

(1952) 05 AHC CK 0004

Allahabad High Court

Case No: Criminal Revision No's. 711, 1257 and 1262 of 1950

Bhushan Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 14, 1952

Acts Referred:

- Constitution of India, 1950 - Article 245
- Essential Supplies (Temporary Powers) Act, 1946 - Section 3, 4, 6
- Constitution of India, 1950 - Article 245
- Essential Supplies (Temporary Powers) Act, 1946 - Section 3, 4, 6
- Constitution of India, 1950 - Article 245
- Essential Supplies (Temporary Powers) Act, 1946 - Section 3, 4, 6

Citation: AIR 1952 All 866 : (1952) 22 AWR 327

Hon'ble Judges: V. Bhargava, J; Brij Mohan Lall, J; Agarwala, J

Bench: Full Bench

Advocate: Gopal Sarup Pathak, for the Appellant; Kanhyalal Misra, for the Respondent

Judgement

Agarwala, J.

Two questions have been referred to this Full Bench :

(1) Whether Sections 3, 4 and 6 of the Essential Supplies (Temporary Powers) Act, XXIV [24] of 1946, or any part thereof are ultra vires of the Indian Legislature which passed the Act?

(2) If the provisions of any of these sections be ultra vires, whether that affects the validity of the entire Act or not.

2. The Essential Supplies (Temporary Powers) Act, XXIV [24] of 1946 was passed by the Central Legislature as it was constituted under the Government of India Act, 1935. Under entries 27 and 29 of List 2 of the Government of India Act trade and commerce within the province and production, supply and distribution of goods

were Provincial subjects. By the India (Central Government and Legislature) Act, 1946, 9 and 10, George VI, Chap. 39, the Central Legislature was empowered to make laws with respect to trade and commerce in, and the production, supply and distribution of, certain specified goods. In exercise of the power thus conferred on it, the Central Legislature passed the Essential Supplies Act for controlling the production, supply and distribution of, and trade and commerce in those goods.

3. The original Act was for a period of one year. Questions about its validity on the grounds of its extension from time to time were considered by the Supreme Court in [Joylal Agarwala Vs. The State](#), and it was held that the Act was not invalid on that ground. The validity of Sections 3, 4 & 6 of the Act on the ground that they purport to delegate essential powers of legislation has not yet been considered by the Supreme Court. This is the question that falls to be considered in the present reference.

4. The sections of the Act the validity of which is challenged are Sections 3, 4 and 6. Section 3 is the main section in the Act and confers on the Central Government power to make rules for regulating or prohibiting the production, supply and distribution and trade and commerce in certain specified articles. It runs as follows :

Section 3.--Powers to control production, supply distribution, etc., of essential commodities.

(1) The Central Government, so far as it appears to it necessary or expedient for maintaining or increasing, supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1) an order made thereunder may provide :

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(c) for controlling the prices at which any essential commodity may be bought or sold;

(d) for regulating by licenses, permits or otherwise the storage, transport, distribution disposal, acquisition, use or consumption of any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(f) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order;

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles, which, in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental, to public interest;

(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(j) for any incidental and supplementary matters including in particular the entering, and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

$$\begin{array}{lll} (3) & * & * \\ (4) & * & * \end{array}$$

Sections 4 and 6 run as follows :

"4. Delegation of powers :--The Central Government may by notified order direct that the power to make orders 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 Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction."

"6. Effect of orders inconsistent with other enactments:--Any order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

5. The applicant's case is that Section 3 of the Act gives too wide a power to the Central Government to make rules and regulations and to pass orders in respect of a very wide field of legislation so wide as almost to cover the whole of Entry 29 of List 2, Government of India Act. It formulates no policy and lays down no standard for the guidance of the Central Government. The extent to which the Central

Government may act in exercise of the powers conferred upon it by Section 3 is left entirely to its own subjective discretion and in this connection emphasis is laid upon the words "so far as it appears to it necessary or expedient." It is contended that the power so conferred is "vagrant and uncanalised and not confined within banks which keep it from overflowing" (to quote the words of Cardozo J. in *Panama Refining Co. v. Ryan* (1935) 79 Law Ed. 446).

6. As regards Section 4 it is urged that that Legislature has no power to authorise sub-delegation of the power conferred on the Central Government and further that even if it were permissible to authorise sub-delegation, the persons to whom the power may be sub-delegated, are so numerous and include persons so unqualified to exercise the powers under the Act as to make the sub-delegation an arbitrary one.

7. As regards Section 6 the contention is that the power to repeal existing statutes cannot be delegated at all because it is an essential legislative function which must be performed by the Legislature itself. Lastly, it is urged that Sections 4 and 6 are not severable from Section 3 and even if Section 3 be valid and any one of the Sections 4 and 6 be invalid the whole Act is invalid.

8. On behalf of the State the Advocate General has urged that all the three sections were lawfully enacted and are not invalid on the ground of improper delegation of the legislative power. His contention in the first place is that the power of delegation is implicit in the power of legislation and the extent to which the delegation is made or sub-delegation allowed is for the Legislature to determine and is not a matter for the Courts to consider; and that in the alternative, even if the Legislature has no unlimited power in the matter of delegating its powers to other persons or bodies, the limit merely is that in every enactment it must lay down a certain policy and having done that the filling up of the details may be left to another authority. He contends that the Act lays down a policy and that is enough.

9. How far the Legislature has power to delegate its legislative functions (using the words in a loose sense) has been the subject matter of discussion in numerous cases both in this country and abroad. A Full Bench of this Court of which one of us was a member in *Surya Pal Singh v. State of Uttar Pradesh*, 1951 ALL. L. J. 365 discussed the matter at length and certain conclusions were recorded. It is, however, no longer necessary to refer to that or any other case because the matter has recently been authoritatively decided by the Supreme Court in *re Constitution of India and Delhi Laws Act (1912) etc. In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, . The Supreme Court was called upon to decide whether the whole or any parts of 3 enactments were valid or invalid on the ground of delegation of powers. These enactments were--the Delhi Laws Act, 1912; the Ajmer Merwara (Extension of Laws) Act, 1947 and the Part C. States (Laws) Act, 1950.

10. Section 7, Delhi Laws Act empowered the Provincial Government by notification in the official gazette to extend, with such restrictions and modifications as it may think 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.

11. Section 2, Ajmer-Merwara (Extension of Laws) Act, 1947, empowered the Central Government by notification in the official gazette to extend to the Province of Ajmer-Merwara, with such restrictions and modifications as it thinks fit, any enactment which is in force in any other province at the date of such notification.

12. Section 2, Part C States (Laws) Act, 1950, which was passed by the Indian Parliament after the coming into force of the present constitution authorised the Central Government by notification in the official gazette to extend to any Part C State or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State at the date of the notification. There was a proviso to the section in these words :

"Provided that provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State."

13. This proviso to Section 2, Part C States (Laws) Act, 1950, roughly corresponds to Section 6, Essential Supplies (Temporary Powers) Act, 1946.

14. By a majority of four to three the Supreme Court held that Section 7, Delhi Laws Act, 1912 and Section 2, Ajmer-Merwara (Extension of Laws) Act, 1947 and the main portion of Section 2, Part C States (Laws) Act, 1950 were valid and the delegation thereby made was within the competence of the Legislature but that the proviso to Section 2, Part C States (Laws) Act, 1950 quoted above was invalid because the function of repealing existing laws must be performed by the Legislature itself and cannot be delegated.

14A. The seven learned Judges of the Supreme Court who decided the above case have given separate judgments. Each of the counsel appearing in the case before us has contended that the majority of the Judges of the Supreme Court support their respective view-points.

15. As observed by Patanjali Shastri C.J. in Raning Rawat v. State of Saurashtra, Cri. Appeal 15 of 1951, D/- 27-2-1952 (S. C.), while undoubtedly certain definite conclusions were reached by the majority of the Judges who took part in the decision in regard to the constitutionality of certain specified enactments, the reasoning in each case was different, and it is difficult to say that any particular principle has been laid down by the majority which can be of assistance in the determination of other cases. Nevertheless, we must make an attempt to find out what precisely the majority of the learned Judges of the Supreme Court have laid down for the guidance of the Courts in India.

16. In the aforementioned case it was conceded on all hands that where the Legislature derives its power through an Act of a superior Legislature or from a written constitution, then in the absence of anything to the contrary, it must be presumed that the Legislature so created :

(a) cannot act beyond the limits laid down in the instrument which gave it birth, and that

(b) it cannot create another independent or parallel legislative power and arm it with the same powers as are possessed by itself. It was also agreed that the Legislature must, in order to perform its functions effectively, be able.

(a) to delegate to another body or person the discretion to bring into effect an Act of the Legislature complete in itself but conditional upon the exercise of that discretion, and

(b) to delegate to subordinate bodies the power to make rules and regulations for the purpose of filling in matters of detail so as to make the legislative enactment effective.

17. The controversy centered round a short point, namely, whether, subject to the two limitations mentioned, above, the legislature had absolute power of delegation or its power of delegation was limited to delegation of unessential legislative functions only. It had been said that the Legislature could not abdicate its functions. The question was : what amounts to abdication? Two learned Judges, Patanjali Sastri J. (now the Chief Justice of India) and Das J., were clearly of the opinion that abdication merely meant creation of a parallel Legislature not subordinate to the Legislature which created it or in other words the only restrictions on the power of a Legislature to delegate its functions were those described above, namely, that it cannot act beyond the limits imposed upon it in the instrument creating it and that it cannot create a parallel Legislature. Three other learned Judges, Kania C. J., Mukherjea and Mahajan JJ., were definitely of the other view. Having examined the judgment of Fazl Ali and Bose JJ., we are of opinion that these two learned Judges were also not prepared to give to the Legislature absolute power of delegation, but they seem to hold that the Legislature has wider power of delegation than the other three learned Judges were prepared to concede.

18. Kania C. J. observed that essential powers of Legislature cannot be delegated. His Lordship explained what these essentials were. The essentials of such function are the determination of the legislative policy and its formulation as a rule of conduct.

19. Fazl Ali J., summed up his conclusions as follows :

"(1) The Legislature must normally discharge its primary Legislative function itself and not through others.

(2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words it can do everything which is ancillary to, and necessary for, the full and effective exercise of its power of legislation.

(3) It cannot abdicate its Legislative functions, and therefore, while entrusting power to an outside agency, it must see that such agency, acts as a subordinate authority and does not become a parallel Legislature.

(4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enable the American Courts to check undue and excessive delegation but the Courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the Legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which the delegation amounts to "abdication and self effacement."

Mahajan J., approved the law summarised by Crawford in his book on Construction of Statutes at pages 25, 26 in the following words :

"So far, however, as the delegation of any power to an executive official or administration board is concerned, the Legislature must declare the policy of the law and the legal principles which are to control in given cases and must provide a "standard to guide the official or the board empowered to execute the law. This standard must not be too indefinite or general. It may be laid down in broad general terms. It is sufficient if the Legislature lays down an intelligible principle to guide the executive or administrative official."

Mukherjea, J. observed :

"The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the Legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the frame work of that policy."

Bose J. was of the opinion that the view expressed by the Privy Council in various cases furnished the criteria for judging whether the delegation was permissible or not. His Lordship held that there were three restrictions on the powers of the Legislature.

(1) that the Legislature cannot act beyond the ambit of its powers the extent of which must be gathered from the document which brings it into being.

(2) that it cannot create a new Legislature for the purpose of legislating generally and

(3) that it cannot abdicate. This phrase his Lordship seemed to explain by saying that every Act of the Legislature must be "Legislation".

His Lordship further held that delegation cannot be extended beyond the scope which had been hallowed by past history. He held the proviso to Section 2 of the Part C States (Laws) Act, 1950 to be invalid on the ground that such power of delegation had not been exercised in the past. His Lordship added with regard to one further disability of the parliament under the present Constitution that

"when parliament had been directed to do a particular and specific thing under the Constitution and particularly under the Chapter on fundamental rights, as, for example, to fix a maximum period of detention under Article 22(7)(b) that sort of duty cannot be delegated."

20. It would thus appear that the majority of the Judges of the Supreme Court have held that besides the two restrictions upon the power of the Legislature mentioned already and agreed to on all hands, there is a third restriction concerning the power of delegation, that it cannot abdicate its functions. According to the majority of Judges, abdication does not consist merely in creating a parallel or independent Legislature. There will be abdication, for instance, if the Legislature were to arm the delegate with the power to repeal existing laws.

What precisely would amount to abdication has not been conclusively laid down by the majority. While Kania C.J., Mahajan and Mukherjea JJ. would seem to hold that if the Legislature lays down a policy for the guidance of the delegate, then there will be no abdication, Bose J. would not lay down any such proposition. His Lordship would seem to hold that the only test of abdication is that the impugned law cannot be said to be "legislation" at all. Fazl Ali J. would also seem to hold likewise. There is, therefore, no majority for the view that the Legislature must in all cases enunciate a policy or and lay down a standard.

21. If the correct view be that if an Act of the Legislature can be held to be "legislation" on a particular subject the extent of delegation is immaterial, (and in our opinion this is the correct view), then there can be no question that Sections 3 and 4, Essential Supplies Act are legislation and are intra vires the legislation. If on the other hand, the correct view be that the legislation must in all cases lay down a policy or standard for the guidance of the delegatee of the power of subordinate legislation, even then in our opinion Sections 3 and 4, Essential Supplies Act are intra vires.

22. The second world war necessitated the control of production, supply and distribution of goods and trade and commerce in various articles in India. With that object the Defence of India Act was enacted empowering the Central Government with vast powers to control the production, supply and distribution of goods and trade and commerce therein. The Defence of India Act expired on the cessation of emergency caused by the War i. e. on 80-9-1946. Though the War had ended the scarcity and short supply of essential commodities like foodstuffs and other essential goods continued. It was, therefore, thought necessary that the powers which the Central Government enjoyed under the Defence of India Act should be continued during a further limited period. With that object in view the Essential Supplies (Temporary Powers) Act 1946 was enacted.

23. The Preamble to the Act (which was deleted by Act LII [52] of 1950, but which was in force at the time when the offence which is the subject matter of the case which has given rise to the present reference was committed) was as follows:

"Whereas it is necessary to provide for the continuance during a limited period of powers to control the production, supply and distribution, of, and trade and commerce in, foodstuffs (including edible oil-seeds and oils) cotton and wollen textiles, paper (including newsprint), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel, and mica."

Section 2 defines "essential commodities." These include the articles mentioned in the preamble.

24. Section 3 authorises the Central Government to regulate or prohibit the production, supply and distribution of essential supplies and trade and commerce therein. It lays down that the regulation and prohibition was to be done for a definite object, namely, for maintaining or increasing supplies of essential commodities, or for securing their equitable distribution and availability at fair prices. Thus a definite policy in the shape of the objective to be achieved has been enunciated. The manner and method of achieving the objective or policy could not be foreseen. These would vary from place to place and from time to time. They could be ascertained and fixed only by experiment and trial.

It was, therefore, necessary to give to the executive a wide discretion for determining the mode in which the objective was to be achieved and for that reason the words "so far as it appears to the Central Government necessary or expedient" were mentioned. It cannot be said that Section 3 does not lay down the policy of the Legislature or that the policy does not furnish a rule of conduct by which the discretion of the Central Government is to be guided. The powers conferred on the Central Government are no doubt wide, indeed very wide, but they are not unlimited or unrestricted. The Central Government has not been created an absolute dictator. Its discretion is confined and limited to certain set purposes mentioned in the section. It cannot travel beyond those purposes.

25. In Clause 2 of Section 3 the Legislature has further given details of the manner in which the power conferred by Sub-section (1) may be exercised. These details are further indications of the intention of the Legislature and of its policy as to how the power conferred upon the Central Government is to be exercised, though for obvious reasons these details and illustrations could not be exhaustively enumerated. The general words, without prejudice to the generality of the power conferred by Sub-section (1) were added in Sub-section (2) to ensure that the general power conferred by Section 8 (1) was not to be confined without the limits of the instances mentioned in Sub-section (2).

26. Mr. Pathak urged that not only there must be a general policy enunciated but that there must also be a standard laid down for the guidance of the subordinate agency. It appears to us that there is no essential difference between policy and standard. Policy usually refers to the objective to be attained by a legislative enactment. Standard is a rule for the measure of quantity, extent, value or quality. It also means a model, criterion or test. In the latter sense policy and standard may be the same thing. In the former sense they may be different. Where the subject matter does not deal with quantity, quality or extent, there is no question of any standard being laid down as apart from policy. In our view the majority of the Judges of the Supreme Court did not insist upon standard, as distinguished from policy, being laid down by the Legislature in every enactment before it can delegate its powers to a subordinate body.

27. The delegation of power similar to that made in Section 3 has been made in several other Acts and has been upheld as valid.

28. In *Shannon v. Lower Mainland Dairy Products Board* (1938) A.C. 708 (P. C.) the Natural Products Marketing (British Columbia) Act, 1936 provided for a scheme to enable the Lieutenant Governor in Council to set up a Central British Columbia Marketing Board, to establish or approve schemes for the control and regulation within the Province, of the transportation, packing storage and marketing of any natural products, to constitute Marketing Boards to administer such schemes, and to vest in those Boards powers considered necessary or advisable to exercise those functions including the power to fix and collect license fees. This enactment gave very wide powers to the Lieutenant Governor in Council. No standards were laid down and power of sub-delegation was also given to him. The Act was challenged on the ground of unconstitutional delegation of legislative functions.

29. The Privy Council repelled this objection for the reasons that the objection was subversive of the rights which the Provincial Legislature enjoyed while dealing with matters falling within the classes of subjects in relation to which the constitution had granted legislative powers.

30. The decision of the Privy Council seems to have met with the approval of the Supreme Court in the Delhi Laws Act case.

31. In the War Measures Act passed by the Canadian Parliament, the provisions were very similar to the provisions of the Essential Supplies Act. It was upheld both by the Canadian Courts and by the Privy Council, vide (1) *In re, G.E. Gray* (1918) 67 S. C. R. (Can) 150. (2) *Chemical Reference Case* (1943) S. C. R. (Can) 1, (3) *Fort Frances Pulp and Paper Co. Ltd. v. Manitoba Free Press Co. Ltd.* (1923) A. C. 695.

32. The delegation of power in the Defence of India Act was similar in terms to that made in the Essential Supplies Act. The Act was upheld as valid by a Pull Bench of this Court [H.N. Nolan and Another Vs. Emperor](#), . This case no doubt suffers from the infirmity that it was decided before the Supreme Courts decision in the *Delhi Laws Act* case was made and the matter was not discussed in the light of the principles deducible from that case. But the Privy Council also may be said to have approved of the delegation made in the Defence of India Act, as they specifically refer to the delegation and call the rules made under the Act as "delegated legislation" and do not question their validity, vide *Srinivas Mall v. Emperor* A. I. R. 1947 P.C. 135, at p. 139.

33. It must also be borne in mind that it is a fundamental principle of our law that rules or regulations or orders made under a power conferred by the Legislature upon a subordinate authority must be reasonable, vide *U.P. Zamindari Abolition Act Case; Suryapal Singh v. State of Uttar Pradesh*, 1951 ALL. L.J. 365 (F B.) at p. 395. This furnishes a justiciable standard for the Courts to apply to all subordinate legislation. By this wholesome rule no subordinate legislation may make rules and regulations which may be considered unreasonable. Public interest is thus safeguarded and the arbitrariness of executive bodies is thus curbed and controlled.

34. Mr. Pathak has referred to the *Panama Refining Co.'s case* (1935) 79 Law Ed. 446 and to *Schechter United States of America*, (1935) 79 Law Ed. 1570 in support of his contention. In the *Panama Refining Co.'s case* Section 9 (c), National Industrial Recovery Act of 1933 was challenged. This section provided:

"The President is authorised to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board commission, officer or other duly authorised agency of a State".

It was held :

"The Congress in Section 9 (c) declares no policy as to the transportation of the excess production. So far as this section is concerned, it gives to the president an unlimited authority to determine the policy and to lay down the prohibition or not to lay down as he may see fit".

35. The declaration of policy in the first section of the National Recovery Act was then examined and it was held that the general policy therein declared was to

remove the obstructions to the free flow of interstate and foreign commerce but that as to production the section had laid down no policy.

36. In those circumstances the Act was held to be invalid.

37. In the Essential Supplies Act, however, as pointed out above, a definite policy has been laid down. The facts of Panama Refining Co.'s case (1935-79 Law Ed. 446) are therefore clearly distinguishable .

38. In Schechter's case, (1935) 79 L Ed. 1570 at p. 1575 a code of rules was promulgated u/s 3, National Recovery Act of 1933. Section 3 authorised the President to make "Codes of fair competition". It was held that the Congress in authorising the making of Codes of fair competition had not laid down any policy or established a standard. Indeed it had not defined what it meant by "fair competition" as the term was used under the Act:

""Unfair competition" as known to the common law is a limited concept. Primarily and strictly, it relates to palming off of one's goods as those of a rival trader. In recent years its scope has been extended. It has been held to apply to misappropriation as well as misrepresentation, to the selling of another's goods as one's own--to misappropriation of what equitably belongs to a competitor."

38a. The fair competition of the Code could not be regarded as antithetical to unfair methods of competition and therefore was not included within the policy laid down in Section 1, National Recovery Act.

39. In our opinion the decision in Schechter's Case, (1935-79 L. Ed. 1570) does not furnish a guide for determining the question before us.

40. On the other hand Opp Cotton Mills Ins v. Administrator of the Wage & Hour Division of the Department of Labour, (1941) 85 L. EW. 624 may be profitably consulted. In that case, the question was whether the Fair Labour Standards Act was valid or not. That Act made a provision for the fixing by administrative agencies of minimum wages for employees engaged in the production of goods for interstate commerce including for this purpose the determination whether employees so engaged in any particular industry shall be classified and be subjected to wage differentials. It was held that the delegation was constitutional. It was observed that the essentials of the legislative function were preserved when the Legislature specified the basic conclusions of fact, upon the ascertainment of which from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective.

Applying this principle to the case in hand it may be said that the Legislature in Section 3 has specified the basic conclusions of fact namely maintenance and increase in supplies of essential commodities, securing of equitable distribution, and availability at fair prices of essential commodities. The Act prescribes an administrative agency which is to find these facts and the Legislature ordains that

upon these facts being found its command is to be effective by the promulgation of orders in pursuance of the facts found.

41. Section 4, Essential Supplies Act is challenged on the ground that it empowers sub-delegation and that sub-delegation is not permitted. Emphasis is laid upon the phrase "selected instrumentalities" occurring in the judgment of the Supreme Court of America in *Schechter*'s case, (1935-79 L Ed. 1570) :

"So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of sub-ordinate rules within the prescribed limits and the determination of facts to which the legislation is to apply."

42. Mr. Pathak urged that the instrumentalities to which the power is delegated must be selected by the legislature itself and that therefore there can be no sub-delegation. There is no force in this contention. It was repelled by Privy Council in *Shannon*'s case (1938 A. C. 708 P. C.) already mentioned. Nor can it be said that the sub-delegation has been permitted to be made to a vague or indefinite or undefined class. Section 4 permits sub-delegation to officers or bodies subordinate to the Central Government or to the Provincial Governments or such officers or authorities as are subordinate to the Provincial Governments. Sub-delegation therefore has been permitted to be made to definite class of persons or bodies, the selection whereof is to be made by the Central Government. The selection of persons in whom the power is to be vested by the Legislature must rest with the Legislature and is not a concern of Courts.

43. Section 6 in our opinion must be held to be invalid on the basis of the decision of the majority of the Judges of the Supreme Court in the *Delhi Laws Act* case.

44. The Advocate General contended that the terms of the proviso to Section 2 of Part C States (Laws) Act, 1950 are distinguishable from the provisions of Section 6. We do not think that there is any essential difference between the two. Whereas the proviso to Section 2, Part C States (Laws) Act, 1950 authorised the Central Government to make express provision for the repeal of an existing law, Section 6, Essential Supplies Act authorises the Central Government to achieve the same object impliedly by passing an order or making a rule or regulation in conflict with an existing law. There is no difference in principle between an "Express repeal" and "an implied repeal."

45. It now remains to be considered whether Section 6 being invalid affects the validity of the other provisions of the Act. This question also to our mind is concluded by the decision in the *Delhi Laws Act* Case. The proviso to Section 2 of Part C States (Laws) Act though invalid was held to be severable from the rest of the enactment. In the same way Section 6, Essential Supplies Act is severable from the rest of the enactment.

46. It was urged by Mr. Pathak that Section 6 must be read not only along with Section 3 but as part of Section 3 and read in that light the Legislature intended to confer on the Central Government a power in which orders both consistent and inconsistent with the existing laws could be made. It was urged that where the power delegated is of so wide a scope that it may step beyond constitutional limits the whole of the power is void and reference was made in this connection to the decision of the Supreme Court in the "bidis" case; [Chintaman Rao Vs. The State of Madhya Pradesh](#), . This argument is without foundation. In the "bidis" case the Central Provinces and Berar Regulation of Manufacture of Bidis (Agricultural Purposes) Act, LXIV [64] of 1948 was challenged as unconstitutional. That Act empowered the Deputy Commissioner to prohibit the manufacture of bidis during the agricultural season in such villages as he may specify. It was provided in Section 4 (2).

"No persons residing in a village specified in such order shall during the agricultural season engage himself in the manufacture of bidis and no manufacturer shall during the said season employ any person for the manufacture of bidis."

The Act was impugned on the ground that it contravened Article 19(1)(g) of the Constitution. The question was whether the Act fell within the ambit of the saving clause in Article 19(6). It was held that the Act was not saved by Article 19(6) and infringed the fundamental right to carry on a trade or business under Article 19(1)(g). It was observed that though the object of the Legislature was to save agricultural labour from being engaged in the manufacture of bidis, the language employed in the statute prohibited a manufacturer of bidis from employing any person in his business, whether belonging to the class of agricultural labour or not. To the argument that the Act may be held valid so far as regards the agricultural labour alone and rejected so far as other persons were concerned, the Supreme Court observed :

"The law even to the extent that it could be said to authorise the imposition of restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly void."

It will be seen at once that the impugned section in that case applied both to objects which were constitutional and to objects which were unconstitutional. The restriction of the section to constitutional objects alone could only be achieved by rewriting the section. This the Courts cannot do and therefore the Supreme Court held that the whole section was void. But where by an express and separate provision something unconstitutional is allowed to be done, that unconstitutional provision can be cut out from the rest of the Act and no rewriting of the section is involved.

If Section 6, Essential Supplies Act were not there, the power conferred u/s 3 could not be so exercised as to infringe an existing law. This rests upon the general principle that all subordinate legislation must be in conformity with the law of the land. Therefore in the absence of Section 6, in exercise of the powers conferred u/s 3, the Central Government could not have made a rule or order contrary to the existing laws. It is Section 6 which confers power upon the Central Government to do that which could not be done otherwise. Section 6, therefore, could be easily separated from Section 3.

47. Our answers, therefore, to the questions referred to us are as follows :

(1) Sections 3 and 4, Essential Supplies (Temporary Powers) Act XXIV [24] of 1946 are intra vires, while Section 6 is ultra vires the Indian Legislature which passed the Act.

(2) The invalidity of Section 6 does not affect the validity of the rest of the Act.