CASE NO.:
Appeal (civil) 3988-3989 of 2001

PETITIONER:
Common Cause

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 08/10/2003

BENCH:
R.C. Lahoti & Ashok Bhan.

JUDGMENT:
J U D G M E N T

BHAN, J.

Keeping in view the National Housing Policy and for rationalisation of rent laws to give incentive to the growth of the housing in general and rental housing, in particular, and the observation made by this Court in Prabhakaran Nair and others vs. State of Tamil Nadu and others [1987 (4) SCC 238] to the following effect:

"The laws of landlord and tenant must be made rational, humane, certain and capable of being quickly implemented. Those landlords who have 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 national 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 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."

Delhi Rent Act, 1995 (for short 'the Act') was enacted by the Parliament. It was meant to be the Model Rent Control Legislation formulated by the Central Government and sent to the States to enable them to carry out necessary amendments to the prevalent rent control laws in the States.

The Delhi Rent Bill, 1994 (for short 'the Bill') was introduced in the Rajya Sabha on 26th August, 1994. It was passed unanimously in the Rajya Sabha on 29th May, 1995. Thereafter it was tabled in the Lok Sabha. Lok Sabha unanimously passed the same on 3rd June, 1995. Presidential assent was given to the Bill on 23rd August, 1995 and the same was accordingly enacted as the Delhi Rent Act, 1995 (Act 33 of 1995) and notified on 23rd August, 1995, as enacted. The Parliament did not fix the date w.e.f which the Act would come into operation. It was left to the discretion of the Central Government to notify the date w.e.f. which the Act would come into operation. Section 1(3) of the Act reads:

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

As the Central Government did not notify the date, appellant filed writ petition No.1495 of 1997 in the High Court of Delhi in public interest seeking a writ or order in the nature of mandamus directing the Union of India to forthwith and without delay issue a notification in the Official Gazette, as contemplated under Section 1(3) of the Act notifying the date on which the said Act shall come into force in its present form.

In the written statement filed by the Union of India, it was stated that a section of people, particularly trader tenants, launched an agitation demanding changes in some of the provisions of the Act. In the wake of this agitation, the then Chief Minister, Government of NCT of Delhi appointed an All Party Committee to examine the Act and make recommendations for changes which could address the grievances of the agitating groups. These primarily related to provisions of the Act concerning deemed rent, registration of tenancies, inheritability of tenancies, eviction, etc. Following the receipt of numerous representations and the All Party Committee Report, the entire issue was re-examined to decide whether the Act should be notified as assented to by the President, or it should be amended in the light of the representations that had been received. After detailed examination, it was finally decided to carry out the amendments to the Act before notifying it. Accordingly the Delhi Rent (Amendment) Bill, 1997 was drafted and introduced in the Rajya Sabha on 28th July, 1997. The Bill was referred to the Parliamentary Standing Committee which examined the amendments suggested in depth. The Parliamentary Standing Committee finalised its Report in December, 2000. The Government considered the Report and accepted all the recommendations of the Committee on 3rd April, 2001

and notice for moving the official amendments in respect of Delhi Rent (Amendment) Bill, 1997 was accordingly sent to the Secretary General, Rajya Sabha in July, 2001. Because of the workload the Bill could not be taken up for consideration in the Rajya Sabha and is expected to be taken up shortly. Since the Government wanted to introduce the Amendments Bill of 1997, the Original Act was not notified.

It was further averred that the enforcement of the Act has been delayed for the above stated reasons and not for any other reason. It was asserted that this Court could not issue a writ in the nature of mandamus to the Central Government for the enforcement of the Act. That it was normal and legally valid for the Parliament to delegate the authority to the Executive government to notify the date from which the Act would come into force.

The writ petition came up for hearing before a Division Bench. One of the learned Judges was of the view that a mandamus could be issued to the Union of India to bring the Act in force and accordingly issued the following directions:

"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."

The other learned Judge, however, did not agree with the above directions and was of the view that such an absolute mandamus could not be issued. According to him the only mandamus which could be issued to the Government was to consider whether the time to bring into force the Act has arrived or not. Accordingly the limited mandamus was issued in the following terms:

"â\200¦In my opinion only a limited mandamus in accordance with the Aeltmesh 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.

Ordered accordingly."

Because of the difference of opinion between the two learned Judges the matter was referred to the third Judge. The third learned Judge did not agree with the view taken by either of the Judges. According to him, keeping in view the position of law as understood by him it would not be appropriate to issue a writ of mandamus directing the Central Government to bring the Act into force in its present form. That a limited mandamus could be issued, but, keeping in view the position explained by the Union of India that it does not want to bring the Act into force in its present form and that it would be brought in force with certain amendments which are pending consideration by the Parliament, even a limited mandamus could not be issued. Accordingly, he passed the following order:

"â\200¦Consequently. I am of the view that even a writ of mandamus as postulated by Aeltemesh Rein need not be issued, since the response of the Central Government is already known. Moreover, it is well settled that the Courts do not issue infructuous writs or writs which are of an academic nature. However, since this is not an issue before me, I leave it as that."

The third Judge directed that the case be listed before the Division Bench for appropriate orders, subject to the orders of Hon'ble the Chief Justice. Thereafter the matter was placed before the Division Bench.

Before the Division Bench, in response to the limited mandamus which had been issued in accordance with the view of the majority, the Central Government filed an affidavit reporting compliance therewith. In view of the affidavit of compliance the writ petition was ordered to be disposed of. On an oral prayer made by the counsel for the petitioner the Division Bench granted Certificate of Fitness under Article 134(A) of the Constitution of India for filing appeals to this Court. Accordingly, the present appeals have been filed.

Counsel for the appellant contended that legislative arena for Parliament is exited once Article 111 of the Constitution is complied with. On the President conveying his assent to the Bill, a Bill is lawfully enacted and converts itself into an Act. According to him, Parliament has used different prescriptions to give effect to its mandate. The same are:

a) When the enactment itself stipulates the date for implementation;

b) When the enactment delegates its power to the executive to appoint the date of enforcement and different dates may be appointed for different provisions of the Act;

As per counsel submission when the enactment delegates its power to the executive to appoint the date of enforcement but does not permit different dates being appointed for different provisions of the Act, then the provisions of Section 5 of the General Clauses Act, 1897 govern such enactments and it comes into force as soon as the President gives his assent to the Bill.

Section 5 of the General Clauses Act prescribes:

"5. Coming into operation of enactments â\200\223 (1) Where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent, --

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of

Parliament, of the President.

(2) omitted

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

According to the appellant, the Act was enacted as Act No.33 of 1995. It was placed on the statute book by public notification in terms of Article 366(18) of the Constitution on 23rd August, 1995. By this, the Act is now out of the legislative arena. As neither a particular date has been stipulated by the Parliament in its enforcement nor the Parliament has expressed any contrary intention by the prescription of permitting different dates being stipulated for enforcement of different provisions of the Act, the Act would be deemed to have been come into force in terms of provisions of Section 5 of the General Clauses Act, 1897.

Point in issue is not res-integra. This point was considered in depth by a Constitution Bench of this Court in A.K.Roy vs. Union of India [1982 (1) SCC 271]. It was held that an Act cannot be said to commence or put in force unless it is brought into operation by a legislative enactment or by exercise of authority by the delegatee empowered to bring the Act into operation by issuing the necessary notification. When enforcement of a statute or a provision therein is left to the discretion of the government without laying down any objective standards, no writ or mandamus can be issued to the government to enforce the statute or any of the provisions of the statute.

In A.K.Roy's case(supra), this Court was examining the Constitution (Amendment) Act, 1978 which was passed by both Houses of Parliament and assented to by the President of India. Section 1(2) of the Amending Act read as under:

"It shall come into force on such date as the Central Government may by notification in the official Gazette appoint and different dates may be appointed for different provisions of the Act."

This Court examined the point regarding the interpretation to be put on Section 1(2) of the 44th Amendment Act; the consequences of the failure of the Central Government to issue a notification under Section 1(2) for bringing into force the provisions of 44th Amendment Act within a reasonable time, and, the question, as to whether despite the provisions contained in Section 1(2), the 44th Amendment must be deemed to have come into force on the date on which the President gave his assent to it. Another question examined was as to whether Section 1(2) of the 44th Amendment Act was severable from the rest of the provisions or if that Section was bad for any other reason.

The point was examined in depth from various angles including the constitutional validity of Section 1(2); the power of the constituent to delegate its power to bring into force the Act to the executive; as to whether there was any internal contradiction between the provisions of Article 368(2) and those of Section 1(2) of the Constitution 44th Amendment Act, and, as to whether, since the Central Government had failed to exercise its power within a reasonable time the Court could issue a mandamus calling upon the Central Government to discharge its duties without any further delay.

After due consideration, this Court by a majority of 3:2 upheld the constitutional validity of Section 1(2) of the 44th Amendment Act and the power of the Parliament to delegate its authority to an outside agency. It was held that no mandamus could be issued to the Central Government to bring into force the Act. Drawing a distinction between the Constitution standing amended (in our case the enactment of the Act) in accordance with the terms of the Bill assented to by the President and the date of coming into force of the amendment, thus, introduced in the Constitution, it was observed that there was no internal contradiction between the provisions of Article 368(2) and those of Section 1(2) of the 44th Amendment Act. That Article 368(2) lays down a general rule of application to a date from which the Constitution would stand amended in accordance with the Bill assented to by the President whereas Section 1(2) of the amended Act specifies the manner in which the Act or any of its provisions would be brought into force. The distinction was pointed out in the following words:

"The distinction is between the Constitution standing amended in accordance with the terms of the Bill assented to by the President and the date of the coming into force of the Amendment thus introduced into the Constitution. For determining the date with effect from which the Constitution stands amended in accordance with the terms of the Bill, one has to turn to the date on which the President gave, or was obliged to give, his assent to the Amendment. For determining the date with effect from which the Constitution, as amended, came or will come into force, one has to turn to the notification, if any, issued by the Central Government under Section 1(2) of the Amendment Act."

It was held that the 44th Amendment Act itself prescribes by enacting Section 1(2) a pre-condition which must be satisfied before any of its provisions could come into force. The pre-condition was the issuance of a notification by the Central Government duly published in the Official Gazette, appointing the date from which the Act or any particular provision thereof will come into force. None of the provisions of 44th Amendment Act could come into operation until the Central Government issues a notification as contemplated by Section 1(2). It was held in para 47 as under:

"The Amendment Act may provide that the amendment introduced by it shall come into force immediately upon the President giving his assent to the Bill or it may provide that the amendment shall come into force on a future date. Indeed, no objection can be taken to the constituent body itself appointing a specific future date with effect from which the Amendment Act will come into force; and if that be so, different dates can be appointed by it for bringing into force different provisions of the Amendment Act. The point of the matter is that the Constitution standing amended in

accordance with the terms of the Bill and the amendment thus introduced into the Constitution coming into force are two distinct things. Just as a law duly passed by the legislature can have no effect unless it comes or is brought into force, similarly, an amendment of the Constitution can have no effect unless it comes or is brought into force. The fact that the constituent body may itself specify a future date or dates with effect from which the Amendment Act or any of its provisions will come into force shows that there is no antithesis between Article 368(2) of the Constitution and Section 1(2) of the 44th Amendment Act. The expression of legislative or constituent will as regards the date of enforcement of the law or Constitution is an integral part thereof. That is why it is difficult to accept the submission that, contrary to the expression of the constituent will, the amendments introduced by the 44th Amendment Act came into force on April 30, 1979 when the President gave his assent to that Act. The true position is that the amendments introduced by the 44th Amendment Act did not become a part of the Constitution on April 30, 1979. They will acquire that status only when the Central Government brings them into force by issuing a notification under Section 1(2) of the Amendment Act."

The Bench also considered the Constitutional validity of Section 1(2) of the 44th Amendment Act. Repelling the argument that the constituent power must be exercised by the constituent body itself and that it could not be delegated by it to the executive or any other agency, it was observed in para 48 as follows:

"â\200¦For determining this question, it is necessary to bear in mind that by 'constituent power' is meant the power to frame or amend the Constitution. The power of amendment is conferred upon the Parliament by Article 368(1), which provides that the Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down in that article. The power thus conferred on the Parliament is plenary subject to the limitation that it cannot be exercised so as to alter the basic structure or framework of the Constitution. It is well settled that the power conferred upon the Parliament by Article 245 to make laws is plenary within the field of legislation upon which that power can operate. That power, by the terms of Article 245, is subject only to the provisions of the Constitution. The constituent power, subject to the limitation aforesaid, cannot be any the less plenary than the legislative power, especially when the power to amend the

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

Contention that after amendment of the Constitution, by virtue of Article 368(2) of the Constitution, the Constitution stood amended as enacted, it was held:

"â\200¦It is, therefore, permissible to the Parliament to vest in an outside agency the power to bring a constitutional amendment into force. In the instant case, that power is conferred by the Parliament on another organ of the State, namely, the executive, which is responsible to the Parliament for all its actions. The Parliament does not irretrievably lose its power to bring the Amendment into force by reason of the empowerment in favour of the Central Government to bring it into force. If the Central Government fails to do what, according to the Parliament, it ought to have done, it would be open to the Parliament to delete Section 1(2) of the 44th Amendment Act by following the due procedure and to bring into force that Act or any of its provisions."

Coming to the next question as to whether legislature could delegate its power to bring a law into force to the executive or an outside agency, it was held that it could do so. On a detailed consideration, it was held in para 50 as follows:

"â\200¦.They read the Privy Council decisions as laying down that conditional legislation is permissible whereby the legislature entrusts to an outside agency the discretionary power to select the time or place to enforce the law. As stated by Shri H.M.Seervai in his Constitutional Law of India (2nd ed., p.1203) : "The making of laws is not an end in itself, but is a means to an end, which the legislature desires to secure. That end may be secured directly by the law itself. But there are many subjects of legislation in which the end is better secured by extensive delegation of legislative power". There are practical difficulties in the enforcement of law contemporaneously with their enactment as also in their uniform extension to

different areas. Those difficulties cannot be foreseen at the time when the laws are made. It, therefore, becomes necessary to leave to the judgment of an outside agency the question as to when the law should be brought into force and to which areas it should be extended from time to time. What is permissible to the legislature by way of conditional legislation cannot be considered impermissible to the Parliament when, in the exercise of its constituent power, it takes the view that the question as regards the time of enforcement of a constitutional amendment should be left to the judgment of the executive. We are, therefore, of the opinion that Section 1(2) of the 44th Amendment Act is not ultra vires the power of amendment conferred upon the Parliament by Article 368(1) of the Constitution."

In Para 51, it was observed:

"â\200¦..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 mandamusâ\200¦.."

Rejecting the argument that Section 1(2) of the 44th Amendment Act was bad because it vested an uncontrolled power in the executive, it was observed that in similar and even more extensive delegation of powers to the executive had been upheld by this Court over the years. Reference was made to a number of decisions such as Sardar Inder Singh vs. State of Rajasthan [1957 SCR 605], Sita Ram Bishambhar Dayat vs. State of U.P. [1972 (4) SCC 485] and Gwalior Rayon Silk Manufacturing Co. Ltd. vs. Asstt. C.S.T. [1974 (4) SCC 98].

Again this point was considered by this Court in Aeltemesh Rein vs. Union of India [1988 (4) SCC 54]. There the government had failed to issue a notification to bring into force Section 30 of the Advocates Act, 1961 into operation for a period of 30 years. A writ petition was filed seeking a writ of mandamus directing the Central Government to issue a notification to bring into force Section 30 of the Advocates Act with immediate effect. Following the judgment in A.K. Roy's case (supra), it held that such a mandamus could not be issued. It was observed:

"â\200¦.Dealing with a similar question a Constitution Bench of this Court in A.K.Roy vs. Union of India has taken the view that a writ in the nature of mandamus directing the Central Government to bring a statute or a provision in a statute into force in exercise of powers conferred by Parliament in that statute cannot be issued. Chandrachud, CJ., who spoke for the majority of the Constitution Bench has observed at pages 314 to 316 of the Report thus : [SCC pp. 310-12 :SCC(Cri) pp.188-89, paras 51 and

52]

But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of Section 3 into force. The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the Forty-fourth 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 mandamusâ\200¦.. . 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 Section 3 of the Amendment Act should be brought into forceâ\200¦â\200¦.It is for these reasons that we are unable to accept the submission that by issuing a mandamus, the Central Government must be compelled to bring the provisions of Section 3 of the Forty-fourth Amendment into forceâ\200¦â\200¦"

It was further observed:

"â\200¦..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 this 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 notâ\200¦.."

This point was again considered by this Court in a recent case in Union of India vs. Shree Gajanan Maharaj Sansthan [2002 (5) SCC 44]. It was observed in para 7, as follows:

"â\200¦.It, therefore, became necessary to leave the judgment to the executive as to when the law should be brought into force. When enforcement of a provision in a statute is left to the discretion of the Government without laying down any objective standards, no writ of mandamus could be issued directing the government to consider the question whether the provision should be brought into force and when it can do so. Delay in implementing the will of Parliament may draw adverse criticism but on the data placed before us, we cannot say that the Government is not alive to the problem or is desirous of ignoring the will of Parliament."

In the present case, the Government received several representations from tenant organisations demanding changes in some of the provisions and the Government on receipt of numeral representations constituted an All Party Committee to re-examine as to whether the Act should be notified or it should be amended in the light of the representations received. After detailed examination, it was finally decided to carry out certain amendments to the Act. Accordingly, Delhi Rent (amendment) Bill was drafted and introduced in the Rajya Sabha. The Amendment Bill was referred to the Parliamentary Standing Committee which examined the amendments suggested in depth. The Parliamentary Standing Committee finalised its reports in December, 2000. The Government after considering the Report accepted the recommendations of the Committee on 3rd April, 2001 and thereafter the notice was sent to the Secretary-General, Rajya Sabha to introduce the Amendment Bill.

From the facts placed before us it cannot be said that Government is not alive to the problem or is desirous of ignoring the will of the Parliament. When the legislature itself had vested the power in the Central Government to notify the date from which the Act would come into force, then, the Central Government is entitled to take into consideration various facts including the facts set out above while considering when the Act should be brought into force or not. No mandamus can be issued to the Central Government to issue the notification contemplated under Section 1(3) of the Act to bring the Act into force, keeping in view the facts brought on record and the consistent view of this Court.

The submission that by virtue of Section 5 of General Clauses Act, the Act has come into force is misconceived. Section 5 of the General Clauses Act has no application. Section 5 is applicable only when the Act does not express any date with effect from which the Act would come into force. It will apply to such cases where there is no provision like Section 1(3) of the Act or Section 1(2) of the 44th Constitutional Amendment. When the Legislature itself provides that the date of coming into force of the Act would be a date to be notified by the Central Government, Section 5 of the General Clauses Act will have no application. It is plain and evident from the language of the provision. Section 5(1) provides that 'where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent'. Sub-clause (3) provides that 'unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement'.' In simple words it would mean that unless otherwise provided a Central Act would come into operation on the date it receives Presidential assent and is construed as coming into operation immediately on the date preceding its commencement. Thus, if a Central Act is assented by

the President on 23.8.1995 then it would be construed to have come into operation on the mid-night between 22nd and 23rd August, 1995. Sub-section (3) has to be read as a corollary to sub-section (1). Sub-section (1) provides that the Act would come into operation on the date it receives the assent of the President where a particular day w.e.f. which the Act would come into force is not prescribed whereas sub-section (3) provides the exact time of the day/night when the Act would come into force. It would not apply to cases where the legislature has delegated the power to the executive to bring into force the Act from a date to be notified by publication in the Official Gazette.

For the reasons stated above, we do not find any merit in these appeals and the same are dismissed with no order as to costs.