption may be granted although the legislature intended to grant exemption to efficiently managed farms. The rule fettered the judgment and discretion of the Commission which could not be done under the Act.

Held, that, Chs. IV-A was a measure of land reform and was intended to provide for equitable distribution of land and with that object s. 32-A provided for ceiling on land holding by an individual. Before a farm could claim exemption from the ceiling fixed in s. 32-A, it had to be proved that the farm was efficiently managed, it consisted of compact blocks, heavy investment or permanent structural improvements had been made on it and its break-up was likely to lead to fall in production. The first three conditions were concerned with the efficiency of the farm and the fourth with the yield from the farm.

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The Act contemplates the framing of rules to give objective guidance to the Commission in carrying out its duties. In evolving the marking system as provided in r. 31, the discretion of the Commission was not fettered and its independence was not made illusory. So long as the marking system took into account what was required under s. 32K(i) (iv), that did not go beyond what was contemplated by the legislature. Schedule C did not fix an unattainable standard and was not a malafide exercise of the power to frame rules with the object of defeating the intention of the legislature. The standards of yields were not too high or unattainable.

The creation of Class B farms under r. 31(2) was beyond the provisions of s. 32K, and hence must be held to be *ultra vires* that section. The creation of Class B farms was so integrated with the whole of Rule 31 that it was not possible to excise Class B farms only from that rule and leave the rest of the rule unaffected; therefore the whole of r. 31 along with Schedules B and C must be struck down as *ultra vires* the provisions of the Act, particularly s. 32-K.

There was nothing in the Act to show that once an efficiently managed farm was taken out of the provisions of s. 32-A on the advice of the Commission, the State Government could, later on, cancel the exemption and apply s. 32-A to it, and, hence, r. 31 (3) must be struck down as *ultra vires* the Act.

The proviso to r. 31(4)(b) inasmuch as it obliged the Commission to apply Schedule C on a mathematical basis, must be struck down as going beyond the rule-making power conferred under the Act. The Commission had to take into account the quality of the land, natural calamities, and the rotation of crops while determining the yield from land.

Rule 31 must therefore be struck down as a whole.

ORIGINAL JURISDICTION :—Petitions Nos. 261 and 365 of 1961.

Petitions under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

C. K. Daphtary, Solicitor-General of India, K. P. Bhandari and *R. Gopalakrishnan,* for the petitioners (in Petn. No. 261/61).

K. L. Goshin and *K. L. Mehta*, for the petitioners (in Petn. No. 365 of 61).

S. M. Sikri, Advocate-General for the State of Punjab, N. S. Bindra and *P. D. Menon*, for the respondents.

1962. July 27. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—These two petitions raise a question as to the validiy and constitutionality of r. 31 framed under the Pepsu Tenancy and Agricultural Lands Act (Act No. 13 of 1955) as amended by Pepsu Act No. 15 of 1956, (hereinafter referred to as the Act) and will be dealt with together. The attack on the rule is practically similar in the two petitions and therefore we shall only give the facts in Petition No. 261 to understand the nature of the attack. The petitioners in Petition No. 261 are landowners in village Dhamo Majra, District Patiala, in the State of Punjab. They are running an agricultural farm on a mechanised scale and the area of the farm measures 421 acres. This area is a compact block of land and it is said that some part of the area is potentially of high productivity whéraas other area is of inferior quality and less productive capacity by reason of the presence of alkaline patches of soil therein. The land was originally scrub jungle and was uneven and extensive reclamation was carried on by the petitioners at heavy cost. They spent a large amount far terracing and levelling the land, constructing *bundhs*, water channels, approach roads and in standardising the area of the fields. Two wells were constructed for providing irrigational facilities and the petitioners have their own electric substation for the purpose. They have also constructed manure pits and have made permanent structural improvements in the shape of construction of roads, servant quarters, tractor sheds, cattle-sheds

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and stores, and have in all incurred expenses over rupees three *lacs* for all these purposes. The petitioners are carrying on farming on the basis of scientific cultivation practices, sowing practices and manure practices and because of the use of modern technique the overall yield per acre is very high keeping in view the fertility and nature of the soil.

On March 4, 1952, the Act was enacted. It was amended on October 30, 1956 and Chaps. IV-A and IV-B were introduced therein. The petitioners have not challenged the constitutionality of these two chapters and their attack is only on r. 31 framed under the powers conferred on the State Government under these chapters. The scheme of Chap. IV-A is to provide ceiling on land and s. 32-A thereof fixes the permissible limit of land which can be owned or held by any person as landowner or tenant under his personal cultivation. "Permissible limit" is defined in s. 3 of the Act and means "thirty standard acres of land and where such thirty standard acres on being converted into ordinary acres exceed eighty acres, such eighty acres". A "standard acre" is defined in s. 2 (1) as "a measure of land convertible with reference to yield from, and the quality of the soil, into ordinary acres according to the prescribed scale". Section 32-B prescribes for returns by the person having land in excess of the ceiling. Section 32-D provides that the Collector shall prepare a draft statement in the manner prescribed showing, among other particulars, the total area of land owned or held by a person, the specific parcels of land which the landowner may retain by way of his permissible limit or exemption from ceiling and also the surplus area. Section 32-E provides for the vesting of the surplus area in the State Government. Section 32F gives power to the Collector to take possession of the surplus area. Section 32-G provides for principles of payment of compensation and sec. 32-J for the

disposal of the surplus area. Then comes s. 32-K (1) with which we are mainly concerned and the relevant part of it is in these terms:—

"32-K (1)—The provisions of section 32A shall not apply to—

(i) ... ...

(ii) ... ...

(iii) ... ...

(iv) efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production;

(v) ... ...

(vi) ... ...

Section 32-P which is in Chap. IV-B provides for the establishment of a Commission called the Pepsu land Commission (hereinafter referred to as the Commission), and sub-ss. (4) and (5) thereof are in these terms—

"(4) Subject to the provisions of this Act and in accordance with any rules which may be made by the State Government in this behalf, it shall be the duty of the Commission to—

(a) ... ...

(b) ... ...

(c) advise the State Government with regard to exemption of lands from the ceiling in accordance with the provision of section 32.K.

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"(5) The advice given by the Pepsu Land Commission under clause (c) of sub-section (4) shall be binding on the State Government and notwithstanding anything in section 32-D no final statement shall, in a case in which exemption is claimed under section 32-K be published unless such advice is included therein."

Section 52 gives power to the State Government to frame rules to carry out the purposes of the Act.

By virtue of the power conferred on the State Government to frame rules, Rules were framed in March 1958 to carry out the purposes of the Act. We are concerned in the present petitions only with rr. 5 and 31. Rule 5 read with Sch. A provides for conversion of ordinary acres into standard acres and r. 31 lays down how the exemption of efficiently managed farms shall be determined. Sub-rule (1) thereof provides that if any person wishes to claim exemption from the ceiling under cl. (iv) of sub-s. (1) of s. 32-K of the Act, he shall also furnish information in form XI to the Collector alongwith information required through other forms prescribed under the Rules. Sub-rule (2) lays down that the Commission shall assign marks in the manner provided in sub-r. (4) in order to decide whether it is a farm which is efficiently managed and consists of compact blocks on which heavy investment structural improvements have been made and whose break-up is likely to lead to a fall in production; and further makes the following classification of farms :—

"Class A : If it is awarded 80 per centum or more marks.

Class B : If it is awarded 60 to 80 per centum marks.

Class C : If it is awarded less than 60 per centum marks."

It is further provided that a class A farm shall be deemed to be an efficiently managed farm and fifty per centum of the area under a farm of Class B shall, subject to the choice of the landowner, be deemed to be an efficiently managed farm and that no area under a farm of class C shall be deemed to be an efficiently managed farm. Sub-rule (3) further provides that "the above classification of farm shall be revised by Govrnment annually in the months of Jannuary and February, and if any efficiently managed farm ceases to be so, the exemption granted in respect there of shall, subject to to the other provisions of the Act, be withdrawn by Government". Sub-rule (4) (a) provides that "the maximum marks to be awarded to a farm, for the purposes of classification, shall be 1,000" and sub-r. (4) (b) provides that the features for which marks are to be awarded are those given in Sch. B and marks shall be awarded for each feature subject to the maximum marks noted against each in that schedule, provided that in allotting marks for "yield" the Commission shall apply the standard yields given in Sch. C. From XI lays down the particulars and there are two Schs. B and C. Out of the total of 1000 marks, 500 marks are prescribed for various features mentioned in items I to IX of Sch. B while 500 marks are for yield. The land in the former Pepsu State is divided into four classes for the purpose of Sch. B. viz., mountaneous, sub-montane central plains and South-eastern districts. Schedule C prescribes average yield in maunds of various crops per acre for irrigated and unirrigated lands.

This in brief is the scheme of Act and r.32 framed thereunder. The petittoners' case is that the Commission is inquiring into the petitioners' claim of

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exemption under s. 32 K (I) (iv) of the Act and in doing so it is bound to follow the requirements of r.31 in addition to the fulfilment of the conditions in cl. (iv) of s.32-K (I). The petitioners contend that the standards of yields prescribed in sch. C under r. 31 are arbitrary, obnoxious, unreasonable, hypothetical, completely unrealistic and unattainable in any modern farm and are repugnant to the provisions of the Act. It is further contended that the system of marking which has been evolved under r. 31 is completely alien and foreign to the Act. Reliance is placed on behalf of the petitioners on the observations of the Sub-Committeee set up by the planning Commission on the problems of Re-organisation, panel on land Reforms for the purpose of suggesting standards of efficient cultivation and management and sanctions for the enforcement of standards, when it said that though "an obvsious test of good husbandry may appear to be the comparative yield of crops, or the gross produce per acre", the Sub-Committee was of the opinion for various reasons which it mentioned that "the yield varied with a number of factors whose effects cannot be measured quantitatively, such as location the fertility and texture of the soil, the vagaries of the climate, the incidence of epidemics etc. which are beyond the control of the farmer". The Sub-Committee was therefore not prepared to apply the test of yield as the sole test of good husbandry. The petitioners further allege that the yield fixed by Sch. C showed great disparity between it and the actual average produce per acre for different crops in different States of India and in different districts of Pepsu, and obviously results in discrimination. It is also urged that the standards fixed by Sch. C were unattainable and therefore the petitioners' claim for exemption under s. 32 K (1) (iv) would be seriously jeopardised if r. 31 is applied. It is contended that the rule goes beyond the power

conferred on the State Government under s. 32 K and was therefore *ultra vires* the Act. Further, it is urged that r. 31 along with the two Schedules was a colourable piece of legislation and the object of framing it was to defeat the purpose of the Act with the intention of seeing that no exemption may be granted even though the legislature intended under s. 32 K (1) (iv) to grant exemption to efficiently managed farms. It is also urged that by making r. 31, the State has fettered the judgment and discretion of the Commission which it could not do under the Act. The petitioners therefore pray that r. 31 should be struck down as *ultra vires* of the Act and also as unconstitutional and the respondents should be directred not to give effect to r. 31.

The petitions have been opposed on behalf of the State of Punjab which is successor to the former State of Papsu and it has been urged that r. 31 does not go beyond the rule making power conferred on the State Government and is intra vires the Act and is not unconstitutional. We do not think it necessary to set out in detail the points raised in the reply of the State, as they will appear from the discussion in the later part of this judgment. Suffice it to say that the State has challenged all the grounds raised on behalf of the petitioners in support of their case that r. 31 is ultra vires the Act and unconstitutional.

In order to determine the question raised in these petitions, it is necassary to refer to the scheme of Chapter IV-A of the Act and the implications of exemption provided under s. 32 K(1) (iv). Chapter IV-A is obviously a measure of land reform and is intended to provide for equitable distribution of land and with that object s. 32 A provides for ceiling on land holdings by an individual. The constitutionality of the Act, as we have already said, has

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not been challenged and therefore it must be held that the provisions of Chap . IV-A when they provide for ceiling on land and disposal of surplus land are reasonable restrictions on the right of persons holding land. Section 32 K (1) however provides that the provision asto ceiling contained in s. 32-A shall not apply to certain type of lands and one of those types is mentioned in cl. (iv) thereof (namely, efficiently managed farms which consist of compact blocks on which heavy investments or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production). Therefore, before any farm can claim that the ceiling as contained in s.32-A shall not apply to it, it has to comply with the conditions in cl. (iv). These conditions which may be deduced from cl. (iv) are :—

(i) that the farm should be efficiently managed;

(ii) that it should consist of compact blocks ;

(iii) that heavy investment or permanent structural improvements must have been made on the farm; and

(iv) the break up of the farm is likely to lead to a fall in production.

Before therefore a person owning or holding a farm can claim exemption from the ceiling provid ed in s. 32 A he has to show that his farm complies with all the four conditions mentioned above. In particular, before a person owning or holding a farm can claim that s. 32 A should not be applied in his case he must show that a break up of the farm is likely to lead to a fall in production. It will thus be clear that the first three conditions under s. 32 K (1) (iv) are concerned with the efficiency of the farm which has to be taken out of s. 32 A while the fourth condition is concerned with the yield from

the farm. Therefore, whatever may have been the view of the Sub-Committee of the Planning Commission with respect to yield as a criterion of good husbandry, there is no doubt that s. 32 K (1) (iv) requires that in considering whether the ceiling provided in s. 32A shall be applied to a particular farm, its yield must be taken into consideration and the farm can only avoid its break up if the result of the break up is likely to lead to a fall in production. There can be no doubt therefore that in order that a farm may get the benefit of s. 32K (1) (iv) it must satisfy the four conditions set out above.

The Act has provided by s. 32 p that the question whether a farm should get the benefit of s.32 K (1) (iv) will be decided by the Commission, Sub-section (4) of s. 32p lays down that it will be the duty of the Commission, subject to the provisions of the Act and in accordance with the Rules which may be made by the State Government, to advise the State Government with regard to exemption of lands from the ceiling in accordance with the provisions of s. 32K. Sub-section (5) provides that the advice given by the Commission shall be binding on the State Government. Sub-section (4) itself shows, in addition to the general power of the State Government to frame rules under s. 52 for carrying out the purposes of the Act, that the State Government has the power to frame rules for the guidance of the Commission in carrying out its duties under s. 32p (4) (c). Rule 31 has obviously been framed with that object. The petitioners however attack the marking system evolved under that rule on the ground that this is completely alien and foreign to the Act. We cannot agree with this contention. It is true that the Commission would have to decide whether a farm is entitled to the benefit of s. 32K. If no rules had been framed the matter would have been left at large for determination of the Commission to the best of its ability. It is true that the

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Commission consists of a Chairman who is or has been a Judge of the High Court and two members to be nominated by the State Government having special knowledge or practical experience of land or agricultural problems, even so we do not think that the Act did not contemplate framing of rules which will give certain objective guidance to the Commission in carrying out its duties. We do not think that in evolving the marking system as provided in r. 31 the Commissions discretion has been fettered and its independent judgment made illusory. So long as the marking system takes into account what is required under s. 32 K (1) (iv) in order to claim exemption from ceiling it cannot be said that the marking system that has been evolved is something beyond what was contemplated by the legislature. A perusal of Sch. B. to r. 31 shows that items I to IX which deal with lay-out, cultivation practices, sowing practices, manure practices, soil conservation practices, development of irrigation facilities, plant protection measures, keeping of records and miscellaneous items (like quality of draught and milch animals and their maintenance, arrangement for storage of produce, small orchards, home poultry farm, apiculture, sareculture, participation in co-operative associations, treatment with labour etc.) are all meant to evaluate the first three conditions in s. 32 K (1) (iv) as indicated by us above. We have been pointed out only one item in Sch. B under head "lay-out" which seems to be out of place and which carries 9 marks out of 500 marks. That item is voluntary consolidation and the criticism on behalf of the petitioners is that so long as the area is compact it is immaterial how that compactness has been achieved, whether voluntarily or otherwise. Barring this item all the other items appear to carry out the first three conditions mentioned by us above

and therefore the Commission will have a standared when it considers the question of exemption of farms. It has full discretion to evaluate the various features set out in Sch. B items I to IX and has full power to give such marks as it thinks fit. I cannot therefore be said that by providing the marking system in Sch. B the rule has in any way fettered the discretion and judgment of the Commission, and affected its independence. Further item X in Sch. B is with respect to "yields" and carries 500 marks out of a total of 1000 marks. Thus the system behind Sch. B is that half the total number of marks is provided for the first three conditions and the other half is provided for the yields. We have already mentioned that the fourth condition under s. 32 K (1)(iv) shows that one of the main qualifications for exemption from ceiling under s. 32 K is that the production of the farm should be such that its break-up shall lead to a fall in production. In the circumstances we do not think that it can be said that the allotment of half the total number of marks to yields in Sch. B is in any manner contrary to the intention of the legislature. We cannot therefore accept the contention of the petitioners that the marking system which has been evolved in Sch. B is in any way foreign to the purposes of the Act or in any way fails to carry out the object behind s. 32 K (1)(iv). The marking system only gives guidance to the Commision in the task assigned to it by s. 32 p (4)(c). The attack on r. 31 on the gronnd that the marking system evolved therein is foreign to the purpose of s. 32 K (1)(iv), must fail.

The main attack of the petitioners however is on Sch. C. This Schedule prescribes the average yield in maunds of various crops for irrigated and unirrigated lands for various districts and tehsils of the former States of Pepsu with which the Act is concerned. Rule 31 provides that in giving

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marks for yields the Commission shall apply the standred yields given in Sch. C. The first contention of the petitioners in this behalf is that the standards of yield have been fixed so high that they are unattainable and this suggests that the intention of the framers of Sch. C. was to make the yields so high that no farm could reach that standard with the result that the intention behind s. 32 K (1)(iv) of exempting efficiently managed farms should be defeated. In effect this contention is a charge of *mala fides* against the State in framing Sch. C with the object of nullifying the intention of the legislature contained in s. 32 K (1)(iv). Schedule C contains 13 crops, the yields of which have been prescribed under two heads, namely, (i) irrigated and (ii) unirrigated. Learned counesl for the petitioners however, concentrated on wheat to show how the standard prescribed is so high and arbitrary as to be unattainable and we shall therefore consider the case of wheat. It is however urged on behalf of the petitioners that practically the same arguments will apply to the other crops we shall assume for present purposes that what applies to wheat will also apply to other crops. The standard fixed for wheat for practically the entire area of the former State of Pepsu (except Kandaghat and Nalagarh, assessment circles Pahar) is thirty months per acre for irrigated and 10 maunds for unirrigated lands. It is said that this is an unattainable standard and therefore Sch. C has been framed with the idea of breaking up the efficiently managed farms completly in spite of the intention of the legislature otherwise, In this contention reliance has been placed on certain produce figures for that area by either side. Before however we consider those figures we may refer to r. 31 (2) whice divides the frams into three categories according to marking. We shall refer to this division later in another con-

nection; but here it may be remarked that in order that an A class farm be deemed under r. 31 (2) to be an efficiently managed farm that requires only 80 per centum of the total marks, so that when we apply the yields fixed under Sch.C we have to scale them down to 80 per centum, for even if yields are at 80 per centum the farm will be wholly entitled to exemption under r. 31 (2). Therefore, though the yields fixed is 30 maunds for irrigated land and 10 maunds for unirrigated land in theory, the practical effect of r. 31 (2) is that if a farm produces 24 maunds per acre of irrigated land and 8 maunds per acre of unirrigated land, it will pass the test prescribed by s. 32K (1) (iv) we have therefore to compare this yield with the other figures which have been brought to our notice by either side, to decide whether the yield fixed in Sch.C has been deliberately fixed so high as to be unattainable with the object of making the provision of s. 32K (1) (iv) nugatory. The burden of proving this and so establishing the *mala fides* of the State Government is on the petitioners.

Before we consider these figures we may dispose of a short point as to the date on which valuation under s. 32 K will have to be made. Section 32 K came into force on October 30, 1956 and it is obvious that it is as on that date that the Commission will have to decide whether a particular farm complies with the requirements of s. 32 K (1) (iv) and should therefore be exempted from the operation of the ceiling provided in s. 32A. The statistics that have been provided to us however are of a later period. We propose to consider them but it will always have to be kept in mind that the decision of the Commission has to be on the facts as they stood on October 30, 1956, so far as s. 32 K (1) (iv) is concerned.

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The Board of Economic Inquiry Punjab (India) publishes every year a bulletin on "Farm Accounts in the Punjab" and this shows that the average yield in maunds for Punjab as a whole in the year 1956-57 of wheat on irrigated land was 13.46 maunds per acre and on unirrigated land 10.68. The same figures for 1957-58 were 14.57 and 10.99 and for 1958-59, 14.65 and 10.1. The same figures of Central Zone, Punjab area were 16.29 and 3.67 for 1956-57; 12.27 and 5.53 for 1957-58 and 15.29 and 11.12 for 1958-59. Taking the matter districtwise, the same figures were 15.95 and B for Ludhaina District for 1956-57 and 15.83 and 6.15 in 1958-59. For Sangurur district which in the former state of Pepsu the figures were15.33 and 6.41 for the year 1958-59. These figures seem to show that so far as the standard fixed in Sch. C for unirrigated land is concerned it cannot be said to be necessarily unattainable, for the standard is 10 maunds which when reduced to 80 per centum comes only to eiget maunds. As for the irrigated area, the standard is 30 maunds which when reduced to 80 per centum comes to 24 maunds. There is no doubt that the standard for the irrigated area is comparatively very much higher than the averages in the bulletin mentioned above. In reply however the State relies on certain yields which are certainly very much higher. Unfortunately, however, we cannot attach much value to these yields for they were obtained in crop competitions and these yields were for irrigated lands verying from over 32 maunds to over 66 maunds per acre. One of the competitors who showed an yield of over 44 maunds per acre has sworn an affidavit to show how these yields in crop competition are arrived at. According to him, the area selected is the best one acre of land which is specially prepared for the purpose. It is intensively

ploughed and abnormal doses of manure and fertlisers are put in it. The irrigation also is twice the normal irrigation. Further at the time of harvesting only one Biswas of land is cut. Out of this, only one bundle of crop cut is threshed and out of the yield obtained from this bundle, the yield of one acre is computed. Obviously, the yield obtained in such a competition is not of such value for purposes of comparison. But this however does not dispose of the matter. It must be remembered that s. 32 K (1) (iv) postulates that only those farms would be exempted whose break-up would lead to a fell in production. This clearly implies that if the farm in question is only producing what the average yield is in the whole of the Punjab its break-up would certainly not lead to a fall in production: Therefore, in order that a farm may comply with the condition that its break-up would result in a fall of production it is obvious that its production must be higher than the average yield for the whole of the Punjab. We have already pointed out that so far as unirrigated land is concerned the fixing of the standard at 8 maunds per acre does not appear to be too high in view of the figures to be found in the bulletin published by the Board of Economic Inquiry Punjab (India), even though the figures relates to the period after October 30, 1956. Asto the irrigated area it seems that the average production has reached up to about 16 maunds per acre. The standard fixed in Sch. C is 30 maunds which when reduced to 80 per centum comes to 24 maunds. On the materials that have been provided by either side on this record, we would hesitate to say that the standard of 24 maunds per acre for irrigated land of the best quality would be too high. Therefore, if the standard fixed in Sch. C is to be taken to apply to the best quality irrigated land and that standard is reduced to 80 per centum in view of r. 31 (2), we

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would hesitate to say that Sch. C had fixed an unattainable standard and so was a *mala fide* exercise of power to frame rules with the object of defeating the intention of the lagislature contained in s. 32 K (l) (iv). We have already said that we propose to take the figures supplied to us with reference to wheat only and we shall assume, as the learned counsel for the petitioners ask us to assume, that what is true about wheat would be equally true about other crops. We would therefore hesitate in the case of other produce also to say that the yield are too high and unattainable, if they are taken to be the yields from the best quality irrigated land, in one case and the best quality unirrigated land in the other. The contention therefore that the Schedule has been framed *mala fide* in the sense mentioned above must fail, as the petitioners have failed to establish that. But this in our opinion does not end the matter and we shall now proceed further to deal with other aspects which have been urged before us.

Rule 31 (2) provides for the criterion for deciding whether the farm is efficiently managed etc. and has created three classes of farms, namely A, B and C, depending upon the marks awarded, 80 per centum or more in the case of class A, 60 per centum or more but below 80 per centum for class B, and below 60 per centum for class C. It is further provided that an A class farm shall be deemed to be efficiently managed while 50 per centum of the area under a farm of class B shall, subject to the choice of the landowner be deemed to be efficiently managed but farm of class C shall not be considered efficiently managed. Now the contention on behalf of the petitioners is that this division into three classes is beyond the purview of s. 32 K and is therefore *ultra vires*. Section 32 K, as we have already indicated, lays down

that provisions of s. 32A shall not apply to efficiently managed farms etc. so that when the Commission considers the question whether a particular farm is efficiently managed under s. 32 K it has only to decide one of two things: namely, whether the farm is efficiently managed etc. or is not efficiently managed. If it is efficiently managed, the provisions of s. 32 A shall not apply to the entire farm; if on the other hand, it is not efficiently managed, the provisions of s. 32 A will apply to the entire farm. There is no scope in s. 32 K for the creation of three classes of farms, as has been done by cl. (2) of r. 31. In other words there is no scope for the creation of class B farms in the rule on the terms of s. 32 K. The rule therefore insofar as it creates an intermediate class of farms, half the area of which is deemed to be efficiently managed is clearly beyond the provisions of s. 32 K (1) (iv). The creation of class B farms of r. 31 (2) being beyond the provisions of s. 32 K must be held to be *ultra vires* that section. The question then arises whether in view of the creation of class B farms by r. 31 the whole of that rule-must go. We are of opinion that the creation of class B farms is so integrated with the whole of r. 31 that it would not be possible to excise class B farms only from that rule and leave the rest of the unaffected. It is impossible to say what the form of r. 31 would have been if the rule-making authority thought it could not provide for class B farms. We are therefore of opinion that the whole of r. 31 along with Schedules B and C must fall, as soon as it is held that the creation of class B farms under the rule is beyond the rulemaking power. This is one ground on which r. 31 must be struck down as *ultra vires* of the provisions of the Act, particularly s. 32 K.

Then comes r. 31 (3) which provides that the classification made under r. 31 (2) shall be

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revised by Government annually in the months of January and February. The attack on this provision is two-fold. In the first place, it is contended that r. 31 (3) leaves the revision of classification of farms entirely to Government—at any rate there is nothing in r. 31 to suggest that the Government is bound to consult the Commission before revising the classification of farms. Secondly, it is urged that there is nothing in s. 32 K or any other provisions of the Act to suggest that once a farm is taken out of the provisions of s. 32 A by the application of s. 32 K that exemption is open to revision thereafter. We are of opinion that there is force in the second contention, though not in the first. Section 32 p (4) and (5) lay down that the State Government will be advised by the Commission with regard to exemption under s. 32K and the advice of the Commission would be binding on the State Government. Rule 31 (3) as it stands does not however provide for advice by the Commission thereunder. It is also not clear whether the Commission under s. 32 is a permanent Commission. It is however urged on behalf of the State that r. 31 (3) must be read subject to the Act and therefore if the Act requires that the Commission must be consulted in the matter of exemption the Government will be bound to consult the Commission even when it proceeds to revise the classification under r. 31 (3). We accept this submission on behalf of the State and hold that though r. 31 (3) does not specifically provide for consultation with the Commission at the time of revision that rule must be read subject to s. 32 p (4) and even at the time of revision the Government is bound to take the advice of tne Commission and is bound to act accordingly.

The other contention however appears to have force. Section 32 K lays down that the provisions of s. 32 A will not apply to efficiently

managed farms etc. Once therefore it is held that a farm comes within s. 32 K (1) (iv) the provisions of s. 32 A relating to ceiling will not apply to it. There is nothing in Chap. IV-A to suggest that once an efficiently managed farm is taken out of the provisions of s. 32 A on the advice of the Commission it can be subjected again to those provisions. Nor have we found anything in the Act which gives power to the State Government to subject a farm to which s. 32 A does not apply in view of s. 32 K to the provision of s. 32 A later. We realise that it may be possible for a farm which was efficiently managed when the Act came into force in 1956 to be so mismanaged later that it no longer remains an efficiently managed farm within the meaning of s. 32 K (1) (iv) and it does seem reasonable in those circumstances that the provisions of s. 32 A should apply later to such a mismanaged farm. But that in our opinion has not been provided in the Act itself. Once the farm as it was on October 30, 1956 gets the benefit of s. 32 K (1) (iv), such a provision in our opinion cannot be made by a rule, for in that case the rule would be going beyond the purview of the Act and would be *ultra vires*. That is another reason why r. 31 (3) must be struck down as *ultra vires* of the Act.

Besides the on attack on Sch. C based on fixing unattainable standars *mala fide*, the Schedule is further attacked on the ground that it goes beyond the intention behind s. 32 K (1) (iv) inasmuch as it provides for a mathematical formula irrespective of various other considerations which have a great play in the matter of yield. We have already pointed out that Sch. C only provides for two classes of lands, namely, irrigated and unirrigated. Further the proviso to r. 31 (4) (b) lays down that in allotting marks for yields, the commission shall

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apply the standard yields given in Sch.C. This means that if the yield of a particular farm of irrigated land is, for example, 15 maunds of wheat per acre, the Commision would be bound under the proviso to give 80 per centum of the marks provided for yields in Sch. B i.e. the Commission will have to award 250 out of 500 marks to such a farm. Now if land whether irrigated or unirrigated was of one quality and if there were no other factors to be taken into consideration in judging the yield in a particular area the application of a mathematical formula would have been justified. But there is no doubt that irrigated and unirrigated lands are not all of the same quality and that quality of land does affect production. There are other factors also to which we shall later refer which have to be taken into account in considring the yield; but those factors have all been ignored in Sch.C. Turning to the quality of land, we find from Sch.A to the Rules, which has been framed with respect to r. 5 for conversion of ordinary acres into standard acres, that there are eight qualities of land in the State, of which five are under the head "irrigated", (namely, *Chahi*, *Chahi-Nehri*, *Nehri* perennial, *Nehri* non-perennial and *Abi*) andthree under the head "unirrigated" (namely, *Sailabi*, *Barani* and *Bhud*). The higest quality is *Nehri* perennial and it is marked as 100 meaning thereby that one ordinary acre of *Nehri* perennial is equal to one standard acre. The lowest quality of irrigated land is *Nehri* non-perennial which is marked as 75, meaning thereby that four ordinary acres of *Nehri* non-perennial are equal to three standard acres. This means that the yield of the lowest quality of irrigated land would be 25 per centum less than the best irrigated land. Now if the standards fixed in Sch. C are with reference to the best land, the best irrigated land is expected to produce 30 maunds minus 20 per centum i.e. 24 maunds.

The lowest quality of irrigated land will be expected to produce 22½ maunds (i.e. 75 per centum of the best land) minus 20 per centum, equal to 18 maunds. This shows that unless some account is taken of the quality of land, Sch.C is bound to work harshly on those farms where the quality of the irrigated land is of the lowest type. It may be said, however, that Sch. C is based on averages. Even if that is so, there is bound to be inequality where all the irrigated land of the farm is of the lawest quality. The same applies to unirrigated land. The best unirrigated land is *Sailabi,* which has 62 per centum yield as compared to the *Nehri* perennial, meaning thereby that roughly 10 acres of *Sailabi* land are equal to six standard acres. *Barani* land is rated at 50 per centum of the best and thus two acres of *Barani* land will be equal to one standard acre. *Bhud* is the worst and rated at 25 per centum and four acres of *bhud* are qual to one standard acre. Thus if the vlauation given in Sch. A. is accepted, *bhud* is only half as productive as *barani* and two-fifths as productive as *sailabi.* Therefore when Sch.C fixes one standard for unirrigated land without regard to quality, it is bound to work inequality between farms and farms. It has been urged on behalf of the state that the Commission would be entitled to take into account these differences in quality. There is however nothing in r. 31 which permits the Commission to take into account this difference in the quality of land. The proviso to r. 31 (4) (b) definitely lays bown that in allotting marks the Commission shall apply the standard yield given in Sch. C, so that the Commission is bound to apply those yields in every case and there is nothing in r. 31 which permits the Commission to take into account the difference in quality of land. Now when s. 32 k (1)(iv) read with s. 32p provided for the appointment of a Commission to advise on the question of exemption under

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s. 32 k (2) (iv), the intention of the legislature obviously was that the Commission will take into account all factors which should be properly taken into account in giving its advice. Quality of land is one such factor which should be properly taken into account by the Commission but as the proviso to r.31(4) stands, the Commission is bound to apply Sch. C on a mathematical basis without consideration of other factors. We are therefore of opinion that the proviso to r. 31 (4) (b) inasmuch as it obliges the Commission to apply Seh. C on a methematical basis goes beyond the provisions of s. 32 k. It was certainly suggested in argument before us that it would be open to the Commission to take into account the diff erence in the quality of land. But there is nothing in the reply of the State to suggest this and we cannot accept what is suggested to us in argument in the face of the proviso to r. 31 (4) (b). The proviso therefore must be sturck down as going beyond the rule-making power inasmuch as it is *ultra vires* the provisions of s. 32 K (l) (iv).

There are other factors which govern the yield of land and these also have not been taken into account in r. 31. Tnese factors may be grouped under the head "natuarl calamities", as for example, pests, locusts, execssive rain, floods and drought. There is nothing in r. 31 which gives a discretion to the Commission when applying the proviso to r. 31 (4) (b) to to take into account these factors,- Obviously, the intention behind the provision in s.32 K(1) (iv) was that in evaluating whether a farm was efficiently managed, the Commission will take all these factors which properly require consideration in the m atter of yield into account, It was however suggested that the Commissson was entitled to take these factors into account when judging the matter of yields; but we find nothing in the reply of the

State Government to this effect and in any case if the proviso to r. 31 (4) (b) is interpreted as it stands it may not be possible for the Commission to take these factors into account when advising the State Government under s. 32 K (1) (iv). It is not even clear which year before October 30, 1956, the Commission will take into account in advising the Government, whether a particular farm is entitled to the benefit of s. 32 K (1) (iv). If, for example, the base year is one immediately preceding October 30, 1956, and if in that year there was some natural calamity, the Commision cannot take that into account and must apply Sch. C as the proviso to r. 31 4) (b) seems to intend. The intention of the legislature therefore behind s. 32 K (1) (iv) would be subverted because of this proviso. That is another reason why this proviso should be struck down as going beyond the intention of the legislature in s. 32 K (1) (iv).

Lastly, there is another factor which is also very relevant in the matter of yields, namely, the rotation of crops which requires all good farmers to leave some part of their lands follow by turns for a whole year in order that the fertility of the soil can be preserved. Again there is nothing in the proviso which allows the Commission to take into account this factor and make calculations only on the actual area of a farm which is cultivated and leave out of account such reasonable area as may not be cultivated in order to preserve the fertility or land on the principle of rotation of crops. As the proviso stands, the Commission is to apply Sch. C over the entire area of the farm without taking into account the factor of rotation of crops which necessitates that some reasonable portion of the land must be left fallow for the whole year in order to preserve the fertility of the soil. Here again it is urged on behalf of the State in argument that the Commission can do so. But

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again that is not to be found in the reply of the State and as the proviso stands it obliges the Commission to apply Sch. C to the entire area of a farm in order to judge whether it is an efficiently managed farm. This is therefore another reason why the proviso goes beyond the intention of the legislature contained in s. 32 K (1) (iv).

The proviso therefore to r. 31 (4) (b) must be be struck down as beyond the rule making power of the State Government. As soon as the proviso is struck down it would be impossible to work r. 31 properly; therefore, the entire r. 31 must fall on this ground also.

We therefore allow the petitions and strike down r. 31 as *ultra vires* the Act and order that r. 31 (along with Schedules B and C) shall not be given effect to by the State of Punjab and shall not be taken into account by the Commission in giving advice to the State Government under s. 32 P (4). The petitioners will get their costs from the State—one set of hearing fee.

Petitions allowed.