

Ram Kishan Vs. State

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Court : Allahabad

Decided On : May-19-1950

Reported in : AIR1951All181

Judge : Wali Ullah, ;Sankar Saran and ;Desai, JJ.

Acts : Constitutional Law; Uttar Pradesh Control of Supplies (Temporary Powers) Act, 1947 - Sections 1(4); Uttar Pradesh Control of Supplies (Continuance of Powers) Ordinance, 1948; Uttar Pradesh Control of Supplies (Continuance of Powers) Act, 1948

Appeal No. : Criminal Revn. No. 794 of 1949

Appellant : Ram Kishan

Respondent : State

Advocate for Def. : K.L. Misra, Addl. Government Advocate

Advocate for Pet/Ap. : Shanti Bhushan, Adv.

Judgement :

Wali Ullah, J.

1. The appct., Ram Kishan, has come up in revision to this Ct. against the order of the learned Ses. J. by which his conviction under Section 6, U. P. Control of

Supplies (Temporary Powers) Act, Act II [2] of 1947, hereinafter called the Supplies Act, has been affirmed. He has been sentenced to a fine of Rs. 200/- or, in default, to undergo R. I. for two months.

2. It appears that on 17-6-1947, the Dist. Mag. of Bijnor, under the delegated authority of the Provincial Govt., passed an Order (Ex. P. 7) under Section 3 (e) of the Supplies Act controlling the rate for hiring out Kolhus. It provided that a Kolhu 8' x 11' might be hired out for Rs. 86/- only for the whole sugarcane crushing season. Para. 3 of the Order provided that it would have retrospective effect from 2-12-1946. Lastly, it provided for punishment for a contravention of its provisions & added that the Ct. trying any offence against that Order might also direct that any stock in respect of which the Order had been contravened be forfeited to Govt. On 3-12-1947, the appct. who is the Munib of a firm known as Bhannamal Gulzari Lal hired out a kolhu 8' x 11' to one Natthu Singh for RS. 145/- when the control rate as fixed by the Dist. Mag's, order was Rs. 86/- only. He was accordingly prosecuted under Section 6 of the Act for contravening the order of the Dist. Mag. In the course of the trial, he admitted that he had hired out the kolhu in question to Natthu Singh for BS. 145. He, however, pleaded that the order of the Dist. Mag. was not in force on the date of the transaction, i.e., 3-12-1947.

3. The learned Mag., however, held that the order of the Dist. Mag. dated 17-6-1947, fixing Rs. 86/- only as the rate for hiring out Kolhus was in force on the date of the transaction, i.e., on 3-12-1947. The appct. was, therefore, convicted & sentenced to undergo R. I. for six months & also to pay a fine of one thousand rupees & the stock, in respect of which the order had been contravened, was also declared to be forfeited to Govt.

4. On appeal, the learned Ses. J. agreed with the trial Ct. that the order of the Dist. Mag. was in force & had been contravened by the accused. His conviction was, therefore, maintained. Regarding the question of sentence, however, the learned Judge found as a fact that the appct. had entered into the transaction with Natthu Singh in absolute ignorance of any binding orders prescribing the rates for hiring out Kolhus. In view of these circumstances, the appeal was partly allowed, the sentence of imprisonment as well as the order for forfeiture of stocks were set

aside & the sentence of fine was also reduced to Rs. 200/- only, with two months' R. I. in default of payment of fine.

5. This case, in the first instance, came on for hearing before a learned single Judge, who referred it to a Bench of two Judges. In view of the importance of the questions involved in the case, the Bench, on 4-11-1949, referred two questions to a F. B.

6. Two questions have been referred to the F. B. for decision :

(1) Whether the U. P. Control of Supplies (Temporary Powers) Act, Act II [2] of 1947, was in force on 3-12-1947, or would be deemed to be in force on that date in view of the U. P. Ordinance No. VIII [8] of 1948 and the U. P. Act XLIII [48] of 1948 ?

(2) Whether Sub-section (4) of Section 1, U. P. Control of Supplies (Temporary Powers) Act, 1947, in so far as it empowers the Provincial Govt. to extend the life of the Act, is ultra vires the powers of the Provincial Legislature ?

7. With regard to the first question, it is clear that by reason of the provisions contained in Section I (4) of the Act, it would cease to have effect on the expiration of one year beginning with 1-10-1946, i.e. after 30-9-1947. There is, however, a provision contained in Sub-clause (4) to the effect that the Provincial Government may, by notified order, direct that the life of the Act would be extended for one year more from that date, i.e. 30-9-1947. The validity of this provision has also been questioned before us and it is the subject-matter of question 2.

8. On 25-9-1948, an ordinance, U. P. Ordinance No. VIII [8] of 1948, was promulgated by the Governor of the United Provinces. Section 2 of this Ordinance provided that the principal Act, viz., U. P. Act II [2] of 1947, was to continue in force until the withdrawal, repeal or expiry of the Ordinance. This Ordinance proceeded on the footing that the principal Act, though temporary in its duration, was still in force on that date, i.e. 25-9-1948. The provisions of Section 2 of the Ordinance, therefore, could continue the operation of the principal Act only from 25-9-1948, until the withdrawal, repeal or expiry of the Ordinance.

9. Then, on 15-12-1948, the United Provinces Legislature passed the U. P. Control of Supplies (Continuance of Powers) Act, No. XLIII [43] of 1948. Section 2 of that Act provided that the principal Act, i.e. the U. P. Control or Supplies (Temporary Powers) Act of 1947, shall be continued until 30-9-1950. By Section 3, the U. P. Ordinance No. VIII [8] of 1948 was repealed. The preamble to this Act makes it clear, however, that the Legislature has proceeded on the footing that the original Act, viz. the U. P. Act II [2] of 1947, had been continued till then by the U. P. Ordinance, i.e. the U. P. Control of Supplies (Continuance of Powers) Ordinance No. VIII [8] of 1948, and as the Ordinance was due to expire, on the expiry of six weeks from the re-assembly of the United Provinces Legislature, the new Act i.e. U. P. Act XLIII [43] of 1948, was enacted. The U. P. Act XLIII [43] of 1948, must, therefore, be looked upon as a piece of legislation which purports to continue the life of the original Act, i.e. Act II [2] of 1947, not from 30-9-1947 but from 15-12-1948, the date when Act XLIII [43] of 1948, came into force. This is so because the latter Act has assumed that the life of the original Act had been validly extended by the U. P. Ordinance No. VIII [8] of 1948.

10. The net result, therefore, is that the principal Act, U. P. Act II [2] of 1947, by its own force, remained in force till 30-9-1947. In the interval between 30-9-1947 and 25-9-1948, however, the original Act was kept alive only by a notified order issued by the Provincial Govt. under Section 1 (4) of the Act. This was order No. O-4216/XXIX-A dated 24-9-1947, notified in U. P. Govt. Gazette dated 27-9-1947, by which the Governor of the United Provinces ordered that the Act shall continue to remain in force until 30-9-1948. If, however, Sub-section (4) of Section I be considered to be ultra vires the powers of the Provincial Legislature, the authority conferred on the Provincial Govt. to extend the life of the Act by a notification in the Gazette would come to an end. The result, therefore, would be that U. P. Ordinance No. VIII [8] of 1948, which proceeds on the footing that the original Act had been validly kept alive by a notified order of the Provincial Government till 25-9-1948, would be of no avail in keeping the Act alive in the interval between 30-9-1947 and 25-9-1948. Similarly the U. P. Act, XLIII [43] of 1948, which proceeds on the assumption that the Ordinance had kept the original Act alive till 15-12-1948, would not avail to continue the life of the Act in the interval between 25-9-1948 and 15-12-1948.

11. If the principal Act be deemed to have expired on 30-9-1947, as was laid down in Section 1 (4) of the Act, neither the Ordinance which was promulgated on 25-9-1948, nor the Act which came into force on 15-12-1948, would keep it alive or continue its operation beyond 30-9-1947, and this is so for two reasons: (i) Neither the Ordinance nor the Act purports to have retrospective effect as both of them proceed explicitly on the footing that the Act was alive till the date of their own enactment. (ii) Neither of them purports to revive an enactment which had already ceased to be operative. Furthermore, 'to continue' by means of a new enactment, the life of an old enactment, which, ex hypothesi, has ceased to be operative long before the new enactment came into existence is something in the nature of a contradiction in terms. It is certainly possible that a new Statute may explicitly & in clear terms provide for what may be described as 'continuance' of an old expired Statute, but that would, in the eye of law, amount to a fresh enactment of the provisions of the old Statute & in the absence of anything in the new Statute which may give it retrospective effect, the provisions of the old Statute in such a case, again, have effect only from the date of the enactment of the new legislation onwards. The result of all this discussion, therefore, is that if the provisions of Section 1 (4) of the Supplies Act be found to be ultra vires the powers of the Provincial Legislature, the notfn. by the Provincial Govt. in the Gazette that the life of the Act was extended for another year would have absolutely, no effect in law, with the result that the Supplies Act would cease to be operative after 30-9-1947.

12. The second question referred to F. B. is

'Whether Sub-section (4) of Section 1, United Provinces Control of Supplies (Temporary Powers) Act, 1947, in so far as it empowers the Provincial Govt. to extend the life of the Act, is ultra vires the powers of the Provincial Legislature?'

This is the main question to be considered in this case. Section 1 (4), United Provinces Control of Supplies (Temporary Powers) Act, 1947, is in these terms :

'It shall cease to have effect on the expiration of one year beginning with October 1, 1946, or, if the Provincial Government by notified order so directs, of two years beginning with that date, except as respects things done. . .'

Therefore, before the expiry of one year from 1-10-1946, the Provincial Govt. may by a notfn. in the Gazette direct that the Act shall remain in force for one year more from that date, i.e. 30-9-1947. As seen above, such a notfn. was made by the Provincial Govt. on 27-9-1947. It directed that the Act shall continue to remain in force until 30-9-1948.

13. If this notfn. has the effect of validly extending the operation of the Act by one year, the result would be that the Control Order of the Dist; Mag. issued under the provisions of the Act would remain in full force on 3-12-1947, the date on which a violation of the Control Order was committed by the appct.

14. In the present case, therefore, the cardinal question which has to be decided is whether the power conferred by Section 1 (4) of the Supplies Act upon the Provincial Govt. to direct that the Act shall have effect even after the expiry of one year from 1-10-1946, is a power which can be validly delegated to the Provincial Govt. The power conferred by Section 1 (4) of the Act is obviously a power to prolong the life of an Act should the Provincial Govt. so desire. There is, here, no restriction or limitation on the exercise of such a power by the Provincial Govt. It is an uncontrolled power that has been conferred. By its own force, the Act could remain operative only for one year from 1-10-1946; after that date its life, or its continuance in force, for another year depends entirely upon the unfettered discretion of the Provincial Govt. Two questions arise: (1) Is the prolongation of the life of an Act necessarily of the nature of an essential legislative act? & (2) How far is delegation of such a power i.e. power of continuance of an Act, permissible in the case of a Provincial Legislature in India?

15. It has been contended on behalf of the appct. that the Order issued by the Provincial Govt. & notified in the U. p. Gazette which directed the continuance of the Act for another year was bad in law inasmuch as the provisions of Section 1 (4) of the Act authorising the Provincial Govt. to extend the operation of the Act were ultra vires the Provincial Legislature. It could not prolong the life of the Act & therefore the Act ceased to have operation after 30-9-1947. Mr. Shanti Bhushan, the learned counsel for the appct., has further contended that no Indian Legislature can create a new Legislature, or a new legislative body; that delegation

of such legislative power, as has been done in the present case, is not permitted by the Constitution. It is conceded, however, that certain functions in connection with legislation may be delegated e.g. 'commencement' of an enactment can be left to the discretion of an executive authority, but not what are commonly known as essential legislative functions. It has been urged that 'duration' of an Act can hardly, if ever, be left to any authority other than the Legislature. It has been conceded that the duration of an Act can be left to the discretion of a non-legislative body only in certain circumstances, i.e. only in a case where it involves the determination of a fact or state of things specified in the Statute itself. It has been urged that the extension of the life of an Act beyond the period fixed in the Act itself is one of the essential legislative functions of a Legislature. It cannot, therefore be delegated by the Legislature to a non-legislative authority.

16. On the other hand, it has been strenuously contended by Mr. Kanhaiya Lal Misra on behalf of Govt. that Section 1 (4) of the Supplies Act does not really involve a delegation of any essential legislative function. The argument is that on a proper interpretation of Section 1 (4) of the Act, it would appear that the Legislature has merely enacted a piece of conditional legislation'; that in effect the Legislature has provided that the Act shall cease to have effect on the expiration of one year.... or of two years provided that in the latter case the Provincial Govt. so directs. It has, however, been conceded by him that according to one view a delegation of essential legislative functions is not permissible under the Const. of Ind. although the learned counsel has pointed out that there is no particular section in the Government of India Act, 1935, which actually prohibits such delegation. Lastly, as an alternative argument, learned counsel has contended that mere delegation of legislative power is not ultra vires the powers of the Legislature. The time of commencement or of termination of a Statute may be validly left to the discretion of the executive authority. Again, the learned counsel has invited our attention to the legislative practice in regard to delegation of powers extending over a very long period of time both in this country as well as in England. He has called our attention to a large number of enactments passed by Indian Legislatures, both Central & Provincial, in which various powers e.g., rule-making powers, sometimes limited & sometimes very extensive, have been left to the executive Govt. i.e, authorities other than legislative. Some of the enactments

referred to in this connection would be noticed later in this judgment. Learned counsel for the parties have referred us to a large number of decisions of Cts. in India as well as of the Judicial Committee of the P. C. They have also referred us to some American & Australian decisions.

17. In support of his contention, learned counsel for the appct. has strongly relied on the principles laid down in the recent decision of F. C. in *Jatindra Nath v. Province of Bihar*. That was a case in which F. C. had to decide whether the provisions of Section 1 (3), Bihar Maintenance of Public Order Act, 1947, were ultra vires the powers of the Provincial Legislature. Section 1 (3), Bihar Maintenance of Public Order Act, 1947, hereinafter referred to as the Bihar Act, provided : 'It shall remain in force for a period of one year from the date of its commencement.' There was, however, a proviso in the following terms :

'Provided that the Provincial Government may, by notification, on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that this Act shall remain in force for a further period of one year with such modifications, if any, as may be specified in the notification.'

It was held by the majority of F. C. that the provisions of Section 1 (3) of the Bihar Act allowing the life of the Act to be extended by a notfn. of Govt. based upon a resolution of both houses of the Legislature was void as it amounted to a delegation by the Bihar Legislature of their power to legislate. That being so, the F. C. in effect, held that no Act existed at the date when orders for detention in that case were made.

18. After the judgment of the F. C. in the case of *Jatindra Nath Gupta* the same question arose & was considered by the Calcutta H. C. in *Badal Bose v. Chief Secretary to Govt., West Bengal*, 53 C. W. N. 728 decided by a D. B. of that Ct. of Harries C. J. & Mitter J. That was a case under the West Bengal Security Act, 1948. Section 1 (4) of that Act provided for the duration of the Bengal Act in these terms :

'It shall in the first instance, remain in force for a period of one year; provided that if a resolution in that behalf, is, before the date on which under this sub-section it

would otherwise have ceased to operate, passed by the Provincial Legislature it shall continue in force for a further period of one year from such date.'

It will be noted in passing that under this proviso, there is no power of 'modification' of the Act as was the case with the Bihar Act dealt with by the F. C. Applying the decision of the F. C. in the case of Jatindra Nath Gupta the Bench held :

'In enacting Section 1 (4), West Bengal Security Act, the intention of the Legislature was to extend the Act after its expiry either by a resolution of the Provincial Assembly or by a resolution of the Legislature itself.

If it was the former the legislation was void & the extension invalid. If it was the latter, the extension was not done by the Legislature which is composed of the Governor & the Provincial Assembly, but by the Assembly only & it was, therefore, invalid.'

19. It was argued by the Advocate-General on behalf of Govt. that the decision of F. C. in that case did not necessarily lay down that the delegation of power to extend the life of an Act was a 'delegation of legislative power.' In regard to the observations in the judgment of Kania C. J. & Mahajan & Mukherjea JJ. in that case to the effect that extending the life of a Statute was a legislative act & the power to do so could not, therefore, be delegated, it was contended by the Advocate-General that those observations were unnecessary for the decision of the case & were thus purely obiter. It was, however, observed by the Bench :

'It being the duty of the F. C., which has become the S. C. of India to lay down the law & to state the principles of law applicable, even its obiter dicta must ordinarily be followed by inferior Courts including High Courts, unless there is very good reason for not doing so.'

Further, the Bench observed that the observations of those learned Judges in Jatindra Nath Gupta's case, were not really obiter; on the contrary, they clearly intended to hold that the delegation of a power to extend an Act was delegation of legislative power which was not permissible.

20. Again, the decision of F. C. was considered in a Madras case by a D. B. of that Ct. in re Veerabhadrayya, : (1949)2MLJ663 . In that case, the Bench had to consider the validity of Section 1(4), Madras Maintenance of Public Order Act, I [I] of 1947. Under this Sub-clause the Act was to remain in force for a period of one year, but the Provincial Govt. was empowered from time to time by notfn. in the Gazette, to extend the operation of the Act for a further period, or periods, not exceeding one year in the aggregate, if in their opinion it was expedient to do so. After a review of several well known decisions of their Lordships of the P. C. regarding the nature of conditional legislation & the distinction between delegation of a power to make a law & the delegation of a power to apply a law, if certain circumstances exist & after a full discussion of the decision of F. C. in the case of Jatindra Nath Gupta the learned Judges arrived at the conclusion that :

"The power or extending the life of an Act is clearly a legislative power & its delegation in the present case to the Provincial Govt. namely, the executive, is not warranted by any of the principles known to constitutional law.'

22. Further, they held that it was impossible to hold that the question raised in the cases before them regarding the validity of a power of extension conferred upon the executive of the Province by Section 1 (4) of the Act was not covered by the majority decision of the F. C. They repelled the contention advanced by the learned Advocate-General for Govt. in that case that a bare power to extend an Act was in the nature of conditional legislation & therefore valid. They went on to explain that:

'The word 'extend' is capable of more than one meaning. If it is merely a question of extending the operation of the Act already complete & alive, to other persons or goods or even to other areas not already specified in the Act itself, the argument of the learned Advocate-General on the authorities cited is perfectly sound. But if by 'extend' is meant to extend the life of the Act itself & to prolong its duration, it is a different matter & cannot be treated on the same footing as conditional legislation.'

23. Next, the learned Judges considered the contention advanced by the Advocate-General in that case that the decision of F. C. in the case of Jatindra Nath Gupta was not directly in point & that, in any event, the observations in some

of the judgments were mere obiter & at p. 673 it was observed :

'We do not, however, read the judgment of F. C. in the manner contended by the learned Advocate-General. We think it is a direct decision on the point & the majority of the Judges are clearly of opinion

that even a bare power to extend the life of an Act with or without modification is a legislative power which could not be delegated.'

24. Finally, they held that the provisions of Section 1 (4), Madras Maintenance of Public Order Act, 1947, were invalid.

25. The decision of the Bench of the Madras H. C. in re Veerabhadrayya, : (1949)2MLJ663 on the point that Section 1 (4), Madras Maintenance of Public Order Act, 1947, was ultra vires the powers of the Provincial Legislature was approved on 3-11-1949, In re E. P. T. Valyudum, : AIR1960 Mad324, by another D. B. of that Ct. to which one of the learned Judges of the previous D. B. In re Veerabhadrayya : (1949)2MLJ663 was a party.

26. The next case referred to us is that of Kishori Lal v. Debi Prasad : AIR1950 Pat50 decided by Agarwala C. J., Meredith & Ramaswami JJ. In that case the Patna Hh. Ct. had to consider the validity of the provisions of Section I (3), Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, which provided :

'It shall remain in force for such period as the Provincial Government may, by notification, fix : provided that the Provincial Government may from time to time, by notification, extend such period.'

It was held by the F. B. (Meredith J. dissenting) that Section I (3) of the Act was not ultra vires the Provincial Legislature on the ground that it was an improper delegation of legislative power to the executive Govt. Agarwala C. J. & Ramaswami J. appear to have expressed the view that, on the facts, the case before them was clearly distinguishable from the case before the F. C., namely, that of Jatindra Nath Gupta, . Both the learned Judges appear to lay great emphasis on the power of modification of the Act which was provided for in Section 1 (3), Bihar Maintenance of Public Order Act, 1947. Ramaswami J.,

repelled the main argument against the validity of Section 1 (3), Bihar Buildings Control Act by saying that the Legislature has determined the Legislative policy & its formulation as a rule of conduct. The Legislature has not delegated any authority or power to make the law; it has merely conferred upon the Provincial Govt.

'authority or discretion as to execution of the law enacted. The Legislature has only vested executive discretion regarding application of the law to a situation already in existence. Such a delegation is permissible in the sense that it is not in conflict with any constitutional principle of delegation of legislative powers.'

He then referred to the cases of *Queen v. Burah*, 5 I. A. 178 : (4 Cal. 172 P. C.), *Russell v. The Queen*, (1882) 7 A. C. 829 : (51 L. J. P. C. 77), *Hodge v. The Queen*, (1884) 9 A. C. 117 : (53 L. J. P. C. 1), *Powell v. Appollo Candle Co. Ltd.*, (1885) 10 A. C. 282 : (54 L. J. P. C. 7) and *Emperor v. Benoari Lal Sarma*, 72 I. A. 57 : (A. I. R. (35) 1948 P. C. 48 : 46 Cr. L. J. 589) as also to some cases from Australian Cts. & came to the conclusion that the impugned provisions of the Act in the case before him did not improperly delegate the legislative power to the Provincial Govt. At p. 69, he summed up the position thus :

'The section has merely vested executive discretion regarding the application of a law to a situation already in existence. The duration of the Act as also the area over which it is to operate has been left to the discretion of the Provincial Govt. Such a delegation is permissible & is not in conflict with any constitutional principle.'

Meredith, J.

27. who dissented from the majority view, in effect, said that he felt bound to accept the principles laid down by the F. C. in the case of *Jatindra Nath Gupta*, & as he put it, he did not consider it proper to express his own individual opinion upon the validity of the contentions put forward by the learned counsel before him. In short, he was of the view that the principles laid down by the F. C. must be accepted & in accordance with those principles, Section 1(3), Bihar Buildings Control Act must be regarded as ultra vires.

28. Lastly, we have the decision of a D. B. of our own Ct. Malik C. J. and Wanchoo J., in the case of Babu Ram Paliwal v. Rex, Cri. Mis. case No. 694 of 1949, & connected cases, decided on 29-7-1949, where the Bench had to consider the provisions of Section 1 (4), United Provinces Maintenance of Public Order Act, 1947 (U. P. Act IV [4] of 1947) in the light of the decision of the F. C. in the case of Jatindra Nath Gupta, . Section I (4) of that Act stands thus :

'It shall, in the first instance, remain in force for a period of one year, provided that, if before the expiry of the first period of one year, or any extended period, a resolution to that effect is passed by the Legislature, it shall remain in force for a further period of one year commencing from the date of such expiry.'

29. The question raised in that case was whether the proviso contained in Section I (4) of the Act was ultra vires the powers the Provincial Legislature. One of the learned Judges, Wanchoo J. definitely held that the impugned proviso was ultra vires the Provincial Legislature. In this view, the duration for which a particular Act should remain on the statute book is one of the essentials of the legislative power & it is for the legislative authority to fix that duration. In the case before him the impugned proviso was ultra vires the power of the Provincial Legislature because it amounted to a delegation of an essential legislative power. The other learned Judge, Malik C. J. however, while holding that--

'Strictly speaking, therefore, no legislative powers have been delegated to anybody, but the discretion exercisable by the Legislature as to the period during which a particular Act is to remain in force has no doubt been delegated.'

Remarked that:

'In the case before us the very life of the Act the question of its remaining on the Statute book is made dependent on the discretion of a body other than the Provincial Legislature as denned in the Government of India Act.'

Eventually the learned Chief Justice expressed his conclusions in these words:

'I am, therefore, inclined to hold that the proviso to Sub-section (4) of Section 1, U. P. Act was ultra vires, though I do not want to express any definite opinion as it

does not appear to be necessary in this case.'

30. I may note here, in passing, that before the decision of the F. C. in the case of Jatindra Nath Gupta , I had occasion to consider the question of the validity of Sub-section (4) of Section 1, U. P. Maintenance of Public Order Act, 1947, in the case of Gauri Nandan v. Rex : AIR1948 All414 & then I held that those provisions were valid inasmuch as they amounted to what is known as 'conditional legislation' rather than 'delegated legislation.' This decision of mine was followed by another learned single Judge, Wanchoo J. in the case of Shri 1008 Swami Harihara Nand Saraswati v. The Superintendent, Central Jail, Banaras : AIR1948 All435 . Later still in the case of Ram Bilas v. Rex : AIR1949 All748 , another learned single Judge, Bind Basni Prasad J. took the same view.

31. To sum up, it would thus appear that the principles enunciated by the majority of the F. C. in the case of Jatindra Nath Gupta, have been followed by Division Benches of Calcutta, Madras & Allahabad High Courts in determining the question whether or not similar provisions in Security Acts of those Provinces relating to an extension of the life of an Act were or were not ultra vires the powers of the Provincial Legislature. On the contrary, the F. B. decision of the Patna H. C. in the case of Kishori Lal Potdar : AIR1950 Pat50 (ubi supra) would appear to strike a dissenting note. The F. B. in that case had to consider the provisions of Section 1 (3), Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, which were very similar to the provisions of Section I (4), Supplies Act with which we are concerned in the present case. The majority decision of the F. B. was that the provisions were not ultra vires the powers of the Provincial Legislature. The learned Judges, who held this view, appear to have considered quite a number of authorities, particularly decisions of the P. C., & to have reached the conclusion that the principles deducible from those decisions supported their view. So far as the decision of the F. C. in the case of Jatindra Nath Gupta is concerned, the learned Judges seem to have distinguished that case on facts, particularly on the point that the Act before them did not confer any power on anybody to modify the provisions of the Act.

32. With great respect, I find myself unable to concur in the view taken by the majority of the F. B. of the Patna H. C. The decision of the F. C. in the case of Jatindra Nath Gupta makes it plain that the extension of the life of an Act, i.e., the duration of a temporary Act is an exercise of a legislative function & that such a power cannot be delegated to any non-legislative authority. It is no doubt true that the Bihar Act with which F. C. was concerned had also delegated the power of modification of the Act but the decision of the majority of the learned Judges of F. C., to my mind, has made it abundantly clear that the mere power to extend the life of an Act, apart from the question of modification of the Act, is a legislative power & that as such it cannot be delegated. According to Ramaswami J. at p. 69:

'The duration of the Act as also the area over which it is to operate has been left to the discretion of the Provincial Govt. Such a delegation is permissible & is not in conflict with any constitutional principle.'

To my mind, the view expressed here runs counter to the decision of F. C. in the case of Jatindra Nath Gupta .

33. Next, I proceed to consider the important decisions to which our attention has been invited by learned counsel for the parties. The first important case is that of *The Queen v. Burah*, 5 I. A. 178 : 4 Cal. 172 P. C. In this case the question was whether a section of an Indian Act conferring upon the Lieutenant Governor of Bengal power to determine whether the Act or any part of it should be applied to a certain district was or was not ultra vires. In the judgment of the P. C. the impugned legislation was held to be 'intra vires.' In this case several important points were decided by P. C. which may be summarised thus: (1) The Indian Legislatures (like the Colonial Legislatures) created under the Indian Constitution Act, act within the powers expressly limited by their Constitution. They are in no sense agents or delegates of the British Parliament which created them, but have, & were intended to have plenary powers of legislation, as large & of the same nature, as those of Parliament itself. The area is no doubt restricted, but within the area their powers are unrestricted.

(2) 'Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordships' judgment)

be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a United discretion, entrusted by the Legislature to persons in whom it places confidence is no uncommon thing; & in many circumstances, it may be highly convenient. It cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred' (p. 195).

(3) At p. 194, Lord Selborne observed with reference to the facts of the particular case :

'The Legislature determined that, so far a certain change should take place; but that it was expedient to leave the time, & the manner, of carrying it into effect to the discretion of the Lieutenant Governor but that, as it was not certain that all those laws, & every part of them could with equal convenience be so applied, it was expedient on that point also, to entrust a discretion to the Lieutenant Governor.'

34. Next, reference may be made to the case of *Russell v. The Queen*, (1882) 7 A. C. 829 : (51 L. J. P. C. 77). In that case the Act under consideration was the Canada Temperance Act, 1878. The Act conferred upon the Governor-General power not only to bring into force the second part of the Act, but also, at the end of three years, to revoke it. This power could be exercised by the Governor-General on his being petitioned to do so, not by the Legislature but by the electors in a county or city in the Dominion. The effect of this legislation was that an authority other than the Legislature was to have power to determine the period for which the Act would remain in force in any county or city. It was contended before the P. C. that the Parliament of Canada had delegated its powers to enforce the Act to a majority of electors of counties & cities. Sir Montague E. Smith, delivering the judgment of the P. C. observed at p. 835 :

'The short answer to this objection is that the Act, does not delegate any legislative powers whatever. It contains within itself the whole legislation on the matters with which it deals. The provision that certain parts of the Act shall come into operation only on the petn. of a majority of electors does not confer on these persons power

to legislate. Parliament itself enacts the condition, & everything which is to follow upon the condition being fulfilled. Conditional legislation of this kind is in many cases convenient, & is certainly not unusual & the power so to legislate cannot be denied to the Parliament of Canada, when the subject of legislation is within its competency.'

The decision in *Queen v. Burah*, (1878) 3 A. C. 889 : (5 I. A. 178 : 4 Cal. 172 P. C.) was approved. 35. The next case is that of *Hodge v. The Queen*, (1883) 9 A. C. 117 : (53 L. J. P. C. 1). In this case the question arose whether the Legislature of Ontario had or had not the power of entrusting to a local authority--a Board of Comrs. -- the power of enacting regulations under the Liquor License Act of 1877, of creating offences for the breach of those regulations & annexing penalties thereto. Their Lordships of the P. C. held that it had that power. Lord Fitz Gerald, delivering the judgment of the P. C. observed at p. 132 :

'It appears to their Lordships, however, that the objection thus raised by the applts. is founded on an entire misconception of the true character & position of the provincial Legislatures. They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a Legislature for Ontario & that its Legislative Assembly should have exclusive authority to make laws for the Province & for provincial purposes in relation to the matters enumerated in Section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary & as ample within the limits prescribed by Section 92 as the Imperial Parliament in the plenitude of its power possessed & could bestow. Within these limits of subjects & area local Legislature is supreme, & has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide, to a municipal institution or body of its own creation, authority to make by-laws or resolutions as to subjects specified in the enactment, & with the object of carrying the enactment into operation & effect.

It is obvious that such an authority is ancillary to legislation, & without it an attempt to provide for varying details & machinery to carry them out might become

oppressive or absolutely fail It was argued at the bar that a Legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, & can, whenever it pleases, destroy the agency it has created & set up another, or take the matter directly into his own hands. How far it shall seek the aid of subordinate agencies, & how long it shall continue them, are matters for each Legislature, & not for Cts. of Law, to decide.'

The decision of P. C. in *Russell v. The Queen*, (1882) 7 A. C. 829 : (51 L. J. P. C. 77) was explained & re-affirmed.

36. The next case of importance is that of *Powell v. Apollo Candle Co. Ltd.*, (1885) 10 A. C. 282 : (54 L. J. P. C. 7). The main question in this case was whether Section 133, Customs Regulation Act of 1879 passed by the Legislature of New South Wales was or was not ultra vires of the Legislature of New South Wales. Under Section 133 an Order in-Council was issued levying certain duties. Sir Robert P. Collier, delivering the judgment of the Board, referred to the cases of *the Queen v. Burah*, (5 I. A. 178 4 Cal. 172 P. C.) & *Hodge v. The Queen*, (1884-9 A. C. 117 : 53 L. J. P. C. 1) in which the Board had dealt with the powers of Colonial Legislatures & then observed at p. 290 :

'These two cases have put an end to a doctrine which appears at one time to have had some currency, that a Colonial Legislature is a delegate of the Imperial Legislature. It is a Legislature restricted in the area of its powers, but within that area unrestricted & not acting as an agent or a delegate.' Further, at p. 291 it was observed : 'It is argued that the tax in question has been imposed by the Governor, & not by the Legislature, who alone had power to impose it. But the duties levied under the Order in Council are really levied by the authority of the Act under which the order is issued.'

The Act was held to be intra vires.

37. The next case to which reference may be made is, *Emperor v. Benoari Lal Sarma*, 72 I. A. 57 : A. I. R. (35) 1948 P. C. 48 : (46 Cr. L. J. 589). In this case, P. C. had to consider inter alia the question of the validity of the delegation of certain powers to the Provincial Govt. or a servant of the Crown appointed by the

Provincial Govt. Under the Ordinance the power to determine the offences or classes of offences & cases or classes of cases triable by the Special Judge, or the Special Mag. was left to the discretion of the Provincial Govt. or the servant of the Crown nominated by the Provincial Govt. The H. C. as well as F. C. of India took the view that there was a delegation of legislative power & that it was invalid. The case went up in appeal to P. C. The validity of the Ordinance was challenged before the P. C. on two grounds : (i) that Section 1 (3) of the Ordinance was invalid inasmuch as it showed that the Governor-General did not consider that an emergency existed, but was making provision in case one should arise in future & (ii) that this section amounted to what is known as delegated legislation by which the Governor-General sought to pass the decision as to whether an emergency existed to the Provincial Govt. instead of deciding it himself. Viscount Simon L. C. who delivered the judgment of the Board in that case repelled both these contentions as being without any substance. In regard to the second objection the Lord Chancellor observed at p. 66 : 'The second objection has attracted more support, but is, in their Lordships' opinion, equally unfounded. It is undoubtedly true that the Governor-General, acting under para. 72 of Schedule 9, must himself discharge the duty of legislation there cast upon him, & cannot transfer it to other authorities. But the Governor-General has not delegated his legislative powers at all. His powers in this respect, in cases of emergency, are as wide as the powers of the Indian Legislature which, as already pointed out, in view of the proclamation under Section 102, had power to make laws for a Province even in respect of matters which would otherwise be reserved to the Provincial Legislature. Their Lordships are unable to see that there was any valid objection, in point of legality, to the Governor-General's Ordinance taking the form that the actual setting up of a Special Ct. under the terms of the Ordinance should take place at the time & within the limits judged to be necessary by the Provincial Govt. specially concerned. This is not delegated legislation at all. It is merely an example of the not uncommon legislative arrangement by which the local application of the provision of a statute is determined by the judgment of a local administrative body as to its necessity.'

38. The next case to which reference may now be made is the case of the *Maritime Bank of Canada v. Receiver-General of New Bruns-Wick*, (1892) A. C. 437 : (61 L. J. P. C. 75). Lord Watson, in delivering the judgment of P. C., at p.

442, referred to what was laid down in the case of *Hodge v. The Queen*, (1884-9 A. C. 117 : 53 L. J. P. C. 1) (ubi supra) & then proceeded to observe with reference to a Provincial Legislature of a Canada, thus:

'It derives no authority from the Govt. of Canada, & its status is in no way analogous to that of a municipal institution, which is an authority constituted for purposes of local administration. It possesses powers, not of administration merely, but of legislation, in the strictest sense of the word & within the limits assigned by Section 92 of the Act of 1867, these powers are exclusive & supreme.'

39. Next, In re *The Initiative & Referendum Act*, (1919) A. C. 935 : (A.I.R. (6) 1919 P. C. 145), the same principle is re-affirmed. Delivering the judgment of the P. C., Viscount Haldane at p. 942 indicated the scheme of the *British North America Act, 1867*, in these terms:

'The scheme of the Act passed in 1867 was thus, not to weld the Provinces into one, nor to subordinate Provincial Govts. to a central authority, but to establish a Central Govt. in which these Provinces should be represented, entrusted with exclusive authority only in affairs in which they had a common interest. Subject to this each Province was to retain its independence & autonomy & to be directly under the Crown as its head. Within these limits of area & subjects, its local Legislature, so long as the Imperial Parliament did not repeal its own Act conferring this status, was to be supreme & has such powers as the Imperial Parliament possessed in the plenitude of its own freedom before it handed them over to the Dominion & the Provinces, in accordance with the scheme of distribution which it enacted in 1867.'

40. Again in *Croft v. Dunphy*, (1933) A. C. 156 : (A.I.R. (20) 1933 P. C. 16), Lord Macmillan in delivering the judgment of the Board referred with approval to the cases of *The Queen v. Burah*, (5 I. A. 178 : 4 Cal. 172 P. C.) (ubi supra), *Hodge v. The Queen*, (1884-9 A. C. 117: 53 L. J. P. C. 1) (ubi supra) & the case of *Riel v. The Queen*, (1885) 10 A. C. 675 : (55 L. J. P. C. 28). The question before the P. C. related to the power of the Dominion Parliament to enact laws of extra-territorial operation. It was observed at p. 163 :

'Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate as being for the peace, order & good Government of Canada or as being one of the specific subjects enumerated in Section 91, British North America Act, their Lordships see no reason to restrict the permitted scope of such legislation by any other consideration than is applicable to the legislation of a fully Sovereign State.'

41. Lastly, I may refer to a case from British Columbia decided by P. C. It is *Georje Walkem Shannon v. Lower Mainland Dairy Products Board*, A. I. R. (26) 1939 P. C. 36: (180 I. C. 538). In this case, one of the points raised related to the competency of delegated legislation by a Provincial Legislature in Canada. Lord Atkin, delivering the judgment of the Board at p. 39, observed thus :

'The third objection is that it is not within the powers of the Provincial Legislature to delegate so called legislative powers to the Lieutenant-Governor in Council, or to give him powers of further delegation. This objection appears to their Lordships subversive of the rights which the Provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relation to which the constitution has granted legislative powers. Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament; & it is unnecessary to try to enumerate the innumerable occasions in which Legislatures both Provincial & Dominion & Imperial have entrusted various persons & bodies with similar powers to those contained in this Act.'

42. Besides these cases decided by the P. C., learned counsel have invited our attention to the case of *Baxter v. Ah Way*, (1909) 8 comm. L. R. 626, decided by the H. C. of Australia. In this case the question arose about the validity of a power conferred on the Governor General in Council under Section 52, Clause (g), Customs Act, 1901. Section 52 enumerated prohibited imports & by Clause (g) of that section the Governor-General was empowered to prohibit the importation of other goods. In exercise of this power the Governor-General-in-Council issued a proclamation prohibiting the importation of opium suitable for smoking. It was held by the H. C. of Australia that Clause (g) of Section 52, Customs Act, was not a delegation of legislative power but only conditional legislation & was thus within

the competence of the Commonwealth Parliament. The prohibition of importation is a legislative act of the Parliament itself, the effect of Clause (g) being to confer upon the Governor-General-in-Council the discretion to determine, subject to Section 56 of the Act, which class of goods other than those specified in the section & under what condition the prohibition shall apply. The principles laid down by the P. C. in the case of *The Queen v. Burah*, (5 I. A. 178: 4 Cal. 172 P. C.) (*ubi supra*) were applied. O'Connor J. at pp. 636, 637 & 638, has very clearly pointed out the distinction between 'delegation of a legislative power' & 'conditional legislation'. At p. 637 the learned Judge observes:

'It is a fundamental principle of the Constitution, that everything necessary to the exercise of a power is Included in the grant of a power. Everything necessary to the effective exercise of a power of legislation must, therefore, be taken to be conferred by the Constitution with that power. Now the Legislature would be an ineffective instrument for making laws if it only dealt with the circumstances existing at the date of the measure. The aim of all Legislatures is to project their minds as far as possible into the future, & to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases, & therefore, legislation from the very earliest times, & particularly in more modern times, has taken the form of conditional legislation leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied.'

43. The same learned Judge, referring to the leading Pennsylvania case known as *Locke's appeal*, 72 Fa. S. R. 491 at p. 498, went on to observe:

'The proper distinction the Ct. said was this : 'The Legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make, its own action depend. To deny this would be to stop the wheels of Govt. There are many things upon which wise & useful legislation must depend which cannot be known to the law-making power, & must, therefore, be subject of inquiry & determination outside of the halls of legislation'.'

Higgins, J.

44. said at p. 646 :

'The Federal Parliament has, within its ambit, full power to frame its laws in any fashion, using any agent, any agency, any machinery that in its wisdom it thinks fit, for the peace, order, & good Government of Australia.'

45. In the same case, Griffith C. J., at p. 632, after referring to the decision in the case of *Queen v. Burah*, (5 I. A. 178 : 4 Cal. 172 P. C.) (ubi supra) to the effect that the maxim, *delegatus non potest delegare*, did not apply in the case of the Indian or Colonial Legislature proceeded to consider the nature of delegated legislation. He added:

'It is of course obvious that every Legislature does in one sense delegate some of its functions. It is too late in the day to say that the Legislature cannot create, for instance, a municipal authority & give it power to make by-laws, or create a public authority with power to make regulations that shall have the force of law, or confer upon the Governor in Council power to make regulations having the force of law, or upon the Judges of the Ct. power to make Rules of Ct. having the force of law.'

46. The decisions referred to above, in my view, clearly indicate the well established principle that the power conferred upon a Legislature to make laws cannot be delegated or transferred by it to any other body or authority. Such a Legislature, though it may have plenary powers within the limits set by the Constitution of the State, cannot give up those powers & thus pass on the duty of making laws to another authority. Such a procedure would amount to a surrender of its legislative powers, a self-effacement which is not permitted by any Constitutional Law. Both the Central & Provincial Legislatures in 'India, according to the decisions of the Judicial Committee, have plenary powers of legislation. Those powers are, however, to be exercised within the limits set by the Indian Constitution. 'The reason for the rule against delegation or transference of legislative power by a Legislature to a non-legislative body was based originally upon the maxim '*delegatus non potest delegare*,' but, as would appear from the decisions of the Judicial Committee of P. C. in the cases of *The Queen v. Burah*,

(5 I. A. 178 : 4 Cal. 172 P. C.); Russell v. The Queen, (1882-7 A. C. 829 : 51 L. J. P. C. 77); Powell v. Apollo Candle Co. Ltd., (1885-10 A. C. 282 : 54 L. J. P. C. 7) & Emperor v. Benoari Lal Sarma, (72 I. A. 57 : A. I. R. (35) 1948 P. C. 48 : 46 Cr. L. J. 589) & Indian Legislatures, whether Provincial or Central, do not act as delegates of the British Parliament in exercising their legislative power which has been conferred upon them by the Constitution. Therefore that reason for the rule against delegation of legislative power disappears. But the rule prohibiting delegation of legislative power, in the sense of a complete surrender of those powers, is based on the essential nature of such a power. In the very nature of things, the duty cast upon a Legislature to make laws must be discharged by the Legislature itself & it cannot be transferred to other authorities. That is the general well established principle. Exigencies of modern life, however, have engrafted certain exceptions on the general principle. The position in this respect here is substantially the same as in America. So far as the position in the American Constitution is concerned, it is made very clear by what Cooley has stated in his 'Constitutional Limitations,' eighth Edn., vol. I, p. 224. He sums up the position thus :

'One of the settled maxims in Constitutional law is, that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; & by the Constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom & patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom & patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.'

Again, at p. 228 Cooley states:

'The maxim that power conferred upon the Legislature to make laws cannot be delegated to any other authority does not preclude the Legislature from delegating any power not Legislative which it may itself rightfully exercise. It may confer

authority in relation to the execution of a law which may involve discretion, but such authority must be exercised under, & in pursuance of the law. The Legislature must declare the policy of the law & fix the legal principles which are to control in given cases, but an administrative officer or body may be invested with the power to ascertain the facts & conditions to which the policies & principles apply.'

As was observed in an American case:

'There is no absolute & universal formula for determining in all cases the powers which must be exercised by the legislative body itself & those which may be delegated by the Legislature to some subordinate or administrative agency. The line of demarcation between those essential legislative functions which must be exercised by the Legislature itself & those of an administrative nature, or involving mere details, which may be delegated to another body or officer, is very vague & fluctuating, & is often difficult to distinguish or discern': (Vide 79 S. C. U. S. Lawyer's Edn. 447 at p. 479).

There is no doubt, however, that certain exceptions have been engrafted on the cardinal principle that the Legislature cannot transfer or delegate this power to any other department or body.

47. The reason for recognizing these exceptions is well expressed in the well known case of the S. C. of the United States viz. *Panama Refining Co. v. A.D. Ryan*, 293 U. S. 388, which is thus summarised in 79 Lawyers' Edn. of the United States Supreme Court Reports 447 at p. 481 :

'Since legislation must often be adopted to complex conditions involving a host of details with which the legislature cannot deal directly, the constitutional inhibition against delegating legislative authority does not deny to the Legislature the necessary resources of flexibility & practicality, enabling it to lay down policies & establish standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits & the determination of facts to which the policy as declared by the Legislature shall apply. Without this power, Legislatures would often be faced with the anomaly of possessing a power over a given

subject, but being unable to exercise it.'

48. To the same effect is the decision in Lockes appeal, 72 Pa. S. R. 491 (*ubi supra*). Similarly, Anson's Law and Custom of the Constitution, Vol. I, Edn. 5, p. 318, gives these reasons for increase of delegated legislation in England :

'The difficulty of carrying a complicated measure of legislation through the House of Commons is responsible for the tendency to leave matters of detail to be formulated by rules or regulations made in the department which is concerned with the administration of the Statute in question. The power of the executive necessarily grows as the intervention of the State in the concerns of daily life outgrows the capacity of Parliament to discuss & determine these matters within the limits of Parliamentary time.'

49. The 'exceptions' may be summed up under these general heads: (1) A Statute may be conditional & its taking effect may be made to depend upon some subsequent event e.g., the determination of the existence or absence of certain facts or conditions on which the operation of the statute is contingent. It seems to me that this is not really an instance of a delegation of a legislative function. Such a form of legislation is inherent in the very nature of the plenary character of legislative power vested in a particular Legislature. Similarly, it may be provided that an enactment shall come into operation only on the petn. of a number of electors or a number of people. Such legislation in Canada was upheld by the P. C. in *Russell v. The Queen*, (1882) 7 A. C. 829 : (51 L. J. P. C. 77). (2) A Legislature may enact a law complete in itself, but may expressly authorize specified officials within definite limitations to provide rules & regulations for carrying out & enforcement of the law enacted. The discretion to be exercised by the non-legislative authority must be limited & it must be exercised within the limits prescribed by the law. Such authority may fill in the details by making by-laws, rules or regulations. 'The Legislature must declare the policy of the law & fix the legal principles which are to control in given cases; but an administrative officer or body may be invested with the power to ascertain the facts & conditions to which the policy & principles apply' (Cooley's Constitutional Limitations, Vol. I, p. 229).

(3) A Legislature may delegate any power) which is not strictly legislative although it may itself be in a position to exercise that power. The line of demarcation between those essentially legislative functions which must be exercised by the Legislature itself & those of an administrative character which may be delegated to another body is, as mentioned already, very vague & fluctuating. It is, however, the nature of the power rather than the manner in which it has to be exercised which determines whether or not the delegation is legal. In this connection, reference may be made to the observations made by Willoughby on the Constitution of United States, vol. III (Edn. 2) p. 1619 :

'It should, perhaps, be observed that enquiries as to the essential or inherent nature of legislative powers are of so speculative a character that the Cts. in many cases have preferred to seek the guidance of historical precedent or of considerations of political expediency rather than the conclusions to be reached by pure reason.'

(4) A limited power of legislation conferred on municipalities & other local bodies which enjoy a certain measure of local self-Govt. has also been recognized as an exception to the general rule. Indeed such a delegation of power is not regarded as a transfer of 'general legislative power' but rather as the grant of the authority to prescribe local regulations. This is sanctified by immemorial practice both in England & in America.

50. Learned counsel for Govt. has in the end, strongly pressed upon that delegation of legislative power is not expressly prohibited by the Const. Ind. His contention is that if delegations of legislative power is not permissible to Legislatures in India, such prohibition must be based on express enactment or necessary intendment inherent in the language of the Constitution and no other. In this connection, he has referred to what Earl Loreburn said in the case of Attorney-General of Ontario v. Attorney-General of Canada, (1912) A. C. 571 : (81 L.J.P.C. 210):

'In the interpretation of a completely, self-governing Constitution founded upon a written organic instrument, such as the British North America Act, if the text is explicit, the text is conclusive alike in what it directs, and what it forbids.'

51. Next, it has been contended by learned counsel that so far as the British Parliament is concerned, it is admitted on all hands that it has undoubtedly unrestricted power to delegate legislative function; that it may enact conditional legislation as well as legislation entrusting to subordinate bodies power to make by-laws or regulations. This, according to the learned counsel, is due to the fact that the powers of the British Parliament are not circumscribed or limited by any written Constitution & its authority is absolute & unrestricted. It is contended that the Indian Legislatures, like many Colonial Legislatures, being patterned on the British model, must be governed by similar basic principles.

52. Further, learned counsel has argued that in none of the cases decided by their Lordships of the P. C. e.g. the Queen v. Burah, 5 I. A. 178 : (4 Cal. 172 P. C.) or Russell v. The Queen, (1882-7 A. C. 829 : 51 L. J. P. C. 77), on which the later decisions of that tribunal directly proceed is there any indication that their Lordships subscribed to the doctrine that delegated legislation so far as Indian or Colonial Legislatures were concerned, would be ultra vires. On the contrary, so contends the learned counsel, the express words used by the P. C. in describing the nature of the power possessed by the Indian Legislatures, Central or Provincial, indicate that such powers of legislation are as large & of the same nature as those of Parliament itself. It is contended that if the powers possessed by the Indian Legislatures are of the same nature as those possessed by the British Parliament it should follow that Indian Legislatures, within the limits of area & subjects prescribed by their Constitution, possess the power e.g. of delegating legislative function to other bodies.

53. Again, it has been contended by learned counsel for Govt. that there is in India a long standing legislative practice which clearly shows that very extensive rule-making powers have been entrusted by the Legislatures of the country to non-legislative bodies. Our attention has been invited to a large number of enactments. It is not necessary to mention more than a few of the various Acts to which our attention has been invited in this connection. Reference may be made to the provisions of C. P. C., 1908, the Indian Aircraft Act (Act XXII [22] of 1934) the Defence of India Act, 1939 & the Foreign Exchange Regulation Act Act VII [7] of 1947). This practice, according to the learned counsel, undoubtedly lends strong

support to the contention urged that delegation of legislative power even of, an essentially legislative character is not prohibited by the Constitution.

54. Lastly, learned counsel has strongly pressed the argument that the majority decision of the F. C. in the case of *Jatindra Nath Gupta* when carefully analysed, would show that there were two basic reasons for which the learned Judges, Mahajan & Mukerji JJ. of that Ct., held the enactment in question to be ultra vires: (1) Delegated legislation is bad as it offends against the maxim *delegatus non potest delegare*; (2) Legislative power must be exercised only by the authority on which it has been conferred by the Constitution & by no other. Both these reasons, according to the learned counsels directly flow from doctrines evolved in the interpretation of the American Constitution, but those doctrines are based upon certain characteristics peculiar to the Constitution of America. Learned counsel has in this connection invited our attention to a passage in the chapter dealing with 'delegation of legislative powers' in the book on 'Statutory Construction' by Crawford at p. 24 :

'Inasmuch as the legislative power of the Govt. is vested exclusively in the Legislature in accordance with the doctrine of separation of powers, the general rule is that the Legislature cannot surrender or abdicate such power. As a result any attempt to do so is unconstitutional & void. Nor can this power to make laws be delegated by the Legislature to any other authority *delegatus non potest delegare* a power, however, which is not legislative in character may be delegated.'

55. Learned counsel has contended that these basic principles of the American Constitution are not necessarily applicable when we have to interpret the Indian Constitution. Indeed the contention of the learned counsel is that delegated legislation of the same type as in England is practised in India; that Indian Legislatures although acting within the ambit of a written Constitution, have all been made 'in the image of their maker' & thus the amplitude of their legislative power should coincide with the amplitude of the power possessed by the British Parliament--provided the subject-matter of legislation is within its competence according to its Constitution. Therefore, it has been contended that the two

principles underlying the American Constitution are not applicable either to the Indian Legislatures or the Colonial Legislatures as it has been authoritatively settled by decisions, of the P. C., already referred to that such Legislatures are not delegates of the British Parliament & that they have plenary powers of legislation within the limits appointed by the Constitution.

56. In the face of the judgment of the F. C. (now the S. C.) in the case of Jatindra Nath Gupta which is binding upon this Ct., it is wholly unnecessary to enter into a discussion of the contentions urged by learned counsel for Govt. which have been noticed above. Such arguments can more appropriately be addressed to S. C. should another occasion arise in future for a consideration by that Ct. of those aspects of the question which do not appear to have been placed before that Ct. in the case of Jatindra, Nath Gupta . In accordance with view expressed by the Calcutta H. Ct. the Madras H. C. & the D. B. of this Ct., in the cases referred to in an earlier part of this judgment, regarding the effect of the decision of F. C. in the case of Jatindra Nath Gupta it seems to me that it is not open to this Ct. to enter into the question whether or not the power to prolong the life of an Act is a power which can be validly delegated. Again in the face of the decision of F. C., it is not open to this Ct. to consider the question whether or not legislative power can be validly delegated to a non-legislative body by any Legislature in India, Central or Provincial.

57. The crucial question, therefore, which has to be decided in this case is whether the power conferred by Section I (4) of the Supplies Act upon the Provincial Govt. to direct that the Act shall not cease to have effect even after the expiration of one year from 1-10-1946, is a power of an essentially legislative character delegated to the Provincial Govt. The power conferred is undoubtedly a power to prolong the life of an Act should the Provincial Govt. so desire. The discretion to extend the life of the Act is vested entirely in the Provincial Govt. What is the essential character of the power so conferred on the Provincial Govt. in the present case is the next question It may be observed that the Supplies Act is a temporary Act; as such it would continue for a fixed period or until repealed or altered earlier. Whether a particular Act will be a permanent Act or only of a temporary duration is a question which has to be determined by the Legislature itself. It follows, therefore, that the

life of an Act must be determined by the exercise of the legislative will of the appropriate Legislature. Conditional legislation or delegation of a power to apply a particular Act which is already on the statute book to certain specified areas or specified classes of persons or even of determining the time of its commencement or the extent of its operation with regard to area etc., is very different from the extension of the life of a temporary Act. As soon as the period fixed for the operation of a temporary Act expires, the Act automatically ceases to operate. It would thus appear that there is no real analogy between 'conditional legislation' which authorizes a non-legislative authority to determine the commencement or termination of an Act & an act done in exercise of a power to determine the life of an enactment itself. In one sense the power of extending the life, of an Act is in reality a power to revive the Act i.e., to bring the Act into existence for a further period. In the present case, by its own force, the Supplies Act remained in force for one year from 1-10-1946; thereafter the continuance of the Act in force for another year depended entirely on the discretion of the Provincial Govt. The duration of a Statute is a matter for determination by the Legislature itself. It is of the nature of an essential legislative act. The prolongation of the life of an Act would appear to be of the nature of an essential legislative act according to the decision of F. C, in the case of Jatindra Nath Gupta . Delegation of such a power is, according to that decision, not permitted by law. In the present case, the prolongation, or extension, of the life of the Supplies Act can be effected by the Provincial Govt. even without the intervention of a resolution passed by any of the chambers of the Legislature of the Province in favour of such an extension.

58. It is instructive to compare (i) the provisions of Section 1 (3), Bihar Maintenance of Public Order Act, 1947, (ii) the provisions of Section 1 (4), United Provinces Maintenance of Public Order Act, Act (IV [4] of 1947), & (iii) the provisions of Section 1 (4), West Bengal Security Act, 1948, with the provisions of Section 1 (4), Control of Supplies Act with which we are concerned here. It is obvious that the power entrusted to the Provincial Govt. under Section 1 (4), Control of Supplies Act is far more drastic in the sense that it is more absolute & is not hedged in by any such restrictions as the resolution or resolutions of a chamber or chambers of the Legislature as a condition precedent for the exercise of the power.

59. It would thus appear that the principles laid down by F. C. in the case of Jatindra Nath Gupta would all the more clearly invalidate a provision like the one contained in Section 1 (4) of the present Act.

60. For the reasons given above, my answer to the two questions is as follows: (1) That the U. P. Control of Supplies (Temporary Powers) Act, (Act II [2] of 1947), was not in force on 3-12-1947, nor would it be deemed to be in force on that date in view of the United Provinces Ordinance No. VIII [8] of 1948 & the United Provinces Act XLIII [43] of 1948. (2) That Sub-section (4), Section I, United Provinces Control of Supplies (Temporary Powers) Act, in so far as it vests powers in the Provincial Govt. to direct by notified order that the Act shall continue in force for two years beginning with 1-10-1946, is ultra vires the powers of the Provincial Legislature.

Sankar Saran, J.

61. I agree to there-plies proposed.

Desai, J.

62. I agree with the proposed replies.

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