
(2012) 04 MAD CK 0113
In the Madras High Court
Case No : W.P.No. 28333 of 2011

Zeenath Begum

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(2)(b)
Constitution of India, 1950 — Article 14, 143(1), 19, 22, 245
Tamil Nadu Preservation of Private Forests Act, 1949 — Section 1(2), 1(3), 2A, 3, 3(1)
(a)

Citation : (2012) WritLR 609

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Selvi George, for the Appellant; R. Ravichandran Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The petitioner has approached this Court with a prayer for issuance of writ in the nature of Mandamus, to direct the State of Tamil Nadu to issue notification in the Government Gazette to notify the amendment introduced vide Bill No. 7 of 2011 dated 10.02.2011 by the Legislative Assembly under the Tamil Nadu Preservation of Private Forest Act, 1949 (hereinafter referred to as "the Act") and pass such other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case. The petitioner along with her sons purchased land measuring 14.23.50 Hectares in S.No. 785/ICIG (2.23.00 Ha), 785/3B9 (1.20.50 Ha), 785/3B8 (1.15.00 Ha), 785/3B1 (1.22.00 Ha), 785/3B7 (0.98.00 Ha), 785/1 CIE (7.45.00 Ha), Thovala Taluk, Alagiapandipuram Village, Kanyakumari District, through Abraham Thomas, son of Mr. Thomas Abraham, Mrs. Lovis Abraham @ Lovis Kuruvilla, w/o of Mr. T.P. Kuruvilla and Mr. Jacob Abraham and Thomas Abraham, sons of Mr. M.K. Abraham, by way of registered sale deed dated 07.02.1996. The petitioner claims to be absolute owner of property in pursuance to the purchase, which was

free from all encumbrances. The petitioner planted cloves, coffee and Silver Oak trees in the land.

2. The case of petitioner is that in order to provide necessary sun light to the coffee, it became necessary to cut and remove the Silver Oak trees. The case of petitioner further is, that it was at that time, that it came to the knowledge of petitioner, that the land purchased by petitioner was notified under the provisions of the Act, therefore, trees could not be cut or removed without permission of the authorities.

3. The petitioner approached the statutory committee and requested for permission to cut and remove the shade trees. The request of petitioner was turned down by the District Collector, on the ground that purchase by petitioner was hit by Section 3(1)(a) of the Act. It was also submitted that name of vendors of petitioner was not shown in the notification.

4. The submission of petitioner is that if it was not within the knowledge of petitioner, otherwise the necessary permission could have been obtained. It is submitted that Section 3(1)(a) of the Act, does not compel the purchaser to obtain prior permission of the committee, but only prohibits the owner from selling notified land without prior permission of the committee. The Act is silent as to the result, if the sale is without prior permission.

5. The petitioner submits that being bonafide purchaser, no fault can be found with her act in purchasing the land. The neighbour of petitioner challenged notification, by filing writ petition, culminated in W.A.Nos. 1336 and 1337 of 2002, wherein, the Hon'ble Division Bench of this Court, has been pleased to stay the notification, issued by the District Collector. The order of stay was made absolute after hearing both the parties and the writ appeal is still pending.

6. The petitioner also challenged the notification, covering the land of petitioner, vide W.P.No. 27881 of 2010, but during pendency of writ petition, the Government introduced the Bill No. 7 of 2011 on 10.02.2011 to amend the Act, by adding new section, namely, Section 4-A in the Act.

7. The Bill No. 7 of 2011 reads as under:

L.A. Bill No. 7 of 2011

A Bill further to amend the Tamil Nadu Preservation of Private Forests Act, 1949. Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-Second year of the Republic of India as follows:-

1.(1) This Act may be called the Tamil Nadu Preservation of Private Forests (Amendment) Act, 2011.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

2. After Section 4 of the Tamil Nadu Preservation of Private Forests Act, 1949,

the following section shall be inserted, namely:-

4-A. Sanction to purchaser:- (1) Notwithstanding anything contained in sub-section (1) of section 3, the purchaser of the whole or any portion of the forest, which has been sold by the owner of such forest without the previous sanction of the committee under clause (a) of sub-section (1) of section 3, may, apply to the committee for sanction to retain the whole or any portion of the forest, within such time as may be prescribed.

(2) The committee may, by order, accord the sanction for the whole or any portion of the forest specified in the application, subject to such conditions as it may deem fit.

(3) The committee may refuse to accord the sanction, if prosecution is instituted for any of the contraventions referred to in section 7, in such forest, other than the contravention of the provisions of sub-section (1) of section 3 or for any other reason to be recorded in writing.

(4) Any person aggrieved by an order under sub-section (3) may, within two months from the date of receipt of such order, prefer an appeal in writing to the State Government. The State Government shall pass such order on the appeal as they may think fit.

(5) The sanction accorded under sub-section (2) shall not prohibit the institution of prosecution against the owner for the contravention of sub-section (1) of section 3."

8. The statement of objects of the Bill reads as under:

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY--STATEMENT OF OBJECTS AND REASONS

As per sub-section (1) of the section-3 of the Tamil Nadu Preservation of Private Forests Act, 1949 (Tamil Nadu Act XXVII of 1949), the owner of the forest shall obtain the previous sanction of the committee constituted u/s 2A of the said Act for the sale of forest and any alienation in contravention of the said provisions is null void. There is no provision in the said Act for the purchaser to apply to the committee for sanction to retain the forest sold to him without the previous sanction of the committee. Many representations have been received by the Government from the purchasers of the forest for sanction to retain the forest, which has been sold to them without the previous sanction of the said committee. The Government after careful consideration of the said representations have decided to amend the said Act so as to make provision to enable the purchaser to make an application to the said committee for sanction to retain the forest and to prefer an appeal to the State Government against the order of the committee.

2. The Bill seeks to give effect to the above decision.

N. SELVARAJ/Minister (Forests)"

9. Though in the earlier W.P.No. 27881 of 2010, the petitioner along with two others, challenged the notification issued by the State Government, but at the time of hearing of the case, the writ was not pressed. The stand taken at the time of hearing was, that the petitioners would be satisfied, if a direction is issued to the respondents to consider the representation, to be preferred by petitioner, in the light of amendment in the Act.

10. The writ petition was disposed of by this Court. The operative part of order reads as under:

"4. Considering the submission made by the learned Senior Counsel for the petitioners, this Court, without going into the merits of the claim of the petitioners, directs the petitioners to prefer a representation within a period of two weeks from the date of receipt of a copy of this order to the appropriate Committee formed under the Tamil Nadu Preservation of Private Forests Act, 1949 and in the event of receiving such representation from the petitioners, the appropriate Committee shall consider the representation of the petitioners in the light of the amendment made to Section 4A of the Tamil Nadu Preservation of Private Forests Act, 1949 published in the gazette as L.A.No. Bill No. 7 of 2011, which reads hereunder:

"2. After Section 4 of the Tamil Nadu Preservation of Private Forests Act, 1949, the following section shall be inserted, namely: -

"4-A. Sanction to purchaser:- (1) Notwithstanding anything contained in sub-section (1) of section 3, the purchaser of the whole or any portion of the forest, which has been sold by the owner of such forest without the previous sanction of the committee under clause (a) of sub-section (1) of section 3, may, apply to the committee for sanction to retain the whole or any portion of the forest, within such time as may be prescribed.

(2) The committee may, by order, accord the sanction for the whole or any portion of the forest specified in the application, subject to such conditions as it may deem fit.

(3) The committee may refuse to accord the sanction, if prosecution is instituted for any of the contraventions referred to in section 7, in such forest, other than the contravention of the provisions of sub-section (1) of section 3 or for any other reason to be recorded in writing.

(4) Any person aggrieved by an order under sub-section (3) may, within two months from the date of receipt of such order, prefer an appeal in writing to the State Government. The State Government shall pass such order on the appeal as they may think fit.

(5) The sanction accorded under sub-section (2) shall not prohibit the institution of prosecution against the owner for the contravention of sub-section (1) of section 3.

It is made clear that the above said exercise shall be completed within a period of four weeks from the date of receipt of the representation from the petitioners.

5 With this direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11. The reading of the order shows, that petitioner did not disclose to this Court, that the amendment Act was not enforced, and was not part of Statute, so as to enable the Committee to consider the representation filed by petitioner.

12. The petitioner has also not chosen to file review or application for recall of the order, but for the reasons best known, has filed the present writ petition, for issuance of writ in the nature of Mandamus, to direct the State Government to issue notification to enforce the amendment Act.

13. The submission of petitioner is that in view of order passed by this Court, a representation was filed with the respondents, which has been rejected, on the ground that the petitioner failed to obtain permission before purchasing the land, thus, the sale was hit by the bar u/s 3 of the Act.

14. It is also submission of petitioner that the petitioner was informed that the Bill No. 7 of 2011 has not been gazetted, therefore, the request of petitioner could not be accepted.

15. Learned counsel for the petitioner prays for issuance of writ in the nature of Mandamus, directing the State of Tamil Nadu to notify the Act in the Gazette notification, as stipulated in the Bill. No malafide has been alleged against the Government for not enforcing the amended Act.

16. The contention of learned counsel for the petitioner was, that there was no point to introduce the Bill, without issuing notification to implement the Act. Therefore, the object, for which the Bill has been introduced, stands defeated.

17. It was also contention of learned counsel for the petitioner that it was duty of the Government to issue consequential notification, being welfare Government, which is to look into the grievance of the public.

18. It was also contended by learned counsel for the petitioner, that action of the State Government in not notifying the Act, is prima facie arbitrary, thus, hit by Article 14 of the Constitution of India, as in-action to issue notification defeats the very object, for which the Bill was passed.

19. The question to be determined in this case is whether this Court can issue direction to the Government of Tamil Nadu, to notify particular Statute.

20. The answer would be in negative, for the reasons hereinafter recorded.

21. This Court cannot give direction to the Government of Tamil Nadu to notify particular Statute, when Legislature has conditionally passed legislation, which is finally to be notified by the Government. The Court has no role to play in the Legislative function.

22. The Hon"ble Supreme Court, in A.K. Roy and Others Vs. Union of India (UOI) and Others, , by majority decision, was pleased to lay down as under:

47. The Amendment Act may provide that the amendment introduced by it shall come into force immediately upon the President giving his assent to the Bill or it may provide that the amendment shall come the force on a future date. Indeed, no objection can be taken to the Constituent body itself appointing a specific future date with effect from which the Amendment Act will come into force, and if that be so, different dates can be appointed by it for bringing into force different provisions of the Amendment Act. The point of the matter is that the Constitution standing amended in accordance with the terms of the Bill and the amendment thus introduced into the Constitution coming into force are two distinct things. Just as a law duly passed by the legislature can have no effect unless it comes or is brought into force, similarly, an amendment of the Constitution can have no effect unless it comes or is brought into force. The fact that the Constituent body may itself specify a future date or dates with effect from which the Amendment Act or any of its provisions will come into force shows that there is no antithesis between Article 368(2) of the Constitution and section 1(2) of the 44th Amendment Act. The expression of legislative or constituent will as regards the date of enforcement of the law or Constitution is an integral part thereof. That is why it is difficult to accept the submission that, contrary to the expression of the constituent will, the amendments introduced by the 44th Amendment Act came into force on April 30, 1979 when the President gave his assent to that Act. The true position is that the amendments introduced by the 44th Amendment Act did not become a part of the Constitution on April 30, 1979. They will acquire that status only when the Central Government brings them into force by issuing a notification u/s 1(2) of the Amendment Act.

48. The next question for consideration is whether section 1 (2) of the 44th Amendment Act is ultra vires the power conferred of the Parliament by Article 368 to amend the Constitution. The argument is that the constituent power must be exercised by the Constituent body itself and it cannot be delegated by it to the executive or any other agency. For determining this question, it is necessary to bear in mind that by "constituent power" is meant that power to frame or amend the Constitution. The power of amendment is conferred upon the Parliament by Article 368 (1), which provides that the Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down in that article. The power thus conferred on the Parliament is plenary subject to the limitation that it cannot be exercised so as to alter the basic structure or framework of the Constitution. It is well-settled that the power conferred upon the Parliament by Article 245 to make laws is plenary within the field of legislation upon which that power can operate. That power, by the terms of Article 245, is subject only to the provisions of the Constitution. The constituent power, subject to the limitation aforesaid, cannot be any the less plenary that the legislative power, especially when the power to amend the Constitution and the

power to legislate are conferred on one and the same organ of the State, namely, the Parliament. The Parliament may have to follow a different procedure while exercising its constituent power under Article 368 than the procedure which it has to follow while exercising its legislative power under Article 245. But the obligation to follow different procedures while exercising the two different kinds of power cannot make any difference to the width of the power. In either event, it is plenary, subject in one case to the constraints of the basic structure of the Constitution and in the other, to the provisions of the Constitution.

49. The contention raised by the petitioners, that the power to appoint a date for bringing into force a constitutional amendment is a constituent power and therefore it cannot be delegated to an outside agency is without any force. It is true that the constituent power, that is to say, the power to amend any provision of the Constitution by way of an addition, variation or repeal must be exercised by the Parliament itself and cannot be delegated to an outside agency. That is clear from Article 368 (1) which defines at once the scope of the constituent power of the Parliament and limits that power to the Parliament. The power to issue a notification for bringing into force the provisions of a Constitutional amendment is not a constituent power because, it does not carry with it the power to amend the Constitution in any manner. It is, therefore, permissible to the Parliament to vest in an outside agency the power to bring a Constitutional amendment into force. In the instant case, that power is conferred by the Parliament on another organ of the State, namely, the executive, which is responsible to the Parliament for all its actions. The Parliament does not irretrievably lose its power to bring the Amendment into force by reason of the empowerment in favour of the Central Government to bring it into force. If the Central Government fails to do what, according to the Parliament, it ought to have done, it would be open to the Parliament to delete section 1 (2) of the 44th Amendment Act by following the due procedure and to bring into force that Act or any of its provisions.

50. We need not enter into the much debated question relating to the delegation of legislative powers. In *The Queen v. Burah*, the Privy Council upheld the delegated power to bring a law into force in a district and to apply to it, the whole or part of the present or future laws which were in force in other districts. In *Russell v. The Queen* it upheld the provision that certain parts of an Act should come into force only on the petition of a majority of electors. In *Hodge v. The Queen*, it upheld the power conferred upon a Board to create offences and annex penalties. The American authorities on the question of the validity of delegated powers need not detain us because, the theory that a legislature is a delegate of the people and therefore, it cannot delegate its power to another does not hold true under our Constitution. The executive, under our Constitution, is responsible to the legislature and is not independent of it as in the United States. The three Privy Council decisions to which we have referred above were considered by this Court in *Re Delhi Laws Act* case, which is considered as a leading authority on the question of delegated legislation. The Reference made in that case by the

President under Article 143(1) of the Constitution to the Supreme Court, in regard to the validity of certain laws, was necessitated by the decision of the Federal Court in *Jatindra Nath Gupta v. State of Bihar* in which it was held by the majority that the power to extend the operation of an Act for a further period of one year with such modification as May be specified was a legislative power and that the provisions of section 1(3) of that Act which delegated that power to an outside agency was bad. One of the questions which was referred to this Court in *Delhi Laws Act* case was whether section 7 of the *Delhi Laws Act, 1912* was ultra vires the Legislature which passed that Act. That section provided that the Provincial Government may by a notification extend with such restrictions and modifications as it thinks fit to the Province of Delhi or any part thereof any enactment which is in force in any part of British India at the date of such notification. The difficulty of discovering the ratio of the seven judgments delivered in the *Delhi Laws Act* case is well-known. There is, however, no difference amongst the learned Judges in their perception and understanding of what was actually decided in the three Privy Council cases to which we have referred and which were discussed by them. They read the Privy Council decisions as laying down that conditional legislation is permissible whereby the legislature entrusts to an outside agency the discretionary power to select the time or place to enforce the law. As stated by Shri H.M. Seervai in his "*Constitutional Law of India*" (2nd ed. at p. 1203: "The making of laws is not an end in itself, but is a means to an end, which the legislature desires to secure. That end may be secured directly by the law itself. But there are many subjects of legislation in which the end is better secured by extensive delegation of legislative power". There are practical difficulties in the enforcement of laws contemporaneously with their enactment as also in their uniform extension to different areas. Those difficulties cannot be foreseen at the time when the laws are made. It, therefore, becomes necessary to leave to the judgment of an outside agency the question as to when the law should be brought into force and to which areas it should be extended from time to time. What is permissible to the Legislature by way of conditional legislation cannot be considered impermissible to the Parliament when, in the exercise of its constituent power, it takes the view that the question as regards the time of enforcement of a Constitutional amendment should be left to the judgment of the executive. We are, therefore, of the opinion that section 1 (2) of the 44th Amendment Act is not ultra vires the power of amendment conferred upon the Parliament by Article 368 (1) of the Constitution.

51. We may now take up for consideration the question which was put in the forefront by Dr. Ghatate, namely, that since the Central Government has failed to exercise its power within a reasonable time, we should issue a mandamus calling upon it to discharge its duty without any further delay. Our decision on this question should not be construed as putting a seal of approval on the delay caused by the Central Government in bringing the provisions of section 3 of the 44th Amendment Act into force. That Amendment received the assent of the

President on April 30, 1979 and more than two and half years have already gone by without the Central Government issuing a notification for bringing section 3 of the Act into force. But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of section 3 into force. The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the Court to compel the Government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it. The executive is responsible to the Parliament and if the Parliament considers that the executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the executive. It would be quite anomalous that the inaction of the executive should have the approval of the Parliament and yet we should show our disapproval of it by issuing a mandamus. The Court's power of judicial review in such cases has to be capable of being exercised both positively and negatively, if indeed it has that power; positively, by issuing a mandamus calling upon the Government to act and negatively by inhibiting it from acting. If it were permissible to the Court to compel the Government by a mandamus to bring a Constitutional amendment into force on the ground that the Government has failed to do what it ought to have done, it would be equally permissible to the Court to prevent the Government from acting, on some such ground as that, the time was not yet ripe for issuing the notification for bringing the Amendment into force. We quite see that it is difficult to appreciate what practical difficulty can possibly prevent the Government from bringing into force the provisions of section 3 of the 44th Amendment, after the passage of two and half year. But the remedy, according to us, is not the writ of mandamus. If the Parliament had laid down an objective standard or test governing the decision of the Central Government in the matter of enforcement of the Amendment, it may have been possible to assess the situation judicially by examining the causes of the inaction of the Government in order to see how far they bear upon the standard or test prescribed by the Parliament. But, the Parliament has left the matter to the judgment of the Central Government without prescribing any objective norms. That makes it difficult for us to substitute our own judgement for that of the Government on the question whether section 3 of the Amendment Act should be brought into force. This is particularly so when, the failure of the Central Government to bring that section into force so far, can be no impediment in the way of the Parliament in enacting a provision in the National Security Act on the lines of that section. In fact, the Ordinance rightly adopted that section as a model and it is the Act which has wrongly discarded it. It is for these reasons that we are unable to accept the submission that by issuing a mandamus, the Central Government must be compelled to bring the provisions of section 3 of the 44th Amendment into force. The question as to the impact of that section which, though a part of the 44th Amendment Act, is not yet a part of the Constitution, will be considered later when we will take up for examination the argument as regards the reasonableness of the procedure prescribed by the Act.

52. We have said at the very outset of the discussion of this point that our decision on the question as to whether a mandamus should be issued as prayed for by the petitioners, should not be construed as any approval on our part of the long and unexplained failure on the part of the Central Government to bring section 3 of the 44th Amendment Act into force. We have no doubt that in leaving it to the judgment of the Central Government to decide as to when the various provisions of the 44th Amendment should be brought into force, the Parliament could not have intended that the Central Government may exercise a kind of veto over its constituent will by not ever bringing the Amendment or some of its provisions into force. The Parliament having seen the necessity of introducing into the Constitution a provision like section 3 of the 44th Amendment, it is not open to the Central Government to sit in judgment over the wisdom of the policy of that section. If only the Parliament were to lay down an objective standard to guide and control the discretion of the Central Government in the matter of bringing the various provisions of the Act into force, it would have been possible to compel the Central Government by an appropriate writ to discharge the function assigned to it by the Parliament. In the past, many amendments have been made by the Parliament to the Constitution, some of which were given retrospective effect, some were given immediate effect, while in regard to some others, the discretion was given to the Central Government to bring the Amendments into force. For example, sections 3 (1) (a) and (4) of the Constitution (First Amendment) Act, 1951 gave retrospective effect to the amendments introduced in Articles 19 and 31 by those sections. The 7th Amendment, 1956, fixed a specific date on which it was to come into force. The 13th Amendment, 1962, provided by section 1 (2) that it shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint. That amendment was brought into force by the Central Government on December 1, 1963. The 27th Amendment, 1971 brought section 3 thereof into force at once, while the remaining provisions were to come into force on a date appointed by the Central Government, which was not to be earlier than a certain date mentioned in section 1(2) of the Amending Act. Those remaining provisions were brought into force by the Central Government on February 15, 1972. The 32nd Amendment, 1973, also provided by section 1 (2) that it shall come into force on a date appointed by the Central Government. That amendment was brought into force on July 1, 1974. The 42nd Amendment, 1976. by which the Constitution was recast extensively, gave power to the Central Government to bring it into force. By a notification dated January 1, 1977 parts of that Amendment were brought into force in three stages (see Basu's Commentary on the Indian Constitution, Ed. 1977, Volume C., Part III, page 134). Certain sections of that Amendment, which were not brought into force, were repealed by section 45 of the 44th Amendment.

54. As regards the argument that section 1(2) of the 44th Amendment Act is bad because it vests an uncontrolled power in the executive, we may point out, briefly, how similar and even more extensive delegation of powers to the

executive has been upheld by this Court over the years. In *Sardar Inder Singh v. State of Rajasthan*, section 3 of the Rajasthan (Protection of Tenants) Ordinance provided that it shall remain in force for a period of two years unless that period is further extended by the Rajpramukh. It was held by this Court that section 3, in so far as it authorised the Rajpramukh to extend the life of the ordinance, fell within the category of conditional legislation and was ultra vires. The Court dissented from the view expressed in *Jetindra Nath Gupta v. The State of Bihar*, (supra) that the power to extend the life of an enactment cannot validly be conferred on an outside authority. In *Sita Ram Bisaambhar Dayal and Ors. v. State of U.P. and others*, section 3D (1) of the U.P. Sales Tax Act, 1948, which was challenged on the ground of excessive delegation, provided for levying taxes at such rates as may be prescribed by the State Government not exceeding the maximum prescribed. While rejecting the challenge, Hegde, J. speaking for the Court observed: (SCC p.487, para 5) "However much one might deplore the "New Despotism" of the executive, the very complexity of the modern society and the demand it makes on its Government have set in motion force which have made it absolutely necessary for the legislatures to entrust more and more powers to the executive. Text book doctrines evolved in the 19th Century have become out of date".

In *Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Assistant Commissioner of Sales Tax*, the question which arose for determination was whether the provisions of section 8 (2) (b) of the Central Sales Tax Act, 1956 suffered from the vice of excessive delegation because the Parliament, in not fixing the rate itself and in adopting the rate applicable to the sale or purchase of good inside the appropriate State, had not laid down any legislative policy, abdicating thereby its legislative function. Rejecting this contention Khanna, J., who spoke for himself and two other learned Judges observed that the growth of the legislative power of the executive is a significant development of the twentieth century and that provision was therefore made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation. Mathew, J. speaking on behalf of himself and Ray, C.J. agreed with the conclusion that section 8 (2) (b) did not suffer from the vice of excessive delegation of legislative power. The decisions bearing on the subject of excessive delegation have been surveyed both by Khanna, J. and Mathew, J. in their respective judgments. In *M.K.. Pasiah and Sons v. The Excise Commissioner*, it was contended for the appellants that the power to fix the rate of Excise Duty conferred by section 22 of the Mysore Excise Act of 1965 on the Government was bad for the reason that it was an abdication by the State legislature of its essential legislative function. The Court, speaking through Mathew, J. upheld the validity of section 22. We are unable to appreciate that the constituent body can be restrained from doing what a legislature is free to do. We are therefore unable to accept the argument that section 1 (2) confers an uncontrolled power on the executive and is, by its unreasonableness, violative of Articles 14 and 19 of the Constitution.

55. We are also unable to accept Shri Tarkunde's argument that the Central Government's failure to bring section 3 of the 44th Amendment into force is mala fide. The Parliament has chosen to leave to the discretion of the Central Government the determination of the question as to the time when the various provisions of the 44th Amendment should be brought into force. Delay in implementing the will of the Parliament can justifiably raise many an eye-brow, but it is not possible to say on the basis of such data, as has been laid before us, that the Central Government is actuated by any ulterior motive in not bringing section 3 into force. The other limb of Shri Tarkunde's argument that there is an obligation upon the Central Government to bring the provisions of the 44th Amendment into force within a reasonable time has already been dealt with by us while considering the argument that, since the Government has not brought section 3 into force within a reasonable time, it should be compelled by a writ of mandamus to perform its obligation.

23. Again in Union of India (UOI) Vs. Shree Gajanan Maharaj Sansthan, the Hon'ble Supreme Court was pleased to lay down as under:

7. In A.K. Roy and Others Vs. Union of India (UOI) and Others, a contention was raised that despite the provisions of Section 1(2) of the 44th Constitution (Amendment) Act, 1978, Article 22 of the Constitution stood amended on 30.4.1979 when the Amendment Act received the assent of the President and that there was nothing more that remained to be done by the Executive except fixing a date for the commencement of the Act as provided u/s 1(2) thereof. According to the said contention, Section 1(2), which is misconceived and abortive, must be ignored and severed from the rest of the Amendment Act. This Court observed that no mandamus could be issued to the Executive directing it to commence the operation of the enactment; that such a direction should not be construed as any approval by the Court of the failure on the part of the Central Government for a long period to bring the provisions of the enactment into force; that in leaving it to the judgment of the Central Government to decide as to when the various provisions of the enactment should be brought into force, the Parliament could not have intended that the Central Government may exercise a kind of veto over its constituent will by not ever bring the enactment or some of its provisions into force; that if only the Parliament were to lay down an objective standard to guide and control the discretion of the Central Government in the matter of bringing the various provisions of the Act into force, it would have been possible to compel the Central Government by an appropriate writ to discharge the function assigned to it by the Parliament. It was further contended that an amendment can be bad because it vests an uncontrolled power in the executive in bringing an enactment into operation. This Court, however, noticed that such power cannot be held to give an uncontrolled power to the executive inasmuch as there are practical difficulties in the enforcement of laws and those difficulties cannot be foreseen. It, therefore, became necessary to leave the judgment to the Executive as to when the law should be brought into force. When enforcement of a provision in a statute is left to the discretion of the Government

without laying down any objective standards no writ of mandamus could be issued directing the Government to consider the question whether the provision should be brought into force and when it can do so. Delay in implementing the will of the Parliament may draw adverse criticism but on the data placed before us, we cannot say that the Government is not alive to the problem or is desirous of ignoring the will of the Parliament.

24. The reading of the Bill shows, that it is in nature of conditional legislation, as though the Statute has been enacted, but discretion is given to State to notify the date as to when it shall come into force. Once legislature in its wisdom has left it to the State Government to enforce the Act, by issuing notification, this Court cannot interfere with the legislative function to issue writ in the nature of Mandamus, as prayed for, in view of the settled position of law, as admittedly there are no allegations of malafide. Consequently, finding no merit in this writ petition, it is ordered to be dismissed. No costs.