Common Cause Vs. Union of India and Others

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Court : Delhi

Decided On : Mar-11-1999

Reported in : AIR1999Delhi257; [1998(79)FLR954]

Judge : Anil Dev Singh and; Mukul Mudgal, JJ.

Acts : Constitution of India - Article 226; Delhi Rent Control Act, 1995 - Sections 1(3)

Appeal No. : Civil Writ Peptition No. 1495 of 1997 (Along with CWP Nos. 210/96,761/96, 83/97, 972/97, 1718/98)

Appellant : Common Cause

Respondent : Union of India and Others

Advocate for Def. : Mr. Anip Sachthey, ; Mr. Anupam Lal and ; Ms. Sandhya Rajpa

Advocate for Pet/Ap. : Mr. H.D. Shourie, Director in person,; Mr. C.L. Rathee,; Mr

Judgement :
ORDER

Anil Dev Singh, J.

1. In this public interest writ petition the petitioner, Common Cause, a society registered under the Societies Registration Act, 1860, seeks a direction to the first and the second respondents, Union of India through the Secretary, Ministry of Urban Affairs and Employment, and the Union of India through the Secretary, Ministry of Law, Justice and Company Affairs respectively, to issue a notification in the official gazette notifying the date on which the Delhi Rent Act, 1995 (Act No. 33 of 1995) (for short 'the new Rent Act') shall come into force. The facts lie in a narrow compass.

2. Home is an eternal quest of all mankind. Law which encourages construction of houses to meet one of the basic demands of habitat is the paramount requirement in this country. Realizing this need and voicing its concern regarding the acute shortage of housing, the Supreme Court in Prabhakaran Nair etc., v. State of Tamil Nadu and Others, , expressed the necessity for a national housing policy. In this regard it observed as follows :-

'It is common knowledge that there is acute shortage of housing, various factors have led to this problem. The laws relating to letting and of landlord and tenant in different States have from different States' angles tried to grapple the problem. Yet in view of the magnitude of the problem, the problem has become insoluble and the litigations abound and the people suffer. More houses must, thereforee, be built, more accommodation and more spaces made available for the people to live in. The laws of landlord and tenant must be made rational, human, certain and capable of being quickly implemented. Those landlords who are having premises in their control should be induced and encouraged to part with available accommodation for limited periods on certain safeguards which will strictly ensure their recovery when wanted. Men with money should be given proper and meaningful incentives as in some European countries to build houses, tax holidays for new houses can be encouraged. The tenants should also be given protection and security and certain amount of reasonableness in the rent. Escalation of prices in the urban properties, land, materials and houses must be rationally checked. This country very vitally and very urgently requires a National Housing Policy if we want to prevent a major breakdown of law and order and gradual disillusionment of people. After all shelter is one of our fundamental rights. New

rational housing policy must attract new buildings, encourage new buildings, make available new spaces, rationalise the rent structure and rationalise the rent provisions and bring certain amount of uniformity though leaving scope for sufficient flexibility among the States to adjust such legislation according to its needs. This Court and the High Court should also be relieved of the heavy burdens of this rent litigations. Tier of appeals should be curtailed. Laws must be simple, rational and clear. Tenants are in all cases not the weaker sections. There are in all cases not the weaker sections. There are those who are weak both among the landlords as well as the tenants. Litigations must come to end quickly. Such new Housing Policy must comprehend the present and anticipate the future. The idea of a National Rent tribunal on an All India basis with quicker procedure should be examined. This has become an urgent imperative of today's revolution. A fast changing society cannot operate with unchanging law and preconceived judicial attitude.'

3. Five years after the decision rendered by the Supreme Court in Prabhakaran's case (supra), the national housing policy was laid before both the Houses of Parliament. The policy was considered and adopted by the Parliament. Consequent thereto a model rent control bill was drafted by the Government of India with the approval of the representatives of the State Governments. The model bill was circulated to all the State Governments including the Governments of the Union Territories, and the same was also tabled before the Parliament. On February 5, 1994 the President of India assented to the Constitution (Seventy-first Amendment) Act, 1994, in order to enable the State Governments to set up State level Rent Tribunals for speedy disposal of rent cases. This was with a view to exclude the jurisdiction of the courts which are otherwise over crowded and the rent litigation is not being disposed of speedily. However, the jurisdiction of the Supreme Court of India was not excluded.

4. The Delhi Rent Control Act, 1958 underwent amendments from time to time in 1960, 1963, 1976, 1984 and 1988. The amendments made in 1988 were based on the recommendations of the Economic Administrative Reforms Commission and the National Commission on Urbanisation. Although the amendments were substantial in nature, they did not go far enough to meet the target envisaged by

the Supreme Court in Prabhakaran's case (supra). They also failed to remove the disincentives to the growth of rental housing and left many questions unanswered and problems unaddressed. They also did not measure up to the Model Rent Control Bill. thereforee, the Delhi Rent Bill, 1994 was drafted and the same was referred to the Standing Committee of Parliament on Urban and Rural Development. The Committee after deliberating and considering the matter expressed the view that though the Bill was comprehensive and elaborate, certain changes should be effected. Before expressing its opinion the Standing Committee of Parliament afforded an opportunity of hearing to the representatives of the house owners and tenants. On August 26, 1994, the Delhi Rent Bill 1994 was introduced in the Rajya Sabha and the same was passed by that House on May 29, 1995. Thereafter, the Bill was introduced in the Lok Sabha and the same was passed on June 3, 1995. Consequent to the passing of the Delhi Rent Bill, 1994 by both houses of Parliament, the President of India assented to the same on August 23, 1995. Thereafter, the new Rent Act was published in the Gazette of India, Extraordinary, Part II, Section I, dated August 23, 1995 as Act No. 33 of 1995. Thus, the Bill was enacted into an Act. However, the New Rent Act for coming into force requires a notification of the Central Government under section 1(3) of the Act which provides that 'the Act shall come into force on such date as the Central Government may, by notification in the official gazette, appoint'. Despite the lapse of four years, the new Rent Act has not been notified by the Central Government. The net result is that the new Rent Act of the Parliament which was meant to remove legal impediments to the growth of housing in general and rental housing in particular has not been enforced. At this stage it will be convenient to refer to the affidavit filed on behalf of the Government of India which was filed on September 8, 1998. This affidavit reads as follows :-

'3. xx xx xx

(i) The Cabinet considered the Note in its meeting held on 19.7.97 and had decided to enforce the Delhi Rent Act, 1995 with the amendments contained in the Note for the Cabinet dt. 8.7.97.

(ii) That this position was also explained through an Affidavit dt. 25.7.97 filed by Shri SPS Parihar on behalf of Union of India, stating inter-alia that Cabinet has decided to enforce the Delhi Rent Act, 1995 with the amendments contained in the Note for the Cabinet dt. 8.7.97 and that the Amendment Bill will be introduced in the Parliament.

(iii) A Bill namely Delhi Rent (Amendment) Bill, 1997 to amend the Delhi Rent Act, 1995 had been introduced in the Rajya Sabha on 28.7.97.

(iv) On 6.8.97, the Delhi Rent (Amendment) Bill, 1997, as introduced in Rajya Sabha, has been referred to the Standing Committee on Urban & Rural Development (1997-98) for examination and Report to Parliament.

(v) The Committee took evidence of various Groups/Individuals as well as from the officials of this Ministry on this subject apart from calling detailed information questionnaire which this Ministry supplied.

(vi) With the dissolution of the 11th Lok Sabha the Committee on Urban & Rural Development also stood dissolved. The Bill came back to the Rajya Sabha. This Bill has again been referred to the newly constituted Standing Committee on Urban and Rural Development by the Speaker on 25.6.98 after constitution of 12th Lok Sabha.

(vii) After the change of the government in the Centre, Law Ministry advised that Government's orders must be obtained on all pending Bills. Accordingly, a Cabinet Note was put up to the Government for its decision on 16.7.98.

(viii) Government's decision is awaited.

(ix) Meanwhile, the Standing Committee on Urban and Rural Development held its first sitting on 14.8.98. Officials of this Ministry attended this sitting and requested the Committee to defer further examination on the matter till the Government takes a decision on the same.

4. That in view of the above position, Ministry is not in a position to bring into force Delhi Rent Act, 1995 Act XXXIII/95 as assented to by the President of India.'

5. Thus, from the above said affidavit it is apparent that the Cabinet is not willing to enforce the New Rent Act in its present form and has decided to enforce the same with the amendments contained in the note for the Cabinet dated July 8, 1997 and for that purpose the Delhi Rent (Amendment) Bill, 1997, was introduced in the Rajya Sabha on July 28, 1997. After its introduction, the Delhi Rent (Amendment) Bill, 1997 was referred to the Standing Committee on Urban and Rural Development (1997-1998) for examination and report. On dissolution of the Eleventh Lok Sabha the said Committee also stood dissolved. After the constitution of the Twelfth Lok Sabha, the Delhi Rent (Amendment) Bill, 1997, which had come back to the Rajya Sabha, was again referred by the Speaker of the Lok Sabha to the reconstituted Standing Committee on Urban and Rural Development on June 25, 1998. However, the examination of the Delhi Rent (Amendment) Bill, 1997, is not being made by the Committee at the request of the new/successor Government as latter has yet to take a decision with regard to the Bill. Thus, virtually the Central Government has not only stalled examination of the Delhi Rent (Amendment) Bill, 1997, but has also stalled the coming into force of the new Rent Act.

6. The question which requires consideration is whether under section 1(3) of the New Rent Act the Central Government has the power to refuse to bring the Act into force.

7. In order to understand what power has been conferred on the Central Government under section 1(3) of the new Rent Act, it will be necessary to refer to the said provision. Section 1(3) reads as follows :-

'1. Short title, extent and commencement.

(1) .....

(2) .....

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. '

8. It appears to me that the above provision does not confer any power on the Central Government to veto the New Rent Act or to refuse to implement the will of the Parliament which has left it to the Central Government to decide only the question as to when the New Rent Act is to be brought into force. This power of conditional legislation vested in the Central Government can not be utilised for the purpose of not bringing the New Rent Act into force at all or for nullifying and neutralising the will of the people, which is expressed through the Parliament. The fact that the Central Government has not issued the notification under section 1(3) of the New Rent Act shows that it does not feel bound by the Parliamentary decision to replace the Delhi Rent Control Act, 1958 especially when it has virtually decided not to enforce the new Rent Act in the present form. When the Parliament Realizing the need to minimise distortion in the rental housing market and to encourage the supply of rental housing both from the existing housing stock and from new housing stock enacted the New Rent Act, the executive can not torpedo the same. The necessity to repeal and replace the Delhi Rent Control Act, 1958 for the purpose of achieving the growth of housing in general is evident from the Statement of Objects and Reasons of the New Rent Act which reads as follows :-

'The relations between landlords and tenants in the National Capital Territory of Delhi are presently governed by the Delhi Rent Control Act, 1958. This Act came into force on the 9th February, 1959. It was amended thereafter in 1960, 1963, 1976, 1984 and 1988. The amendments made in 1988 were based on the recommendations of the Economic Administration Reforms Commission and the National Commission on Urbanisation. Although they were quite extensive in nature, it was felt that they did not go far enough in the matter of removal of disincentives to the growth of rental housing and left many questions unanswered and problems unaddressed. Numerous representations for further amendments to the Act were received from groups of tenants and landlords and others.

2. The demand for further amendments to the Delhi Rent Control Act, 1958 received fresh impetus with the tabling of the National Housing Policy in both Houses of Parliament in 1992. The Policy has since been considered and adopted by Parliament. One of its major concerns is to remove legal impediments to the

growth of housing in general and rental housing in particular. Paragraph 4.6.2 of the National Housing Policy specifically provides for the stimulation of investment in rental housing especially for the lower and middle income groups by suitable amendments to rent control laws by State Governments. The Supreme Court of India has also suggested changes in rent control laws. In its judgment in the case of Prabhakaran Nair v. State of Tamil Nadu, the Court observed that the laws of landlords and tenants must be made rational, humane, certain and capable of being quickly implemented. In this context, a Model Rent Control Legislation was formulated by the Central Government and sent to the States to enable them to carry out necessary amendments to the prevailing rent control laws. Moreover, the Constitution (Seventy-Fifth Amendment) Act, 1994 was passed to enable the State Governments to set up State-level rent, tribunals for speedy disposal of rent cases by excluding the jurisdiction of all courts except the Supreme Court.

3. In the light of the representations and developments referred to above, it has been decided to amend the rent control law prevailing in Delhi. As the amendments are extensive and substantial in nature, instead of making changes in the Delhi Rent Control Act, 1958, it is proposed to repeal and replace the said Act by enacting a fresh legislation.

4. To achieve the above purposes, the present Bill, inter alia, seeks to provide for the following, namely :-

xx xx xx

5. On enactment, the Bill will minimise distortion in the rental housing market and encourage the supply of rental housing both from the existing housing stock and from new housing stock.

xx xx xx'

9. The legislature having appreciated the need for enacting the New Rent Act, it is not open to the Central Government to sit in judgment over the wisdom of the legislature and set at naught the legislative will. In Supreme Court Legal Aid Committee v. Union of India and Others, , a three Judge Bench of the Supreme

Court gave a direction to the Union Government to take steps to issue the notification applying the provisions of Chapter III of the Legal Services Authorities Act, 1987, to the States/Union Territories to which such provisions had not been made applicable, within two weeks of the passing of the order. In that case, according to section 1(3) of the Legal Services Authorities Act, 1987, the Act and its various provisions could come into force only by a notification of the Central Government. The said section reads as follows :-

'1. Short title, extent and commencement. - (1) ....

(2) .....

(3) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.'

The Legal Services Authorities Act, 1987, except Chapter III thereof, was extended to all the States vide notification of the Central Government dated November 9, 1995. However, the provisions of Chapter III of the Legal Services Authorities Act, 1987, were not extended to a number of States and Union Territories. The reason given by the Central Government for not extending the provisions was that certain States had not framed the Rules under section 28 of that Act. The Supreme Court not only directed the framing of the Rules by the States and the Union Territories but also asked the Central Government to issue the requisite notification applying the provisions of Chapter III to the States and the Union Territories. In this regard, the Supreme Court made the following direction :-

'5. The provisions of the Act except Chapter III were extended to all the States and the Union Territories on 9-11-1995. More than two years have elapsed. The time available was more than sufficient for the State Government and the Union Territories to act and frame rules under Section 28 of the Act. It is directed that the States and the Union Territories which have not framed the rules so far, i.e, the above-mentioned States/Union Territories excluding the Union Territory of

Chandigarh shall frame the relevant rules under Section 28 and notify the same within a period of two months. As soon as the rules are framed, the same shall be duly intimated to the Union Government and the Union Government shall take steps to issue the notification applying the provisions of Chapter III to that State/Union Territory within two weeks from the date of such intimation.'

10. Learned counsel for the respondent relied upon the decisions of the Supreme Court in A.K. Roy v. Union of India and Aelte- mesh Rein, Advocate, Supreme Court of India, v. Union of India and Others for contending that no direction to the Central Government can be issued to bring a statute or a statutory provision into force in a case where the said statute leaves the question of bringing the Act or a statutory provision into force at the discretion of the Central Government.

11. It may be noted that in A.K. Roy's case (supra) the Supreme Court observed that the Parliament by leaving to the Central Government to decide as to when the various provisions of the 44th Constitution Amendment Act, 1978 should be brought into force, could not have intended the Central Government to exercise a kind of veto over its constituent will by not ever bringing the Amendment or some of its provisions into force. The Supreme Court, however, by a majority of three is to two declined to issue the mandamus to the Central Government to bring into force the various provisions of the said Act, but expressed hope that the Central Government will without further delay bring the 44th Constitution Amendment Act into force. Similarly, in the case of Aeltemesh Rein (supra) the Supreme Court, relying upon A.K. Roy's case (supra), did not issue a direction to the Central Government obliging it to bring section 30 of the Advocates Act into force. At the same time it must be pointed out that the Supreme Court expressed the view that every discretionary power vested with the executive should be exercised in a just, fair and reasonable manner as that is the essence of the rule of law.

12. Learned counsel for the respondent submitted that according to the decisions of the Supreme Court in A.K. Roy (supra) and Aeltemesh Rein (supra) no direction can ever be issued to the Central Government to bring into force a legislation. I am not persuaded to read the above judgments as imposing a total ban in issuing an appropriate direction to an unwilling government to implement the mandate of the

Parliament by notifying a date for bringing into force the legislation. If the learned counsel for the respondent is right in his submission, then in that event the Supreme Court in Supreme Court Legal Aid Committee (supra) would not have given a direction to the Central Government to issue the requisite notification for applying the provisions of Chapter III of the Legal Services Authorities Act, 1987. It appears that there is hardly any possibility of the Delhi Rent Act, 1995, being brought into force by the Central Government on its own. This is clearly discernible from the affidavit of the Central Government dated September 8, 1998. From the affidavit the following position emerges :-

1. Central Cabinet decided to enforce the Delhi Rent Act, 1995 with the amendments contained in the note for the Cabinet dated July 8, 1998 which means the Central Government is not willing to enforce the Act in its present form.

2. Pursuant to the decision of the Central Government, Rent Control Amendment Bill, 1997 has been introduced in the Parliament.

3. On the constitution of the 12th Lok Sabha, the Central Government was required to take a fresh decision in regard to the Delhi Rent Control Bill, 1997, which decision has not been taken.

The fact that the Central Government has expressed its inability to enforce the Delhi Rent Act, 1995, has been brought out in the last paragraph of its affidavit. This paragraph summing up the situation states as follows :-

'4. That in view of the above position, Ministry is not in a position to bring into force Delhi Rent Act, 1995 Act XXXIII/95 as assented to by the President of India.'

13. The power vested by the Parliament in the Central Government by Section 1(3) of the new Rent Act, which is in the category of the conditional legislation, has to be exercised by the latter for bringing into force the provisions of the Act. The Central Government cannot say that it will not bring the new Rent Act into force or it will bring the same into force after the same is amended by the Parliament. The Central Government is bound to implement the will of the Parliament and cannot take shelter under the plea that it will enforce the new Rent Act only after the same

is amended by the Parliament. As and when the new Rent Act is amended by the Parliament, the same would stand modified accordingly.

14. It is significant to note that the Standing Committee on Urban and Rural Development (1996-97) presented its report to the Lok Sabha on April 22, 1997. In this respect the Committee recommended that the new Rent Act should be notified without any further delay. In this regard it was stated as follows :-

'3.5.2. More than 1 year and 8 months have elapsed since Delhi Rent Act 95 was assented to by the President. Till date the Act has not been notified by the Government to be implemented. The Committee note with concern the way the Government is dealing with the said Act and recommend the same should be notified without any further delay.'

15. Despite the recommendation of the Parliamentary Committee the New Rent Act has not been enforced by the Central Government. Here is a case where the Central Government is not willing to implement the will of the people expressed through the Parliament. In such a case the court will have the jurisdiction to issue an appropriate direction to the Central Government to notify the new Rent Act.

16. In A.K. Roy's case (supra) it was contended that since the Central Government failed to exercise its powers to bring the 44th Constitution Amendment Act, 1978 into force within a reasonable time and had delayed its implementation, a direction should be issued calling upon the Central Government to discharge its duty. The petitioner in that case, however, failed to place on record any data to show that the action of the Central Government in delaying the implementation of the will of the Parliament was actuated by any ulterior motive. In view of this position, the Apex Court while declining to issue a writ of mandamus held as follows:-

'Delay in implementing the will of the Parliament can justifiably raise many an eyebrow, but it is not possible to say on the basis of such data, as has been laid before us, that the Central Government is actuated by any ulterior motive in not bringing Section 3 into force.'

17. The above observations of the Supreme Court do not show that in no circumstances a prayer for a direction in the nature of mandamus directing the Central Government to discharge its duty to bring into force the legisation in respect of which power is vested in the Central Government to issue a notification for enforcing its operation would be accepted. In both the cases (A.K. Roy and Aeltemesh Rein), unlike the present case, it was not found by the Court that the Central Government had expressed its inability or refusal to bring into force the legislation. Where the Central Government refuses to bring into force a legislation a mandamus would lie directing it to effectuate the will of the Parliament. The instant case is of refusal of the Central Government to bring into force the Delhi Rent Control Act, 1995 (Act No. 33 of 1995) in its present form instead of being simply a case of delay in implementing the will of the Parliament.

18. In view of the above discussion, the writ petition succeeds and the rule is made absolute. The respondent-Union of India is directed to bring into force the Delhi Rent Act, 1995 (Act No. 33 of 1995) by issuing an appropriate notification within six weeks from today.

19. In the other writ petitions, namely, CWP Nos. 210/96, 761/96, 83/97, 972/97 and 1718/98, same direction is issued as has been issued in the instant petition (CWP No. 1495/97) since they raise the identical question.

20. The writ petition is disposed of.

Mukul Mudgal, J.

21. I have read the erudite judgment of my learned brother and I am in full agreement with the reasoning and the discussion in the said judgment. I am only respectfully differing in the ultimate directions issued and for this I am recording my separate reasons.

22. The relevant portion of the law relating to the mandamus which may be issued to the Government for bringing into force a particular enactment is in Paras 52, 53 & 54 of the majority opinion of the Hon'ble Supreme Court judgment reported as A.K. Roy v. Union of India . The relevant portion of para 52 reads as under:

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

the Act which has wrongly discarded it. It is for these reasons that we are unable to accept the submission that by issuing a mandamus, the Central Government must be compelled to bring the provisions of Sec. 3 of the 44th Amendment into force. The question as to the impact of that section which, though a part of the 44th Amendment Act, is not yet a part of the Constitution, will be considered later when we will take up for examination the argument as regards the reasonableness of the procedure prescribed by the Act.'

23. The Supreme Court has thus clearly held that in the absence of objective standards laid down by the Parliament governing the decision of the Central Government in the matter of enforcement of the amendment it is not possible to judicially examine the inaction of the Government. The Court has also held that when the Parliament itself has not held the executive responsible or accountable for not bringing into force the amendment, the Court cannot issue a mandamus recording its disapproval. Even if the Government has expressed its inability to enforce the Delhi Rent Control Act, as per its additional affidavit, I am of the view that this is still a matter of legislative concern and not a matter where a writ court can issue a mandamus.

24. The relevant portion of the para 53 of the said judgment reads as under:

'We have said at the very outset of the discussion of this point that our decision on the question as to whether a mandamus should be issued as prayed for by the petitioners, should not be construed as any approval on our part of the long and unexplained failure on the part of the Central Government to bring Sec. 3 of the 44th Amendment Act into force. We have no doubt that in leaving it to the judgment of the Central Government to decide as to when the various provisions of the 44th Amendment should be brought into force, the Parliament could not have intended that the Central Government may exercise a kind of veto over its constituent will by not even bringing the Amendment or some of its provisions into force. The Parliament having seen the necessity of introducing into the Constitution a provision like Sec. 3 of the 44th Amendment, it is not open to the Central Government to sit in judgment over the wisdom of the policy of that section. If only the Parliament were to lay down an objective standard to guide and

control the discretion of the Central Government in the matter of bringing the various provisions of the Act into force, it would have been possible to compel the Central Government by an appropriate writ to discharge the function assigned to it by the Parliament. In the past, many amendments have been made by the Parliament to the Constitution, some of which were given retrospective effect, some were given immediate effect, while in regard to some others, the discretion was given to the Central Government to bring the Amendments into force. For example, Sections 3 (1)(a) and 4() of the Constitution (First Amendment) Act, 1951 gave retrospective effect to the amendments introduced in Art. 19 and 31 by those sections. The 7th Amendment, 1956, fixed a specific date on which it was to come into force. The 13th Amendment, 1962, provided by Section 1 (2) that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. That amendment was brought into force by the Central Government on Dec. 1, 1963. The 27th Amendment, 1971 brought Section 3 thereof into force at once, while the remaining provisions were to come into force on a date appointed by the Central Government, which was not to be earlier than a certain date mentioned in Sec. 1(2) of the Amending Act. Those remaining provisions were brought into force by the Central Government on Feb. 15, 1972. The 32nd Amendment, 1973, also provided by Sec. 1(2) that it shall come into force on a date appointed by the Central Government. That amendment was brought into force on July 1, 1974. The 42nd Amendment, 1976, by which the Constitution was recast extensively, gave power to the Central Government to bring it into force. By a notification dated Jan. 1, 1977 parts of that Amendment were brought into force in three stages (see Basu's Commentary on the Indian Constitution, Edn. 1977, Vol. C, Part III, p. 134). Certain sections of that Amendment, which were not brought into force, were repealed by Sec. 45 of the 44th Amendment.'

25. The relevant portion of the para 54 reads as under:

'It is in this background that the Parliament conferred upon the Central Government the power to bring the provisions of the 44th Amendment Act into force. The Parliament could not have visualised that, without any acceptable reason, the Central Government may fail to implement its constituent will. We

hope that the Central Government will, without further delay, bring Sec. 3 of the 44th Amendment Act into force. That section, be it remembered, affords to the detnu an assurance that his case will be considered fairly and objectively by an impartial tribunal.

26. Thus it is seen that the Supreme Court has declined to issue a mandaus to bring into force Section 3 of the 44th Amendment. If this be the position vis-a-vis a constitutional Amendment then it cannot be any different for a statute.'

27. The Hon'ble Supreme Court had in fact clarified this position of law in its decision in Aeltemesh Rein v. Union of India .

28. Paragraph 6 of the Aeltemesh Rein's judgment reads as under:

'The effect of the above observations of the Constitution Bench is that it is not open to this Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central Government. As long as the majority view expressed in the above decision holds the field it is not open to this Court to issue a writ in the nature of mandamus directing the Central Government to bring section 30 of the Act into force. But we are of the view that this decision does not come in the way of the Supreme Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing section 30 of the Act into force has arrived or not. Every discretionary power vested in the Executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether section 30 of the Act should be bought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing

circumstances are such that section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under section 30 of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above.'

29. It is in the light of the above, I am respectfully unable to agree with my learned brother that a writ of mandamus could issue to the Central Government to bring into force the legislation in respect of which power is vested in it to issue a notification for enforcing its operation. The only writ which can issue in the light of the judgment in Aeltemesh Rein (supra's) case is a writ of mandamus to the Government to consider whether the time to bring into force the said Act of 1995 has arrived.

30. I am unable to read the judgment of the Constitution Bench of the Hon'ble Supreme Court in A.K. Roy's case (Supra) to mean that a mandamus can issue in the as found in the present case. As the A.K. Roy judgment stands I am unable to agree with my learned brother that a writ or mandamus ought to issue directing the Central Government to bring into force the Delhi Rent Act, 1995. In my opinion only a limited mandamus in accordance with the Aeltemesh Rein's case (supra) can issue to the Central Government to consider within 6 weeks whether the time to enforce the Act has arrived and in this view of the matter I respectfully disagree with the ultimate directions while agreeing with the rest of the reasoning and discussion in the aforesaid judgment of my esteemed brother Anil Dev Singh, J.