
(1977) 10 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2191 of 1975

Oberoi Motors and Another	Vs	APPELLANT
The Union Territory Administration, Chandigarh and Others		RESPONDENT

Date of Decision : 31-10-1977

Acts Referred:

Constitution of India, 1950 — Article 228
Essential Commodities Act, 1955 — Section 3, 3(1), 3(2), 5, 7

Citation : AIR 1978 P&H 294 : (1978) 1 ILR (P&H) 343

Hon'ble Judges : R.S. Narula, C.J.; R.N. Mittal, J.; Prem Chand Jain, J.; M.R. Sharma, J.; Gurnam Singh, J

Bench : Full Bench

Judgement

R.N. Mittal, J.—Briefly the case of the petitioner is that petitioner No. 2 is a partner of petitioner No. 1, which carries on the business of sale of automobile spare parts, tyres and tubes, at Chandigarh. On July 27, 1974, one Balbir Singh lodged a first information report against the petitioners to the effect that they were selling truck tyres in black market. As a consequence of the first information report, the house of petitioner No. 2 was searched by the police from where 11 truck tyres were recovered, which were taken into possession by the police. Petitioner No. 2 was arrested u/s 7 of the Essential Commodities Act (hereinafter referred to as the Act) on the ground that he had violated the provisions of Chandigarh Motor Car and Tractor Tyres and Tubes Control Order, 1968(hereinafter referred to as the 1968 Order) as amended by the Chandigarh Motor Car and Tractor Tyres and Tubes Control Order, 1968(Chandigarh Ist Amendment) Order, 1973(hereinafter referred to as the first Amendment Order), and another Order, called the Chandigarh Fixation of Retail Prices of Automobile Tyres and Tubes Control Order, 1971(hereinafter referred to as the 1971 Order). The petitioners have filed this writ petition praying that the clauses relating to the control of prices of automobile Tyres and Tubes in the 1968 Order and 1971 Order, be declared void and ultra vires of the powers of respondents Nos. 1 and 2 and be struck down, and the prosecution of petitioner NO. 2, on the basis of the

aforsaid Orders, be set aside.

2. The respondents have contested the writ petition but did not file any return. The writ petition came up for hearing before a Division Bench on April, 21, 1977. It referred the case for hearing before a Full Bench of five judges on the ground that the petitioners had challenged that the petitioners had challenged the vires and constitutional validity of the 1968 Order and 1971 Order.

3. The first question that arises for determination is whether the provisions of the 1968 Order are ultra vires. In order to determine this question, it will be necessary to refer to some of the sections of the Act and then history of the Order. Section 2(a) defines "essential commodity" in the following terms:--

"2(a) "essential commodity" means any of the following clauses of commodities:

(i) to (x)..... (xi) Any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III of the Seventh Schedule to the Constitution."

Section 3 relates to power to control production, supply, distribution, etc. of essential commodities, and section 5, to delegation of powers. Section 3 empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein, by an order, in case it is of the opinion that it is necessary or expedient so to do, for maintaining or increasing supplies thereof or for securing their equitable distribution and availability at a fair price. Sub--section (2) of this section contains those matters with respect to which an order under sub--section (1) may provide. Clause (c) of Sub--section (2) authorises the Central Government to make a provision for controlling the price at which any essential commodity may be bought or sold. Section 5 empowers the Central Government to notify an order directing that the power to make orders or issue notifications u/ s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction be exercisable also by (a) such officer or authority subordinate to the Central Government, or (b) such State Government or such officer or authority subordinate to State Government, as may be specified in the direction.

4. On June 18, 1966, the Central government acting u/s 5 of the Act, made an order (Annexure P.1) by which it delegated its powers to issue order u/s 3(1) to the State Government and in relation to the Union Territory, to the Administration. It was published in the Government of India Gazette of even date, which is as follows:--

"S. O. No 1844.--In exercise of the powers conferred by S. 5 of the Essential Commodities Act 1955(10 of 1955) the Central Government hereby directs..... (a) That the powers conferred on it by sub-section (1) of S.

3 of the said Act to make orders to provide for the matters specified in clauses (d), (e), (f), (g), (h), (i) and (ii) and (j) of Sub--Section (2) thereof shall in relation to all commodities other than food stuffs and fertilizers (whether inorganic, organic or mixed), be exercisable also by a State Government or, in relation to a Union Territory by the administrator thereof subject to the following conditions namely:--

.....

On December 27, 1968, the Chief Commissioner, Chandigarh made the 1968 Order which was published in the Government of India Gazette, dated 14-3-1969. This order was made by him under the powers conferred in him vide Annexure P. 1. The preamble of the Order is as follows:--

"NO. HI(2H)-68/46448--Whereas for maintaining supplies and securing equitable distribution and availability at fair prices of tyres and tubes of motor cars and tractors in the Union Territory of Chandigarh, the Chief Commissioner, Chandigarh, is of the opinion that it is necessary and expedient so to do. Now, therefore, in exercise of the powers conferred by S. 3 of the Essential Commodities Act, 1955(10 of 1955), read with Government of India, Ministry of Commerce Order No. S. O. 1844, dated the 18th June, 1966, and all other powers enabling him in this behalf, the Chief Commissioner hereby makes the following order namely,--

....."

In clause 2(f), "tyres and tubes of motor cars and tractors" have been defined and these include tyres and tubes of a taxi. Later clause 2(f) was amended by the Chief Commissioner, Chandigarh, vide First Amendment Order and by virtue of this amendment tyres of trucks and buses were included in the said definition. The amended clause 2(f) reads as under:--

"Tyres and Tubes of motor cars and tractors include tyres and tubes of a taxi, trucks and bus."

Clause 3 deals with licensing of dealers, clause 4 with issue of license, clauses 5, with period of licence and fee chargeable and clause 7, with distribution or sale. The relevant clause, which is the subject matter of challenge in the present case, is clause 7(3) which is as follows:--

"7(3) The dealer shall not sell tyres and tubes of motor cars and tractors at a price exceeding that fixed from time to time by:--

(a) the manufacturer; or

(b) the Central Government".

At this stage, it will also be relevant to make a mention of the order of the Central Government, dated July, 30, 1966(S. O. No. 2314) issued under S. 5 of the Act under which 1971 Order was made and also the salient provisions of the

1971 Order. Under the aforesaid order, the Central Govt. authorised the Administrator of the Union Territory to make an Order under clause (c) of sub-section (2) of section 3 of the Act. The relevant part of the order is as follows:--

"S. O. 2314.--In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955(10 of 1955), the Central Government hereby directs--

(a) that the powers conferred on it by sub-section (1) of S. 3 of the said Act to make orders to provide for the matters specified in clause (c) of Sub-section (2) thereof shall, in relation to all commodities other than foodstuffs and fertilizers (whether inorganic, organic or mixed) be exercisable also by a State Government or, in relation to a Union Territory by the Administrator thereof, subject to the following conditions namely:--

(i) that where the price at which any essential commodity may be bought or sold is controlled by or under any other law for the time being in force no order shall be made in pursuance of the powers hereby delegated.

(ii) that where the price is not so controlled, no order shall be made in pursuance of the powers hereby delegated in respect of any essential commodity:--

(a) if the whole-sale prices, or retail prices or both, of such commodity have been fixed by the manufacturers or producers thereof with the approval of the Central Government, except on the basis of such prices.

(b) in any other case, except with the prior concurrence of the Central Government.

(iii) that no order shall be issued in pursuance of the powers hereby delegated if it is inconsistent with any order issued by the Central Government under the said act."

As mentioned above, the 1971 Order (Annexure p. 4) was made by the Chief Commissioner, Chandigarh, under the above Orders (S. O. No. 2314). Clause 2 of the 1971 Order contains definitions. Sub-clause (a) of clause 2 defines dealer as follows:--

"Dealer means a person engaged in the business of purchase, sale or storage for sale of automobile tyres and tubes, whether in conjunction with any other business or not, and includes his representative or agent."

Clause (d) defines "Price List" and it says that Price List means the list published by the manufacturers. Clause 3 is the relevant clause by which the selling retail prices of the automobile tyres and tubes have been fixed. The said clause reads thus:--

"No dealer shall charge in excess of the recommended retail price published by the manufacturers of automobile tyres and tubes from time to time as the selling retail prices of automobile tyres and tubes."

Mr. Kuldip Singh, learned counsel for the petitioners has challenged clause 7(3)

of the 1968 Order on the ground that vide Annexure P. 1, the Central Government had not delegated its powers to the Chief Commissioner, u/s 3(2)(c) of the Act. He submits that while delegating powers, the Central Government gave powers to the Chief Commissioner with respect to matters specified in clauses (d), (e), (f), (g), (h), (i)(ii) and (j) of sub--section (2) of the section 3 only. According to him, if the Chief Commissioner had not been conferred with the power to fix the prices of the tyres and tubes under clause (c) of sub--section (2) of S. 3, he could not make a provision in the 1968 Order for fixing the prices of the tyres and tubes.

5. The argument *prima facie*, appeared to be very attractive but when examined closely, it was found to be without any merit. No doubt it is true that under order, Annexure P. 1, the Central Government conferred powers on the Chief Commissioner to make an order with respect to matters specified in clauses (d), (e), (f), (g), (h), (i), (ii) and (j) of sub--section (2) of section 3 and no power had been conferred on him with respect to the matter specified in clause (c) of sub--section (2) of Section 3 of the Act. But subsequent to the Order Annexure P. 1, the Central Government made another order dated July, 30, 1966(S. O. 2314), reproduced above, by which it authorised the Chief Commissioner to make orders regarding the matters specified in clause (c) of sub--section (2) of S. 3, in relation to all the commodities other than food--stuffs and fertilizers. The 1968 order was made on December 27, 1968 and was published in the Gazette on March 14, 1969, that is, after the passing of both the aforesaid orders, dated July 18, 1966 and July 30, 1966. Thus on the date when the 1968 Order was made, the Chief Commissioner had been conferred power to make an order under clause (c) of sub--section (2) of section 3. For making the 1968 Order, he, no doubt relied on the order dated June 18, 1966(Annexure P. 1) and not on the Order dated July 30, 1966(S. O. 2314). He, however, in the order specifically said that he was also relying on "all other powers enabling him in this behalf", which have been underlined by me in the notification above. Thus in addition to the Order dated June 18, 1966(Annexure P. 1), he was relying on his powers which were conferred on him by the other Order. Even if he had not used those words, he could still rely on the Order dated July 30, 1966(S. O. 2314). It is an established proposition of law that in order to determine the validity of such an order, the material thing is its substance and not the form. An order purported to have been made under a wrong provision, would nonetheless be valid if it is shown to be within the four corners of the powers of the authority, who made the same. A reference in this connection may be made to *P. Balakotaiah Vs. The Union of India (UOI) and Others*, wherein it is observed that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within the powers under any other rule. There is, thus, no substance in the contention of the learned counsel for the petitioners.

6. The other contentions raised by the learned counsel for the petitioners, relate to the validity of both the Orders, that is, 1968 Order as well as 1971 Order. I

shall, therefore, deal with the said orders simultaneously. The main contention of the learned counsel for the petitioners is that by virtue of the order dated July 30, 1966(S. O. 2314), the Central Government had authorised the Chief Commissioner to make orders to provide for the matters specified in clause (c) of sub-section (2) of section 3 regarding tyres of automobiles and other commodities mentioned in the order, but by virtue of the 1968 Order and 1971 Order, he further delegated powers to the manufacturers. According to the learned counsel, the Chief Commissioner had no authority to further delegate powers for fixing the prices, to any other authority, and consequently clause 7(3) (a) in the 1968 Order and clause 3 in the 1971 Order are liable to be struck down on this ground.

7. I have given a thoughtful consideration to the argument of the learned counsel and find force in the contention Both the clauses have been reproduced above. The Chief Commissioner himself did not fix the fair prices of the automobile tyres and tubes. On the other hand, he delegated this power to the manufacturers. It will be seen from the perusal of section 5 of the Act and the various orders made under it that the Chief Commissioner is a delegate of the Central Government for framing of the orders. It is an established principle of law that further delegation cannot be made by a delegate. The doctrine of *delegatus non potest delegare* is well known. It means that a delegated power cannot be delegated by a delegate. The principle has been accepted by their Lordships of the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . The relevant observations of Bachawat, J., are as follows (at pp. 311-12):

"As a general rule, whatever a person has power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be re-delegated, *delegatus non potest delegare*. The naming of a delegate to do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him, and there is a presumption that he is required to do the act himself and cannot re-delegate his authority. As a general rule, & if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited. "See Crawford on Statutory Construction, 1940 Edn., Art. 195 P. 335. Normally, a discretion entrusted by Parliament to an administrative organ must be exercised by that organ itself. If a statute entrusts an administrative function involving the exercise of a discretion to a Board consisting of two or more persons it is to be presumed that each member of the Board should exercise his individual judgment on the matter and all the members of the Board should act together and arrive at a joint decision. Prima facie, the Board must act as a whole and cannot delegate its function to one of its members.....But the maxim "*delegatus non potest delegare*" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is

intended to be exercised by that authority and by no other."

In this regard, reference may also be made to *Captain Ganpati Singhji Vs. The State of Ajmer and Another*, . In that case, the Chief Commissioner was empowered u/s 40 of the Ajmer Laws Regulation of 1877 to make rules about ".....The establishment of a proper system of conservancy and sanitation at fair.....". The Chief Commissioner framed the rules under the aforesaid Regulation. The first three sub--rules of Rule 1 framed by him prohibited the holding of a fair except under a permit issued by the District Magistrate and he was enjoined to satisfy himself before issuing any permit that the applicant was in a position to establish a proper system of conservancy, sanitation and which and ward at the fair. The fourth sub--rule empowered the District Magistrate to revoke any such permit without assigning any reasons or giving any previous notice. The appellant made an application for a permit to hold a fair which was refused by the District Magistrate on the ground that no more permits were to be issued to private individuals. He challenged the aforesaid order. It was held by the Supreme Court that under the Regulation, it was the Chief Commissioner and not the District Magistrate who had power to frame rules, that the Chief Commissioner had no authority to delegate that power and that the rules made by the latter were, therefore, ultra vires. From the aforesaid discussion, it emerges that the Central Government had not authorised the Chief Commissioner to delegate its powers for fixing the prices of tyres and tubes to any other person, and consequently he could not further delegate the same to the manufacturers.

8. This matter may be examined from other points of view as well. Firstly, even if it may be assumed that the Central Government had authorised the Chief Commissioner to delegate its powers to the manufacturers, the question arises, could it do so? For deciding it, again a reference to section 5 is necessary. The Legislature, vide section 5 authorised the Central Government to delegate its powers u/s 3(2) to an officer or authority subordinate to it, or to State Government or to an officer or authority subordinate to it (State Government), and not to any other person. The Central Government, therefore, could not delegate its power to fix fair price of any commodity to the manufacturers. In case the Central Government could not delegate the power to the manufacturers, how its delegate, that is, the Chief Commissioner, could delegate that power to them. If the matter is considered from this point of view, I have no doubt in my mind that the authority given to the manufacturers to fix the prices of the tyres and tubes is illegal and without jurisdiction.

9. Secondly, section 7 of the Act provides sentence of imprisonment and fine to a person who commits breach of the Orders. In the said Orders, no provision has been made as to how the prices fixed by the manufacturers will be published by them. In case penal action had been provided for contravention of the clauses relating to the price control, it was also necessary that a provision should have been made to the effect that the prices fixed by the manufacturers would be

published in the official gazette or in any other way so that every dealer could know about them. This has, however, not been done in the present case. Unless a person with reasonable diligence can acquire knowledge of law, he cannot be convicted for its breach. In this connection reference may be made to the observations of the Supreme Court in *Harla Vs. The State of Rajasthan*, wherein Bose, J., speaking for the Court, observed as follows (at p. 468):

In the absence of any special law or custom, it would be against the principles of natural justice to permit the subject of a State to be punished or penalised by the laws of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. it must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. In the absence therefore of any law, rule, regulation or custom a law cannot come into being by merely passing a resolution without promulgation or publication in the Gazette or other means. Promulgation or publication of some reasonable sort is essential.

In this respect the difference between an Order and An Act is obvious. Acts of the Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Proclamations and Orders of appropriate authorities. There must therefore be promulgation and publication in their cases. The mode of publication can vary. But reasonable publication of some sort, there must be.

Mr. Anand Swaroop has not brought to my notice any communication to the effect that publicity was being given to the price lists of the manufacturers in such a way that these might come to the notice of the dealers and the public before these came into force. In these circumstances the prices fixed by the manufacturers cannot be said to have the force of law.

10. Thirdly, the Central Government in clause a (ii)(a) of the Order dated July 30, 1966, has prescribed the method on fixing the prices of the commodities in case their prices had been fixed by the manufacturers with the approval of the Central Government. It is that if wholesale prices or retail prices or both had been fixed by the manufacturers with the approval of the Central Government, the Chief Commissioner can fix the price only after taking into consideration such prices. The criterion laid down by the Order clearly shows that it is the Chief Commissioner, who after taking into consideration the price fixed by the manufacturers has to apply his mind and fix the prices of the commodities. Each time the manufacturer increases or decreases the price, the Chief Commissioner has to fix the same under the Order. He cannot say that prices fixed by the manufacturers, will automatically become fair prices of the tubes and tyres under

the 1968 and 1971 Orders. It is also note-worthy that the Chief Commissioner can take into consideration the prices of the manufacturers, if these have been fixed with the approval of the Central Government. In the present case, no such approval has been shown by the learned counsel for the respondents. A reference in this connection was made by Mr. Anand Swaroop, to a letter dated Dec. 30, 1970, issued by the Government of India, Ministry of Industrial Development and Internal Trade, Department of Internal Trade, Civil Supplies Organisation, New Delhi, to the Chief Secretary, Union Territory, Chandigarh. This letter, however, nowhere says that the prices have been or will be fixed by the manufacturers, of tyres and tubes, with the prior approval of the Central Government. He then argued that the industries which manufactured tyres and tubes, were governed by the provisions of the Industries (Development and Regulation) Act, 1951 wherein the Central Government has been empowered under S. 18G to regulate supply and distribution of tyres and tubes at fair prices. No doubt it is true that according to the said section, the Central Government has been empowered to provide for regulating the supply and distribution of the article at a fair price by a notified order. If, however, it does not say that the manufacturers covered by the Act can fix the prices of the commodities manufactured by them with or without the prior approval of the Central Government. In these circumstances it should have been proved as a fact that the manufacturers of tyres and tubes had obtained the prior approval of the Central Government. No order of communication has been brought to my notice which shows that the prices of tyres and tubes have been fixed by the manufacturers with the approval of the Central Government under the said provision. After going through Mr. Anand Swaroop, learned counsel for the respondents, cannot derive any benefit from it. In these circumstances it cannot be held that the present case is covered by clause a(ii)(a) of the Order dated July, 30, 1966.

11. Mr. Anand Swaroop, learned counsel for the respondent No. 2, then argued that the impugned clauses were valid in view of clause a (ii)(b) of the Order dated July, 30, 1966(S. O. No. 2314), according to which the Chief Commissioner has been delegated power to fix prices with the concurrence of the Central Government. He submitted that the letter dated Dec. 30, 1970, conferred blanket approval, if the Chief Commissioner fixed the prices in accordance with the retail prices recommended by manufacturers. I do not find any substance in this contention of the learned counsel. Paragraph 3 of the letter on which reliance was placed, says that the question of fixation of retail prices of automobile tyre and tubes was some time ago considered by the Ministry and the manufacturers were advised that they should issue recommended retail price lists with 7 1/2% margin for dealers of automobile tyres and tubes other than tractor and animal drawn vehicles" tyres and tubes on all India basis, and that recommended retail price lists had since been issued by the manufacturers of the tyres and tubes and they included a margin of 7 1/2% for the retailers. In view of the difficult supply position of automobile tyres and tubes, the Union Territory Administration should

consider fixing in exercise of the powers already delegated to it under the provisions of the Essential Commodities Act the recommended retail prices published by the manufacturers from time to time as the selling retail prices which included a margin of 7 1/2% for the retailers. It is further stated in the letter that two copies of the control order, if any, issued by the Union Territory Administration, in pursuance of the suggestion, be endorsed to the Ministry for information and record, in due course. The letter no doubt gives a suggestion to the Chief Commissioner to adopt the prices fixed by the manufacturers from time to time as fair prices. The letter, however, does not authorise the Chief Commissioner to make an order to the effect that whatever prices would be fixed by the manufacturers in future, those would automatically become fair prices under the orders so made. If a liberal interpretation is given to this letter, it shows that the Chief Commissioner may, after taking into consideration the prices fixed by the manufacturers, fix those prices in the Union Territory. The provision which has been incorporated by the Chief Commissioner in both the orders, is not warranted by this letter. There is yet another snag in complying with the letter dated Dec. 30, 1970. It is that the Chief Commissioner has not carried out the directions of the Central Government to send copies of both the orders to it (the Central Government). It was the duty of respondents Nos. 1 and 2 to show that copies of orders were sent to the Central Government. There is, however, nothing on the record to prove the said fact. Therefore, it cannot be held that the conditions imposed by the Central Government were complied with by respondents Nos. 1 and 2. In view of the above discussions, I am unable to hold that the impugned clauses are valid in view of clause a (ii)(b) of the order, dated July 30, 1966, read with the letter of the Central Government, dated Dec. 30, 1970.

12. It was next argued by Mr. Kuldip Singh, learned counsel for the petitioners that the criteria for fixing prices by the Chief Commissioner had not been laid down by the Central Government in either of the two orders issued under S. 5 of the Act. In the circumstances he urged that unguided and uncontrolled powers had been conferred on the Chief Commissioner to fix the fair prices. If no guidance had been provided by the Central Government, the learned counsel argued, impugned clauses in the orders were liable to be struck down on this ground. I have carefully examined this argument of the learned counsel, but find it without any merit. It is an established principle of law that guidance may be sought by a competent authority to use its discretion from the policy and purpose of the Act as set out in its preamble and in the operative provisions (See *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*,). The preamble of the Act says that it has been enacted to provide for the control and production, supply and distribution of, and trade and commerce in certain commodities, in the interest of general public. From the aforesaid preamble and other provisions of the Act, it is clear that the object of the act is to maintain or increase the supply of essential commodities, and to secure their equitable distribution and availability at fair prices. For maintaining the supply and

equitable distribution of the essential commodities, fixing of prices of those commodities become imperative. While fixing the prices it is to be seen that these should be fair, not only from the point of view of the consumer, but also from that of the manufacturer also. In case a reasonable margin of profit is not allowed to the manufacturer, he will stop manufacturing goods, which is harmful for the industry and the consumer. If higher profits are allowed to the manufacturer, the prices increase which is injurious to the consumer. Consequently it is necessary that the manufacturer recovers his cost of production and he and the retailer also get a reasonable margin of profit. If the prices are fixed in that way, the consumer will also not mind paying them. He feels a pinch if the margin of profit of the manufacturer goes very high. Further guidance for fixing the prices is available from S. 3 of the Act. Sub--section (3) of S. 3 provides that where any person sells any essential commodity in compliance with an order made with reference to cl.(f) of sub--s. (2), he shall pay the price therefore in the manner prescribed below:--

(a) Where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon the agreed price.

(b) Where no such agreement can be reached, the price calculated with reference to the controlled price, if any,

(c) Where neither cl.(a) nor cl.(b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

The method of fixing the price of sugar is provided in sub--s. (3--C) of S. 3. It says that the Central Government may determine the price of the sugar after having regard to--

(a) the minimum price, if any, fixed for sugarcane by the Central Government under this section,

(b) the manufacturing cost of sugar,

(c) the duty or tax, if any, paid or payable thereon and,

(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar.

From sub--s. (3) it is clear that if the price is not controlled, the price should be calculated at the marked rate in the locality on the date of sale. If that principle is not found to be proper after taking into consideration the condition of the market, then the principle laid down for fixing of price of sugar cane be adopted. It is not possible that principles can be laid down in the Act for fixing the fair prices of all commodities. It is enough if certain principles have been laid down for fixing the fair prices of certain commodities in the Act and guidance can be sought from those principles for fixing the prices of other commodities. For fixing the prices of the tyres and tubes, the aforesaid principles can be of great assistance. After taking into consideration the preamble of the Act and S. 3. I am

of the opinion that enough guidance is available in the Act for fixing the prices of essential commodities. The impugned clauses in the order cannot be struck down on this ground.

13. One more argument of Mr. Anand Swaroop may be noticed at this stage. He argued that an Act should be construed in such a way that it suppresses the mischief and advances the remedy. In support of his contention he placed reliance on *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . He further argued that the provisions of the Act and the orders are to be read in such a way that the provisions relating to fixing of fair prices in both the orders are valid. I have given a deep thought to the argument of the learned counsel. The principle that an Act should be construed in such a way that it suppresses the mischief and advances the remedy, is unexceptionable. But if a provision is clearly ultra vires, it cannot be saved on the ground that it suppresses the mischief, In the present case, it has already been held by me that the impugned provisions are illegal and without jurisdiction. In the circumstances the proposition enunciated will not be applicable. I consequently reject this contention of the learned counsel.

14. In the end it may be mentioned that Mr. Kuldip Singh, learned counsel for the petitioners, had challenged both the orders on the ground that when the Central Government delegated powers to the Union Territory under S. 5 of the Act, the tyres and tubes had not been declared as essential commodities. He, however, fairly conceded that in view of the observations in *State of Andhra Pradesh and Another Vs. Potta Sanyasi Rao and Others*, , the aforesaid ground is no longer available to him.

15. For the reasons recorded above, I accept the writ petition and strike down clause 7(3)(a) of the 1968 Order and clause (3) of the 1971 Order. In view of the fact that the case involves complicated question of law, I leave the parties to bear their own costs.

Prem Chand Jain, J.

16. I have very carefully gone through the judgment of my learned brother Mittal, J. but in spite of my best effort I have not been able to persuade myself to agree with him on the main findings in view of which clause 7(3)(a) of the 1968 Order and clause 3 of the 1971 Order have been quashed and the writ petition has been allowed.

17. Briefly putting, what was sought to be argued by Mr. Kuldip Singh, learned counsel for the petitioners, was that the Chief Commissioner had no authority to delegate its powers for fixing the prices to any other authority (in the instant case to the manufacturers) and in this situation, clause 7(3)(a) of the 1968 Order and clause 3 of the 1971 Order, which read as under, are liable to be struck down :--

Clause 7(3) of the 1968 Order :

"7(3). The dealer shall not sell tyres and tubes of motor cars and tractors at a price exceeding that fixed from time to time by:--

(a) the manufacturer, or

(b) the Central Government."

Clause 3 of 1971 Order :

"No dealer shall charge in excess of the recommended retail price published by the manufacturers of automobile tyres and tubes from time to time as the selling retail prices of automobile tyres and tubes."

18. The principal contention of Mr. Kuldip Singh, learned counsel for the petitioners, was that the Chief Commissioner himself did not fix the fair prices of the automobile tyres and tubes, that instead he delegated this power to the manufacturers, that the Central Government had delegated its powers to the Chief Commissioner under the Act and that a power delegated by an authority could not further be delegated by a delegate. It was also submitted by the learned counsel that even the Central Government could not delegate the power to fix fair price of any commodity to the manufacturer in exercise of its powers under S. 5 of the Act. In support of his contentions, reliance has been placed on the judgments of their Lordships of the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and in *Captain Ganpati Singhji Vs. The State of Ajmer and Another*, .

19. On the other hand, it was submitted by Shri Anand Swaroop, Senior Advocate, learned counsel appearing for the respondents, that there has been no delegation of power by the Chief Commissioner in favour of the manufacturer, that the manufacturer is required to fix a price under law to be the price at which its goods are to be sold by the whole--salers or retailers that legally there was nothing wrong for the Chief Commr. to have said in the Control Orders that the dealer shall not sell tyres and tubes of motor cars and tractors at a price exceeding that fixed from time to time by the manufacturer, that such a provision in the order did not amount to delegation of power by the Chief Commissioner in favour of the manufacturers and that the Control Orders did not suffer from any infirmity.

20. After giving my thoughtful consideration to the entire matter, I am of the view that there is no merit in the contention of Shri Kuldip Singh, learned counsel for the petitioners.

21. The doctrine of *delegatus non potest delegare*, is well known in as much as it is well settled that a delegated power could not be delegated by a delegate. This being the established proposition of law, as is evidence from the judgments of their Lordships of the Supreme Court referred to above, I do not propose to dilate any further on this aspect of the matter. However, this by itself does not solve the problem as it has to be determined as a fact whether by saying in the Control Orders that the dealer shall not sell tyres and tubes of motor cars and

tractors at a price exceeding that fixed from time to time by the manufacturers, can it be said that there has been a delegation of power by a delegate?

22. Mr. Kuldip Singh had argued that the Central Government had not delegated its powers to the Chief Commissioner under S. 3(2)(c) of the Act, that while delegating the powers, the Central Government gave powers to the Chief Commissioner in respect of matters specified in cls. (d), (e), (f), (g), (h), (i), (ii) and (j) of sub-s. (2) of S. 3 only, and that the Chief Commissioner having not been conferred with the power to fix the prices of the tyres and tubes under cl. (c) of sub-s. (2) of S. 3, he could not make a provision in the 1968 Order for fixing the prices of the tyres and tubes. These contentions of Mr. Kuldip Singh have been negated by my learned brother Mittal, J., and I am in respectful agreement with the view taken by him in this respect. Having come to the conclusion that the Central Government had delegated power to the Chief Commissioner to fix prices of the tyres and tubes under cl.(c) of sub-s. (2) of S. 3, therefore can be no gainsaying that the Chief Commissioner could fix the prices exceeding which the dealer could not sell the tyres and tubes and in that respect he had jurisdiction to issue Control Orders. In the instant case, the Control Orders have been issued by the appropriate authority in which it has been mentioned that the dealer shall not sell tyres and tubes of motor cars and tractors at a price exceeding that fixed from time to time by the manufacturers. The attack of the learned counsel for the petitioners is that by adopting the price to be fixed from time to time by the manufacturers, the Chief Commissioner has not fixed the price himself as a delegate, but he has delegated the power further in favour of the manufacturer. In my view, this approach of the learned counsel is untenable. If we look at the practical functioning of the entire system it would be evident that the manufacturers are legally bound to fix the prices of the items manufactured by them. When the manufacturers fix the prices of the items which they manufacture, they take into consideration various factors which are necessary for determining the price. In this situation it cannot be said that the manufacturers fix their prices arbitrarily or without there being any data for fixing such a price. When these commodities are sent in the market to be sold, then in the absence of any control, the dealers would be able to fix the retail prices for any item unchecked and make profit at their sweet will. In such a situation, especially in respect of any item which is in short supply and for which there is great demand, it would be straightway possible to fleece the needy customer.

23. The manufacturers publish the prices of the items which they manufacture by issuing price-lists. As earlier observed, the manufacturers do not fix the prices arbitrarily. They take into consideration the entire date and thereafter fix the prices. In the case of manufacturers, the price already stands determined. In the instant case, what the delegate has done, is that it has accepted the price of the tyres and tubes as the price under the Act which the manufacturer may fix from time to time. By this act, the power of fixing the price has not at all been delegated to the manufacturers, rather, the act of fixing the price is being

performed by the appropriate authority, i.e., the delegate himself. Mere acceptance of the price already fixed by the manufacturer or to be fixed by the manufacturer of an essential commodity, cannot be termed to be a delegation of power in favour of a person who could not be delegated with such a power. While fixing the price, many difficulties may be experienced by the appropriate authority and in order to overcome those difficulties, some method has to be adopted by the appropriate authority. Even the Government of India experienced difficulty with regard to the fixation of retail prices of automobile tyres and tubes, with the result that the matter was taken up with the manufacturers who were advised that they should issue recommended retail price-lists. At this stage, it would be appropriate to refer to a passage from the copy of letter No. 4(14)/69--GS--III, dated Dec. 30, 1970, from the Government of India, Ministry of Industrial Development and Internal Trade. Department of Internal Trade. Civil Supplies Organisation, New Delhi, to the Chief Secretary U. T., Chandigarh. Regarding fixation of retail prices of automobile tyres and tubes under the Essential Commodities Act, 1955, which reads as under :--

"The question of fixation of retail prices of automobile tyres and tubes was sometime ago considered in this Ministry and the manufacturers were advised that they should issue recommended retail price lists with 7 1/2 % margin for dealers of automobile tyres and tubes other than tractor and ADV (Animal Drawn Vehicle) tyres and tubes on an all India basis. The recommended retail price lists have since been issued by the manufacturers of tyres and tubes and they include a margin of 7 1/2% for the retailers. The manufacturers had been asked to send copies of these price lists to the Secretaries. Civil Supplies Department of all State Governments and Union Territory Administrations. It is hoped that these have since been received. In view of the present difficult supply position of automobile tyres and tubes, it is suggested that the State Governments/Union Territory Administrations may please consider immediately fixing statutorily in exercise of the powers already delegated to them under the provisions of the Essential Commodities Act the recommended retail prices published by the manufacturers from time to time as the selling retail prices, which include a margin of 7 1/2% for the retailers. The margin of 7 1/2% would also be applicable to tractors and A. D. V. tyres and tubes. It is requested that two copies of the corneal order, if any, issued by the State Government/Union Territory Administration in pursuance of the above suggestion may be endorsed to this Ministry for information and record in due course."

24. From the aforesaid extract, it would be evident that the manufacturers were advised to issue recommended retail price-list with 7 1/2% margin for dealers of automobile tyres and tubes. In this manner, over and above the price that was fixed by the manufacturer for his item, a margin of 7 1/2% was allowed to be added by the manufacturer for the benefit of the dealer. In the instant case, the appropriate authority after applying its mind has adopted the formula of fixing the price by accepting the price fixed by the manufacturer or to be fixed from time to time by the manufacturer and this action of the authority cannot be

termed to be a delegation of its power. In this view of the matter, I am unable to hold that price fixed by the Chief Commissioner under the Control Orders has not been done in accordance with law and that the power of fixing the price has been delegated by him to the manufacturers.

25. It was also contended by Mr. Kuldip Singh that the act of fixing the price is a positive act where the authority has to apply its mind and thereafter fix the price. According to the learned counsel, by accepting the price that has been fixed by the manufacturer or that may be fixed from time to time by the manufacturer, the appropriate authority did not apply its mind and fixed the price as may be determined by the manufacturer. I am again unable to agree with this contention of the learned counsel. It would be a sheer surmise and hardly fair to contend that the appropriate authority did not apply its mind while accepting the price of the manufacturer to be the price under the Control Order. As is evident from my discussion, the manufacturers do not fix the prices arbitrarily of the manufactured items and the price is based on some data. The appropriate authority accepted the price of the manufacturer as the price under the Control Order only after applying its mind and fixed that price to be the price under the Control Order. Thus, it cannot justifiably be contended that the appropriate authority did not apply its mind in fixing the price of the tyres and tubes under the Control Order by accepting the price fixed by the manufacturers.

26. It was also contended by the learned counsel that even the Central Government could not delegate the power of fixing the price to the manufacturer. This contention of the learned counsel is based on the supposition that by accepting the price to be fixed by the manufacturer the authority is delegating its power to a person to whom such a power could not be delegated. In the earlier part of the judgment, I have already held that by accepting the price fixed by the manufacturer or to be fixed by the manufacturers no question of delegation arises. For those very reasons, the contention of the learned counsel that even the Central Government could not fix that price which has been determined by the manufacturer to be the price under the Control Order, is untenable.

27. It was also submitted by the learned counsel that it was necessary that a provision should have been made to the effect that the prices fixed by the manufacturers should be published in the Official Gazette so that every dealer could know about them. I am afraid, I am unable to agree with the submission of the learned counsel. The price lists are sent to the dealers by the manufacturers. Without the price list no sale can be effected by the dealer. This being so, no further publication of the prices of such commodities is necessary. Under the Control Orders, the dealer is only required to sell the article at a price fixed by the manufacturer and such a price is always known to a dealer as the price list is received by such a dealer, of the manufactured item in which he is dealing. In this view of the matter, it was not at all necessary to make any provision under the Control Orders for publication of the manufacturer's price list in the Official Gazette.

28. No other point arise for consideration.

29 to 31. For the reasons recorded above, I dismiss this writ petition, but leave the parties to bear their own costs.

R.S. Narula, J.

I agree with Jain, J.

Gurnam Singh, J.

I agree with R. N. Mittal, J.

M. R. Sharma, J.

32. I had always thought that essential requisites of a valid law are well known. They are that it should be passed by a competent authority in accordance with the procedure laid down should be certain and clearly understandable by all and last of all it should have wide publicity so that the citizens who are to be bound by it know its content. Furthermore, the penal statutes are invariably construed in favour of the citizen not only with regard to their letter but also with regard to the method by which they are brought on the statute book. The Chief Commissioner of Chandigarh promulgated the Chandigarh Motor Car and Tractor Tyres and Tubes Control Order, 1968, on Dec. 27, 1968, which was published in the Official Gazette dated March 4, 1969. Clause 7(3) of this order reads as under:--

"The dealer shall not sell tyres and tubes of motor cars and tractors at a price exceeding that fixed from time to time by--

(a) the manufacturer, or

(b) the Central Government."

33. Again on July 5, 1971 the Chief Commissioner of Chandigarh promulgated the Chandigarh promulgated the Chandigarh Fixation of Retail Prices of Automobile Tyres and Tubes Control Order, 1971. Clause 3 of this Order reads as under:--

"No dealer shall charge in excess of the recommended retail price published by the manufacturers of automobile tyres and tubes from time to time as the selling retail prices of automobile tyres and tubes."

The constitutional validity of these provisions has been challenged before us on various grounds which have been elaborately dealt with by my learned brother R. N. Mittal, J., and I think it would be presumptuous on my part to tread the same grounds all over again. However, in view of the importance of the point involved, I would like to add a few words of my own.

34. A plain reading of the aforementioned provisions shows that the two Orders have fixed the prices of tyres and tubes at such rates which might be fixed by

the manufacturers even in future. The fixation of the prices of these commodities is the kernel of the two Orders and on this important point he has accepted the de futuro decisions to be made by the manufacturers of these commodities thereby exposing a citizen to penal action in case he violates such de futuro decisions. *B. Shama Rao Vs. The Union Territory of Pondicherry*, the Supreme Court was concerned with these facts. The Legislature of Pondicherry State passed the Pondicherry General Sales Tax Act (No. 10 of 1965) providing therein that the Madras General Sales Tax Act, 1959, and any other rules issued under the said Act or similarly enforced were to apply to Pondicherry State. This provision was struck down as being unconstitutional. While doing so, the Supreme Court observed (at p. 1487)--

"The question then is whether in extending the Madras Act in the manner and to the extent it did under S. 2(1) of the Principal Act the Pondicherry Legislature abdicated its legislature. It is manifest that the Assembly refused to perform its legislative function entrusted under the Act constituting it. It may be that a mere refusal may not amount to abdicate if the legislature instead of going through the full formality of legislation applies its mind to an existing statute enacted by another Legislature for another jurisdiction, adopts such an Act and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act and directs the executive to apply and implement such an Act. But when it not only adopts such an Act but also provides that the Act applicable to its territory shall be the Act amended its territory shall be the Act amended in future by the other legislature, there is nothing for it to predicate what the amended Act would be. Such a case would be clearly one of non-application of mind and one of refusal to discharge the function entrusted to it by the instrument constituting it. It is difficult to see how such a case is not one of application or effacement in favour of another legislature at least in regard to that particular matter.

35. As already noticed the fixation of the prices is the kernel of the two Orders. The prices to be fixed by the manufacturers naturally vary from time to time. The impugned provisions of the two orders have clothed even the varying prices with statutory sanctity, even though the extent to which they might vary was not in the comprehension of the authority promulgating the two Orders at the time of their promulgation. If such a lapse of duty on the part of a sovereign legislature was not only frowned upon but also struck down by the Supreme Court. I fail to see how a similar lapse on the part of a delegated authority can be placed at a higher footing. If the impugned provisions are allowed to remain on the statute book, even some innocent dealers who are not aware of the changes in the prices made by the manufacturers would also become liable to be prosecuted. I cannot comprehend such a situation without entertaining serious apprehensions in my mind.

36. For the reasons aforementioned, in agreement with the view expressed by my learned brother R. N. Mittal, J. I hold that clause 7(3)(a) of the 1968 Order

and clause 3 of 1971 Order are unconstitutional and direct the Union Territory of Chandigarh to refrain from prosecuting the petitioner under these provisions.

Order of the Court

37. Though view of majority (three out of five) of us is in favour of allowing the petition and striking down clause 3 of the 1971 Order, the petition is dismissed on account of the provisions of clause (4)(a) of Art. 228A of the Constitution without any order as to costs.

38. Petition dismissed.