A GWALIOR RAYON SILK MFG. (WVG.) CO. LTD.

v.

THE ASSTT. COMMISSIONER OF SALES TAX & ORS.

December 21, 1973

B [A. N. RAY, C.J., K. K. MATHEW, H. R. KHANNA, A. ALAGIRISWAMI AND P. N. BHAGWATI, *JJ.*]

Central Sales Tax Act, 1956—S. 8(2)(b)—Whether it suffers from the vice of excessive delegation.

Sec. 8(2)(b) of the Central Sales Tax Act 1956, provides that the tax payable by any dealer on his turnover, in so far as it relates to the sale of goods in the course of inter-state trade or commerce not falling within sub-sec. (1),——— C in case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate state, whichever is higher.... etc.

The short question which arose for determination in these four appeals was whether the provisions of sec. 8(2)(b) of the Central Sales Tax Act, 1956 suffer from the vice of excessive delegation because the parliament, in not fixing the rate itself and in adopting the rate applicable to the sale or purchase of goods inside the appropriate State had not laid down any legislative policy and thus abdicated its legislative function. The High Court answered this question in the negative D and upheld the constitutional validity of those provisions.

Dismissing the appeals,

HELD : (1) There is clear legislative policy which can be found in the provisions of Sec. 8(2)(b) of the Central Sales Tax Act 1956. The policy of the law in this respect is that in case the rate of local sales tax be less than 10 per cent, in such an event, the dealer, if the case does not fall within Sec. 8(1) of the Act, should pay Central Sales Tax at the rate of 10 per cent. If, however, the rate of E local sales tax for the goods concerned be more than 10 per cent, in that event, the policy is that the rate of the Central Sales Tax shall also be the same as that of the local sales tax for the said goods. The object of the law thus is that the rate of the Central Sales tax shall in no event be less than the rate of local sales tax for the goods in question though it may exceed the local rate in case that rate be less than 10 per cent. [984 A]

For example, if the local rate of tax in the appropriate State for the non- F declared goods be 6 per cent, in such an event a dealer, whose case is not covered by sec. 8(1) of the Act, would have to pay Central Sales Tax at a rate of 10 per cent. In case, however, the rate of local sales tax for such goods be 12 per cent the rate of Central Sales tax would also be 12 per cent because otherwise, if the rate of Central Sales Tax were only 10 per cent, the unregistered dealer who purchases goods in the course of inter-State trade would be in a better position than an intra-State purchaser and there would be no disincentive to the dealers to desist from selling goods to unregistered purchasers in course of inter-State trade. The object of the law apparently is to deter inter-State sales to unregistered dealers G as such inter-State Sales would facilitate evasion of tax. [984 C]

(2) It is also not possible to fix the maximum rate under Sec. 8(2)(b) because the local sales tax varies from State to State. The rate of local sales tax can also be changed by the State legislatures from time to time. It is not within the competence of the parliament to fix the maximum rate of local Sales tax. The fixation of the rate of local Sales tax is essentially a matter for the State legislatures and the parliament does not have any control in the matter. The parliament has therefore necessarily, if it wants to prevent evasion of payment of Central Sales H Tax, to tack the rate of such tax with that of local sales tax, in case the rate of local sales tax exceeds a particular limit. [984 E]

State of Madras v. *N. K. Nataraja Mudaliar*, [1968] 3 S.C.R. 829, referred to and

B. Shama Rao v. *The Union Territory of Pondicherry*, [1967] 2 S.C.R. 650, explained and distinguished. A

(3) The growth of the legislative power of the executive is a significant development of the twentieth century. The theory of laissez-faire has been given a go-by and large and comprehensive powers are being assumed by the State with a view to improve social and economic well-being of the people. Most of the modern socio-economic legislations passed by the legislature lay down the guiding principles and the legislative policy. The legislatures because of limitation imposed upon by the time factor hardly go into matters of detail. Provision is, therefore made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation. The practice of empowering the Executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare state. [890 D] B

(4) In questions of delegated legislation, the principle which has been well established is that the legislature must lay down the guidelines, principles or policy for the authority to whom power to make subordinate legislation is entrusted. The correct position of law thus is that an "unlimited right of delegation is not inherent in the legislative power itself. This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislatures must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the stand which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it provided the legislative policy is enunciated with sufficient clearness or a standard laid down. The courts cannot and should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case." [892 C] C D

In re *Delhi Laws Act* 1912, [1951] S.C.R. 747 and *Municipal Corporation of Delhi* v. *Birla Mills* [1968] 3 S.C.R. 231, *Devi Das Gopal Krishan* v. *State of Punjab* A.I.R. 1967 S.C. 1895; *Harishankar Bagla* v. *The State of Madhya Pradesh* [1955] 1 S.C.R. 380; *Pandit Banarasi Das Bhagat* v. *The State of Madhya Pradesh & Ors.* [1959] S.C.R. 427; *Corporation of Calcutta & Anr.* v. *Liberty Cinema* [1965] 2 S.C.R. 477 and *Sita Ram Bishembhar Dayal & Ors.* v. *State of U.P. & Others* [1972] 2 S.C.R. 141, referred to. E

It is not possible to subscribe to the view that if the legislature can repeal an enactment, as it normally can, it retains enough control over the authority making the subordinate legislation and, as such, it is not necessary for the legislature to lay down legislative policy, standard or guidelines in the statute. The acceptance of this view would lead to startling results. Supposing the Parliament tomorrow enacts that as the crime situation in the country has deteriorated, criminal law to be enforced in the country from a particular date would be such as is framed by an officer mentioned in the enactment. Can it be said that there has been no excessive delegation of legislative power even though the Parliament omits to lay down in the statute any guideline or legislative policy for the making of such criminal law? The vice of such an enactment cannot be ignored or lost sight of on the ground that if the Parliament does not approve the law made by the officer concerned, it can repeal the enactment by which that officer was authorised to make the law. [894 H—895 C] F G

(per C.J. and Mathew J:)

(1) Delegation is not handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment, remaining in the grantor or delegator. [899 G]

(2) Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced. [900 A] H

Wills J in Huth v. *Clarke*, [1890] 25, Q.B.D. 391, 395 and *Hodge* v. *The Queen* [1883] 9 A.C. 117.

A (3) What is prohibited, is the conferment of arbitrary power by the legislature upon a subordinate body without reserving to itself control over that body and the self-efacement of legislative power in favour of another agency either in whole or in part. In other words, the legislature should not abdicate its essential function. [904 C]

Devi Das Gopal Krishan v. *State of Punjab*, [1967] 3 S.C.R. 557, *Corporation of Calcutta & another* v. *Liberty Cinema*, [1965] 2 S.C.R. 477; *Municipal Board, Nagpur* v. *Raghuvendra Kripal*, [1966] 1 S.C.R. 950; *The Municipal Corporation* B *of Delhi* v. *Birla Cotton and Spinning and Weaving Mills*, [1968] 3 S.C.R. 251 and *Sita Ram Bishembhar Dayal* v. *State of U.P.* [1972] 2 S.C.R. 141, referred to.

(4) The concept of 'abdication' seems no less vague, fluctuating and uncertain than the "transfer to others of the essential legislative functions". Some writers think that a legislature does not 'abdicate' unless it withdraws from the field and surrenders its responsibility therefor; and to some, there seems to be 'abdication' whenever a legislature while remaining in the field and retaining its responsibility C therefore entrusts to others the formulation of policy, otherwise than with a definite standard or purpose laid down by it. [904 D—E]

In re Gray, 57 S.C.R. 150; *In re Initiative and Referendum Act*, [1919] A.C. 935; *In Shannon* v. *Lower Mainland Dairy Products Board*, [1938] A.C. 708 P.C.; *R.* v. *Burah* [1878] 5 I.A. 178; *In Re the Delhi Laws Act* 1912 etc. [1951] S.C.R. 747, referred to.

(5) The crucial point is, whether the legislature preserved its capacity intact and retained perfect control over the delegate inasmuch as it could at any time D repeal the legislation and withdraw the authority and discretion it had vested on the delegate. [906 B]

(6) Delegation of 'law making' power is the dynamo of modern government. Delegation by the legislature is necessary in order that the exertion of legislative power does not become a futility. Today, while theory still affirms legislative supremacy, power floats back increasingly to the Executive. One must not take lightly and say that there can be transfer of legislative pow under the guise of delegation which would tentamount to abdication. At the same time, one must E be aware of the practical reality that the parliament cannot go into details of all legislative matters. [906 D—E]

(7) The making of law is only a means to achieve a purpose. It is not a end in itself. That end can be attained by the legislature making the law. But many topics or subjects of legislation are such that they require expertise, technical knowledge and a degree of adaptability to changing situations etc., which parliament might not possess and, therefore this end is better secured by extensive delegation of legislative power. The legislative process would frequently bog down if F a legislature were required to appraise before hand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. [906 G]

(8) In the present case, by Sec. 8(2)(b) of the Act, parliament has not delegated any power to the State legislatures. Therefore, the question was whether parliament had abdicated its legislative function when it chose to adopt the rate to be fixed by the state legislatures for local sales. In the present case, parliament G had fixed the rate of tax on inter-state sales of the description specified in s. 8(2)-(b) of the Act at the rate fixed by the appropriate state legislature in respect of intra-state-sales with a purpose, namely, to check evasion of tax on inter-state sales and to prevent discrimination between residents of different states. Further, in the instant case, parliament can repeal the provisions of s. 8(2)(b) adopting a higher rate of tax fixed by the appropriate state legislature in respect of intra-state sales. If parliament can repeal the provision, there can be no objection on the score that parliament has abdicated its legislative function. It retains its control over the fixation of the rate itself. [911 H]

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Cobb & Co. Ltd. v. *Kropp*. [1967] 1 A.C. 141, referred to.

Therefore there is no excessive delegation of legislative power as contended by the petitioner.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 212-215 of 1973. A

From the judgment and order dated the 29th August, 1972 of the Madhya Pradesh High Court at Jabalpur, in Misc. Petitions Nos. 191 of 1968, 30 of 1970, 63 and 64 of 1972.

A. K. Sen, R .V. Patel, Biswarup Gupte, R. N. Jhunjhunwala and *U. K. Khaitan*, for the appellants (in C. A. 212-215). B

I. N. Shroff, for respondent Nos. 1-3 (in C.A. 212-215).

B. Sen and *S. P. Nayar*, for respondent No. 4 (in C.A. 212).

S. P. Nayar, for respondent No. 4 (in C.A. 213-215).

The judgment of H. R. Khanna, A. Alagiriswami and P. N. Bhagwati, JJ. was delivered by Khanna J. K. K. Mathew, J. gave a separate Opinion on behalf of A. N. Ray, C. J. and himself. C

KHANNA, J. The short question which arises for determination in these four appeals on certificate against the judgment of the Madhya Pradesh High Court is whether the provisions of section 8(2)(b) of the Central Sales Tax Act, 1956 (Act 54 of 1956) (hereinafter referred to as the Act) suffer from the vice of excessive delegation. The D High Court answered this question in the negative and upheld the constitutional validity of those provisions.

Sub-sections (1), (2) and (4) of section 8 of the Act read as under :

"(1) Every dealer, who in the course of inter-Estate trade or commerce— E

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be three per cent of his turnover. F

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)—

(a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and G

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher; H

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under

A the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce, unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

B (a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of

C Government."

It has been argued on behalf of the appellants that the fixation of rate of tax is a legislative function and as the Parliament has, under section 8(2)(b) of the Act, not fixed the rate of central sales tax but has adopted the rate applicable to the sale or purchase of goods inside the appropriate State in case such rate exceeds 10 per cent, the Parlia-

D ment has abdicated its legislative function. The above provision is consequently stated to be constitutionally invalid because of excessive delegation of legislative power. This contention, in our opinion, is not well founded. Section 8(2)(b) of the Act has plainly been enacted with a view to prevent evasion of the payment of the central sales tax. The Act prescribes a low rate of tax of 3 per cent in the case of inter-State sales only if the goods are sold to the Government

E or to a registered dealer other than the Government. In the case of such a registered dealer, it is essential that the goods should be of the description mentioned in sub-section (3) of section 8 of the Act. In order, however, to avail of the benefit of such a low rate of tax under section 8(1) of the Act, it is also essential that the dealer selling the goods should furnish to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer, to

F whom the goods are sold, containing the prescribed particulars in prescribed form obtained from the prescribed authority, or if the goods are sold to the Government not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government. In cases not falling under sub-section (1), the tax payable by any dealer in respect of inter-State sale of declared goods is the rate applicable to the sale or purchase of such goods inside

G the appropriate state *vide* section 8(2)(a) of the Act. As regards goods other than the declared goods, section 8(2)(b) provides that the tax payable by any dealer on the sale of such goods in the course of inter-State trade or commerce shall be calculated at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher.

H The question with which we are concerned is whether the Parliament in not fixing the rate itself and in adopting the rate applicable to the sale or purchase of goods inside the appropriate State has not laid down any legislative policy and has abdicated its legislative function.

In this connection we are of the view that a clear legislative policy can be found in the provisions of section 8(2)(b) of the Act. The policy of the law in this respect is that in case the rate of local sales tax be less than 10 per cent, in such an event the dealer, if the case does not fall within section 8(1) of the Act, should pay central sales tax at the rate of 10 per cent. If, however, the rate of local sales tax for the goods concerned be more than 10 per cent, in that event the policy is that the rate of the central sales tax shall also be the same as that of the local sales tax for the said goods. The object of law thus is that the rate of the central sales tax shall in no event be less than the rate of local sales tax for the goods in question though it may exceed the local rate in case that rate be less than 10 per cent. For example, if the local rate of tax in the appropriate State for the non-declared goods be 6 per cent, in such an event a dealer, whose case is not covered by section 8(1) of the Act, would have to pay central sales tax at a rate of 10 per cent. In case, however, the rate of local sales tax for such goods be 12 per cent, the rate of central sales tax would also be 12 per cent because otherwise, if the rate of central sales tax were only 10 per cent, the unregistered dealer who purchases goods in the course of inter-State trade would be in a better position than an intra-State purchaser and there would be no disincentive to the dealers to desist from selling goods to unregistered purchasers in the course of inter-State trade. The object of the law apparently is to deter inter-State sales to unregistered dealers as such inter-State sales would facilitate evasion of tax. It is also not possible to fix the maximum rate under section 8(2)(b) because the rate of local sales tax varies from State to State. The rate of local sales tax can also be changed by the State legislatures from time to time. It is not within the competence of the Parliament to fix the maximum rate of local sales tax. The fixation of the rate of local sales tax is essentially a matter for the State Legislatures and the Parliament does not have any control in the matter. The Parliament has therefore necessarily, if it wants to prevent evasion of payment of central sales tax, to tack the rate of such tax with that of local sales tax, in case the rate of local sales tax exceeds a particular limit. Dealing with the provisions of section 8(2)(b) of the Act, Hegde J. in the case of *State of Madras* v. *N. K. Nataraja Mudaliar*(1) observed :

> "Then we come to cl. (b) of s. 8(2), which deals with goods other than declared goods. Here the law at the relevant time was that the tax shall be calculated at the rate of seven percentum of the turnover or at the rate applicable to sale or purchase of such goods inside the appropriate State, whichever is higher. As could be seen from the report of the Taxation Enquiry Committee, the main reason for this provision was to prevent as far as possible the evasion of sales tax. The Parliament was anxious that inter-State trade should be canalised through registered dealers over whom the appropriate government has a great deal of control. It is not very easy for them to evade tax. A measure which is intended to check the evasion of tax is undoubtedly a valid measure. Further, inter-State trade carried on through

(1) [1968] 3 SCR 829.

A dealers coming within s, 8(2), must be in the very nature of things very little. It is in public interest to see that in the guise of freedom of trade, they do not evade the payment of tax. If the sales tax they have to pay is as high or even higher than intre-State sales tax then they will be constrained to register themselves and pay the tax legitimately due. The impact of this provision on inter-State trade is bound to be B negligible, but at the same time it is an effective safeguard against evasion of tax."

The adoption of the rate of local sales tax for the purpose of the central sales tax as applicable in a particular State does not show that the Parliament has in any way adbicated its legislative function. Where a law of Parliament provides that the rate of central sales tax C should be 10 per cent or that of the local sales tax, whichever be higher, a definite legislative policy can be discerned in such a law, the policy being that the rate of central sales tax should in no event be less than the rate of local sales tax. In such a case, it is as already stated above, not possible to mention the precise figure of the maximum rate of central sales tax in the law made by the Parliament because such a rate is D linked with the rate of local sales tax which is prescribed by the State Legislatures. The Parliament in making such a law cannot be said to have indulged in self-effacement. On the contrary, the Parliament by making such a law effectuates its legislative policy, according to which the rate of central sales tax should in certain contingencies be not less than the rate of the local sales tax in the appropriate State. A law made by Parliament containing the above provision cannot be E said to be suffering from the vice of excessive delegation of legislative function. On the contrary, the above law incorporates within itself the necessary provisions to carry out the objective of the legislature, namely, to prevent evasion of payment of central sales tax and to plug possible loopholes.

There is, in our opinion, marked difference between the enactment F of a law which was struck down by this Court in the case of *B. Shama Rao* v. *The Union Territory of Pondicherry*(1) and that contained in section 8(2)(b) of the Central Sales Tax Act. In *Shama Rao's* case the Legislative Assembly for the Union Territory of Pondicherry passed the Pondicherry General Sales Tax Act which was published on June 30, 1965. Section 1(2) of the Act provided that it would come into force on such date as the Pondicherry Government may by notifi- G cation appoint and section 2(1) provided that the Madras General Sales Tax Act, 1959, as in force in the State of Madras immediately before the commencement of the Pondicherry Act, shall be extended to Pondicherry subject to certain modifications. The Pondicherry Government issued a notification on March 1, 1966, appointing April 1, 1966 as the date of commencement of the Pondicherry Act. Prior to the issue of the notification, the Madras Legislature had amended H the Madras Act and consequently it was the Madras Act as amended up to April 1, 1966 which was brought into force in Pondicherry. A

(1) [1967] 2 SCR 650.

petition was thereupon filed challenging the validity of the Pondicherry Act. During the pendency of that petition, the Pondicherry Legislature passed Amendment Act 13 of 1966 whereby section 1(2) of the principal Act was amended to read that the latter Act would come into force on April 1, 1966 and that all proceedings and action taken under that Act would be deemed valid as if the principal Act as amended had been in force at all material times. It was held by majority by this Court that the Act of 1965 was void and still-born and could not be revived by the Amendment Act of 1966. According to the Court, the Pondicherry Legislature not only adopted the Madras Act as it stood at the date when it passed the principal Act, but in effect it also enacted that if the Madras Legislature were to amend its Act prior to the notification of its extension to Pondicherry, it would be the amended Act that would apply. The Legislature, it was held, at that stage could not anticipate that the Madras Act would not be amended nor could it predicate what amendments would be carried out, whether they would be of a sweeping character or whether they would be suitable in Pondicherry. The result, in the opinion of the Court, was that the Pondicherry Legislature accepted the amended Act though it was and could not be aware what the provisions of the amended Act would be. There was, according to the Court, in these circumstances a total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras Legislature.

It would appear from the above that the reason which prevailed with the majority in striking down the Pondicherry Act was the total surrender in the matter of sales tax legislation by the Pondicherry Legislature in favour of the Madras Legislature. No such surrender is involved in the present case because of the Parliament having adopted in one particular respect the rate of local sales tax for the purpose of central sales tax. Indeed, as mentioned earlier, the adoption of the local sales tax is in pursuance of a legislative policy induced by the desire to prevent evasion of the payment of central sales tax by discouraging inter-State sales to unregistered dealers. No such policy could be discerned in the Pondicherry Act which was struck down by this Court.

Another distinction, though not very material, is that in the Pondicherry case the provisions of the Madras Act along with the subsequent amendments were made applicable to an area which was within the Union Territory of Pondicherry and not in Madras State. As against that, in the present case we find that the Parliament has adopted the rate of local sales tax for certain purposes of the Central Sales Tax Act only for the territory of the State for which the Legislature of that State had prescribed the rate of sales tax. The central sales tax in respect of the territory of a State is ultimately assigned to that State under article 269 of the Constitution and is imposed for the benefit of that State. We would, therefore, hold that the appellants cannot derive much assistance from the above mentioned decision of this Court.

It may be stated that this Court in two cases has upheld the validity of statute by which the legislature left the fixation of rates to another body. This was, however, subject to the rider that the legislature

must provide guidance for such fixation. In the case of *Corporation of Calcutta & Anr.* v. *Liberty Cinema*(1) while dealing with section 548 of the Calcutta Municipal Act relating to the levy of licence fee on cinema houses, Sarkar J. (as the then was) speaking for the majority after referring to the earlier case of *Pandit Banarsi Das Bhanot* v. *The State of Madhya Pradesh*(2) observed :

> "This therefore is clear authority that the fixing of rates may be left to non-legislative body. No doubt when the power to fix rates of taxes is left to another body, the legislature must provide guidance for such fixation. The question then is, was much guidance provided in the Act? We first wish to observe that the validity of the guidance cannot be tested by a rigid uniform rule; that must demand on the object of the Act giving power to fix the rate."

In *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills Delhi & Anr.*(3) this Court dealt with the provisions of sections 113 and 150 of the Delhi Municipal Corporation Act in the context of levy of certain taxes, including tax on consumption or sale of electricity. One of the questions which arose for determination in that case was whether section 150 of the abovementioned Act transgressed the limits of permissible delegation. According to that section, the Municipal Corporation may at a meeting pass a resolution for the levy of any of the taxes specified in sub-section (2) of section 113 defining the maximum rate of tax to be levied, the class or classes of persons or the description of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted. Such a resolution has to be sanctioned by the Central Government and thereafter the Corporation has to pass a second resolution determining, subject to the maximum rate, the actual rate of tax. Wanchoo CJ., Hidayatullah, Sikri, Ramaswami and Shelat JJ. unheld the validity of the above section, while Shah and Vaidialingam JJ. dissented and held that section 150(1) of the Act was void beause of excessive delegation of legislative authority to the Corporation. Wanchoo CJ. and Shelat J. on a consideration of the various provisions of the Act held that the power conferred by section 150 on the Corporation was not unguided and could not be said to amount to excessive delegation. After referring to the earlier authorities, Wanchoo CJ. speaking for himself and Shelat J. observed :

> "A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not

(1) [1965] 2 SCR 477. (2) [1959] SCR 427.
(3) [1968] 3 SCR 231.

warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made to also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."

Hidayatullah J. (as he then was) speaking for himself and Ramaswami J. observed :

"Once it is established that the legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. If the delegate acts contrary to the wishes of the legislature the legislature can undo what the delegate has done."

It was further observed :

"To insist that the legislature should provide for every matter connected with municipal taxation would make municipalities mere tax collecting departments and not self-governing bodies which they are intended to be. Government might as well collect taxes and make them available to the municipalities. That is not a correct reading of the history of Municipal Corporations and other self-governing institutions in our country."

Sikri J. (as he then was) observed :

"I can see no sign of abdication of its functions by Parliament in this Act. On the contrary Parliament has constituted the Corporation and prescribed its duties and powers in great deal.

But assuming I am bound by authorities of this court to test the validity of s.113(2)(d) and s.150 of the Act by ascertaining whether a guide or policy exists in the Act, I find adequate guide or policy in the expression 'purposes of the Act' in s. 113. The Act has pointed out the objectives or the results to be achieved and taxation can be levied only for the purpose of achieving the objectives or the results. This, in my view, is sufficient guidance especially to a self-governing body like the Delhi Municipal Corporation. It is necessary to rely on the safeguards mentioned by the learned Chief Justice to sustain the delegation."

Shah J. (as he then was) speaking for himself and Vaidialingan J. after referring to the earlier authorities observed :

> "On a review of the cases the following principles appear to be well-settled : (i) Under the Constitution the Legislature has plenary powers within its allocated field; (ii) Essential legislative function cannot be delegated by the Legislature, that is, there can be no abdication of legislative function or authority by complete effacement, or even partially in respect of a particular topic or matter entrusted by the Constitution to the Legislature; (iii) Power to make subsidiary or ancillary legislation may however be entrusted by the Legislature to another body of its choice, provided there is enunciation of policy, principles or standards either expressly or by implication for the guidance of the delegate in that behalf. Entrustment of power without guidance amounts to excessive delegation of legislative authority; (iv) Mere authority to legislate on a particular topic does not confer authority to delegate its power to legislate on that topic to another body. The power conferred upon the Legislature on a topic is specifically entrusted to that body, and it is a necessary intendment of the constitutional provision which confers that power that it shall not be delegated without laying down principles, policy, standard or guidance to another body unless the Constitution expressly permits delegation; and (v) the taxing provisions are not exception to these rules."

It was further observed :

> "The Constitution entrusts the legislative functions to the legislative branch of the State and directs that the functions shall be performed by that body to which the Constitution has entrusted and not by some one else to whom the Legislature at a given time thinks it proper to delegate the function entrusted to it. A body of experts in a particular branch of undoubted integrity or special competence may probably be in a better position to exercise the power of legislation in that branch, but the Constitution has chosen to invest the elected representatives of the people to exercise the power of legislation, and not to such bodies of experts. Any attempt on the part of the experts to usurp, or of the representatives of the people to abdicate the functions vested in the legislative branch is inconsistent with the constitutional scheme. Power to make subordinate or ancillary legislation may undoubtedly be conferred upon a delegate, but the Legislature must in conferring that power disclose the policy, principles or standards which are to govern the delegate in the exercise of that power so as to set out a guidance. Any delegation which transgresses this limit infringes the constitutional scheme."

After referring to the provisions of the Delhi Municipal Corporation Act, Shah and Vaidialingam JJ. held that the delegation could not

be upheld merely because of the special status, character, competence or capacity of the delegate or by reference to the provisions made in the statute to prevent abuse by the delegate of its authority. Shah and Vaidialingam JJ. accordingly came to the conclusion that Section 150(1) was void as it permitted excessive delegation of legislative authority to the Corporation.

It would appear from the above that not only was the constitutional validity of section 150 of the Delhi Municipal Corporation Act upheld by the majority, the majority of the judges also expressed the view that it was essential for the legislature to lay down the legislative policy and standards before it could delegate the task of subordinate legislation to another body.

We find ourselves unable to agree with the view, which has been canvassed during the course of arguments that if a legislature confers power to make subordinate or ancillary legislation upon a delegate, the legislature need not disclose any policy, principle or standard which might provide guidance for the delegate in the exercise of that power.

It may be stated at the outset that the growth of the legislative powers of the executive is a significant development of the twentieth century. The theory of laissez-faire has been given a go-by and large and comprehensive powers are being assumed by the State with a view to improve social and economic well-being of the people. Most of the modern socio-economic legislations passed by the legislature lay down the guiding principles and the legislative policy. The legislatures because of limitation imposed upon by the time factor hardly go into matters of detail. Provision is, therefore, made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation. The practice of empowering the executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare state. At the same time it has to be borne in mind that our Constitution-makers have entrusted the power of legislation to the representatives of the people, so that the said power may be exercised not only in the name of the people but also by the people speaking through their representatives. The rule against excessive delegation of legislative authority flows from and is a necessary postulate of the sovereignty of the people. The rule contemplates that it is not permissible to substitute in the matter of legislative policy the views of individual officers or other authorities, however competent they may be, for that of the popular will as expressed by the representatives of the people. As observed on page 224 of Vol. I in Cooley's Constitutional Limitations, 8th Ed. :

> "One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution

A itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."

B

According to John Locke when parliamentary representatives have been chosen and the authority to make laws has been delegated to them, they have no right to redelegate it. As against that Jeremy Renthas in The Limits of Jurisprudence Defined distinguishes between laws which belong to the legislator by conception, being his work alone, and laws which belong to him by pre-adoption, being the joint C work of the legislator and the 'subordinate power holder'. In the latter case, he says, the legislator 'sketches out a sort of imperfect mandate which he leaves it to the subordinate holder to fill up'. To economise its own time and to take advantage of export skill in administration, parliament is content to lay down principles and to leave the details (frequently experimental or requiring constant adjustment in the light of experience) to some responsible minister or D public body. (*see* Foreword by Sir Cecil Carr to Hewitt's The Control of Delegated Legislation, 1953 Ed.).

The Constitution, as observed by this Court in the case of *Devi Dass Gopal Krishan* v. *State of Punjab*(1) 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 E 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 aspect of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is danger inherent in such a process of delegation. An over-burdened legislature or one controlled by a F 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 G 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 limts.

The question as to the limits or permissible delegation of legislative power has arisen before this Court in a number of cases. Those cases were reviewed at length in the judgments of Wanchoo CJ. and Shah H J. in the case of *Municipal Corporation of Delhi* v. *Birla Mills* (supra) and they summed up the conclusions or principles which had been

(1) AIR 1967 S.C. 1895.

established by those cases. Those conclusions or principles have already been reproduced above. A

The matter came up for the first time before this Court *In re Delhi Laws Act,* 1912.(1) Although each one of the learned Judges who heard that case wrote a separate judgment, the view which emerged from the different judgments was that it could not be said that an unlimited right of delegation was inherent in the legislative power itself. This was not warranted by the provisions of the Constitution, which vested the power of legislation either in Parliament or State legislatures. The legitimacy of delegation depended upon its being vested as an ancillary measure which the legislature considered to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative function. Exactly what constituted "essential legislative function" was difficult to define in general terms, but this much was clear that the essential legislative function must at least consist of the determination of the legislative policy and its formulation as a binding rule of conduct. Thus where the law passed by the legislature declares the legislative policy and lays down the standard which is enacted into a rule of law, it can leave the task of subordinate legislation like the making of rules, regulations or bye-laws which by its very nature is ancillary to the statute to subordinate bodies. The subordinate authority must do so within the framework of the law which makes the delegation, and such subordinate legislation has to be consistent with the law under which it is made and cannot go beyond the limits of the policy and standard laid down in the law. As long as the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case (*see* observations of Wanchoo CJ. in *Municipal Corporation of Delhi* v. *Birla Mills,* Supra). B C D E

In *Harishankar Bagla* v. *The State of Madhya Pradesh*(2) this Court dealt with the validity of clause 3 of the Cotton Textile (Control of Movement) Order, 1948 promulgated by the Central Government under section 3 of the Essential Supplies (Temporary Powers) Act, 1946. While upholding the validity of the impugned clause, this Court observed that 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, and where the legislature has laid down such a principle in the Act and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at given prices, the exercise of the power was valid. F G

In *Pandit Banarsi Das Bhanot* v. *The State of Madhya Pradesh & Ors.* (supra) Venkatarama Aiyar J. speaking for majority observed : H

(1) [1951] SCR 747. (2) [1955] 1 SCR 380.

A

> ".... the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

B The learned Judge held that the power conferred on the State Government by section 6(2) of the Central Provinces and Berar Sales Tax Act, 1947, to amend the Schedule relating to exemptions was in consonance with the accepted legislative practice relating to the topic and was not unconstitutional.

C In *Vasantlal Maganbhai Sanjanwala* v. *The State of Bombay & Ors.*(1) the validity of section 6(2) of the Bombay Tenancy and Agricultural Lands Act 67 of 1948 was assailed. The said provision authorised the Provincial Government by notification to fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or to fix such rate on any other suitable basis as it thought fit. Gajendragadkar J. (as he than was) speaking for the D majority observed that although the power of delegation was a constituent element of legislative power, the 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.

E The views expressed by this Court in *Corporation of Calcutta & Anr.* v. *Liberty Cinema* (supra), *B. Shama Rao* v. *Union Territory of Pondicherry* (supra) and *Devi Dass Gopal Krishan* v. *State of Punjab* (supra) have already been reproduced above. In *Sita Ram Bishambhar Dayal & Ors.* v. *State of U.P. & Ors.*,(2) this Court observed :

F

> "It is true that the power to fix the rate of a tax is a legislative power but if the legislature lays down the legislative policy and provides the necessary guidelines, that power can be delegated to the executive."

It would appear from the above that the view taken by this Court in a long chain of authorities is that the legislature in conferring G power upon another authority to make subordinate or ancillary legislation must lay down policy, principle or standard for the guidance of the authority concerned. The said view has been affirmed by Benches of this Court consisting of seven Judges. Nothing cogent, in our opinion, has been brought to our notice as may justify departure from the said view. The binding effect of that view cannot be watered down by the opinion of a writer, however eminent he may be, H nor by observations in foreign judgments made in the context of the statutes with which they were dealing.

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(1) [1961] SCR 341. (2) [1972] 2 SCR 141.

Regarding the subject of delegation, it has been observed on page 228 of Cooley's Constitutional Limitations, Vol. I, 8th Edition : A

> "The maxim that power conferred upon the legislature to make laws cannot be delegated to any other authority does not preclude the legislature from delegating any power not legislative which it may itself rightfully exercise. It may confer an authority in relation to the execution of a law which may involve discretion, but such authority must be exercised under and in pursuance of the law. The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative officer or body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws, and in an effort to detail and to particularise, they would miss sufficiency both in provision and execution." B C

The matter has been dealt with on page 1637 of Vol. III in Willoughby on the Constitution of the United States, 2nd Edition, in the following words : D

> "The qualifications to the rule prohibiting the delegation of legislative power which have been earlier adverted to are those which provide that while the real law-making power may not be delegated, a discretionary authority may be granted to executive and administrative authorities : (1) to determine in specific cases when and how the powers legislatively conferred are to be exercised and (2) to establish administrative rules and regulations, binding both upon their subordinates and upon the public, fixing in detail the manner in which the requirements of the statutes are to be met, and the rights therein created to be enjoyed." E

The matter has also been dealt with in Corpus Juris Secundum Vol. 73, page 324. It is stated there that the law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. Accordingly, in delegating powers to an administrative body with respect to the administration of statutes, the legislature must ordinarily prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion with regard thereto, and a statute or ordinance which is deficient in this respect is invalid. In other words, in order to avoid the pure delegation of legislative power by the creation of an administrative agency, the legislature must set limits on such agency's power and enjoin on it a certain course of procedure and rules of decision in the performance of its function; and, if the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, its attempt to delegate is a nullity. F G H

We are also unable to subscribe to the view that if the legislature can repeal an enactment, as it normally can, it retains enough control

over the authority making the subordinate legislation and, as such, it is not necessary for the legislature to lay down legislative policy, standard or guidelines in the statute. The acceptance of this view would lead to startling results. Supposing the Parliament tomorrow enacts that as the crime situation in the country has deteriorated, criminal law to be enforced in the country from a particular date would be such as is framed by an officer mentioned in the enactment. Can it be said that there has been no excessive delegation of legislative power even though the Parliament omits to lay down in the statute any guideline or legislative policy for the making of such criminal law? The vice of such an enactment cannot, in our opinion, be ignored or lost sight of on the ground that if the Parliament does not approve the law made by the officer concerned, it can repeal the enactment by which that officer was authorised to make the law.

Reference has been made to the decision of the Judicial Committee in the case of *Cobb & Co. Ltd. & Ors.* v. *Norman Eggert Kropp*(1). The appellant companies in that case brought two actions against the Commissioner for Transport, who was the nominal defendant for the Government of Queensland. The first action was for repayment of fees levied under the State Transport Facilities Act for the carriage of goods and passengers on motor vehicles operated by the appellants in the State of Queensland. The second action was for repayment of fees levied under the State Transport Act for the same purposes as in the first action. The appellants challenged the validity of the legislation in both the actions. The respondent conceded that the licence fees were an imposition of taxation, which would be illegal and void if not done with the authority of Parliament but contended that the two Acts were within the legislative competence of the queensland legislature. The Judicial Committee held that the power of the Queensland legislature to legislate for the peace welfare and good government of the state was full and plenary within certain limits. It was further held that the Queensland legislature was entitled to use any agent or any subordinate agency or any machinery that they considered appropriate for carrying out the object and the purposes that they had in mind and which they designated. The legislature, it was observed, was entitled to use the Commissioner for Transport as their instrument to fix and recover the licence and permit fees, provided they preserved their own capacity intact and retained perfect control over him. In this context, the Judicial Committee observed:

> "In their Lordships' view the Queensland legislature were fully warranted in legislating in the terms of the Transport Acts now being considered. They preserved their own capacity intact and they retained perfect control over the Commissioner for Transport inasmuch as they could at any time repeal the legislation and withdraw such authority and discretion as they had vested in him. It cannot be asserted that there was a levying of money by pretence or prerogative

(1) [1967] AC 141.

without grant of Parliament or without parliamentary warrant." A

Reference in the above observations to the retention of control and repeal of legislation, in our opinion, should be taken to be in the context of the overall effect of the impugned legislation. The effect of the impugned legislation had been brought out clearly in the judgment of Stable J. and the Judicial Committee quoted with approval the following passage from that judgment: B

> "The Commissioner has not been given any power to act outside the law as laid down by Parliament. Parliament has not abdicated from any of its own power. It has laid down a framework, a set of bounds, within which the person holding the office created by Parliament may grant, or re-train from collecting fees which are taxes." C

The above passage shows that the Judicial Committee expressly took note of the fact that the impugned legislation had laid down the framework and set of bounds within which the authority holding the office could act. The above case cannot, therefore, be an authority for the proposition that it is not necessary for the Parliament to lay down a framework and set of bounds within which a person D authorised by an enactment could act.

We have been referred to the literal meaning of the word "abdication" and it has been argued that even if the legislature does not lay down any guidelines, policy or standard for the guidance of the authority to whom it gives the power of making subordinate legislation, it (the legislature) does not abdicate its function as long as it E retains the power to repeal the statute giving that power. What is the exact connotation of the word "abdication" and whether there is proper use of the word "abdication" if the legislature retains the right of repealing the law by which uncanalised and unguided power is conferred upon another body for making subordinate legislation are questions which may have some attraction for literary purists or those indulging in sonantic niceties; they cannot, in our view, detract from F the principle which has been well established in a long chain of authorities of this Court that the legislature must lay down the guidelines, principles or policy for the authority to whom power to make subordinate legislation is entrusted. The correct position of law, if we may say so with all respect, is what was enunciated by Mukherjea J. *in the Delhi Laws Act* case (supra). Said the learned Judge :

G

> "It cannot be said that an unlimited right of delegation is inherent in the legislative power itself. This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must H retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of

law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. Provided the legislative policy is enunciated with sufficient clearness or a standard laid down the courts cannot and should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case."

As a result of the above, we hold that section 8(2)(b) of the Central Sales Tax Act does not suffer from the vice of abdication or excessive delegation of legislative power. The appeals fail and are dismissed with costs. One hearing fee.

MATHEW, J.—These appeals are preferred on the basis of certificates granted by the High Court of Madhya Pradesh under article 133(1)(c) of the Constitution from a common judgment of that Court holding that the provisions of s. 8(2)(b) of the Central Sales Tax Act, 1956 (hereinafter referred to as the Act) do not suffer from the vice of excessive delegation and are therefore immune from attack on the ground that Parliament has abdicated its essential legislative function in enacting them.

Mr. A. K. Sen appearing for the appellants submitted that Parliament, by enacting s. 8(2)(b) has delegated its legislative function to fix the rate of tax leviable on the turnover of sales of goods in the course of inter-State trade coming within the purview of the sub-clause and has abdicated its legislative function in so far as it adopted the rate that might be fixed in the sales tax law of the appropriate State from time to time for taxing the local sales. Counsel submitted that fixing the rate of tax is an essential legislative function and that this function cannot be delegated without laying down the legislative policy for the guidance of the delegate. In support of this contention counsel referred to the decisions of this Court on the subject.

In *Corporation of Calcutta and Another* v. *Liberty Cinema*,(1) the validity of s. 548(2) of the Calcutta Municipal Act, 1951, which empowered the Corporation to levy fees "at such rates as may from time to time be fixed by the Corporation" was challenged on the ground of excessive delegation as it provided no guidance for the fixation of the amount. The majority upheld the provision relaying on the decision in *Banarsidas* v. *State of Madhya Pradesh*(2) holding that the fixation of rates of tax not being an essential legislative function, could be validly delegated to a non-legislative body, but observed that when it was left to such a body, the legislature must provide guidance for such fixation. The Court found the guidance in the monetary needs of the Corporation for carrying out the functions entrusted to it under the Act.

(1) [1965] 2 I. C. R. 477.

(2) [1959] S.C.R. 427.

In Municipal Board, Hapur v. *Raghuvendra Kripal*(1), the validity of the U.P. Municipalities Act, 1916, was involved. The Act had empowered the municipalities to fix the rate of tax and after having enumerated the kinds of taxes to be levied, prescribed an elaborate procedure for such a levy and also provided for the sanction of the Government. Section 135(3) of the Act raised a conclusive presumption that the procedure prescribed had been gone through on a certain notification being issued by the Government in that regard. This provision, it was contended, was *ultra vires* because there was an abdication of essential legislative functions by the legislature with respect to the imposition of tax inasmuch as the State Government was given the power to condone the breaches of the Act and to set at naught the Act itself. This, it was contended, was an indirect exempting or dispensing power. Hidayatullah, J., speaking for the majority, said that regard being had to the democratic set-up of the municipalities which need the proceeds of these taxes for their own administration, it is proper to leave to these municipalities the power to impose and collect these taxes. He further said that apart from the fact that the Board was a representative body of the local population on whom the tax was levied, there were other safeguards by way of checks and controls by Government which could veto the action of the Board in case it did not carry out the mandate of the legislature.

In *Devi Das Gopalkrishnan* v. *State of Punjab*(2), the question was whether s. 5 of the East Punjab General Sales Tax Act, 1948, which empowered the State Government to fix sales tax at such rates as it thought fit was bad. The Court struck down the section on the ground that the legislature did not lay down any policy or guidance to the executive in the matter of fixation of rates. Subba Rao C.J., speaking for the Court, pointed out that the needs of the State and the purposes of the Act would not provide sufficient guidance for the fixation of rates of tax. He pointed out the danger inherent in the 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 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.*"

In *Municipal Corporation of Delhi* v. *Birla Cotton and Spinning and Weaving Mills*(3), the main question was about the constitutionality of delegation of taxing powers to Municipal Corporations. The Delhi Municipal Corporation Act (66 of 1957), by s. 113(2) had empowered the Corporation to levy certain optional taxes. Under s. 150,

(1) [1966] 1 S.C.R. 950. (2) [1967] 3 S.C.R. 557.
(3) [1968] 3 S.C.R. 251.

power was given to the Corporation to define the maximum rate of tax to be levied, the classes of persons and the description of articles and property to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted. The majority of the Court held the delegation to be valid. Wanchoo C.J. observed that there were sufficient guidance, checks and safeguards in the Act which prevented excessive delegation. The learned Chief Justice observed that statements in certain cases to the effect that the power to fix rates of taxes is not an essential legislative function were too broad and that "the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation". According to the learned Chief Justice, the fact that delegation was made to an elected body responsible to the people including those who paid taxes provided a great check on the elected councillors imposing unreasonable rates of tax. He then said :

> "The guidance may take the form of providing maximum rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local areas and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a watchdog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance may be provided".

In *Sita Ram Bishambher Dayal* v. *State of U.P.*(1), s. 3-D(1) of the U.P. Sales Tax Act, 1948, had provided for levying taxes at such rates as may be prescribed by the State Government not exceeding the maximum prescribed therein. Hegde, J. speaking for the Court, observed :

> "However much one might deplore the "New Despotism" of the executive, the very complexity of the modern society and the demand it makes on its Government have set in motion forces which have made it absolutely necessary for the legislatures to entrust more and more powers to the executive. Text book doctrines evolved in the 19th Century have become out of date".

In this context it is necessary to have a clear idea of the concept of delegation. Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought had unfortunately resulted from assuming that

(1) [1972] 2 S.C.R. 141.

delegation involves, or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced.

Willis, J. said in *Huth* v. *Clarke*,(1) :

> Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself... It is never used by legal writers, so far as I am aware, as implying that the delegating person parts with his power in such a manner as to denude himself of his rights"

See also John Willis, *"Delegatus non potest delegare"*(2).

If this essential nature of the concept of delegation is kept in mind, it is not difficult to understand the principle of the leading decisions on the question of delegation of legislative power and the theory of abdication.

In *Hodge* v. *The Queen*(3), the Privy Council said that s. 92 of the British North America Act conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by s. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow and that, within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.

The main argument in the case was that the delegation of a power to make regulation ancillary to legislation might be *intra vires* but for a legislature to pass a skeleton legislation and to empower the Government to clothe the bare bones was not delegation but abdication, as that would create and endow with its own capacity a new legislative power not created by the British North America Act to which it owes its existence.

In 1918, nearly forty years after *Hodge* v. *The Queen*(3), the theory of "abdication" was raised in *In re Gray*(4) where the Supreme Court of Kanada upheld an Act but the judges did not agree in their reasoning for so holding. The Act was called the "Dominion War Measures Act" which, empowered the Governor-General to make "such regulations as he may by reason of the existence of real or

(1) [1890] 25 Q.B.D. 391, 395.
(2) 21 Canadian Bar Review 257.
(3) [1883] 9 A.C. 117.
(4) 57 S.R.C. 150.

A apprehended war..., deem necessary or advisable for the security, defence, peace, order and welfare of Canada". The argument was that the legislation transferred legislative power of Dominion Parliament to the executive authority. Anglin, J. thought that the British North America Act forbade "complete" abdication but obviously gave to that phrase a very narrow meaning; for he went on to describe it as "something so inconceivable that the constitutionality of an attempt to do B anything of the kind need not be considered" and expressly said that the Dominion Parliament had as much authority to delegate as the Imperial Parliament. Duff, J. also thought that an implied prohibition against "abandonment" must be read into the Act; but for him no delegation of legislative power, however extensive, would amount to "abandonment", since the executive in making the regulations is no more than an agent of the legislature which can always recall its authoC rity. For him the borbidden point of "abandonment" is not reached until there is, on the part of the legislature, an intention to abandon control over the executive or an abandonment of control in fact. Despite these differences of opinion, the judges agreed in holding that there was no constitutional objection to the extremely extensive delegation contemplated by the Act, and in giving a very narrow meaning to the word "abdication".

D

Unfortunately, *In re Gray* was a wartime case and the profession tends to regard wartime cases with a cynical but natural suspicion.

In *re Initiative and Referendum Act*(1) Viscount Haldane said that by s. 92 of the British North America Act, legislative power in a province is conferred only upon its legislature and went on to make a state- E ment which has often been quoted :

> "No doubt a body, with a power of legislation on the subjects entrusted to it so ample as that enjoyed by a Provincial Legislature in Canada could, while preserving its own capacity intact, seek the assistance of subordinate agencies as ..... in *Hodde* v. *The Queen* (supra) .... (but) it F does not follow that it can create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence."

In *Shannon* v. *Lower Mainland Dairy Products Board*(2), the usual objection was made that "in the present case there is practically a surrender by the provincial Legislature of its legislative responsibility to another body" and as usual Lord Haldane's dictum was cited. The Privy Council did not even call on the Attorney General for British Columbia for an answer and dealt with the objection in the following pithy sentences of Lord Atkin :

> "Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which Legislatures, Provincial, Dominion and Imperial, have

(1) [1919] A.C. 935.

(2) [1938] A.C. P.C. 708

entrusted various persons and bodies with similar powers to those contained in this Act." A

Now it is well known that the English Parliament may, by legislation, give to anybody of its own choosing, the power to modify or add to a given Act of Parliament (the legality of all English statutory rules and orders derives from this).

In *R.* v. *Burah*(1), the Privy Council held that the Indian Legislature was in no sense an agent or delegate of the British Parliament, that within the limits of its powers, the Indian legislature had plenary powers of legislation as wide and of the same nature as those of the British Parliament, and that the plenary powers of legislation carried with them the power to legislate absolutely or conditionally. The Privy Council did not require as a prerequisite to a valid delegation of legislative power that the law must lay down a policy or standard; nor did it do so in any other case of delegated legislation. Indeed, such a requirement is opposed to the principle affirmed by it that within the limits of their powers, Indian legislatures had, and were intended to have, plenary powers of legislation as large, and of the same nature, as the British Parliament itself. And, as already stated, it has never been doubted that the British Parliament can delegate legislative powers without laying down any policy or standard for guidance. B C D

In *In re the Delhi Laws Act*, 1912, *etc.*(2), the question was elaborately dealt with and all the relevant ruling were considered but it is difficult to extract any binding principle from that decision. While dealing with this decision in *Kathi Ranging Ravat* v. *State of Saurashtra*(3) Patanjali Sastri, C.J. said : E

> "While undoubtedly certain definite conclusions were reached by the majority of the judges who took part in the decision in this regard to the constitutionality of certain specified enactments, the reasoning in each case was different and it is difficult to say that any particular principle has been laid down by the majority which can be of assistance in the determination of other cases." F

But that decision is generally held to have laid down the principle that the legislature should not abdicate its essential legislative function by transferring it and thus efface itself.

In *Municipal Corporation of Delhi* v. *Birla Cotton and Spinning and Weaving Mills* (supra) already referred to, Sikri, J. (as he then was), in his concurring judgment took the view that there was "adequate guide or policy in the expression 'purposes of the Act' in s. 113" but that it was not necessary to rely on the safeguards mentioned by Wanchoo, C. J. in his judgment to sustain the delegation. He said : G

> "Apart from authority, in my view, Parliament has full power to delegate legislative authority to subordinate bodies. H

(1) [1878] 5 I.A. 178. (2) [1951] S.C.R. 747.
(3) [1952] S.C.R, 435,444.

A

> This power flows, in my judgment, from article 246 of the Constitution. The word 'exclusive' means exclusive of any other subordinate body. There is, however, one restriction in this respect and that is also contained in Art. 246. Parliament must pass a law in respect of an item or items of the relevant list. Negatively, this means that Parliament cannot abdicate its functions. It seems to me that this was the position under the various Government of India Acts and the Constitution has made no difference in this respect. I read (1883) 9 A.C. 117 and (1885) 10 A.C. 282 as laying down that legislatures like Indian legislatures had full power to delegate legislative authority to subordinate bodies. In the judgments in these cases no such words as 'policy', 'standard' or 'guidance' is mentioned."

B

C

In *Lichter* v. *United States*(1), the Supreme Court upheld the validity of the Renegotiation Act. That Act provided for the renegotiation of war contracts and authorised administrative officers to recover profits which they determined to be excessive; such profits being defined to mean "any amount of a contract or a sub-contract price which is found as a result of renegotiation to represent excessive profits" which means, in other words that excessive profits mean excessive profits. The Court repelled the challenge on the ground of delegated legislation by saying :

D

> "It is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program. The statutory terms "excessive profits" in the context was a sufficient expression of legislative policy and standards to render it constitutional".

E

The position so far as U.S.A. is concerned has been summarized by Schwartz(2) :

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> ". . . . If standards such as those contained in the Renegotiation and Communications Acts are upheld as adequate, it becomes apparent that the requirement of standards has become more a matter of form than substance. Provided that there is no abdication of the Congressional function, as there was in the Schechter Case, the enabling law will be upheld, even though the only standard which the Court can find is so broad as to be almost illusory".

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The position in Australia is also practically the same. In *Victorian Stevedoring and General Contracting Co. Pvt. Ltd.* v. *Dignan*(3) : Dixon, J. said that the objection to delegation of legislative power was not based on the ground that the doctrine of separation of powers forbade such delegation. He said that when in *Huddart Parker Ltd.* v.

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(1) 334 U. S. 742. (2) "American Administrative Law", 2nd ed., pp. 41-42.
(3) [1931] 46 C.L.R. 73.

Commonwealth(1) the judges answered the objection against delegation of legislative power by observing that *Roche* v. *Kronheimer*(2) upheld the validity of such a delegation, it really meant that the time had gone by for assigning to the separation of powers in the Australian Constitution, the effect of restraining Parliament from making a law conferring the power of an essentially legislative character on the executive. While logically or theoretically, legislative power belonged exclusively to Parliament, the power of Parliament to authorise subordinate legislation was based more upon the usages of British legislation and to the theory of English Law and whatever may be the rationale, the decision in *Roche* v. *Kronheimer*(2) must be adhered to. And according to that judgment "the true view is that legislative power in itself includes the power of delegation" (see also Wynes, "Legislative, Judicial and Executive Powers", 4th ed. 118).

In the ultimate analysis, what is prohibited, according to Chief Justice Subba Rao in *Devi Das Gopal Krishnan* v. *State of Punjab* (supra) is the conferment of arbitrary power by the legislature upon a subordinate body without reserving to itself control over that body and the self-effacement of legislative power in favour of another agency either in whole or in part. In other words, the legislature should not abdicate its essential function. The question to be asked and answered then is when does a legislature abdicate its legislative function?

The concept of 'abdication' seems no less vague, fluctuating and uncertain than the "transfer to others (of) the essential legislative functions" banned by the Supreme Court of the United States in the *Panama Refining Co.* v. *Ryan*(3). To Lord Haldane, a legislature does not 'abdicate' unless it withdraws from the field and surrenders its responsibility therefor. But in the eyes of some other judges, there seems to be 'abdication' whenever a legislature, while remaining in the field and retaining its responsibility therefor entrusts to others the formulation of policy otherwise than with a definite standard or purpose laid down by it.

In *In re the Delhi Laws Act*, 1912 *etc.* (supra) Kania, C.J. said that if full powers to do everything that the legislature can do are conferred on a subordinate authority, although the legislature retains the power to control the action of subordinate authority by recalling such power or repealing the Acts passed by the subordinate authority, there is no abdication or effacement of the legislature conferring such power. Fazl Ali, J. observed that there are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement". Patanjali Sastri, J. was of the view that delegation of legislative authority is different from the creation of a new legislative power. In the former, the delegating body does not efface itself but retains its legislative power intact and

(1) [1931] 44 C.L.R. 492. (2) [1921] 29 C.L.R. 329.
(3) 293 U.S. 388, 421.

merely elects to exercise such power through an agency or instrumentality of its choice. In the latter there is no delegation of power to subordinate units but a grant of power to an independent and coordinate body to make laws operative of their own force. For the first, no express provision authorities delegation is required. In the absence of a constitutional inhibition, delegation of legislative power, however extensive, could be made so long as the delegating body retains its own legislative power intact. Mahajan, J. was of the opinion that the legislature cannot substitute the judgment, wisdom and patriotism of any other body, for those to which alone the people have seen fit to confide this sovereign trust and that the view that unless expressly prohibited a legislature has a general power to delegate its legislative functions to a subordinate authority is not supported by authority or principle. Mukherjea, J. took the view that it cannot be said that an unlimited right of delegation is inherent in the legislative power itself and the legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law. Das, J. said that the power of delegation is necessary for, and ancillary to, the exercise of legislative power and is a component part of it. The only qualification upon the power to delegate is that the legislature may not, without preserving its own capacity intact, create and endow with its own capacity a new legislative power not created or authorise by the Act to which it owes its existence. Bose, J. said that the Indian Parliament can legislate along the lines *Queen* v. *Burah* (supra); that is to say, it can leave to another person or body the introduction or application of laws which are or may be in existence at that time in any part of India which is subject to the legislative control of Parliament.

In *Cobb & Co. Ltd.* v. *Kroop*(1), the question was whether the Queensland legislature had legislative authority under the impugned Acts to invest the Commissioner for Transport with power to impose and levy licence and permit fees. It was not disputed before their Lordships that fees imposed are to be regarded as constituting taxation. Accordingly, it was contended that the legislature had *abdicated* its exclusive power of levying taxation. The Privy Council held that Queensland Legislature was entitled to use any agent or subordinate agency and any machinery that it considered appropriate for carrying out the object and the purposes that they had in mind and which they designated, and to use the Commissioner for Transport as its instrument to fix and recover the licence and permit fees, provided it preserved its own capacity intact and retained perfect control over him; that as it could at any time repeal the legislation and withdraw such authority and discretion as it had vested in him, it had not assigned, transferred or abrogated its sovereign power to levy taxes, nor had it renounced or abdicated its responsibilities in favour of a newly created legislative authority and, that, accordingly, the two Acts were valid. Lord Morris of Borth-y-Gest said :

> "What they (the legislature) created by the passing of the Transport Acts could not reasonably be described as a new

(1) [1967] 1 A.C. 141.

> legislative power or separate legislative body armed with general legislative authority (see R. V. Burah, 3 A.C. 889). Nor did the Queensland legislature "create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence" (see In re the Initiative and Referendum Act, 1919 A.C. 935, 945)". A

The point to be emphasised—and this is rather crucial—is the statement of their Lordships that the legislature preserved its capacity intact and retained perfect control over the Commissioner for Transport in asmuch as it could at any time *repeal the legislation and withdraw the authority and discretion it had vested in him* and, therefore, the legislature did not abdicate its functions. B

Duff, J. said *In re Gray* (supra) C

> "There is no attempt to substitute the executive for Parliament in the sense of disturbing the existing balance of constitutional authority.... The powers granted could at any time be *revoked and anything done under them nullified by Parliament,* which Parliament did not, and for that matter could not, abandon any of its own legislative jurisdiction". D

Delegation of 'law making' power, it has been said, is the dynamo of modern Government. Delegation by the legislature is necessary in order that the exertion of legislative power does not become a futility. Today, while theory still affirms legislative supremacy, we see power flowing back increasingly to the executive. Departure from the traditional rationalization of the status quo arouses distrust. The legislature comprises a broader cross-section of interests than any one administrative organ; it is less likely to be captured by particular interests. We must not, therefore, lightly say that here can be a transfer of legislative power under the guise of delegation which would tantamount to abdication. At the same time, we must be aware of the practical reality, and that is, that Parliament cannot go into all legislative matters. The doctrine of abdication expresses a fundamental democratic concept but at the same time we should not insist that law-making as such is the exclusive province of the legislature. The aim of government is to gain acceptance for objectives demonstrated as desirable and to realize them as fully as possible. The making of law is only a means to achieve a purpose. It is not an end in itself. That end can be attained by the legislature making the law. But many topics or subjects of legislation are such that they require expertise, technical knowledge and a degree of adaptability to changing situations which parliament might not possess and, therefore, this end is better secured by extensive delegation of legislative power. The legislative process would frequently bog down if a legislature were required to appraise before hand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. The presence of Henry VIII clause in many of the statutes is a pointer to the necessity of extensive delegation. The hunt by court for legislative policy or guidance in the crevices of a statute or the nook and cranny of its preamble is not an edifying spectacle. It is not E F G H

A clear what difference does it make in principle by saying that since the delegation is to a representative body, that would be a guarantee that the delegate will not exercise the power unreasonably, for, if *ex hypothesi* the legislature must perform the essential legislative function, it is certainly no consolation that the body to which the function has been delegated has a representative character. In other words, if no B guidance is provided or policy laid down, the fact that the delegate has a representative character could make no difference in principle.

Seeing that by s. 8(2)(b) of the Act Parliament has not delegated any power to the State legislatures the question is: Has Parliament abdicated its legislative function, when it chose to adopt the rate to be fixed by the State legislatures for taxing local sales?

C Counsel said that when the State legislature makes its sales tax law or amends or alters it from time to time, it does not act as delegate of Parliament. It acts as a sovereign legislature with plenary powers of legislation within its sphere and while legislating in that sphere, it is not subject to any guidance or control from any outside agency including the Parliament, and, the rates of tax which may be fixed D by the State Legislature from time to time would, therefore, be rates for taxing the local sales having nothing to do with the formulation of any policy by Parliament and, Parliament would be adopting those rates for the Central tax even without being aware of what those rates might be when fixed in future. Counsel relied heavily on *Shama Rao* v. *Pondicherry*(1) in support of this submission.

E In that case, the legislative assembly for the Union Territory of Pondicherry passed the Pondicherry General Sales Tax Act (10 of 1965) which was published on June 30, 1965. Section 1(2) of the Act provided that it would come into force on such date as the Pondicherry Government may, by notification, appoint, and s. 2(1) provided that the Madras General Sales Tax Act, 1959, as in force in the State of Madras immediately before the commencement of the Pondi- F cherry Act, shall be extended to Pondicherry subject to certain modifications, one of which related to the constitution of the Appellate Tribunal. The Act also enacted a Schedule, giving the description of goods, the point of levy and the rates of tax. The Pondicherry Government issued a notification on March 1, 1966, appointing April 1, 1966, as the date of commencement. Prior to the issue of the notification, the Madras legislature had amended the Madras Act and G consequently it was the Madras Act as amended upto April 1, 1966, which was brought into force in Pondicherry. When the Act had come into force, the petitioner was served with a notice to register himself as a dealer and he thereupon filed a writ petition challenging the validity of the Act. After the petition was filed, the Pondicherry Legislature passed the Pondicherry General Sales Tax (Amendment) Act (13 of 1966) whereby s. 1(2) of the principal Act was amended to read H that the latter Act "shall come into force on the 1st day of April, 1966"; it was also provided that all taxes levied or collected and all proceedings

(1) [1967] 2 S.C.R. 650.

taken and things done were to be deemed valid as if the principal Act as amended had been in force at all material times. A

The Court, by a majority, held that the Pondicherry legislature not only adopted the Madras Act as it stood at the date when it passed the principal Act, but in effect also enacted that if the Madras Legislature were to amend its Act prior to the notification of its extension to Pondicherry, it would be the amended Act that would apply; that the B legislature at that stage could not anticipate that the Madras Act would not be amended nor could it predicate what amendments would be carried out or whether they would be of a sweeping character or whether they would be suitable in Pondicherry and that, the result was that the Pondicherry Legislature accepted the amended Act though it was not and could not be aware what the provisions of the amended Act C would be. There was, in these circumstances, the Court said, a total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras Legislature. The Court referred with approval the oft-quoted dictum of Lord Haldane in *In re Initiative and Referendum Act* (supra) that the legislature of a province in Canada could not create and endow with its own capacity a new legislative power not created by the Act to which it owed its own existence D and the passage from Cooley on "Constitutional Law", 4th ed. 138, to the effect :

> "This high prerogative have been entrusted to its own wisdom, judgment and patriotism and not to those of other persons and it will act *ultra vires* if it undertakes to delegate the trust instead of executing it."

E

It is pertinent to note that in almost all cases the argument against delegation was built upon the dictum of Lord Haldane but that has never stood in the way of the Courts upholding the most extensive delegation. Bora Laskin, after referring to the dictum of Lord Haldane, said : (1)

> "This oft-quoted passage remains more a counsel of caution than a constitutional limitation... This proposition has in no way affected the widest kind of delegation by Parliament and by a provincial legislature to agencies of their own creation or under their control; see Reference re Regulations (Chemicals, (1943) 1 D.L.R. 248; Shannon v. Lower Mainland Dairy Products Board, (1938) A.C. 708." F G

And, as regards the observations of Cooley, we think that they were based on the American doctrine that the legislature being the delegate of the people cannot further delegate the trust but execute it themselves.

We think that the principle of the ruling in *Shama Rao* v. *Pondicherry* (supra) must be confined to the facts of the case. It is doubtful H

(1) See Canadian Bar Review, vol. 34 (1956), footnote on p. 919.

whether there is any general principle which precludes either Parliament or a State legislature from adopting a law and the future amendments to the law passed respectively by a State legislature or Parliament and incorporating them in its legislation. At any rate, there can be no such prohibition when the adoption is not of the entire corpus of law on a subject but only of a provision and its future amendments and that for a special reason or purpose. In *A-G N.S. v. A.G. Can.* (*Nova Scotia Inter-delegation Case*) (1), the Supreme Courts of Canada said that neither the Parliament of Canada nor the legislature of any province can delegate one to the other (to be exercised by that other as a Parliament or Legislature, as the case may be) any of the legislative authority respectively confefred upon them by the British North America Act and especially by sections 91 and 92 thereof. The Court was of the view that legislative authority conferred upon Parliament and upon a provincial legislature is exclusive and, in consequence, neither can bestow upon or accept power from the other, although each way delegate to subordinate agencies: and to permit through delegation alteration of the distribution of legislative power established by the British North America Act (save as permitted by s. 94) would mean that matters within Dominion competence would be incorporated in legislation assented to by the Lieutenant-Governor instead of by the Governor-General, and *vice versa;* and, moreover, it would mean that the debate and judgment of one legislative body would be addressed to matters which were not its concern but that of another legislative body as provided in a constituent Act. The Court said that delegation of this kind is incompatible with a federal State.

In his book "Canadian Constitutional Law," 3rd. ed., Bora Laskin has this much to say on the case:

"It is important however, to appreciate the limits of the doctrine affirmed by the Nova Scotia Inter-delegation case. Property understood the case does not prohibit either Parliament or a provincial legislature from incorporating referentially *into the valid legislation of one the future valid enactments of the other.* Illustrations of this kind of anticipatory incorporation by reference may be seen in the Cr. Code, S.534 (fixing the qualifications of jurors in criminal proceedings as those prescribed by 'the laws in force for the time being in a province'), and in the Summary Convictions Act, R.S.O. 1960, c. 387, s. 3 (making applicable to provincial summary conviction proceedings certain provisions of the Cr. Code 'as amended or re-enacted from time to time'). There is no unconstitutional delegation involved where there is no enlargement of the legislative authority of the referred legislature, but rather a borrowing of provisions which are within its competence and which were enacted for its own purposes, and which the referring legislature could have validly spelled-out for its own purposes. This was appreciated by Judson, J. in Re Brinklow, (1953) O.W.N. 325, 105 Can. C.C. 203 (aff'd on appeal on other grounds). However, in *Regina v. Pialka* (1953) 4 D.L.R. 440, (1953) O.W.N. 596, 106 Can. CC. 197 (C.A.), Laidlaw, J.A. reserved the question of the

(1) (1950) 4 D.L.R. 369.

validity of the Provincial Summary Convictions Act if it were construed to incorporate not only provisions of the Cr. Code in existence when the provincial statute was last enacted but also provisions subsequently introduced.

"This is, with respect, an unnecessary as well as an unwarranted acceptance of a limitation on legislative competence, and justifiable only as a matter of legislative policy of the referring legislature; see Laskin, Note (1956) 34 Can. Bar. Rav. 215; but cf. Bourne, Note, (1956) 34 Can.Bar. Rav. 500. Once it is determined that a referring legislature is legislating in relation to a matter within its competence and that the referred legislature is similarly legislating within its competence and for its own purposes, a borrowing by the one from the other of future enactments does not invo lve the latter in exercise of power which it does not otherwise possess. This view is simply supported by *Regina v. Glibbery*, (1963) 1 O.R. 232, 36 D.L.R. (2d) 548". (see Bora Laskin, "Canadian Constitutional Law", 3rd ed., pp. 40-41).

The decision in *A-G Ont.* v. *Scott*(1) was in an appeal from a judgment reversing an order dismissing a motion for prohibition directed to a Magistrate purporting to act under the Ontario Reciprocal Enforcement of Maintenance Orders Act, R.S.O. 1950, c.334. The Act carried out an arrangement, to which certain other provinces and England became parties, for enforcement in Ontario, against resident husbands, of provisional maintenance orders for which proceedings had been initiated in a reciprocating jurisdiction by wives resident there. By.s.5(2) of the Act, a resident husband against whom 'confirmation' of a foreign order was sought was entitled 'to raise any defence that he might have raised in the original proceedings had he been a party thereto but no other defence". Among the objections to the validity of the Act was one directed to s.5(2) as being an unconstitutional delegation or abdication of legislative authority.

Rand, J. with whom Kerwin, C.J.C., Kellock and Cartwright JJ. agreed, held that the action of each legislature was wholly discrete and independent of the other, a relation incompatible with delegation; and that it was a case of adoption of a circumscribed nature in that only a single right was involved, namely, the private right of maintenance between husband and wife; that the right touched a resident of each country; that the obligation of support was recognized by both; and that the material matters of adoption went to the grounds of defence. He was of the view that there was no attempt to permit another legislature to enact generally laws for a Province which would obviously be an abdication. He said that the adoption of rules and procedure from time to time in force in another jurisdiction was exemplified by R.2 of the Exchequer Court; and the adoption of various provisions of the Criminal Code by Provincial statutes was seen in the Summary Convictions Act, R.S.O. 1950, c.379, s.3. According to the learned judge, from the standpoint of legislative competency, there was no difference between the adoption of procedure and that of substantive

(1) [1956] S.C.R. 137.

law, that in each case legislation was enacted by reference to the legislation as it may from time to time be made by another legislature, that no challenge could be made to the complementary enactment there and that if the Province cannot exercise the same power in relation to a subject of such a local and civil rights nature, then the oft-quoted words of Lord Fitzgerald in *Hodge* v. *The Queen* that its power is "as plenary and as ample within the limits prescribed by s. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow" would seem to be somewhat rhetorical".

Locke, J. said that the validity of the statute was directed to s.5(2) which limited the available defences to those that might have been raised in the original proceedings in England. The defences permitted under the law of England, as the date of Reciprocal Enforcement of Maintenance Orders Act came into force in Ontario, may have been extended or limited by legislation passed thereafter in England, and this, it was contended, amounted to a delegation of the authority of the legislature of its power to deal with the civil rights of residents in Ontario and that this could not be done was made clear by the judgment of the Supreme Court of Canada in *A-G N.S.* v.*A-G Can.* (supra) but the learned judge came to the conclusion that this objection should not prevail as it was a valid exercise of provincial powers under head (13) of s. 92 of the British North America Act to declare that the defences which may be relied upon in proceedings of this nature shall be those from time to time permissible under the laws of England, those laws in substance being adopted and declared to be the law in the Province.

As regards the correctness of the reasoning of Locke, J. see Bora Laskin, comments in (1956) 34 Can. Bar. Review, 215, 227.

We think that Parliament fixed the rate of tax on inter-State sales of the description specified in s.8(2)(b) of the Act at the rate fixed by the appropriate State legislature in respect of intra-State sales with a purpose, namely, to check evasion of tax on inter-State sales and to prevent discrimination between residents in one State and those in other States. Parliament thought that unless the rate fixed by the States from time to time is adopted as the rate of tax for inter-State sales of the kind specified in the sub-clause, there will be evasion of tax in inter-State sales as well as discrimination. We have already pointed out in our judgment in Civil Appeals No. 2547-2549 of 1969 and 105-106 of 1970 the objectives which Parliament wanted to achieve by adopting the rate of tax in the appropriate State for taxing the local sales. And for attaining these objectives Parliament could not have fixed the rate otherwise than by incorporating the rate to be fixed from time to time by the appropriate State legislature in respect of local sales. It may be noted that in so far as inter-State sales are concerned, the Central Sales Tax Act, by s. 9(2) has adopted the law of the appropriate State as regards the procedure for levy and collection of the tax as also for imposition of penalties.

There can be no doubt that Parliament can repeal the provisions of s.8(2)(b) adopting the higher rate of tax fixed by the appropriate

State legislature in respect of intra-State sales. If Parliament can repeal the provision, there can be no objection on the score that Parliament has abdicated its legislative function. It retains its control over the fixation of the rate intact. In other words, so long as Parliament can repeal the provisions of s.8(2)(b) adopting the higher rate of tax fixed by the State legislatures, it has not abdicated its legislative function. As already stated, this point has been expressly decided by the Privy Council in *Cobb & Co Ltd.* v. *Kropp* (supra).

We are glad to find that our conclusion that Parliament has not abdicated its legislative function by enacting s.8(2)(b) of the Act is in agreement with that reached by the High Court of Gujarat in *Rallis India Ltd.* v. *R. S. Joshi Sales Tax Officer*(1) and the High Court of Punjab in *Tek Chand Daulat Rai v. The Excise and Taxation Officer, Ferozepore and Others*(2).

In the result these appeals are dismissed with costs.

S.C. *Appeals dismissed.*

(1) 31 S.T.C. 261.

(2) 29 S.T.C. 585.

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