

(2003) 07 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 43985 of 1997 and 27711, 27730, 27731, 27864 and 27865 of 2000

Kanpur Aloo Arhati Association and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 226, 227
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 7(2)

Citation : (2003) 2 UPLBEC 1588

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Judgement

M. Katju, J.—This writ petition and other similar writ petitions are being disposed of by a common judgment. Writ Petition Nos. 43985 of 1997 and 43987 of 1997, relate to wholesalers of fruits and vegetables in Kanpur City. While Writ No. 27865 of 2000, Writ No. 27730 of 2000 and Writ No. 27711 of 2000 relate to foodgrains wholesalers. Writ Nos. 27731 of 2000 and Writ No. 27864 of 2000 relate to wholesalers of Khandsari.

2. The petitioners in all these writ petitions are wholesallers of various Items e.g., foodgrains fruits and vegetables, khandsari sugar etc., in Kanpur City. The common grievance of all the petitioners in these writ petitions is that they have been asked to shift their business premises from the present place in the heart of Kanpur City e.g., Kidwai Nagar, Cooperganj, Collectorganj, etc., to a new market yard called the Navin Mandi Sthal at Naubasta (Hamirpur Road) which is at the outskirts of Kanpur City. All the petitioners have been informed that if they do not shift from their respective business places to the Navin Mandi Sthal, the Krishi Utpadan Mandi Samiti, Kanpur, which is a statutory body constituted under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as an Act), would not renew their licenses:

3. As stated in Paragraph 9 of Writ Petition No. 27730 of 2000, the foodgrains

traders had been issued notices in the year 1977 to shift their business premises (including shops and godowns) to the Navin Mandi Sthal, Naubasta. Against those notices the dealers filed various writ petitions which were allowed on 21.9.78, vide Writ Petition No. 4833 of 1978 and connected writ petitions. Copy of the said judgment of this Court is Annexure-4 to Writ Petition No. 27730 of 2000, In that decision this Court held that there was no statutory provision empowering the State Government to force, a person to shift his place of business. However, subsequently by U.P. Act No. 19 of 1979 the Act was amended and Section 7(2)(b) was introduced which stated :-

"The State Government, where it considers necessary or expedient in the public interest so to do, may, by notification :-

(b) declare that the whole-sale transactions of all or any of the specified agricultural produce in respect of a market area shall be carried on only at a specified place or places within its principal market yard or sub-market yards."

4. Pursuant to the aforesaid amendment the U.P. Government issued notification dated 9.3.81 copy of which is Annexure-5 to Writ Petition No. 27730 of 2000. This notification issued u/s 7(2)(b) stated that, the wholesale trade of certain commodities mentioned in that notification should be conducted at Kanpur at, the new mandi site whose location has been specified in the said notification. By subsequent notification dated 5.11.97 Annexure-6 to Writ Petition No. 27730 of 2000, several fruits and vegetables have also been added to the items mentioned in the notification dated 9.3.1981. These notifications have been challenged in this bunch of petitions.

5. The petitioner No. 1 in Writ Petition No. 43985 of 1997 is an Association of wholesalers of Potato and other vegetables, which is registered under the Societies Registration Act. Its members are carrying on the business of purchase and sale of vegetables including potatoes in wholesale under valid licenses issued by the Krishi Utpadan Mandi Samiti, Kanpur. True copy of the Certificate of Registration of petitioner No. 1 and a list of its members are Annexure-1 and 2 to the writ petition.

6. It is alleged in Paragraph 5 of Writ Petition No. 43985 of 1997, that the fruits and vegetables mandi was uprooted and established thrice in as many years at Kanpur. In the year 1976 the Kanpur Development Authority (KDA) vide its resolution dated 25.6.76 approved a scheme to establish a modern and organized fruits and vegetables market at "O" Block, Qidwai Nagar, Kanpur and invited the wholesalers of fruits and vegetables situate at dense localities of Badshahi Naka and Cooperganj to purchase plots and shift to the new mandi. By a subsequent resolution dated 15.2.77 the KDA fixed the land rate at Rs. 100/- per sq. yard and decided to allot plots on advance deposit of Rs. 5750/-. A total number of 730 Big plots and 574 small plots were offered for allotment out of which 442 were allotted by the year 1981 and by 1984 all the plots were allotted and a fully developed and organized fruits and vegetables market started

functioning at "O" Block, Qidwai Nagar, Kanpur. A true copy of the resolution of the meeting of the Association and KDA dated 24.4.96 under the Presidentship of the Vice-Chairman, KDA giving details is annexed as Annexure-4 to the writ petition. In the lease deeds executed by the KDA in favour of the wholesalers it was specifically provided that since the KDA had resolved that the Sabzi Mandi should be shifted from the crowded area of the city on the land set apart for allotment to such dealers at southern city extension Scheme No. 2, Qidwai Nagar, Kanpur, the plots are being allotted to carry on the business of selling potatoes in the allotted open space. The lease, thus, confines the petitioners to do business of vegetables only on the allotted land. True copies of some lease deeds are Annexures-5 and 5-A to the writ petition. The Mandi Samiti, Kanpur also joined in maintaining the Subzi Mandi at Qidwai Nagar, Kanpur and had invested Rs. 204 lacs for maintenance of sewage clearing and internal road in the year 1994. By Notification dated 9.3.81 issued u/s 7(2)(b) of the Act, the State Government notified the Naubasta market yard for wholesale of 39 specified agricultural produce, excluding fruits and vegetables.

7. It is alleged in Paragraph 12 of the petition that for the reason best known to the Mandi Samiti inspite of the aforesaid notification the wholesale trade of foodgrains could not be shifted and the Mandi Samiti, Kanpur permitted illegal trade of foodgrains outside the Naubasta market yard. It is alleged that the Mandi Samiti did not take effective steps to shift the foodgrains trade to Naubasta. It is alleged in Paragraph 14 of the writ petition that since the Mandi Samiti, Kanpur failed to shift the foodgrains trade to Naubasta inspite of the notification it had to justify the constructions of Navin Mandi Sthal, Naubasta and therefore, in order to protect any administrative action against the officials of the Mandi Samiti, Kanpur it proposed to shift the site of wholesale trade in fruits and vegetables. In Paragraph 15 of the writ petition it is alleged that whereas foodgrain trade is not organized and is carried out in Kanpur in various congested localities causing problem of transportation, traffic congestion, pollution and unhygienic condition in Kanpur, the officials of the Mandi Samiti, Kanpur proposed to shift an organized, well maintained and systematic fruits and vegetables mandi established by KDA at "O" Block, Qidwai Nagar between the years 1981 and 1984 to Navin Mandi Sthal, Naubasta. It is alleged that the object of taking this decision was not to regulate the market at Qidwai Nagar but this decision was taken in connivance with the foodgrains dealers in Kanpur and was initiated by the Chairman and the Secretary of the Mandi Samiti, Kanpur to save themselves from the responsibility of shifting the wholesale trade of notified commodities and allowing an illegal trade to be carried on in the congested city of Kanpur. The Chairman, Mandi Samiti, Kanpur gave a notice to the President of the petitioner association to attend a meeting on 11.7.97, vide Annexure-7 to the writ petition. The petitioner submitted a reply protesting against the proposal to shift the wholesale trade of potato and vegetable to Navin Mandi Sthal, Naubasta vide Annexure-11 to the writ petition. Thereafter the impugned notification dated 15.11.97 has been issued by the Governor of U.P. u/s 7(2)(b)

of the Act, vide Annexure-12 to the writ petition

8. It is alleged in Paragraph 19 of the writ petition that before issuing the impugned notification dated 15.11.97, the respondents have failed to consider the objections of the petitioners and have completely ignored taking into account that an organized fruits and vegetables market was established at "O" Block, Qidwai Nagar, Kanpur by the KDA between the years 1981 and 1984 and has been maintained by the KDA and the Mandi Samiti, Kanpur at the costs of crores of rupees and that the market is well developed and does not need any change of site. In Paragraph 20 of the writ petition it is alleged that the vegetables and fruits market at Qidwai Nagar has been established in a wide open area with broad roads in an extension scheme of the City having no congestion, no traffic problems having well maintained lane, sewerage and waste disposal system etc. Hence, there was no need to shift the market to Naubasta. It is alleged that this is being done in connivance with the foodgrain dealers who refused to shift their trades to Naubasta inspite of the said notification. It is alleged in Paragraph 28 of the writ petition that the wholesale traders had invested lacs of rupees in constructing their shops and had earned goodwill in the organized market. The shifting of the entire trade will cause great hardships to the traders.

9. A short counter-affidavit has been filed in Writ Petition No. 43985 of 1997. In Paragraph 3 of the same it is stated that a detailed counter-affidavit has been filed in Writ Petition No. 43987 of 1999, which may be treated as the counter-affidavit in this case also.

10. We have perused the counter-affidavit in Writ Petition No. 43987 of 1997. In Paragraph 3 of the same it has been stated that similar notification u/s 7(2)(b) have been upheld by this Court as well as by the Supreme Court vide *Ms. Amrit Rice Mill v. Krishi Utpadan Mandi Samiti* (1987) 1 UPLBEC 394; *Karedin Jaiswal v. State* 1993 AWC 1513; *Vishal Traders v. State of U.P.* 1983 ALJ 786 and AIR 1981 1127 (SC) etc. Hence, this petition is also liable to be dismissed.

11. In Paragraph 4 of the counter-affidavit it is stated that the notification u/s 7(2)(b) is legislative in character and hence, it was not necessary to give opportunity of hearing before issuing the same. The notification has been issued in the public interest, as the wholesale market of fruits and vegetables is in a congested locality and mostly fruits and vegetables are brought by trucks and other vehicles, and there is a paucity of space in the existing market yard. In Paragraph 7 of the same it is stated that even if the fruits and vegetables market is shifted three times in 50 years, it makes no difference. The notification was issued in the public interest and to avoid congestion in the City. Wholesale transactions in all agricultural produce are to go outside the main City, which has grown up as a residential area. Carrying on wholesale trade in specified produce is hazardous to the residents and results in accidents due to congestion of traffic and is also unhygienic. Due to rainy season it becomes impossible to transact business and people at large are put to hardship. After the wholesale trade is shifted to the outskirts of the City in the declared market area at Naubasta

(Hamirpur Road) the fruits and vegetables can be taken by the retail traders and sale can be made in the City. It is further alleged that even if the resolution was passed by the KDA in the year 1976 to organize fruits and vegetables markets in "O" Block, Qidwai Nagar, Kanpur that has outlived its utility since the business has grown many times and Kanpur City has grown many times. Even if the resolution was relevant in the year 1976, it is not relevant in the year 1999 or even in the year 1997, when the notification was issued. The fruits and vegetables arrive in several truckloads daily causing congestion, and because of the rotten smell in the City the thickly polluted area like Qidwai Nagar becomes unhygienic. The wholesale trade is of a very high magnitude and therefore, the administration felt difficulty in having wholesale transactions of fruits and vegetables in the existing market and it has been decided to shift the trade to Navin Mandi Sthal at Naubasta (Hamirpur Road).

12. In Paragraph 8 of the counter-affidavit it is stated that most of the wholesale traders in fruits and vegetables applied for allotment of shops and they have been allotted shops and some of them had even been given possession at the new mandi site. This writ petition has only been filed to forestall shifting of the trade. In Paragraph 9 of the same it is stated, that looking to the quantum of arrivals, which is lacs of quintals daily, the problem of road and sewerage has multiplied manifold. They are not functional and hence shifting of trade of wholesale in fruits and vegetables is absolutely necessary. The roads have developed potholes and there is no sufficient place for parking trucks and other auto vehicles. In Paragraph 10 of the same it is stated, that there are sufficient number of shops in Navin Mandi Sthal and some of them have been allotted to the traders in fruit and vegetables. The Mandi Samiti has constructed more than 300 shops and the process of construction of further shops is going on. In Paragraph 11 of the same it is stated that the market yard at Hamirpur Road is suitable for carrying on wholesale business in fruits and vegetables as most of the arrivals are from that side. The Mandi Samiti is also considering acquiring and developing a New Mandi Sthal for other agricultural produce. In Paragraph 12 of the same it is stated that notice was given to the wholesalers to apply for shops and some of them had even taken possession. There is certainty of allotment of shops. None of the wholesalers of fruits and vegetables carrying on business in Qidwai Nagar would be left without allotment of shops, and if any individual trader makes a grievance regarding allotment he would be allotted a shop. In Paragraph 25 of the same it is stated that only the wholesale trade is being shifted and not the retail trade.

13. An impleadment application has been filed in this case by 119 dealers, which was allowed by means of an order dated 27.9.2003.

14. A short rejoinder-affidavit has been filed. In Paragraph 4 of the same it is stated that the rejoinder-affidavit filed in Writ Petition No. 43987 of 1997 may be treated as the rejoinder-affidavit in this case also. We have perused that rejoinder-affidavit.

15. In this case, we had also appointed an Advocate Commissioner Sri J.J. Munir, Advocate, High Court by our order dated 22.4.2003 for inspecting the existing mandis of foodgrains, fruits and vegetables, etc., at Kanpur City and he has submitted a report to which an objection has also been filed by the Mandi Samiti, Kanpur. In this report the Advocate Commissioner after discussing the facts in detail has observed in conclusion that it is apparent that the public is put to great inconvenience due to the existing Subzi Mandi. They are also exposed to hazards of disease and have to face problems of traffic congestion in the entire area of Qidwai Nagar.

16. In the earlier part of the report on Page 18 the learned Advocate Commissioner has stated that upon inspection of the Qidwai Nagar Mandi he found the same to be a relocated, well organized and planned Mandi with ample space within its premises for movement of vehicles, loading and unloading of goods etc. However, at Page 32 of his report the learned Advocate Commissioner stated, "As I was standing on the main public road in front of the Mandi, I noticed a uniformed guard wielding a lathi asking a truck driver to move away his vehicle. I rushed to the spot and made enquiries from the guard. First, he refused to answer but, then relented. He identified himself as Radhey Shyam, a security guard with the Mandi. He confessed that he had instructions from the Mandi traders to ensure for two or three days that no truck is parked on the public road. A transporter standing nearby also said that they had been asked for a few days by the Mandi office bearers not to park truck on the road. It is, thus, evident that the Mandi office bearers have managed the parking pattern of trucks during my inspection". At Page 34 of his report the learned Advocate Commissioner stated, "In conclusion it is apparent that the public are put to great inconvenience due to the existing Subzi Mandi. They are also exposed to hazards of disease and have to face problem of traffic congestions in the entire area of Qidwai Nagar." Thus, despite his earlier observation in Page 18 of his report, the learned Advocate Commissioner has ultimately accepted that the Qidwai Nagar Mandi is causing problems of traffic congestion, diseases etc. On inspecting the Navin Mandi Sthal, Naubasta, which is almost 6 k.m. from Kidwai Nagar the learned Advocate Commissioner after detailed inspection and consideration has come to the conclusion that the traders of Qidwai Nagar Mandi would decidedly suffer if the Mandi is shifted to Navin Mandi Sthal, Naubasta as the latter does not seem to be very congenial to the traders. Though, the Mandi Sthal is located in a very large area, the shops constructed there seem to be woefully deficient for traders of perishables. The shops may be suitable for wholesale of foodgrains, but they are unsuitable for fresh vegetables, fruits, potatoes etc. Also, while some of the shops at Kidwai Nagar are designed to stock huge quantities of commodities, they cannot be stocked at the Naubasta Shops. The Naubasta Mandi is 10 k.m., from the Transport Nagar, and this would lead to escalation in prices. He has also observed that in Qidwai Nagar Mandi there are in existence about 1300 traders in vegetables and fruits alone while Navin Mandi Sthal has at present only a total of 348 shops as per the statement

of the Mandi Samiti officials themselves. The learned Advocate Commissioner has stated that it does not appear to be feasible that such a large number of traders at Qidwai Nagar Mandi can be shifted to the New Mandi site as the same is short of accommodation. However, the learned Advocate Commissioner has also observed that more shops can be constructed at Navin Mandi Sthal because space is available in abundance.

17. In Pages 26 to 31 of his report the learned Advocate Commissioner has referred in detail to his meeting with various people, many of whom handed over representations to him. On 1.5.2002, about 21 Resident of Qidwai Nagar gave him a representation expressing unequivocal support for shifting of the Mandi from Qidwai Nagar. The learned Advocate Commissioner spoke to many Doctors who stated that the Mandi at Qidwai Nagar was causing many problems e.g., road accidents, air pollution etc., which cause Asthama and Allergy, and had created unhygienic conditions in the locality due to dumping of rotten vegetables, which cause many diseases. The principals of some schools also complained that the Qidwai Nagar Mandi was causing problems of traffic jams etc. Many traders also said that the Qidwai Nagar Mandi was causing adverse effects on local trade and business. The local market of retail business of cloth, electrical goods, general merchants etc. was once a flourishing market but due to the increasing traffic flow in the Mandi in question the local market has been deserted by the customers who avoid visiting Qidwai Nagar due to traffic jam. All trade there has flopped. Many citizens said that they could not sleep due to the constant movement of trucks and had to face breathing problems. The truck drivers park their vehicles in the residential area and indulge in nuisance. The learned Advocate Commissioner has also seen filth and garbage lying in the side of the Mandi and rotting vegetables.

18. The Krishi Utpadan Mandi Samiti, Kanpur, has filed an objection to the report of the learned Advocate Commissioner and we have perused the same. In Paragraph 5 of this objection it has been stated that the learned Advocate Commissioner gave information about a week before his visit to the parties as well as to the their Counsels and therefore, the traders at Kanpur were quite conscious that the Commissioner has been appointed and he would be visiting the place on 1.5.2003. Hence, they managed that there may be no rush in the market at the time of his visit. They succeeded in preventing the producers to bring their produce through trucks at the time of inspection and hence both the Mandis gave a deserted look and there was no buying and selling at that time, which was an unusual phenomenon. Hon'ble Mr. Justice N.L. Ganguli (Retd.) who had been appointed Commissioner in connected Writ Petition No. 43987 of 1997 (which relates to foodgrains trade) had visited the market at Kanpur incognito and he had submitted a report that there was lot of congestion creating unhygienic conditions and road blocks and constant truck traffic and he has suggested in his report that the entire wholesale trade in foodgrains and fruits and vegetables be shifted to Navin Mandi Sthal. In Paragraph 6 of the objection of the Mandi Samiti to the report of the Advocate Commissioner it is stated that

the foodgrains Mandi at Collectorganj and Cooperganj, Kanpur is 120 years old. It is in a very congested area and it is not possible for trucks to move in the Mandi. The trucks are parked on the main road, and from these goods are brought inside the market. At the time when the learned Advocate, Commissioner visited the spot it was deserted on account of his prior intimation. The vegetables, fruits and grains Mandis of Kanpur are the biggest Mandis in UP, and the entry of trucks in the city in day-time is prohibited. Hence, there is a long queue of trucks in the night and they stand on the road blocking it. Due to that the entire traffic during evening and night hours makes, it an inaccessible place. Upto 11.00 O'clock in the night there is a traffic jam . It takes hours to reach from one point in the city to another. Kanpur itself is a heavily crowded city. The population of Kanpur has gone upto 50 to 60 lakhs and hence, the wholesale trade should go outside the city and only the retail trade should continue in the city. The report of the SSP, CMO and the D.M. etc. filed with the supplementary counter-affidavit of the Mandi Samiti shows that due to the wholesale trade in foodgrains and fruits and vegetables there is immense traffic problems and unhygienic conditions resulting in epidemics. The wholesale trade means trade of not less than 10 quintals in one transaction. If the wholesale trade is taken outside the city then 80% congestion would be removed from the city. Only retail sale causing only 20% problem would be left in the city. In Paragraph 11 of the same it is stated that there is a lot of open space in the new market yard and about 100 trucks can be parked there. There are three types of shops and small godowns constructed there. In Paragraph 13 of the same it is stated that the present markets were constructed 120 years ago and since then production and sale has increased manifold and the Mandis have consequently to be shifted to a suitable place. During rainy season the old Mandis are inaccessible due to lack of drainage, and they are often submerged with water and filth. There has been constant demand from the public that the wholesale trade should be shifted to the outskirts of the city. In Western Countries wholesale trade takes place about 10 to 20 kms. away from the city. In Paragraph 16 of the same it is stated that there are only two main roads connecting Kidwai Nagar, viz., G.T. Road and Kalpi-Lucknow Road. Everyday, there is a flow of 500 trucks on these two roads loaded with potato, onion, fruits and vegetables etc., and the trucks are on the roads for hours together completely blocking the traffic. There is no parking place. There are about 10 educational institutions, which vehemently protested against the running of the wholesale trade in the Kidwai Nagar.

19. We have also perused the report of Hon'ble Mr. Justice N.L. Ganguly (Retd.) in Writ Petition No. 43987 of 1997. Hon'ble Ganguly has in his findings in his report stated that the markets at Collectorganj, Cooperganj, Kidwai Nagar, and Badshahi Naka are congested and in the thickly populated area of Kanpur. Wholesale business is being carried on in the congested area of the city. The condition of the roads is bad, with ditches, and the narrow lanes often causes traffic jams. Most of traders have encroached on the Corporation footpaths, which creates, traffic congestion. He has stated that the market yard at Naubasta

is bound with high walls connected with road, with water and sewerage facilities, Hospital, Post Office, Bank and Police outpost. The distance of 11 kms. is nothing in the present days. The roads are good and fast moving vehicles are available for going to Naubasta.

20. From a perusal of the facts as disclosed in the affidavits in all these connected writ petitions as well as from the reports of Hon'ble Mr. Justice N.L. Ganguly (Retd.) as well as Advocate Commissioner Mr. J.J. Munir, it is evident that the present wholesale foodgrains, vegetables, fruits and khandsari mandis in Kanpur City at Kidwai Nagar, Cooperganj, Collectorganj, and Badshahi Naka etc., are causing huge problems of traffic congestion, pollution, spread of diseases etc. Obviously, this is because these wholesale Mandis were established about a century ago and since then the population of Kanpur City has gone up several times. It is not necessary for us to repeat in detail of all the allegations in the counter-affidavit filed in these writ petitions as well as in the reports of the Commissioners appointed by this Court. Suffice it to say that all these clearly prove that the existing wholesale Mandis in Kanpur are causing huge problems for the citizens of Kanpur and therefore, it would be in the public interest if they are moved out to a more appropriate site.

21. It may be mentioned that a wholesale dealer does not have to be in direct contact with the public, unlike a retailer. Hence, even if the wholesale business is carried on from a place outside the city or at the outskirts the public will not suffer.

22. The validity of Section 7(2)(b) of the Act has already been upheld by a Division Bench of this Court in *M/s. Amrit Rice Mill, Pilibhit v. Krishi Utpadan Mandi Samiti* (1987) 1 UPLBEC 394.

23. In AIR 1981 1127 (SC) the Supreme Court observed (vide Paragraph 17), that shifting of a market yard is a legislative act and not a judicial or quasi-judicial function, and hence, the rules of natural justice have to application. In the same decision it was also observed, "Nothing may be expected to remain static in this changing world of ours. A market, which is suitably and conveniently located today, may be found to be unsuitable and inconvenient tomorrow on account of the development of the area in another direction or the congestion, which may have reduced the market into an impossible, squalid place or for a variety of other reasons. To so interpret the provisions of the Agricultural Produce Marketing Regulation Act, as prohibiting the abolition of a market once established and bar the transfer of the market to another place would, as we said, be to defeat the very object of the Act."

24. In *Karedin v. State of U.P.* 1993 AWC 1513, this Court again upheld the validity of Section 7(2)(b) and following the decision of the Supreme Court in *R.K. Porwal's case* (supra), held that a declaration u/s 7(2)(b) is a legislative function and hence no opportunity of hearing need be given.

25. It is well settled that a legislative act cannot be challenged on the ground of

malafides, and its motive cannot be gone into by the Court, vide K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, ; Ashok Kumar alias Golu Vs. Union of India and others, ; Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others, ; Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, ; and R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, , etc., Hence, it cannot be said that the impugned notifications amount to colourable exercise of power.

26. Since, it has been held that a Notification u/s 7(2)(b) is a legislative activity we are of the opinion that the Court should exercise judicial restraint in interfering with such legislative activity. A notification u/s 7(2)(b) is a piece of delegated legislation and it can be struck down only if (1) it violates some provision of the parent Act, or (2) it violates some provision of the Constitution. In our opinion, the impugned notification dated 9.3.81 and the subsequent notification e.g., of 15.11.97, are clearly within the ambit of Section 7(2)(b) of the Act, and it has not been shown that they violate any other provision of the Act. Hence, it cannot be said that these notifications are ultra vires any provision of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964.

27. The next question, which arises, is whether the impugned notifications violates any provision of the Constitution. In our opinion, they do not. The material on record in these petitions, which includes the report of the Advocate Commissioner Mr. Munir and Hon'ble Justice Ganguly (Retd.) as well as the affidavits of the respondents clearly indicates that the present wholesale Mandis in Kanpur City are causing immense traffic problems, congestion, diseases, noise pollution etc., and have become a headache for the public there. Hence, the shifting of the wholesale Mandis from the existing sites is clearly reasonable. No doubt the petitioners right to do business under Article 19(1)(g) is to some extent affected by the impugned notifications, but this right is subject to reasonable restriction under Article 19(6) of the Constitution.

28. It may be mentioned that to test the reasonability of a restriction we have to see the subject matter, extent of restriction, the mischief which it seeks to check, etc. The reasonableness of the restriction has to be determined in an objective manner and has to be seen from the point of view of the interest of the general public and not merely from the point of view of the persons upon whom the restrictions are imposed vide Mohd. Hanif Quareshi and Others Vs. The State of Bihar, Moreover, the impugned notifications cannot be said to be unreasonable merely because in a given case, they may operate harshly, vide State of Gujarat Vs. Shantilal Mangaldas and Others, . As observed by the Supreme Court in Laxmi Khandsari and Others Vs. State of U.P. and Others, ; Divert v. State of Gujarat AIR 1986 SC 1323 ; State of Madras Vs. V.G. Row, ; Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, and Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, etc., the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed and the extent and urgency of the evil sought

to be remedied thereby, disproportion of the imposition, prevailing conditions at the time etc., are the relevant considerations for determining whether the restriction is reasonable.

29. Further, as held in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, the standard of reasonableness must also vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time. In adjudging the validity of the restriction the Court has necessarily to approach the question from the point of view of the social interest which the legislation intends to promote, vide *Pathumma and Others Vs. State of Kerala and Others*, ; *P.P. Enterprises and Others Vs. Union of India (UOI) and Others*, and *Jyoti Prasad v. Union Territory of Delhi (supra)*, etc.

30. Judged by these standards the impugned notifications cannot be faulted on the ground of lack of reasonableness. As stated in the counter-affidavits filed in these connected writ petition and the report of the Commissioners, the existing wholesale Mandis in Kanpur have become the cause of immense traffic congestion in Kanpur City, apart from causing diseases, pollution etc. Hence, shifting the Mandis to outskirts of the City or beyond is clearly reasonable.

31. It must be remembered that certain matters are by their very nature such as had better be left to the administrators instead of Courts themselves seeking to substitute their own views and perception as to what is the best way in which to remove aberrations creeping into that field. The present is clearly an instance, where this Court should not interfere with the steps taken by the respondents to resolve a pressing problem. In matters of policy the Courts have a limited role and it should only interfere with the same when it is clearly illegal. That clearly is not the case here. The impugned notifications are a salutary step for undoing a mischief, which was crying out for redress for a long time, and they are not illegal.

32. As observed by the Supreme Court in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, the Court must presume, that the legislature understands and correctly appreciates the need of its own people. The legislature is free to recognize degrees of harm, and may confine its restrictions to those where the need is deemed to be the clearest.

33. In our opinion, the State should not be hampered by the Court in dealing with evils at their point of pressure. All legislation, including delegated legislation (such as the kind we are examining) is essentially ad hoc. Since, social problems nowadays are extremely complicated, this inevitably entails special treatment for distinct social phenomena. If legislation is to deal with realities it must address itself to variations in society. The State must, therefore, be left with wide latitude in devising ways and means of social control and Regulation, and the Court should not, unless compelled by the law, encroach into this field.

34. As Justice Frankfurter of the U.S. Supreme Court observed in *American Federation of Labour v. American Sash and Door Co.* (1949) 335 US 538 :-

"Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a Court debilitates popular Democratic Government. Most laws dealing with social and economic problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. But, even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed by the legislature than that the law should be aborted by judicial fiat. Such, an assertion of judicial power defeats responsibility from those on whom in a democratic society it ultimately rests. Hence, rather than exercise judicial review Courts should ordinarily allow legislatures to correct their own mistakes wherever possible."

35. Similarly, his dissenting judgment in *New State Ice Co. v. Liebemann* (1932) 285 U.S. 262, Mr. Justice Brandies of the U.S. Supreme Court observed that the Government must be left free to engage in social experiments. Progress in the Social Sciences, even as in the Physical Science, depends on "a process of trial and error" and Courts must not interfere with necessary experiments.

36. Justice Brandies also observed :-

"To stay, experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation."

37. No doubt the petitioners will suffer some hardship, as they will have to leave their existing place of business, where they would be having goodwill. However, the interest of the public overrides that of the petitioners. In the report of the Mr. J.J. Munir, Advocate Commissioner, it has been mentioned that many persons including Doctors and Teachers recommended that the existing mandis should be transferred to some other place as they are causing great inconvenience to the public due to traffic congestion and hazard of diseases. A large number of others citizens have given similar suggestions to the Advocate Commissioner Mr. Munir in this connection. This is also supported by the letters of the Dy. S.P. and C.M.O., Kanpur, copies of which are Annexures SCA-3 and 4 to the supplementary counter-affidavit of Chabi Nath Pathak in Writ No. 43987 of 1997.

38. At any event it is not for this Court to sit in appeal over the impugned orders of the State Government u/s 7(2)(b). The Court must exercise judicial restraint in such matters, as it is not an expert in administration.

39. In the words of Chief Justice Neely:

"I have very few illusions about my own limitations as a Judge. I am not an Accountant, Electrical Engineer, Financer, Banker, Stockbroker or System Management Analyst. It is the height of folly to expect Judges intelligently to review a 5000 pages record addressing the intricacies of public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

40. The notification u/s 7(2)(b) has been held to be a legislative activity by this

Court as well as by the Supreme Court in the aforesaid decisions. Hence, we would like to comment on the subject of judicial review of a Statute or a delegated legislation. We feel justified in making these comments because the times which this country is passing through requires clarification of the role of the judiciary vis-a-vis the Legislature and the Executive.

41. Under our Constitution the Judiciary, the Legislature and the Executive have their own spheres of operation. It is important that these organs do not entrench on each others proper spheres and confine themselves to their own, otherwise there will always be danger of a reaction. The judiciary must, therefore, exercise self restraint and eschew the temptation to act as a super legislature or a Court of Appeal sitting over the Laws validly made by the Legislature or the Executive (as delegated legislation) or as a third House of Parliament. By exercising restraint it will enhance its own respect and prestige. Of course, if a law, clearly violates some provision of the Constitution or is beyond its legislative competence it will be declared by the Court as ultra vires, but as long as it does not do so, it is not for the Court to sit in appeal over the wisdom of the legislature or its delegate. The Court may feel that the mischief sought to be remedied by the law may better have been achieved by adopting some other course of action or by some other law, but on this ground it cannot strike down the law. The legislature (or its delegate) in its wisdom is free to choose different methods of remedying an evil, and the Court cannot say that this or that method should have been adopted. As Mr. Justice Cardozo observed in *Anderson v. Wilson* 289 U.S. 20 :

"We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it."

42. It must, never be forgotten that the legislature has been elected by the peoples while Judges are not, and in a democracy it is the people who are supreme. No Court should, therefore, strike down an enactment or a piece of delegated legislation solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the legislature or its delegate on a question of policy, because he can never be justifiably certain that he is right. Judicial humility should, therefore, prevail over judicial activism in this respect.

43. As Mr. Justice Holmes of the U.S. Supreme Court observed in his dissenting judgment in *Tyson v. Banton* 273 U.S. 418:

"I am far from saying that I think this particular law a wise and rational provision. That is not my affair. But, if a people of the State of New York speaking by their authorized voice say they want it. I see nothing in the Constitution of the United States to prevent their having their will."

44. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this

in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, but also fosters that equality by minimizing interbranch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus, decreases its ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of interbranch equality.

45. Second, judicial restraint tends to protect the independence of the judiciary. When Courts become engaged in social legislation, almost inevitably voters, legislators and other elected officials will conclude that the activities of Judges should be closely monitored. If Judges act like legislators, it follows that Judges should be elected like legislators. This is counterproductive. The touchstone of an independent judiciary has been its removal from the political process. Even, if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

46. The constitutional trade-off for independence is that Judges must restrain themselves from the areas reserved to the other separable branches. Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

47. The Court should always hesitate to declare a statute unconstitutional, unless it finds it clearly so, and it should avoid supplementing or modifying statutes when construing them, for that is the task of the legislature. As observed by the Supreme Court in *M.H. Qureshi v. State of Bihar* (supra), the Court must presume that the legislature understands and correctly appreciates, the need of its own people. The legislature is free to recognize degrees of harm and may confine its restrictions to those where the need is deemed to be the clearest. In the same decision it was also observed that the legislature is the best Judge of what is good for the community on whose suffrage it came into existence.

48. In *Lochner v. New York* (1905) 198 U.S. 45, Mr. Justice Holmes of the U.S. Supreme in the celebrated dissenting judgment criticized the majority of the Court for becoming a super legislature by inventing a "liberty of contract" theory, thereby enforcing its particular laissez-faire Economic Philosophy. Similarly, in his dissenting judgment in *Griswold v. Connecticut* 381 U.S. 479, Mr. Justice Hugo Black warned that "unbounded judicial creativity would make this Court a day-to-day Constitutional Convention." Justice Cardozo stated this principle eloquently "The Judge is not a Knight errant, roaming at will in pursuit of his own ideal of beauty and goodness. Justice Frankfurter has pointed out that great Judges have constantly admonished their brethren of the need for discipline in observing their limitations (See Frankfurter's "Some Reflections on the Reading of Statutes").

49. In this connection we may usefully refer to the well-known episode in the history of the U.S. Supreme Court when it dealt with the New Deal Legislation of

President Franklin Roosevelt. When President Roosevelt took office in January, 1933, the country was passing through a terrible economic crisis - the Great Depression. To overcome this, President Roosevelt initiated a series of legislation called the New Deal, which were mainly economic regulatory measures. When these were challenged in the U.S. Supreme Court, the Court began striking them down on the ground that they violated the due process clause in the U.S. Constitution. As a reaction, President Roosevelt proposed to reconstitute the Court (which has nine Judges) with six more Judges to be nominated by him. This threat was enough, and it was not necessary to carry it out. The Court in 1937 suddenly changed its approach and began upholding the laws (See *West Coast Hotel Co. v. Parrish* 300 U.S. 379 . "Economic due process" met with a sudden demise.

50. The moral of this story is that if the judiciary does not exercise restraint and over-stretches its limits there is bound to be a reaction from politicians. The politicians will then step in and curtail the powers, or even the independence of the judiciary (in fact the mere threat may do, as the above example demonstrates). The judiciary should, therefore, confine itself to its proper sphere, realizing that in a democracy many matters and controversies are best resolved in a non-judicial setting.

51. We hasten to add that it is not our opinion that Judges should never be "activist." Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the U.S. Supreme Court, vide *Brown v. Board of Education* (1954) 347 U.S. 483 ; *Miranda v. Arizona* 384 U.S. 436 and *Roe v. Wade* 410 U.S. 113, etc., or the decisions of our own Supreme Court which expanded the scope of Articles 14 and 21 of the Constitution. This, however, should be resorted to in exceptional circumstances when the situation forcefully demands from the interest of the nation, but always keeping in mind that ordinarily the task of legislation or amending the law is for the legislature, and not the judiciary.

52. It has been stated in Paragraph 9 of the supplementary counter-affidavit in Writ Petition No. 43987 of 1997, sworn by Chhabi Nath Pathak that the Mandi Samiti, Kanpur has got sufficient funds to purchase the land for establishment of a market yard and it will not require acquisition proceedings. The Mandi Samiti has funds to proceed with the construction of the market yard immediately. In Paragraph 11 of the said affidavit, it is stated that the District Magistrate, Kanpur has sent a letter dated 14.10.1995 to the Vice Chairman, Kanpur Development Authority requesting him to make available 50 acres of land on the by-pass which is about 10 kms. from the existing foodgrains market yard. The Kanpur Development Authority is making genuine efforts to spare 50 acres of land on the by-pass and there is every possibility of getting the land within a short duration. The Mandi Samiti is prepared to pay the price of the land immediately vide Annexure-SA-1 to the supplementary-affidavit. Thus, it is apparent that there is no shortage of funds with the Mandi Samiti, Kanpur, for improving and

expanding the Navin Mandi Sthal at Naubasta, and it should do so immediately.

53. We may mention that the proposal of shifting the existing wholesale Mandis has been pending since the year 1977, i.e., for about 26 years, but the wholesalers have managed by various means (including interim orders of this Court) to continue in their existing sites for 26 years, thus, obviously increasing the enormous problems in Kanpur City of traffic jams and congestion, accidents etc., and unhygienic conditions, diseases, noise pollution etc., due to which there is great deal of resentment, in the public of Kanpur City. In this connection the letters of the Dy. S.P., Kanpur dated 20.10.99 Annexurc-SA-3 to the supplementary counter-affidavit of Chhabi Nath Pathak may be seen. The CMO, Kanpur has also written a letter to the District Magistrate on 29.10.1999 (vide Annexure-SCA-4) that the existing Mandis at Kidwai Nagar germinate unhygienic conditions and epidemic diseases because the place has become filthy due to rotting fruits and vegetables thrown on the roads and drains which gives rise to foul smell in the atmosphere. It is stated in Paragraph 15 of the supplementary counter-affidavit that about five trucks reach the Mandi every day and roads are blocked for several hours causing enormous traffic problems. There is a crying need to shift the wholesale trade from Kanpur City to some other place.

54. Hence, we find no illegality in the impugned notifications, and all these writ petitions are dismissed and interim orders vacated.

55. However, since the wholesale Mandis at Kanpur City have been existing for a long time, in our opinion, it would not be appropriate if they are immediately and abruptly ordered to be shifted to the Navin Mandi Sthal at Naubasta (Hamirpur Road). As pointed out in the report of Mr. J.J. Munir, the learned Advocate Commissioner, the Navin Mandi Sthal at Naubasta requires to be developed so that the wholesalers can appropriately shift there. We, therefore, direct that a Committee shall be set up forthwith for this purpose under the Chairmanship of the Commissioner, Kanpur Division and the members of the Committee will include representatives of the Associations of wholesalers of foodgrains, fruits and vegetables, khandsari etc., as also officials of the various concerned departments e.g., the Kanpur Development Authority, the Krishi Utpadan Mandi Samiti, Kanpur, Nagar Nigam, Kanpur, Jal Sansthan, Kanpur, U.P. Power Corporation, Telephone Department etc. This Committee will form a rational plan for shifting all the existing wholesale Mandis at Kanpur to the Navin Mandi Sthal, Naubasta (Hamirpur Road). The Committee will ensure that the petitioners and the other wholesalers of Kanpur are provided appropriate space, accommodation and facilities including sewerage, water supply, electric and telephone supply etc.

56. However, we give a firm directive to the authorities that under no condition should the existing wholesale Mandis in Kanpur City be allowed to remain at their existing sites at Kidwai Nagar, Cooperganj, Collectorganj, Badshahi Naka etc., beyond one year from the date of this judgment, and they must be shifted to the Navin Mandi Sthal, Naubasta (Hamirpur Road) latest within one year from the date of delivery of this judgment. It is made clear that there will be no pick and

choose in this connection, and all the wholesale dealers have to go to the new site within one year from today. The matter has been dragging on for 26 years, and it cannot be allowed to drag on forever.

57. Let the Registrar General of this Court send copy of this judgment forthwith to the Chief Secretary, U.P., Secretaries of the Departments of Food and Civil Supplies, Home, Law as well as the D.G.P., U.P. and the Commissioner, Kanpur Division who will ensure strict compliance with this judgment.