

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**I.A. NO. 248201 OF 2023
IN
CIVIL APPEAL NO. 897 OF 2002**

IN THE MATTER OF:

State of U.P. ... Appellants
Jai Bir Singh *versus* ... Respondents

AND IN THE MATTER OF:

All India Institute of Medical Sciences, New Delhi ... Intervenor

INDEX

S. No.	Particulars	Pg. No.
1.	Brief Note on behalf of AIIMS, New Delhi.	1 – 10
2.	AIIMS Act, 1956 (as amended).	11 – 29
3.	PGIMER Chandigarh Act, 1966.	30 – 42
4.	JIPMER Puducherry Act, 2008.	43 – 56
5.	NIMHANS Bangalore Act, 2012.	57 – 70
6.	Office Memorandum for re-constitution of Permanent Negotiating Machinery at AIIMS, New Delhi dated 28.05.2021.	71 – 75
7.	<i>Malpe Vishwanath Acharya v State of Maharashtra</i> , (1998) 2 SCC 1.	76 – 98
8.	<i>Satyawati Sharma v. UOI.</i> , (2008) 5 SCC 287.	99 – 136

SUBMITTED BY: ANAND VARMA, AOR FOR INTERVENOR/AIIMS

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BRIEF NOTE ON BEHALF OF AIIMS

1. The present matters are concerned with the interpretation of the term 'industry' under Section 2(j) of the Industrial Disputes Act, 1947 (ID Act, 1947), and the correctness of the tests / principles laid down by this Hon'ble Court in ***Bangalore Water Supply and Sewerage Board v A Rajappa, (1978) 2 SCC 213.***¹
2. The present intervenor is the All India Institute of Medical Sciences, New Delhi. It is established as an Institute of National Importance by Parliament under the AIIMS Act, 1956. The said Act has been amended in recent years to include additional Institutes established in different parts of the country.
3. Briefly, the submissions on behalf of AIIMS are outlined as follows:
 - (i) The judgments of this Hon'ble Court interpreting Section 2(j) and leading upto the judgment in ***BWSSB*** have a common thread / element: 'industry' covers *branches of works that can be said to be analogous to the carrying out of a trade or business*. The term 'undertaking' has to be interpreted accordingly. The judgments, however, vary in either taking an expansive ambit in interpreting undertaking (as in the *triple test*), or imposing a limitation.
 - (ii) 'Undertaking' was correctly interpreted as having a commercial element in ***Madras Gymkhana***,² and ***Sardarjung Hospital***.³
 - (iii) A limiting principle in interpreting 'undertaking' is supported by the maxim of *noscitur a sociis*.
 - (iv) The triple test is thus correct, but incomplete. The test needs modulation to include a *commercial element* as a sine qua non for an entity to be an industry.
 - (v) A variation in interpretation is not necessarily a reflection on the correctness or otherwise of the principles laid down in ***BWSSB***. It is now well settled that the interpretation of legal principles and provisions may evolve with changing socio-economic conditions.

¹ (1978) 2 SCC 213 | Vol. 5-B, pg. 4 - 91

² (1968) 1 SCR 742 | Vol. 5-B, pg. 269 - 287

³ (1970) 1 SCC 735 | Vol. 5-B, pg. 303 - 316

- (vi) In any case, this Hon'ble Court has, subsequent to the judgment in **BWSSB**, taken a discordant view that a research institute does not fall within the third limb of the triple test. The said view in **Physical Research Laboratory v KG Sharma**,⁴ needs to be reconciled with judgment in **AIIMS v Raj Singh**⁵ holding the present Intervenor as an industry be applying BWSSB.
- (vii) The dominant or main functions of the present Intervenor, as per the parent Act, are (i) research in public health and medicine, (ii) under-graduate, post-graduate, super-specialized and doctoral medical education and (iii) patient care, as an incidence of research and education functions. None of these functions fall within the ambit of Section 2(j) in the absence of a commercial element.
- (viii) Notably, any person employed at AIIMS will not be left remediless in case this Hon'ble Court holds AIIMS to be an exception under the definition of the term '*industry*'. There is an internal '*Permanent Negotiating Machinery*' which was constituted at AIIMS and continues to be functional, which is in addition to the remedy available under the provisions of Administrative Tribunal Act, 1985. The machinery was set up with an objective to resolve any sudden incidents which may disrupt the smooth functioning at AIIMS.
4. The term '*undertaking*' has been the subject matter of interpretation by this Hon'ble Court from **DN Banerji v PR Mukherjee** onwards.⁶ The said judgment notes that though the word "*undertaking*" in the definition of "*industry*" is wedged in between business and trade on the one hand and manufacture on the other, it means much more than what is ordinarily understood by trade or business. In this context, it was held that the definitions in the Act will include disputes arising in "*branches of work that can be said to be analogous to the carrying out of a trade or business*".⁷ This is the common thread or element which finds mention in all subsequent formulations, including in **BWSSB**.
5. In **Corporation of the City of Nagpur v Its Employees**,⁸ when considering whether the Nagpur Corporation and its individual departments were industry or not, this Hon'ble Court stated the following as the five characteristics as the conditions implicit in the definition of industry:
- “(i) *the activity must concern the production of goods or services;*
(ii) *it must be to serve others but not to oneself;*
(iii) *it must involve co-operative effort between employer and employee, between capital and labour;*
(iv) *it must be done as a commercial transaction; and*
(v) *it must not be in exercise of purely governmental functions.*”⁹

⁴ (1997) 4 SCC 257 | Vol. 5, pg. 3723

⁵ (2017) 12 SCC 803 | Vol. 5, pg. 5853

⁶ (1952) 2 SCC 619 | Vol. 5B, pg. 142

⁷ Vol. 5B, pg. 142 @ 153 (para 17) & 158 (para 26)

⁸ 1960 (2) SCR 942 | Vol. 5B, pg. 194

⁹ Vol. 5B, pg. 142 @ 202

6. The Court in **Nagpur Corporation**, however, applied the abovesaid appropriate tests a bit too broadly, to identify different departments of the Corporation as industry.¹⁰
7. In **Ahmedabad Textile Industry's Research Association v State of Bombay**,¹¹ this Hon'ble Court held that a research association fell within Section 2(j) on the basis that it rendered material services to a part of the community, namely, the member mills, by discovering processes of manufacture with a view to securing greater efficiency, rationalization and reduction of costs of member mills. It was held that the research association *was organized or arranged in a manner in which a trade or business is generally organized*,¹² and could not be equated to a purely educational institution.
8. In **Madras Gymkhana Club Employees' Union v Management of Gymkhana Club**,¹³ this Hon'ble Court held that before an activity can be described as an industry, *"it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services"*.¹⁴ The Court further held that *"the word 'undertaking' must be defined as "any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade."*¹⁵
9. The above principles were furthered by this Hon'ble Court in **Management of Safdarjung Hospital v. Kuldip Singh Sethi**,¹⁶ and the essentiality of commercial character was emphasized:¹⁷

*"18. What is meant by "material services" needs some explanation too. Material services are not services which depend wholly or largely upon the contribution of professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services. Even an establishment where many such operate cannot be said to convert their professional services into material services. **Material services involve an activity carried on through cooperation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable. Thus the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors, etc. are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular***

¹⁰ Vol. 5B, pg. 142 @ 217

¹¹ (1961) 2 SCR 480 | Vol. 5B, pg. 227

¹² Vol. 5B, pg. 227 @ 234

¹³ (1968) 1 SCR 742 | Vol. 5B, pg. 269

¹⁴ Vol. 5B, pg. 269 @ 283

¹⁵ Vol. 5B, pg. 269 @ 284

¹⁶ (1970) 1 SCC 735 | Vol. 5B, pg. 303

¹⁷ Vol. 5B, pg. 311 – 313

individuals. *It is the production of this something which is described as the production of material services.*

20. *The reason for these cases, as also the Gymkhana Club case lies in the kind of establishment with which we are concerned. The Gymkhana Club case of this Court (followed and applied in Cricket Club v. Labour Union [AIR 1969 SC 276]) has held that non-profit making member's clubs are not employed in trade or industry and their employees are not entitled to engage in trade disputes with the clubs. This view finds support from Hotel and Catering Industry Training Board v. Automobile Proprietary Ltd. [(1969) 1 WLR 697 HL SC (1968) 1 WLR 1526 and (1968) 3 All ER 399 CA] The Solicitors case cited by Mr Ramamurti was so decided because there the services rendered by the employees were in aid of professional men and not productive of material goods or wealth or material services. The other case of university was also decided, as it was, for the same reason.*

21. *It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employees or between employees and employees in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. **It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.***

... ..

23. *We may now consider closely the Hospital Mazdoor Sabha case and the reasons for which it was held that the workmen employed in a hospital were entitled to raise an industrial dispute. **We may say at once that if a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment. It becomes a business.***

(emphasis supplied)

10. Basis the abovesaid test and principles, which were consistent with the principles laid down in the **Ahmedabad Textiles** and **Madras Gymkhana** judgments, the presence of a commercial sense is essential for an undertaking to be treated as analogous with trade or business. It is submitted that the commercial sense requirement is not about profit motive, which had already been negated, but about the character of the output: the activity must produce something that is commercially valuable to the community as such and not individually.

11. The judgment in *Safdarjung* was followed, in respect of hospitals, in the judgments of *Managements of Hospitals, Orissa v Class IV Employees*,¹⁸ and *Dhanrajgiri Hospital v Workmen*.¹⁹
12. In *BWSSB*, this Hon'ble Court rejected the commercial sense test laid down in *Safdarjung* and overruled that judgment.²⁰ The majority opinion noted the formulation in *Safdarjung* that "*the enterprise must be analogous to trade or business in a commercial sense*" and observed that the expression 'commercial sense' is opaque, admitting of more than one meaning. It is the respectful submission of the Intervenor that *BWSSB's* rejection of the 'commercial sense' test is founded on a misreading of what the test actually requires. The judgment in *BWSSB* does not engage with the central question that the test was designed to answer, namely, what is the nature, role and structure of the organization whose status as an 'industry' is in question. *BWSSB* treats the only two possible meanings of 'commercial sense' as being profit motive or commercial pattern of organisation. It did not consider the third reading, which is the one that *Safdarjung* plainly intended: that 'commercial sense' refers to the commercial character or value of the **output of the activity**, that is to say, whether the activity produces something that is commercially valuable to the community as such, independently of the personal professional qualification of the individuals who render the service.
13. It is this reading that explains the contrast drawn in *Safdarjung* between services such as electric power, water and transport on the one hand, and the services of professionals such as doctors, teachers and lawyers on the other. The former produce commercially valuable outputs that exist independently of the professional standing of their producers. The latter produce professional services whose value is inseparable from the personal knowledge and skill of the individual rendering them. The judgment in *BWSSB* did not engage with this distinction at all.
14. It is thus respectfully submitted that the triple test laid down in para 140 of *BWSSB* is a correct but incomplete formulation. The correct approach, as adopted by this Hon'ble Court in *Ahmedabad Textiles, Madras Gymkhana* and *Safdarjung*, is to restore the commercial sense test in its proper form, that is, as a test directed at the nature, role, dominant functions and output of the organisation.
15. The abovesaid interpretation is also supported by a complete application of the principle of *noscitur a sociis*. If the term 'undertaking' is to be interpreted as analogous to the preceding terms of business and trade, and not completely severed from them, reading a "commercial sense" requirement is essential, failing which, 'undertaking' assumes a meaning at variance with the rest of Section 2(j).
16. Furthermore, a reconsideration in interpretation is not necessarily a reflection on the correctness or otherwise of the principles laid down in *BWSSB*. The judgment itself anticipated the need for evolution. Para 15 left the door open explicitly: "*If society, in its advance, experiences*

¹⁸ (1972) 4 SCC 216 | Vol. 5B, pg. 317

¹⁹ (1975) 4 SCC 621 | Vol. 5B, pg. 321

²⁰ Vol. 5B, pg. 69 – 71.

subtler realities and assigns values to them, jurisprudence may reach out to such collective good."²¹

17. This approach aligns with the observations of this Hon'ble Court in judgments such as **BALCO Employees Union v Union of India & Ors**,²² where at para 51, it was acknowledged that economic policies and legislative measures are shaped by shifting socio-economic priorities, and judicial review must be conscious of such evolution. In **Zee Telefilms v. Union of India**,²³ at para 35, it was reiterated that constitutional and statutory interpretation must be responsive to changing times, particularly in contexts influenced by liberalization and globalization.
18. Together, these authorities affirm the principle that legislation is not static, but a living instrument that must be interpreted in harmony with the evolving socio-economic framework and the needs of the nation.
19. An illustration may also be taken from the change in interpretation regarding tenancy laws, which reflects a clear shift from a strongly tenant-protective regime toward a more balanced, and in certain respects landlord-favouring, framework in response to changing housing needs and economic realities. This Hon'ble Court in **Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1** observed that insofar as social legislations are concerned, the law must strike a balance between rival interest and should try to be just to all and not give disproportionate benefit to one section of society. Similarly, this Hon'ble Court in **Satyawati Sharma v. UOI, (2008) 5 SCC 287** held that, "*a legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same..*"
20. Insofar as the Intervenor's research functions are concerned, this Hon'ble Court may also take into consideration a subsequent judgment in **Physical Research Laboratory v. K.G. Sharma**.²⁴ In the said judgment, this Hon'ble Court applied **BWSSB's** principles to hold that PRL, a public autonomous body engaged in pure research in space science, funded by the Department of Space, was not an industry: "*...while interpreting the words 'undertaking', 'calling' and 'service' which are of much wider import, the principles of 'noscitur a sociis' was applied and it was held that they would be 'industry' only if they are found to be analogous to trade or business. Furthermore, an activity undertaken by the Government cannot be regarded as 'industry' if it is done in discharge of its sovereign functions*". It was observed in paras 12-13 that, "*the research work carried on by PRL is not connected with production, supply or distribution of material goods or services... PRL is conducting research not for the benefit or use of others. Though the results of research work done by it are occasionally published, they have never*

²¹ Vol. 5B, pg. 22.

²² (2002) 2 SCC 333 | Vol. 5, pg. 4085 - 4135

²³ (2005) 4 SCC 649 | Vol. 5, pg. 4435 - 4527

²⁴ (1997) 4 SCC 257 | Vol. 5, pg. 3723

been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value..... Neither from the nature of its organisation nor from the nature and character of activity carried on by it, can it be said to be an 'undertaking' analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise.” Upon these observations, this Hon’ble Court held that PRL was not an industry.

21. However, with respect to AIIMS, this Hon’ble Court has held otherwise and positively contemplated it to be an industry under Section 2(j), in the matter of **AIIMS v Raj Singh**.²⁵
22. The Intervenor’s submission that AIIMS cannot be categorized as an “industry” is rooted in the objects for which it was established and the functions it performs. The Health Survey and Development Committee (Bhore Committee), in its Report published in 1946, recommended the establishment of a national medical centre at Delhi to concentrate on training well-qualified teachers and research workers to meet the health and welfare needs of the country. Pursuant to this recommendation, AIIMS was established as an Institute of National Importance under the All India Institute of Medical Sciences Act, 1956 (“AIIMS Act”). As per Section 13 of the AIIMS Act, the objects of the Institute are:
 - (a) *to develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India;*
 - (b) *to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and*
 - (c) *to attain self-sufficiency in post-graduate medical education.*
23. Section 14 of the AIIMS Act enumerates the functions of the Institute. These include, inter alia: providing under-graduate and post-graduate teaching in modern medicine and allied sciences; providing facilities for research in various branches of such sciences; conducting experiments in new methods of medical education; prescribing courses and curricula for studies; training teachers for medical colleges across India; holding examinations and granting degrees and diplomas; establishing and maintaining medical colleges, hospitals, a dental college, nursing college, and rural and urban health organisations; as well as undertaking national health research projects.
24. The Statement of Objects and Reasons of the AIIMS Act has been further articulated in the AIIMS (Amendment) Act, 2012: “*The main object of the aforesaid Act is to provide a high standard of medical education, both post-graduate and undergraduate, for all medical colleges and other allied institutions in the country to improve professional competence*

²⁵ (2017) 12 SCC 803 | Vol. 5, pg. 5853

- among medical practitioners and to attain self-sufficiency in post-graduate medical education and to promote medical research.”*
25. As an Institute of National Importance, AIIMS is entrusted from time to time with research projects by the World Health Organisation, the Indian Council of Medical Research and other government and semi-government bodies. These include sophisticated investigations in neurosciences, genetics and computer simulation of hormone-receptor interaction, as well as clinical and epidemiological studies on the prevention and treatment of national health problems such as leprosy, malaria, tuberculosis, diabetes, hepatitis and iodine deficiency. AIIMS was set up by statute precisely to carry out medical research that advances medical knowledge for the benefit of the nation.
 26. Therefore, as set out above, the primary object and function of AIIMS is research, training and education in medical sciences. The research conducted at AIIMS is not undertaken for any commercial purpose; it is directed towards advancement in the field of medical sciences and, ultimately, the public health and welfare of the nation. The function of running a hospital is an incidence of the primary object of AIIMS, since medical research and training in treatment necessarily requires the provision of such treatment at a clinical facility.
 27. The correct approach to determining whether AIIMS is an “industry” is not merely functional as the majority in **BWSSB** held but must also take into account the “commercial sense” test, as crystallized in **Safdarjung**. The said judgment, elaborated above, correctly held that every employment relationship does not result in an “industry” and that an enterprise must be “*analogous to trade or business in a commercial sense*”.
 28. The **Safdarjung** view also finds support in the principle that the mere mention of “service in hospitals and dispensaries” in the First Schedule to the ID Act as activities which could be declared a “public utility service” does not mean that every hospital is an “industry”. This inevitably means that the purpose behind the establishment of an undertaking must be examined independently to determine whether it should be categorised as an “industry.”
 29. It is pertinent to mention that the special character of an institution such as AIIMS as distinct from a typical commercial or industrial establishment has been consistently recognised by courts when considering the exercise of industrial rights such as the right to strike. In **Scheduled Castes and Scheduled Tribes Medical Association (Regd.) Delhi v. Union of India**²⁶, a Division Bench of the Hon’ble Delhi High Court considered at length the question of whether doctors, interns and junior residents at AIIMS could go on strike and coerce willing doctors not to discharge their duties. The Hon’ble High Court recorded the severe impact of bandhs and strikes on patient care at AIIMS as follows:

“3. As set forth, the strikes had a tremendous impact and the patients suffered as emergency services were shut down; the patients waiting for treatment remained in the hospital being untreated in serious condition; the patients who were admitted to have surgery and other

²⁶ 2011:DHC:1046-DB | Vol. 5, pg. 44595 - 4609

advanced treatment remained in agony; and further certain doctors, who wanted to help, aid or assist the patients, were coerced and compelled not to attend the patients. It is urged that the doctors, regard being had to their nature of duties, responsibilities, professional ethics and the right of a citizen under Article 21 of the Constitution to avail treatment cannot go on strike or take recourse to demonstration or protest paralyzing the system...”

“30. We have referred to the objects and reasons and the provisions of the Act and the decision in A.I.I.M.S. Students Union (supra) only to highlight the significant, meaningful and pregnant role played by A.I.I.M.S. in the field of medical education and carrying on of research and delivering of sophisticated latest treatment facilities to the patients.”

30. In ***Court on its own Motion v. All India Institute of Medical Sciences***²⁷, the Hon’ble Delhi High Court considered the stark difference between the impact of industrial action at AIIMS and at regular factories and trading establishments:

“6. We are conscious of the fact that employees ordinarily also have a right to agitate their grievances by way of peaceful action including collective bargaining and collective action. However, considering the special circumstances of the AIIMS as an Institution and particularly the sensitive nature of such a super-speciality referral hospital requiring the uninterrupted and smooth functioning of each and every sphere of activity as also the space and locational constraints such as ICU/Emergency/Trauma Centre... and also Blood Bank facilities, life-saving medicines and devices being required at short notice, as well as unimpeded movement of medical and para-medical personnel having to be ensured at all times, it would be appropriate and in the interest of justice and also in public interest, that there should be no activity in the nature of strike, dharna or demonstration or gherao at, or in, or around the AIIMS at all.

7. The impact of a strike in a hospital is totally different from that in the case of a factory or trading establishment. Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as require constant and incessant attending and care and, therefore, unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking staff. Unlike financial losses, the loss of life or limb cannot be recouped...

8. Hospitals are also public utility service within the meaning of the Industrial Disputes Act. It was also the intention of Parliament, as is envisaged by the 1982 amendment to the definition of ‘industry’ under the Industrial Disputes Act, that hospitals have been excluded from the scope of definition of industry and from the purview of the Industrial Disputes Act, 1947. Even though the said amendment has not been

²⁷ 2002 (64) DRJ 418 | Vol. 5, pg. 4055 - 4058

brought into force but it does reinforce the position that 'hospitals' have to be treated as a class apart from 'industry'."

31. In the same judgment, the Hon'ble High Court directed the constitution of a Permanent Negotiating Machinery ("PNM") at AIIMS for resolution of employment disputes, and also laid down a Code of Conduct applicable to AIIMS employees, which prohibits, inter alia: cessation of work for any reason whatsoever; use of loudspeakers or slogans within the campus; gate meetings or protest meetings within a radius of 500 metres from the boundary of the Institute; interference in official work; any disruptive activity; and Trade Union activities within the campus. Additionally, for any service related disputes, it is always open for the employees to approach the Central Administrative Tribunal.
32. It is thus humbly submitted that AIIMS is not similarly situated with a factory or trading establishment, and that the difference arises fundamentally from the nature and purpose of the activities undertaken at AIIMS. The omnibus application of the tests in **BWSSB** to hold AIIMS as an "industry", without regard to the true object and purpose of the institution, is incongruous with the meaning and purport of the term "industry" as used in the ID Act.

Submitted by:

(ANAND VARMA)
AOR for Intervenor/AIIMS

New Delhi
18.03.2026

The
All-India Institute of Medical Sciences
Act, 1956

(All-India Institute of Medical Sciences Act, 1956)

[Act 25 of 1956]

[2nd June, 1956]

CONTENTS

1. Short title and commencement
2. Definitions
3. Establishment and incorporation of the Institute
4. Composition of the Institute
5. Declaration of Institutes as institution of national importance
6. Term of office of, and vacancies among, members
7. President of the Institute
8. Allowances of President and members
9. Meetings of the Institute
10. Governing Body and other Committees of the Institute
11. Staff of the Institute
12. Location of the Institute
13. Objects of the Institute
14. Functions of the Institute
15. Payment to the Institute
16. Fund of the Institute
17. Budget of the Institute
18. Accounts and audit
19. Annual Report

-
- 20. Pension and provident funds
 - 21. Authentication of the orders and instruments of the Institute
 - 22. Acts and proceedings not to be invalidated by vacancies, etc
 - 23. Recognition of Medical, dental and nursing qualifications granted by the Institute
 - 24. Grant of medical, dental or nursing degrees, diplomas, etc., by the Institute
 - 25. Control by Central Government
 - 26. Disputes between the Institute and the Central Government
 - 27. Returns and information
 - 27-A. Incorporation of Institute registered as society under the Societies Registration Act, 1860
 - 27-B. Effect of incorporation of Institutes
 - 27-C. Provisions of this Act to apply to societies incorporated into All-India Institutes of Medical Science under section 27A
 - 27-D. Power to make transitory provisions for Institutes (other than existing Institute)
 - 28. Power to make rules
 - 29. Power to make regulations

All-India Institute of Medical Sciences Act, 1956

[Act 25 of 1956]

[2nd June,
1956]

An Act to provide for the establishment of ¹[All-India Institutes of Medical Sciences].

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

1. Short title and commencement.— (1) This Act may be called the ²[All-India Institutes of Medical Sciences] Act, 1956.

(2) It shall come into force on such date³ as the Central Government

may, by notification in the Official Gazette, appoint.

2. Definitions.— In this Act, unless the context otherwise, requires —

⁴[(a) “corresponding Institute” means the Institutes referred to in column (3) of the Table given under section 27A;

(aa) “existing Institute” means the All-India Institute of Medical Sciences,—

(i) established under sub-section (1) of section 3, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012); and

(ii) located at New Delhi, as required under section 12 as it stood before such commencement;

(ab) “Fund” means the Fund of the Institute referred to in section 16;]

(b) “Governing Body” means the Governing Body of the Institute;

(c) Institute means the All-India Institute of Medical Sciences established under section 3 ⁵[and includes the corresponding Institutes and other Institutes which may be established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012)];

(d) “member” means a member of the Institute;

(e) “regulation” means a regulation made by the Institute;

(f) “rules” means a rule made by the Central Government.

⁵[(g) “society” means the society referred to in column (2) of the Table given under section 27A.]

3. Establishment and incorporation of the Institute.— (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Act an institution to be called the All India Institute of Medical Sciences:

⁶[Provided that the Central Government may, on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), establish by notification in the Official Gazette, such other All-India Institutes of Medical Sciences at such places as it may specify in the said notification in addition to the existing Institute and the corresponding Institutes.]

(2) ⁷[Every Institute] shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

4. Composition of the Institute.— ⁸[Every Institute] shall consist of the following members, namely:—

- ⁹[(a) in the case of existing Institute, the Vice-Chancellor of the Delhi University, *ex officio*;
- (aa) in the case of every other Institute established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), the Vice-Chancellor of a University situated in a State in which such Institute has been established after such commencement and such Vice-Chancellor shall be nominated by the Central Government;]
- (b) the Director General of Health Services, Government of India, *ex officio*;
- (c) the Director of the Institute, *ex officio*;
- (d) two representatives of the Central Government to be nominated by that Government, one from the Ministry of Finance and one from the Ministry of Education;
- (e) five persons of whom one shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government;
- (f) four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by rules; and
- (g) three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.

¹⁰[5. **Declaration of Institutes as institution of national importance.**— (1) It is hereby declared that the existing Institute declared as an institution of national importance, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), under section 5 as it stood before such commencement, shall continue to be an institution of national importance.

(2) It is hereby declared that every corresponding Institute shall be an institution of national importance.

(3) It is hereby declared that every Institute established under the proviso to sub-section (1) of section 3, on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), shall be an institution of national importance.]

6. Term of office of, and vacancies among, members.— (1) Save as otherwise provided in the section, the term of office of a member shall be five years from the date of his nomination or election:

Provided that the term of office of a member elected under clause (g) of section 4 shall come to an end as soon as he ¹¹[becomes a

Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or] ceases to be a member of the House from which he was elected.

(2) The term of office of an *ex officio* member shall continue so long as he holds the office in virtue of which he is such a member.

(3) The term of office of a member nominated or elected to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated or elected.

(4) An outgoing member shall, unless the Central Government otherwise directs, continue in office until another person is nominated or elected as a member in his place.

(5) An outgoing member shall be eligible for re-nomination or re-election.

(6) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

(7) The manner of filling vacancies among members shall be such as may be prescribed by rules.

7. President of the Institute.— (1) There shall be a ¹²[President for every Institute] who shall be nominated by the Central Government from among the members other than the Director of the Institute.

¹³[Provided that the President of the existing Institute shall also be the President of every corresponding Institute and other Institutes established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), till such date the Central Government nominates a separate President for every corresponding Institute and other Institutes established after such commencement.]

(2) The President shall exercise such powers and discharge such functions as are laid down in this Act or as may be prescribed by rules or regulations.

8. Allowances of President and members.— The President and members shall receive such allowances, if any, ¹⁴[from the Institute of which they are the President and members] as may be prescribed by rules.

¹⁵[Provided that in case a person is a President of two or more Institutes, the allowances shall be borne by the Institutes in such proportion as may be prescribed by rules.]

9. Meetings of the Institute.— ¹⁶[Every Institute shall] hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the

transaction of business at the first meeting as may be laid down by that Government; and thereafter ¹⁷[every Institute shall meet] at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulation:

¹⁸[Provided that the provisions relating to holding of the first meeting shall not apply to the existing Institute.]

10. Governing Body and other Committees of the Institute.— (1)

There shall be ¹⁹[separate Governing Body for every Institute which shall be constituted by such Institute] from among its members in such manner as may be prescribed by regulations.

²⁰[Provided that the Governing Body of the existing Institute, constituted before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), shall be deemed to have been constituted under this section.]

(2) The Governing Body shall be the executive committee of ²¹[every Institute] and shall exercise such powers and discharge such functions as ²¹[every Institute] may, by regulations made in this behalf, confer or impose upon it.

(3) The President of ²¹[every Institute] shall be the Chairman of the Governing Body and as Chairman thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.

(4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among, the members of the Governing Body shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, ²²[every Institute may constitute] as many standing committees and as many *ad hoc* committees as it thinks fit for exercising any power or discharging any ²³[functions of such Institute] or for inquiring into or reporting or advising upon, any matter which the Institute may refer to them.

(6) A standing committee shall consist exclusively of ²⁴[members of every Institute; but an *ad hoc* committee may include persons who are not members of such Institute] but the number of such persons shall not exceed one-half of its total membership.

²⁵[Provided that the Standing Committee of the existing Institute constituted, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), shall be deemed to have been constituted under this section.]

(7) The Chairman and members of the Governing Body and the Chairman and members of a standing committee or an *ad hoc* committee shall receive such allowances, if any, as may be prescribed by regulations.

11. Staff of the Institute.— (1) There shall be a ²⁶[chief executive officer of every Institute] who shall be designated as the ²⁷[Director of such Institute] and shall, subject to such rules as may be made by the Central Government in this behalf, be appointed by the Institute:

²⁸[Provided that the first Director of every Institute (other than the existing Institute), established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), shall be appointed by the Central Government:

Provided further that in case a Director of a society has been appointed by the Central Government before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, such Director shall be deemed to be the first Director of the concerned corresponding Institute.]

²⁹[(1A) The Director shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that any person holding office as a Director immediately before the commencement of the All-India Institute of Medical Sciences and the Post-Graduate Institute of Medical Education and Research (Amendment) Act, 2007 (42 of 2007), shall in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Director and shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of his office or of any contract of service.]

(2) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(3) The Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body.

(4) Subject to such rules as may be made by the Central Government in this behalf, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may determine the designations and grades of such other officers and employees.

(5) The Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed

by such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed by regulations made in this behalf.

³⁰[12. Location of the Institute.— (1) The existing Institute shall be located at New Delhi.

(2) All corresponding Institutes shall be located at the places mentioned in column (3) of the Table given under section 27A.

(3) All Institutes [other than the existing Institute and corresponding Institutes referred to in sub-sections (1) and (2)] shall be located at such places as the Central Government may, by notification in the Official Gazette, specify.]

13. Objects of the Institute.— The objects of ³¹[every Institute] shall be—

- (a) to develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India;
- (b) to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and
- (c) to attain self-sufficiency in post-graduate medical education.

14. Functions of the Institute.— With a view to promotion of the objects specified in section 13, ³²[every Institute] may—

- (a) provide for under-graduate and post-graduate teaching in the science of modern medicine and other allied sciences, including physical and biological sciences;
- (b) provide facilities for research in the various branches of such sciences;
- (c) provide for the teaching of humanities in the under graduate courses;
- (d) conduct experiments in new methods of medical education, both under graduate and post-graduate, in order to arrive at satisfactory standards of such education;
- (e) prescribe courses and curricula for both under-graduate and post graduate studies;
- (f) notwithstanding anything contained in any other law for the time being in force, establish and maintain—
 - (i) one or more medical colleges with different departments, including a department of preventive and social medicine, sufficiently staffed and equipped to undertake not only under graduate medical education but also post-graduate medical education in different subjects;

- (ii) one or more well-equipped hospitals;
- (iii) a dental college with such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary;
- (iv) a nursing college sufficiently staffed and equipped for the training of nurses;
- (v) rural and urban health organisations which will form centers for the field training of the medical, dental and nursing students of the Institute as well as for research into community health problems; and
- (vi) other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists and medical technicians of various kinds;
- (g) train teachers for the different medical colleges in India;
- (h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in under-graduate and post-graduate medical education as may be laid down in the regulations;
- (i) institute, and appoint persons to, professorships, readerships, lectureships and posts of any description in accordance with regulations;
- (j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be;
- (k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in section 13;
- (l) demand and receive such fees and other charges as may be prescribed by regulations;
- ³³[(m) construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf;
- (n) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute;]

15. Payment to the Institute.— The Central Government may, under appropriation made by Parliament by law in this behalf, pay to ³⁴[every Institute] in each financial year such sums of money and in such manner as may be considered necessary by that Government for the exercise of its powers and discharge of its functions under this Act.

16. Fund of the Institute.— (1) ³⁵[Every Institute] shall maintain a Fund to which shall be credited—

- (a) all moneys provided by the Central Government;
- (b) all fees and other charges received by the Institute;
- (c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and
- (d) all moneys received by the Institute in any other manner or from any other source.

³⁶[Provided that the Fund maintained by the existing Institute and the society, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), shall be deemed to be the Fund maintained under this section.]

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under section 14.

17. Budget of the Institute.— ³⁷[Every Institute shall prepare], in such form and at such time every year as may be prescribed by rules, a budget in respect of the financial year next ensuing showing the estimated receipts and ³⁸[expenditure of the concerned Institute] and shall forward to the Central Government such number of copies thereof as may be prescribed by rules.

18. Accounts and audit.— (1) ³⁹[Every Institute] shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance-sheet in such form as the Central Government may by rules prescribe in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of ⁴⁰[every Institute] shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by ⁴⁰[every Institute] to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of ⁴⁰[every Institute] shall have the same rights, privileges and authority in connection with such audit as the Comptroller General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of ⁴⁰[every Institute] as well as of the institutions established and maintained by it.

(4) The accounts of ⁴⁰[every Institute] as certified by the

Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

19. Annual Report.— ⁴¹[Every Institute] shall prepare for every year a report of its activities during that year and submit the report to the Central Government in such form and on or before such date as may be prescribed by rules and a copy of this report shall be laid before both Houses of Parliament within one month of its receipt.

20. Pension and provident funds.— (1) ⁴²[Every Institute] shall constitute for the benefit of its officers, teachers and other employees in such manner and subject to such conditions as may be prescribed by regulations, such pension and provident funds as it may deem fit.

⁴³[Provided that the pension and provident fund constituted by the existing Institute or society, before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), shall be deemed to be the pension and provident fund under this section.]

(2) Where any such pension or provident fund has been constituted the Central Government may declare that the provisions of the Provident Funds Act, 1925 (19 of 1925), shall apply to such fund as if it were a Government provident fund.

21. Authentication of the orders and instruments of the Institute.— All orders and ⁴⁴[decisions of every Institute] shall be authenticated by the signature of the President or any other member authorised by the Institute in this behalf and all other instruments shall be authenticated by the signature of the Director or any other ⁴⁵[officer of every Institute] authorised in like manner in this behalf.

22. Acts and proceedings not to be invalidated by vacancies, etc.— No act done or proceeding taken by ⁴⁶[every Institute], Governing Body or any standing or *ad hoc* committee under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, ⁴⁶[every Institute], Governing Body or such standing or *ad hoc* committee.

⁴⁸[**23. Recognition of Medical, dental and nursing qualifications granted by the Institute.**— Notwithstanding anything contained in the Indian Medical Council Act, 1956 (102 of 1956), the Dentists Act, 1948 (16 of 1948) and the Indian Nursing Council Act, 1947 (48 of 1947), the medical, dental or nursing degrees or diplomas, as the case may be, granted by ⁴⁷[every Institute] under this Act shall be recognised—

(a) medical qualifications for the purpose of the Indian Medical

Council Act, 1956 (102 of 1956) and shall be deemed to be included in the First Schedule to that Act;

(b) dental qualifications for the purpose of the Dentists Act, 1948 (16 of 1948) and shall be deemed to be included in the Scheduled to that Act; and

(c) nursing qualifications for the purpose of the Indian Nursing Council Act, 1947(48 of 1947) and shall be deemed to be included in the Schedule to that Act.]

⁴⁹[24. Grant of medical, dental or nursing degrees, diplomas, etc., by the Institute.— Notwithstanding anything contained in any other law for the time being in force, ⁵⁰[every Institute] shall have power to grant medical, dental or nursing degrees, diplomas and other academic distinctions and title under this Act.]

25. Control by Central Government.— ⁵¹[Every Institute] shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

26. Disputes between the Institute and the Central Government.— If in, or in connection with, the exercise of its powers and discharge of its functions by the Institute under this Act, any dispute arises between the Institute and the Central Government, the decision of the Central Government on such dispute shall be final.

27. Returns and information.— ⁵²[Every Institute] shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

⁵³[27-A. Incorporation of Institute registered as society under the Societies Registration Act, 1860.— Each of the Institute, registered as society under the Societies Registration Act, 1860 (21 of 1860) and mentioned in column (2) of the Table below shall be a body corporate having perpetual succession and common seal and shall by its name mentioned in column (3) of that Table, sue and be sued:

TABLE

LIST OF SOCIETIES INCORPORATED AS ALL-INDIA INSTITUTES OF MEDICAL SCIENCES

Serial Number	Society	Corresponding Institute and place of its location
(1)	(2)	(3)
1.	All-India Institute of Medical Sciences, Bhopal	All-India Institute of Medical Sciences, Bhopal (Madhya Pradesh).
2.	All-India Medical Institute of Sciences,	All-India institute of Medical Sciences, Bhubaneswar

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| | Bhubaneswar | (Odisha). |
| 3. | All-India Institute of Medical Sciences, Jodhpur | All-India Institute of Medical Sciences, Jodhpur (Rajasthan). |
| 4. | All-India Institute of Medical Sciences, Patna | All-India Institute of Medical Sciences, Patna (Bihar). |
| 5. | All-India Institute of Medical Sciences, Raipur | All-India Institute of Medical Sciences, Raipur (Chhattisgarh). |
| 6. | All-India Institute of Medical Sciences, Rishikesh | All-India Institute of Medical Sciences, Rishikesh (Uttarakhand).] |

27-B. Effect of incorporation of Institutes.— (1) On and after the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012,—

- (a) any reference to a society in any law, other than this Act, or in any contract or other instrument, shall be deemed as a reference to the corresponding Institute;
- (b) all property, movable and immovable, of or belonging to a society shall vest in the corresponding Institute;
- (c) all the rights and liabilities of a society shall be transferred to, and be the rights and liabilities of, the corresponding Institute;
- (d) subject to the provisions of this Act, every person (including Director, officers and other employees) who is employed in the society, immediately before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), shall, on and after such commencement, become an employee of the corresponding Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012), as if the said Act had not been promulgated, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations:

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government;

- (e) the Governing Body of every society, shall, from the date of constitution of the Governing Body under sub-section (1) of

section 10, stand dissolved and no chairperson or other person shall be entitled to any compensation for the premature termination of the term of his office or of any contract of service;

(f) all committees (including Standing Committee, if any) of the society shall stand dissolved;

(g) any examination conducted by the existing Institute for admission of candidates for award of medical degrees and diplomas by such society shall be valid examination and be deemed to have been conducted by the corresponding Institute.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, absorption of any employee by the corresponding Institutes in its regular service under this section shall not entitle such employee to any compensation under this Act or any other law and no such claim shall be entertained by any court, tribunal or other authority.

27-C. Provisions of this Act to apply to societies incorporated into All-India Institutes of Medical Science under section 27A.— All provisions of this Act shall, *mutatis mutandis*, apply to the societies, referred to in column (2) of the Table given under section 27A, incorporated into All-India Institutes of Medical Sciences referred to in column (3) of the said Table.

27-D. Power to make transitory provisions for Institutes (other than existing Institute).— (1) The Central Government may, if it is of the opinion that certain measures are required for speedy and effective functioning of corresponding Institutes (other than the existing Institute), by notification in the Official Gazette, specify such measures as it may consider necessary for the smooth and effective functioning of such Institutes:

Provided that no such notification shall be issued under this section, after the expiry of a period of two years from the date of commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012 (37 of 2012).

(2) Every notification issued under this section shall be laid, as soon as may be after it is made, before each House of Parliament.]

28. Power to make rules.— (1) The Central Government, after consultation with ⁵⁴[all the Institutes], may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that consultation with the Institute shall not be necessary on the first occasion of the making of rules under this section, but the Central Government shall take into consideration any suggestions which the Institute may make in relation to the

amendment of such rules after they are made.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of nomination of members under clause (f) of section 4;

⁵⁵[(aa) the proportion of allowances of the President to be borne by the Institutes under the proviso to section 8;]

(b) the control and restrictions in relation to the constitution of standing and *ad hoc* committees under sub-section (5) of section 10;

(c) the conditions of service of, the procedure to be followed by, and the manner of filling vacancies among, members of ⁵⁶[every Institute];

(d) the powers and functions to be exercised and discharged by the President of the Institute;

(e) the allowances, if any, to be paid to the President and members of the Institute;

(f) the number of officers and employees that may be appointed by the Institute and the manner of such appointment;

(g) the form in which and the time at which the budget and reports shall be prepared by the Institute and the number of copies thereof to be forwarded to the Central Government;

(h) the form and manner in which returns and information are to be furnished by the Institute to the Central Government;

(i) any other matter which has to be or may be prescribed by rules.

⁵⁷[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

29. Power to make regulations.— ⁵⁸[Every Institute] ⁵⁹[, with the previous approval of the Central Government, may, by notification in the Official Gazette] make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act, and

without prejudice to the generality of this power, such regulations may provide for—

- (a) the summoning and holding of meetings other than the first meeting of the Institute, the time and place where such meetings are to be held, the conduct of business at such meetings and the number of members necessary to form a quorum;
- (b) the manner of constituting the Governing Body and standing and *ad hoc* committees, the term of office of, and the manner of filling vacancies among, the members of, the Governing Body and standing and *ad hoc* committees;
- (c) the powers and functions to be exercised and discharged by the President of the Institute and the Chairman of the Governing Body.
- (d) the allowances, if any, to be paid to the Chairman and the members of the Governing Body and of standing and *ad hoc* committees;
- (e) the procedure to be followed by the Governing Body and standing and *ad hoc* committees in the conduct of their business, exercise of their powers and discharge of their functions;
- (f) the tenure of office, salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute including teachers appointed by the Institute;
- (g) the powers and duties of the Chairman of the Governing Body;
- (h) the powers and duties of the Director and other officers and employees of the Institute;
- (i) the management of the properties of the Institute;
- (j) the degrees, diplomas and other academic distinctions and titles which may be granted by the Institute;
- (k) the professorships, readerships, lecturerships and other posts which may be instituted and persons who may be appointed to such professorships, readership, lecturerships and other posts;
- (l) the fees and other charges which may be demanded and received by the Institute;
- (m) the manner in which, and the conditions subject to which, pension and provident funds may be constituted for the benefit of officers, teachers and other employees of the Institute;
- (n) any other matter for which under this Act provisions may be made by regulations.

⁶⁰[Provided that the regulations made by the existing Institute,

before the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, shall continue to be the regulations made under this section until such regulations are amended or rescinded by the existing Institute in accordance with the provisions of this section.]

(2) Until the Institute is established under this Act, any regulation which may be made under sub-section (1) may be made by the Central Government, and any regulation so made may be altered or rescinded by the Institute in exercise of its powers under sub-section (1).

⁶⁰[Provided that every corresponding Institute shall, within three months of the date of the commencement of the All-India Institute of Medical Sciences (Amendment) Act, 2012, make regulations.]

⁶¹[(3) Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

¹ Subs. by Act 37 of 2012, s. 2, for "an All-India Institute of Medical Sciences" (w.e.f 16-7-2012).

² Subs. by s. 3, *ibid.*, for "All-India Institute of Medical Sciences" (w.e.f. 16-7-2012).

³ 15th November, 1956, *vide* notification No. s.r.o. 2688, dated 6th November, 1956, see Gazette of India, Extraordinary, Part ii, s. 3.

⁴ Subs. by Act 37 of 2012, s. 4, for clause (a) (w.e.f. 16-7-2012).

⁵ Ins. by s. 4, *ibid.* (w.e.f. 16-7-2012).

⁶ The proviso ins. by s. 5, *ibid.* (w.e.f. 16-7-2012).

⁷ Subs. by Act 37 of 2012, s. 5, for "The Institute" (w.e.f. 16-7-2012).

⁸ Subs. by s. 6, *ibid.*, for "The Institute" (w.e.f. 16-7-2012).

⁹ Subs. by s. 6, *ibid.*, for clause (a) (w.e.f. 16-7-2012).

¹⁰ Subs. by s. 7, *ibid.*, for section 5 (w.e.f. 16-7-2012).

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11. Ins. by Act 33 of 2000, s. 2 (w.e.f. 25-8-2000).
12. Subs. by Act 37 of 2012, s. 8, for "President of the Institute" (w.e.f. 16-7-2012).
13. Ins. by s. 8, *ibid.* (w.e.f. 16-7-2012).
14. Subs. by s. 9, *ibid.*, for "from the Institute" (w.e.f. 16-7-2012).
15. Ins. by s. 9, *ibid.* (w.e.f. 16-7-2012).
16. Subs. by s. 10, *ibid.*, for "The Institute shall" (w.e.f. 16-7-2012).
17. Subs. by s. 10, *ibid.*, for "the Institute shall meet" (w.e.f. 16-7-2012).
18. Ins. by s. 10, *ibid.* (w.e.f. 16-7-2012).
19. Subs. by s. 11, *ibid.*, for "a Governing Body of the Institute which shall be constituted by the Institute" (w.e.f. 16-7-2012).
20. Ins. by s. 11, *ibid.* (w.e.f. 16-7-2012).
21. Subs. by s. 11, *ibid.*, for "the Institute" (w.e.f. 16-7-2012).
22. Subs. by Act 37 of 2012, s. 11, for "the Institute may constitute" (w.e.f. 16-7-2012).
23. Subs. by s. 11, *ibid.*, for "functions of the Institute" (w.e.f. 16-7-2012).
24. Subs. by s. 11, *ibid.*, for certain words (w.e.f. 16-7-2012).
25. Ins. by s. 11, *ibid.* (w.e.f. 16-7-2012).
26. Subs. by s. 12, *ibid.*, for "chief executive officer of the Institute" (w.e.f. 16-7-2012).
27. Subs. by s. 12, *ibid.*, for "Director of the Institute" (w.e.f. 16-7-2012).
28. Subs. by s. 12, *ibid.*, for the proviso (w.e.f. 16-7-2012).
29. Ins. by Act 42 of 2007, s. 2 (w.e.f. 30-11-2007).
30. Subs. by Act 37 of 2012, s. 13, for section 12 (w.e.f. 16-7-2012).
31. Subs. by s. 14, *ibid.*, for "the Institute" (w.e.f. 16-7-2012).
32. Subs. by s. 15, *ibid.*, for "the Institute" (w.e.f. 16-7-2012).
33. Ins. by Act 30 of 1987, s. 2 (w.e.f. 8-9-1987).
34. Subs. by Act 37 of 2012, s. 16, for "the Institute" (w.e.f. 16-7-2012).
35. Subs. by s. 17, *ibid.*, for "The Institute" (w.e.f. 16-7-2012).

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36. Ins. by s. 17, *ibid.* (w.e.f. 16-7-2012).
37. Subs. by s. 18, *ibid.*, for "The Institute shall prepare" (w.e.f. 16-7-2012).
38. Subs. by s. 18, *ibid.*, for "expenditure of the Institute" (w.e.f. 16-7-2012).
39. Subs. by s. 19, *ibid.*, for "The Institute" (w.e.f. 16-7-2012).
40. Subs. by Act 37 of 2012, s. 19, for "the Institute" (w.e.f. 16-7-2012).
41. Subs. by s. 19, *ibid.*, for "The Institute" (w.e.f. 16-7-2012).
42. Subs. by s. 20, *ibid.*, for "The Institute" (w.e.f. 16-7-2012).
43. Ins. by s. 20, *ibid.* (w.e.f. 16-7-2012).
44. Subs. by s. 21, *ibid.*, for "decisions of the Institute" (w.e.f. 16-7-2012).
45. Subs. by s. 21, *ibid.*, for "officer of the Institute" (w.e.f. 16-7-2012).
46. Subs. by s. 22, *ibid.*, for "the Institute" (w.e.f. 16-7-2012).
47. Subs. by s. 22, *ibid.*, for "the Institute" (w.e.f. 16-7-2012).
48. Subs. by Act 24 of 2002, s. 2, for section 23 (w.e.f. 24-5-2002).
49. Subs. by Act 24 of 2002, s. 3, for section 24 (w.e.f. 24-5-2002).
50. Subs. by Act 37 of 2012, s. 22, for "the Institute" (w.e.f. 16-7-2012).
51. Subs. by s. 22, *ibid.*, for "The Institute" (w.e.f. 16-7-2012).
52. Subs. by s. 22, *ibid.*, for "The Institute" (w.e.f. 16-7-2012).
53. Ins. by s. 23, *ibid.* (w.e.f. 16-7-2012)
54. Subs. by Act 37 of 2012, s. 24, for "the Institute" (w.e.f. 16-7-2012).
55. Ins. by Act 37 of 2012, s. 24 (w.e.f. 16-7-2012).
56. Subs. by s. 24, *ibid.*, for "the Institute" (w.e.f. 16-7-2012).
57. Subs. by Act 4 of 1986, s. 2 and the Schedule, for sub-section (3) (w.e.f. 15-5-1986).
58. Subs. by Act 37 of 2012, s. 25, for "The Institute" (w.e.f. 16-7-2012).
59. Subs. by Act 4 of 1986, s. 2 and the Schedule, for "may, with the previous approval of the Central Government" (w.e.f. 15-5-1986).
60. Ins. by Act 37 of 2012, s. 25 (w.e.f. 16-7-2012).
61. Ins. by Act 4 of 1986, s. 2 and the Schedule (w.e.f. 15-5-1986).

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The
Post-Graduate Institute of Medical
Education and Research, Chandigarh Act,
1966

(PGI of Medical Education and Research, Chandigarh Act, 1966)

[Act 51 of 1966]

[17th December, 1966]

CONTENTS

1. Short title and commencement
2. Declaration of Post-Graduate Institute of Medical Education and Research, Chandigarh, as an institution of national importance
3. Definitions
4. Incorporation of Institute
5. Composition of Institute
6. Term of office of, and vacancies among, members
7. President of Institute
8. Allowances of President and members
9. Meetings of Institute
10. Governing Body and other committees of Institute
11. Staff of Institute
12. Objects of Institute
13. Functions of Institute
14. Vesting of property
15. Payment of Institute
16. Fund of Institute
17. Budget of Institute
18. Accounts and audit

19. Annual report
20. Pension and provident funds
21. Authentication of orders and instruments of Institute
22. Acts and proceedings not to be invalidated by vacancies, etc
23. Grant of medical degrees, diplomas, etc., by Institute
24. Recognition of medical qualifications granted by Institute
25. Control by Central Government
26. Disputes between Institute and Central Government
27. Returns and information
28. Transfer of service of existing employees
29. Continuance of facilities at Institute
30. Power to remove difficulties
31. Power to makes rules
32. Power to make regulations

Post-Graduate Institute of Medical Education and Research, Chandigarh Act, 1966

[Act 51 of 1966]

[17th
 December,
 1966]

An Act to declare the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh, to be an institution of national importance and to provide for its incorporation and matters connected therewith

Be it enacted by Parliament in the Seventeenth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Post-Graduate Institute of Medical Education and Research, Chandigarh Act, 1966.

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Declaration of Post-Graduate Institute of Medical Education and Research, Chandigarh, as an institution of national importance.—Whereas the objects of the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh in the Union Territory of Chandigarh are such as to make the institution one of national importance, it is hereby declared that the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh is an institution of national importance.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) "Fund" means the Fund of the Institute referred to in Section 16;
- (b) "Governing Body" means the Governing Body of the Institute;
- (c) "Institute" means the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh, incorporated under this Act;
- (d) "member" means a member of the Institute;
- (e) "regulation" means a regulation made by the Institute;
- (f) "rule" means a rule made by the Central Government.

4. Incorporation of Institute.—The Post-Graduate Institute of Medical Education and Research, Chandigarh, is hereby constituted a body corporate by the name aforesaid and as such body corporate, it shall have perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and shall, by that name, sue and be sued.

5. Composition of Institute.—The Institute shall consist of the following members, namely:—

- (a) the Vice-Chancellor of the Punjab University, *ex officio*;
- (b) the Director-General of Health Services, Government of India, *ex officio*;
- (c) the Director of the Institute, *ex officio*;
- (d) three representatives of the Central Government to be nominated by that Government, one each from the Ministry of Finance, Ministry of Education and Ministry of Health and Family Planning;
- (e) seven persons of whom one shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government;
- (f) four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by rules; and
- (g) three members of Parliament of whom two shall be elected from among themselves by the members of the House of the

People (Lok Sabha) and one from among themselves by the members of the Council of States (Rajya Sabha).

6. Term of office of, and vacancies among, members.—(1) Save as otherwise provided in this section, the term of office of a member shall be five years from the date of his nomination or election.

(2) The term of office of a member elected under clause (g) of Section 5 shall come to an end as soon as he ²[becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States, or] ceases to be a member of the House from which he was elected.

(3) The term of office of an *ex officio* member shall continue so long as he holds the office by virtue of which he is such a member.

(4) The term of office of a member nominated or elected to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated or elected.

(5) An out-going member other than a member elected under clause (g) of Section 5 shall, unless the Central Government otherwise directs, continue in office until another person is nominated as a member in his place.

(6) An out-going member shall be eligible for re-nomination or re-election.

(7) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

(8) The manner of filling vacancies among members shall be such as may be prescribed by rules.

7. President of Institute.—(1) There shall be a President of the Institute who shall be nominated by the Central Government from among the members other than the Director of the Institute.

(2) The President shall exercise such powers and discharge such functions as are laid down in this Act or as may be prescribed by rules or regulations.

8. Allowances of President and members.—The President and other members shall receive such allowances, if any, from the Institute as may be prescribed by rules.

9. Meetings of Institute.—The Institute shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government; and thereafter the Institute shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

10. Governing Body and other committees of Institute.—(1) There shall be a Governing Body of the Institute which shall be constituted by the Institute in such manner as may be prescribed by regulations:

Provided that the number of persons who are not members of the Institute shall not exceed one-third of the total membership of the Governing Body.

(2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may, by regulations made in this behalf, confer or impose upon it.

(3) The President of the Institute shall be the Chairman of the Governing Body and as Chairman thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.

(4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among, the members of the Governing Body shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, the Institute may constitute as many standing committees and as many *ad hoc* committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them.

(6) The Chairman and members of the Governing Body and the Chairman and members of a standing committee or an *ad hoc* committee shall receive such allowances, if any, as may be prescribed by regulations.

11. Staff of Institute.—(1) There shall be a chief executive officer of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be made by the Central Government in this behalf, be appointed by the Institute:

Provided that the first Director of the Institute shall be appointed by the Central Government.

(2) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(3) The Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body.

(4) Subject to such rules as may be made by the Central Government in this behalf, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may determine the

designations and grades of such other officers and employees.

(5) Subject to such rules as may be made by the Central Government in this behalf, the Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed by regulations made in this behalf.

12. Objects of Institute.—The objects of the Institute shall be—

- (a) to develop patterns of teaching in undergraduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education;
- (b) to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and
- (c) to attain self-sufficiency in post-graduate medical education to meet the country's needs for specialists and medical teachers.

13. Functions of Institute. With a view to the promotion of the objects specified in Section 12, the Institute may—

- (a) provide for undergraduate and post-graduate teaching in the science of modern medicine and other allied sciences, including physical and biological sciences;
- (b) provide facilities for research in the various branches of such sciences;
- (c) provide for the teaching of humanities;
- (d) conduct experiments in new methods of medical education, both undergraduate and post-graduate, in order to arrive at satisfactory standards of such education;
- (e) prescribe courses and curricula for both undergraduate and post-graduate studies;
- (f) notwithstanding anything contained in any other law for the time being in force, establish and maintain—
 - (i) one or more medical colleges with different departments, including a department of preventive and social medicine, sufficiently staffed and equipped to undertake not only undergraduate medical education but also post-graduate medical education in different subjects,
 - (ii) one or more well-equipped hospitals,
 - (iii) a dental college with such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary,
 - (iv) a nursing college sufficiently staffed and equipped for the training of nurses,

- (v) rural and urban health organisations which will form centers for the field training of the medical, dental and nursing students of the Institute as well as for research into community health problems, and
- (vi) other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists, pharmacists, drug analysts and medical technicians of various kinds;
- (g) train teachers for the different medical colleges in India;
- (h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in undergraduate and post-graduate medical education as may be laid down in the regulations;
- (i) institute, and appoint persons to, professorships, readerships, lecturerships and posts of any description in accordance with regulations;
- (j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be;
- (k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in Section 12;
- (l) demand and receive such fees and other charges as may be prescribed by regulations;
- ³[(m) construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf;
- (n) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute;]
- ⁴[(o)] do all such other acts and things as may be necessary to further the objects specified in Section 12.

14. Vesting of property.—The properties of the Institute which had, by virtue of the Punjab Reorganisation Act, 1966 (31 of 1966), vested in the Central Government shall, on the commencement of this Act, vest in the Institute.

15. Payment of Institute.—The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as may be considered necessary by that Government for the exercise of its powers and discharge of its functions under this Act.

16. Fund of Institute.—(1) The Institute shall maintain a Fund to

which shall be credited—

- (a) all moneys provided by the Central Government;
- (b) all fees and other charges received by the Institute;
- (c) all moneys received by the Institute by way of grants, gifts, donations; benefactions, bequests or transfers; and
- (d) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under Section 13.

17. Budget of Institute.—The Institute shall prepare in such form and at such time every year as may be prescribed by rules a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure of the Institute and shall forward to the Central Government such number of copies thereof as may be prescribed by rules.

18. Accounts and audit.—(1)The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may by rules prescribe, and in accordance with such general directions as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute as well as of the institutions established and maintained by it.

(4) The accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

19. Annual report.—The Institute shall prepare for every year a report of its activities during that year and submit the report to the Central Government in such form and on or before such date as may be prescribed by rules and a copy of this report shall be laid before both Houses of Parliament within one month of its receipt.

20. Pension and provident funds.—(1) The Institute shall constitute for the benefit of its officers, teachers and other employees in such manner and subject to such conditions as may be prescribed by regulations, such pension and provident funds as it may deem fit.

(2) Where any such pension or provident fund has been constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 (19 of 1925), shall apply to such fund as if it were a Government Provident Fund.

21. Authentication of orders and instruments of Institute.—All orders and decisions of the Institute shall be authenticated by the signature of the President or any other member authorised by the Institute in this behalf and all other instruments shall be authenticated by the signature of the Director or any other officer of the Institute authorised in like manner in this behalf.

22. Acts and proceedings not to be invalidated by vacancies, etc.—No act done or proceeding taken by the Institute, Governing Body or any standing or *ad hoc* committee under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Institute, Governing Body or such standing or *ad hoc* committee.

23. Grant of medical degrees, diplomas, etc., by Institute.—Notwithstanding anything contained in any other law for the time being in force, the Institute shall have power to grant medical degrees, diplomas and other academic distinction and titles under this Act.

24. Recognition of medical qualifications granted by Institute.—Notwithstanding anything contained in the Indian Medical Council Act, 1956 (102 of 1956), the medical degrees and diplomas granted by the Institute under this Act shall be recognised medical qualifications for the purposes of that Act and shall be deemed to be included in the First Schedule to that Act.

25. Control by Central Government.—The Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

26. Disputes between Institute and Central Government.—If in, or in connection with, the exercise of its powers and discharge of its functions by the Institute under this Act, any dispute arises between the Institute and the Central Government, the decision of the Central Government on such dispute shall be final.

27. Returns and information.—The Institute shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

28. Transfer of service of existing employees.—Subject to the provisions of this Act, every person who is employed in the Post-Graduate Institute of Medical Education and Research, Chandigarh, immediately before the commencement of this Act shall, on and from such commencement, become an employee of the Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same right and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of commencement of this Act if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations:

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government.

29. Continuance of facilities at Institute.—The Institute shall continue to provide facilities to the Governments of the States of Haryana and Punjab and the Central Government in relation to the Union Territories of Chandigarh and Himachal Pradesh and the people of the States and territories aforesaid and such facilities shall not, in any respect, be less favourable to such Governments and people than what were being provided to them before the 1st day of November, 1966 and shall be made available for such period and upon such terms and conditions (including those relating to any contributions to be made for the provision of such facilities) as may be agreed upon between the Institute, Governments of the States of Haryana and Punjab and the Central Government before the 1st day of April, 1967, or if no agreement is reached by the said date, as may be fixed by order of the Central Government.

30. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, within a period of three years from the commencement of this Act, by order published in the Official Gazette, make such provision or give such directions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

31. Power to make rules.—(1) The Central Government, after consultation with the Institute, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that consultation with the Institute shall not be necessary on the first occasion of the making of rules under this section, but the

Central Government shall take into consideration any suggestions which the Institute may make in relation to the amendment of such rules after they are made.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner of nomination of members under clause (f) of Section 5;
- (b) the control and restrictions in relation to the constitution of standing and *ad hoc* committees under sub-section (5) of Section 10;
- (c) the conditions of service of, the procedure to be followed by, and the manner of filling vacancies among, members of the Institute;
- (d) the powers and functions to be exercised and discharged by the President of the Institute;
- (e) the allowances, if any, to be paid to the President and other members of the Institute;
- (f) the number of officers and employees that may be appointed by the Institute and the manner of such appointment;
- (g) the form in which, and the time at which, the budgets and reports shall be prepared by the Institute and the number of copies thereof to be forwarded to the Central Government;
- (h) the form and manner in which returns and information are to be furnished by the Institute to the Central Government;
- (i) any other matter which has to be or may be prescribed by rules.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or ⁵[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

32. Power to make regulations.—(1) The Institute ⁶[, with the previous approval of the Central Government, may, by notification in the Official Gazette], make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act, and

without prejudice to the generality of this power, such regulations may provide for—

- (a) the summoning and holding of meetings, other than the first meeting, of the Institute, the time and place where such meetings are to be held, the conduct of business at such meetings and the number of members necessary to form a quorum;
 - (b) the manner of constituting the Governing Body and standing and *ad hoc* committees, the term of office of, and the manner of filling vacancies among, the members of, the Governing Body and standing and *ad hoc* committees;
 - (c) the powers and functions to be exercised and discharged by the President of the Institute and the Chairman of the Governing Body;
 - (d) the allowances, if any, to be paid to the Chairman and the members of the Governing Body and of standing and *ad hoc* committees;
 - (e) the procedure to be followed by the Governing Body and standing and *ad hoc* committees in the conduct of their business, exercise of their powers and discharge of their functions;
 - (f) the tenure of office, salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute including teachers appointed by the Institute;
 - (g) the powers and duties of the Chairman of the Governing Body;
 - (h) the powers and duties of the Director and other officers and employees of the Institute;
 - (i) the management of the properties of the Institute;
 - (j) the degrees, diplomas and other academic distinctions and titles which may be granted by the Institute;
 - (k) the professorships, readerships, lecturerships and other posts which may be instituted and persons who may be appointed to such professorships, readerships, lecturerships and other posts;
 - (l) the fees and other charges which may be demanded and received by the Institute;
 - (m) the manner in which, and the conditions subject to which, pension and provident funds may be constituted for the benefit of officers, teachers and other employees of the Institute;
 - (n) any other matter for which under this Act provisions may be made by regulations.
- (2) Notwithstanding anything contained in sub-section (1), the first

regulations under this Act shall be made by the Central Government; and any regulations so made may be altered or rescinded by the Institute in exercise of its powers under sub-section (1).

²[(3) Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

¹ 1-4-1967: *vide* Notification No. S.O. 1115 dated 29-3-1967, Gazette of India, Extraordinary, Part II, Section 3(ii), p. 797.

² *Inserted by Act 18 of 2001, Section 2.*

³ *Inserted by Act 30 of 1987, Section 3.*

⁴ *Relettered as clause (o) by Act 30 of 1987, Section 3.*

⁵ *Substituted by Act 4 of 1986, Section 2 and Schedule (w.e.f. 15-5-1986).*

⁶ *Substituted by Act 4 of 1986, Section 2 and Schedule (w.e.f. 15-5-1986).*

⁷ *Inserted by Act 4 of 1986, Section 2 and Schedule (w.e.f. 15-5-1986).*

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The
Jawaharlal Institute of Post-Graduate
Medical Education and Research,
Puducherry Act, 2008¹
(Jawaharlal Institute of Post-Graduate Medical Education and
Research, Puducherry Act, 2008)

[Act 19 of 2008]

[16th May, 2008]

CONTENTS

1. Short title and commencement
2. Declaration of Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry as an Institution of national importance
3. Definitions
4. Incorporation of Institute
5. Composition of Institute
6. Term of office of, and vacancies among members
7. President of Institute, his powers and functions
8. Allowances of President and members
9. Meetings of Institute
10. Governing Body and other committees of Institute
11. Staff of Institute
12. Objects of Institute
13. Functions of Institute
14. Vesting of property
15. Payment to Institute
16. Fund of Institute

17. Budget of Institute
18. Accounts and audit
19. Annual report
20. Pension and provident funds
21. Authentication of orders and instruments of Institute
22. Acts and proceedings not to be invalidated by vacancies, etc
23. Grant of medical degrees, diplomas, etc., by Institute
24. Recognition of medical qualifications granted by Institute
25. Control by Central Government
26. Resolution of differences
27. Returns and information
28. Transfer of service of existing employees
29. Power to make rules
30. Power to make regulations
31. Laying of rules and regulations before Parliament
32. Power to remove difficulties

Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry Act, 2008

[Act 19 of 2008]

[16th May,
2008]

An Act to declare the Institution known as the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry, to be an institution of national importance and to provide for its incorporation and matters connected therewith

Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

Prefatory Note—Statement of Objects and Reasons.—The Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry was established in 1964 primarily with the objectives to

develop patterns of teaching in undergraduate and post-graduate medical education so as to establish and demonstrate high standards of education. The Institute has been providing quality education and excellent patient care delivery services over the years, however; it could not grow due to constraints in the process of manpower selection, lack of academic autonomy, lack of flexibility in administrative and financial powers, commensurate with other institutions like, All India Institute of Medical Sciences, New Delhi and Post-Graduate Institute of Medical Education and Research, Chandigarh.

2. It is proposed to make the Institute a statutory body corporate and declare it as an institution of national importance under Entry 64 of List I of the Seventh Schedule to the Constitution so that it may develop as a high level institution of medical education and research on the pattern of the All India Institute of Medical Sciences, New Delhi and the Post-Graduate Institute of Medical Education and Research, Chandigarh.

3. This Bill will empower the Institute with academic autonomy to develop its own curriculum, set new trends in medical education and research and award its own degrees and also enable it to have appropriate delegated administrative and financial powers. The conferring of statutory status on this Institute will enable it to grow into a model centre of excellence.

4. The Bill seeks to achieve the above objects.

1. Short title and commencement.—(1) This Act may be called the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry Act, 2008.

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

2. Declaration of Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry as an Institution of national importance.—Whereas the objects of the institution known as the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry in the Union territory of Puducherry are such as to make the institution one of national importance, it is hereby declared that the institution known as the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry is an institution of national importance.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) "Fund" means the Fund of the Institute referred to in Section 16;
- (b) "Governing Body" means the Governing Body of the Institute;
- (c) "Institute" means the institution known as the Jawaharlal Institute of Post-Graduate Medical Education and Research,

Puducherry, incorporated under this Act;

- (d) "member" means a member of the Institute;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "specified" means specified by regulations made under this Act.

4. Incorporation of Institute.—The Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry, as institute functioning under the Union Ministry of Health and Family Welfare, is hereby constituted a body corporate by the name aforesaid and as such body corporate, it shall have perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract and shall, by that name, sue and by sued.

5. Composition of Institute.—(1) The Institute shall consist of the following members, namely:—

- (a) Secretary to the Government of India in the Ministry or Department of Health and Family Welfare, ex officio;
- (b) the Vice-Chancellor of the Puducherry University, ex officio;
- (c) the Vice-Chancellor of the Tamil Nadu Dr. M.G.R. Medical University, Tamil Nadu, ex officio;
- (d) the Director-General of Health Services, Government of India, ex officio;
- (e) the Director of the Institute, ex officio;
- (f) Chief Secretary, Government of Puducherry, ex officio;
- (g) Secretary to the Government of India or his nominee (not below the rank of Joint Secretary) in the Department of Expenditure, Ministry of Finance, ex officio;
- (h) Secretary to the Government of India or his nominee (not below the rank of Joint Secretary) in the Department of Higher Education, Ministry of Human Resource Development, ex officio;
- (i) seven persons of whom one shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government in such manner as may be prescribed;
- (j) four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in such manner as may be prescribed; and
- (k) three Members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.

(2) It is hereby declared that the office of member of the Institute shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

6. Term of office of, and vacancies among members.—(1) Save as otherwise provided in this section, the term of office of a member shall be five years from the date of his nomination or election.

(2) The term of office of a member elected under clause (k) of sub-section (1) of Section 5 shall come to an end as soon as he becomes a Minister or Minister of State or Deputy Minister or the Speaker or the Deputy Speaker of Lok Sabha or the Deputy Chairman of Rajya Sabha or ceases to be a member of the House from which he was elected.

(3) The term of office of an ex officio member shall continue so long as he holds the office by virtue of which he is such a member.

(4) The term of office of a member nominated or elected to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated or elected.

(5) An outgoing member other than a member elected under clause (k) of sub-section (1) of Section 5 shall continue in office until another person is nominated as a member in his place or for a period of three months, whichever is earlier:

Provided that the Central Government shall nominate a member in place of an outgoing member within the said period of three months.

(6) An outgoing member shall be eligible for re-nomination or re-election.

(7) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

(8) The manner of filling vacancies among members shall be such as may be prescribed.

7. President of Institute, his powers and functions.—(1) There shall be a President of the Institute who shall be nominated by the Central Government from among the members other than the Director of the Institute.

(2) The President shall exercise such powers and discharge such functions as are laid down in this Act or as may be prescribed.

8. Allowances of President and members.—The President and other members shall receive such allowances from the Institute as may be prescribed.

9. Meetings of Institute.—The Institute shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government; and thereafter, the Institute shall meet at such times and places and

observe such rules of procedure in regard to the transaction of business including quorum at its meetings as may be specified.

10. Governing Body and other committees of Institute.—(1) There shall be a Governing Body of the Institute which shall be constituted by the Institute in such manner as may be specified:

Provided that the number of persons who are not members of the Institute shall not exceed one-third of the total membership of the Governing Body.

(2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may specify in this behalf.

(3) The President of the Institute shall be the Chairperson of the Governing Body and as Chairperson thereof he shall exercise such powers and discharge such functions as may be specified.

(4) The procedure to be followed in exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among the members of the Governing Body shall be such as may be specified.

(5) Subject to such control and restrictions as may be prescribed, the Institute may constitute as many standing committees and as many ad hoc committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them.

(6) The Chairperson and members of the Governing Body and the Chairperson and the members of a standing committee or an ad hoc committee shall receive such allowances, as may be specified.

11. Staff of Institute.—(1) There shall be a Chief Executive Officer of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be prescribed, be appointed by the Institute:

Provided that the first Director of the Institute shall be appointed by the Central Government.

(2) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(3) The Director shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(4) The Director shall exercise such powers and discharge such functions as may be specified, or as may be delegated to him by the Institute or the President of the Institute or the Governing Body or the Chairperson of the Governing Body.

(5) Subject to such rules as may be prescribed, the Institute may

appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may determine the designations and grades of such other officers and employees.

(6) Subject to such rules as may be prescribed, the Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be specified.

12. Objects of Institute.—The objects of the Institute shall be—

- (a) to develop patterns of teaching in undergraduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education;
- (b) to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and
- (c) to attain self-sufficiency in post-graduate medical education to meet the country's needs for specialists and medical teachers.

13. Functions of Institute.—With a view to the promotion of the objects specified in Section 12, the Institute may—

- (a) provide for undergraduate and post-graduate teaching in the science of modern medicine and other allied sciences, including physical and biological sciences;
- (b) provide facilities for research in various branches of such sciences;
- (c) provide for the teaching of humanities;
- (d) conduct experiments in new methods of medical education, both undergraduate and post-graduate, in order to arrive at satisfactory standards of such education;
- (e) specify courses and curricula for both undergraduate and post-graduate studies;
- (f) notwithstanding anything contained in any other law for the time being in force, establish and maintain—
 - (i) one or more medical colleges with different departments, including a department of preventive and social medicine, sufficiently staffed and equipped to undertake not only undergraduate medical education but also post-graduate medical education in different subjects,
 - (ii) one or more well-equipped hospitals,
 - (iii) a dental college with such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary,
 - (iv) a nursing college sufficiently staffed and equipped for the

- training of nurses,
- (v) rural and urban health organisations which will form centres for the field training of the medical, dental and nursing students of the Institute as well as for research into community health problems, and
 - (vi) other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists, pharmacists, drug analysts and medical technicians of various kinds;
 - (g) train teachers from different medical colleges in India;
 - (h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in undergraduate and post-graduate medical education as may be laid down in the regulations;
 - (i) institute, and appoint persons to, professorships, readerships, lecturerships and posts of any description in accordance with regulations;
 - (j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be;
 - (k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in Section 12;
 - (l) demand and receive with the prior approval of the Central Government such fees and other charges as may be specified:

Provided that such fees and other charges payable by the students shall in no case exceed the fees and other charges specified by a medical Institute of the Central Government;
 - (m) reserve at least twenty seats out of every seventy-five seats in undergraduate courses in the institute for local applicants;
 - (n) provide free treatment to the poor patients in the same manner as are being provided by a medical Institute of the Central Government;
 - (o) construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf;
 - (p) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute;
 - (q) do all such other acts and things as may be necessary to further the objects specified in Section 12.

14. **Vesting of property.**—The properties of the Jawaharlal Institute

of Post-Graduate Medical Education and Research, Puducherry which vested in the Central Government shall, on the commencement of this Act, vest in the Institute.

15. Payment to Institute.—The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as may be considered necessary by that Government for the exercise of its powers and discharge of its functions under this Act.

16. Fund of Institute.—(1) The Institute shall maintain a Fund to which shall be credited—

- (a) all moneys provided by the Central Government;
- (b) all fees and other charges received by the Institute;
- (c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and
- (d) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under Section 13.

17. Budget of Institute.—The Institute shall prepare in such form and at such time every year a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure of the Institute and shall forward to the Central Government such number of copies thereof as may be prescribed.

18. Accounts and audit.—(1) The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may, by rules prescribe, and in accordance with such general directions as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books,

accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute as well as of the institutions established and maintained by it.

(4) The Accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

19. Annual report.—The Institute shall prepare for every year a report of its activities during that year and submit the report to the Central Government in such form and on or before such date as may be prescribed and a copy of this report shall be laid before both Houses of Parliament within one months of its receipt.

20. Pension and provident funds.—(1) The Institute shall constitute for the benefit of its officers, teachers and other employees in such manner and subject to such conditions as may be specified by regulations, such pension and provident funds as it may deem fit.

(2) Where any such pension or provident fund has been constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 (19 of 1925), shall apply to, such fund as if it were a Government Provident Fund.

21. Authentication of orders and instruments of Institute.—All orders and decisions of the Institute shall be authenticated by the signature of the Director or any other member authorised by the Institute in this behalf and all other instruments shall be authenticated by the signature of such officers as may be authorised by the Institute.

22. Acts and proceedings not to be invalidated by vacancies, etc.—No act done or proceeding taken by the Institute, Governing Body or any standing or ad hoc committee under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Institute, Governing Body or such standing or ad hoc committee.

23. Grant of medical degrees, diplomas, etc., by Institute.—Notwithstanding anything contained in any other law for the time being in force, the Institute shall have the power to grant medical, dental, nursing degrees, diplomas and other academic distinctions and titles under this Act.

24. Recognition of medical qualifications granted by Institute.—Notwithstanding anything contained in the Indian Medical Council Act, 1956 (102 of 1956) the Dentists Act, 1948 (16 of 1948), the Indian Nursing Council Act, 1947 (48 of 1947), the medical degrees and diplomas, dental degrees and nursing degrees granted by the Institute under this Act shall be recognised medical qualifications for the

purposes of the Acts aforesaid and shall be deemed to be included in the Schedules to the respective Acts.

25. Control by Central Government.—The Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

26. Resolution of differences.—If in, or in connection with, the exercise of its powers and discharge of its functions by the Institute under this Act, any dispute arises between the Institute and the Central Government, the decision of the Central Government thereon shall be final.

27. Returns and information.—The Institute shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

28. Transfer of service of existing employees.—(1) On and from the date of commencement of this Act, every employee holding a post in the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry, before that date, shall hold the post in the Institute by the same tenure, and upon the same terms and conditions of service including remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such post as if this Act had not been passed and shall continue to do so as an employee of the Institute for a period of one year from the date of the commencement of this Act, unless he, within the said period of one year, opts not to be an employee of the Institute or until his tenure, remuneration or other terms and conditions of service are duly altered by the regulations:

Provided that the officers of the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry belonging to the Central Health Service, who opts to be an employee of the Institute then, his appointment, pay, allowances and other terms and conditions of service shall be such as may be prescribed.

(2) Every person, who opts not to be an employee of the Institute within the period so specified, shall be governed by the rules and orders as are applicable to the Central Government officers and employees of equivalent rank.

(3) Subject to the provisions of this section, the tenure, remuneration and other terms and conditions of service including pension of any employee of the Institute shall not be altered to his disadvantage without the previous approval of the Central Government.

29. Power to make rules.—(1) The Central Government, after consultation with the Institute, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that consultation with the Institute, shall not be necessary

on the first occasion of making of rules under this section, but the Central Government shall take into consideration the suggestions which the Institute may make in relation to the amendment of such rules after they are made.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner of nomination of members under clauses (j) and (k) of sub-section (1) of Section 5;
- (b) the manner of filling vacancies under sub-section (8) of Section 6;
- (c) the powers and functions to be exercised and discharged by the President of the Institute under Section 7;
- (d) the allowances to be paid to the President and other members of the Institute under Section 8;
- (e) the control and restrictions in relation to the constitution of standing and ad hoc committees under sub-section (5) of Section 10;
- (f) the tenure of office, salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute appointed by the Institute under Section 11;
- (g) the form in which, and the time at which, the budgets and reports shall be prepared by the Institute under Section 17;
- (h) the form of annual statement of accounts including balance-sheet under sub-section (1) of Section 18;
- (i) the form of annual report under Section 19;
- (j) any other matter which has to be or may be prescribed by rules.

30. Power to make regulations.—(1) The Institute with the previous approval of the Central Government may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for—

- (a) the summoning and holding of meetings, other than the first meeting, of the Institute, the time and place where such meetings are to be held and the conduct of business at such meetings under Section 9;
- (b) the manner of constituting the Governing Body and standing and ad hoc committees, the term of office of, and the manner of filling vacancies therein, the allowances to be paid to the members and the procedure to be followed by the Governing Body; standing and ad hoc committees in the conduct of their

- business, exercise of their powers, discharge of their functions under Section 10;
- (c) the powers and duties of the Director and other officers and employees of the Institute under sub-sections (3) and (4) and other conditions of service under sub-section (5) of Section 11;
- (d) the power of the Institute under Section 13, to specify—
- (i) courses and curricula for undergraduate and post-graduate studies;
 - (ii) hold examination and grant degrees, diplomas and other academic distinctions and titles under clause (h);
 - (iii) the professorships, readerships, lecturerships and other posts which may be instituted and persons who may be appointed to such posts under clause (i);
 - (iv) the management of the properties of the Institute under clause (k);
 - (v) the fees and other charges which may be demanded and received by the Institute under clause (j);
- (e) the manner in which, and the conditions subject to which, pension and provident funds may be constituted for the benefit of officers, teachers and other employees of the Institute under sub-section (1) of Section 20;
- (f) any other matter for which under this Act provisions may be made by regulations.

(2) Notwithstanding anything contained in sub-section (1), the first regulations under this Act shall be made by the Central Government; and any regulations so made may be altered or rescinded by the Institute in exercise of its powers under sub-section (1).

31. Laying of rules and regulations before Parliament.—Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

32. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provision not

inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section, after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

1: Received the assent of the President on 16-5-2008 and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 19-5-2008, pp. 1-9, No. 26.

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The National Institute of Mental Health and Neuro-Sciences, Bangalore Act, 2012¹

[Act 38 of 2012]

[13th September, 2012]

CONTENTS

1. Short title and commencement
2. Declaration of National Institute of Mental Health and Neuro-Sciences, Bangalore, as an institution of national importance
3. Definitions
4. Incorporation of Institute
5. Composition of Institute
6. Term of office of and vacancies among members
7. Powers and functions of President
8. Vice-President of Institute
9. Allowances of President, Vice-President and other members
10. Meetings of Institute
11. Governing Body and other committees of Institute
12. Staff of Institute
13. Objects of Institute
14. Functions of Institute
15. Vesting of property
16. Payment of Institute
17. Fund of Institute
18. Budget of Institute
19. Accounts and audit

20. Annual report
21. Pension and provident funds
22. Authentication of orders and instruments of Institute
23. Acts and proceedings not to be invalidated by vacancies, etc
24. Grant of medical degrees, diplomas, etc., by Institute
25. Recognition of medical qualifications granted by Institute
26. Control by Central Government
27. Resolution of differences
28. Returns and information
29. Transfer of service of existing employees
30. Power to make rules
31. Power to make regulations
32. Laying of rules and regulations before Parliament
33. Power to remove difficulties

National Institute of Mental Health and Neuro-Sciences, Bangalore Act, 2012

[Act 38 of 2012]

[13th
September,
2012]

An Act to declare the institution known as the National Institute of Mental Health and Neuro-Sciences, Bangalore, to be an institution of national importance and to provide for its incorporation and for matters connected therewith

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows—

Prefatory Note—Statement of Objects and Reasons.—The National Institute of Medical Health and Neuro-Sciences, Bangalore was established as an autonomous body, registered under the Karnataka Societies Registration Act, 1960 on 27th December, 1974 by integrating the erstwhile All India Institute of Mental Health under the Government of India and Mental Hospital, Bangalore under the

Government of Karnataka. This integration facilitated better functioning and repaid growth of the Institute. It is a tertiary care medical and academic Institution, dedicated to the care of neurological, neurosurgical and psychiatric disorders and manpower development in super specialty branches related to neurosciences, including nursing and basic sciences. Integrating mental health and neurosciences, the Institute has gained international recognition in patient care and education. The Institute in its present form faces constraints in (a) growing the further and in evolving new courses in diverse fields relevant to the present national scenario in India; (b) giving greater thrust to inter disciplinary research and innovation; and (c) evolving strategies for enhanced service delivery, rehabilitation of patients with neurological and mental disability.

2. It is proposed to make the Institute a statutory body corporate and to declare it as an institution of national importance under Entry 64 of List I of the Seventh Schedule to the Constitution so that it may develop as a high level institution of Mental Health and Neuro Sciences on the pattern of the All India Institute of Medical Sciences, New Delhi, the Post-Graduate Institute of Medical Education and Research, Chandigarh and the Jawaharlal Institute of Post-Graduate Education and Research, Puducherry.

3. This Bill will empower the Institute with academic autonomy to develop its own curriculum, set new trends in mental health and neuro sciences, award its own degrees and also enable it to have appropriate delegated administrative and financial powers. The conferring of statutory status on this Institute will enable it to grow into a model centre of excellence.

4. This Bill seeks to achieve the above objects.

1. Short title and commencement.—(1) This Act may be called the National Institute of Mental Health and Neuro-Sciences, Bangalore Act, 2012.

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

2. Declaration of National Institute of Mental Health and Neuro-Sciences, Bangalore, as an institution of national importance.—Whereas the objects of the National Institute of Medical Health and Neuro-Sciences, Bangalore are such as to make the institution one of national importance, it is hereby declared that the National Institute of Mental Health and Neuro-Sciences, Bangalore is an institution of national importance.

3. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Fund" means the Fund of the Institute referred to in Section 17;

- (b) "Governing Body" means the Governing Body of the Institute;
- (c) "Institute" means the institutions known as the National Institute of Mental Health and Neuro-Sciences, Bangalore, incorporated under this Act;
- (d) "member" means a member of the Institute;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "specified" means specified by regulations made under this Act.

4. Incorporation of Institute.—The National Institute of Mental Health and Neuro-Sciences, Bangalore, an Institute registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act XVII of 1960) on the 27th day of December, 1974, is hereby constituted a body corporate by the name aforesaid and as such body corporate, it shall have perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract and shall, by that name, sue and be sued.

5. Composition of Institute.—(1) The Institute shall consist of the following members, namely—

- (a) the Minister of Health and Family Welfare, *ex officio*;
- (b) the Minister of Health and Family Welfare (Medical Education), Government of Karnataka, *ex officio*;
- (c) Secretary to the Government of India in the Ministry or Department of Health and Family Welfare, *ex officio*;
- (d) The Director of the Institute, *ex officio*;
- (e) Secretary to the Government of India or his nominee (not below the rank of Joint Secretary) Ministry of Finance, Department of Expenditure, *ex officio*;
- (f) Secretary to the Government of India or his nominee (not below the rank of Joint Secretary) in the Department of Higher Education, Ministry of Human Resource Development, *ex officio*;
- (g) The Director-General of Health Services, Government of India, *ex officio*;
- (h) The Vice-Chancellor of Rajiv Gandhi University of Health Sciences, Karnataka, *ex officio*;
- (i) The Chief Secretary to the Government of Karnataka or his nominee who shall not be below the rank of Secretary to that Government;
- (j) Seven persons of whom one shall be a non-medical scientist representing the Indian Sciences Congress Association, and, one each from biological, behavioural and physical sciences, of repute, from any University to be nominated by the Central Government in such manner as may be prescribed;

- (k) four representatives of medical faculties of Indian Universities, of whom one shall be from the National Institute of Mental Health and Neuro-Sciences, to be nominated by the Central Government in such manner as may be prescribed;
- (l) three Members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.

(2) It is hereby declared that the office of member of the Institute shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

6. Term of office and vacancies among members.—(1) Save as otherwise provided in this section, the term of office of a member shall be five years from the date of his nomination or election.

(2) The term of office of a member elected under clause (l) of sub-section (1) of Section 5 shall come to an end as soon as he becomes a Minister or Minister of State or Deputy Minister or the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or ceases to be a member of the House from which he was elected.

(3) The term of office of an ex officio member shall continue so long as he holds the office by virtue of which he is such a member.

(4) The term of office of a member nominated or elected to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated or elected.

(5) An outgoing member other than a member elected under clause (l) of sub-section (1) of Section 5 shall continue in office until another person is nominated as a member in his place or for a period of three months, whichever is earlier:

Provided that the Central Government shall nominate a member in place of an outgoing member within the said period of three months.

(6) An outgoing member shall be eligible for re-nomination or re-election.

(7) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

(8) The manner of filling vacancies among members shall be such as may be prescribed.

7. Powers and functions of President.—(1) There shall be a President of the Institute who shall be nominated by the Central Government from amongst the members other than the Director of the Institute.

(2) The President shall exercise such powers and discharge such

functions as are laid down in this Act or as may be prescribed.

8. Vice-President of Institute.—There shall be a Vice-President of the Institute who shall be nominated by the Central Government from amongst the members other than the Director of the Institute.

9. Allowances of President, Vice-President and other members.—The President, Vice-President and other members shall receive such allowances from the Institute as may be prescribed.

10. Meetings of Institute.—The Institute shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government, and thereafter, the Institute shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be specified.

11. Governing Body and other committees of Institute.—(1) There shall be a Governing Body of the Institute which shall be constituted by the Institute in such manner as may be specified:

Provided that the number of persons who are not members of the Institute shall not exceed one-third of the total membership of the Governing Body.

(2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may specify in this behalf.

(3) The President of the Institute shall be the Chairperson of the Governing Body and as Chairperson thereof he shall exercise such powers and discharge such functions as may be specified.

(4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among the members of the Governing Body shall be such as may be specified.

(5) Subject to such control and restrictions as may be prescribed, the Institute may constitute as many standing committees and as many ad hoc committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them.

(6) The Chairperson and members of the Governing Body and the Chairperson and the members of a standing committee or an ad hoc committee shall receive such allowances, as may be specified.

12. Staff of Institute.—(1) There shall be a chief executive officer of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be prescribed, be appointed by the Institute:

Provided that the first Director of the Institute shall be appointed by the Central Government.

(2) The Director shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(3) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(4) The Director shall exercise such powers and discharge such functions as may be specified or as may be delegated to him by the Institute or the President of the Institute or the Governing Body or the Chairperson of the Governing Body.

(5) Subject to such rules as may be prescribed, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and the designations and grades of other officers and employees shall be such as may be specified.

(6) Subject to such rules as may be prescribed, the Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be specified.

13. Objects of Institute.—The objects of the Institute shall be—

- (a) to develop patterns of teaching in undergraduate and postgraduate medical education in all its branches with a focus on mental health, neuro-sciences and allied specialities so as to demonstrate a high standard of medical education;
- (b) to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity;
- (c) to attain self-sufficiency in postgraduate medical education to meet the country's needs for specialists and medical teachers, particularly in the field of mental health, neuro-sciences and allied specialities;
- (d) to evolve innovative strategies to offer diagnostic and comprehensive therapeutic service facilities in the field of mental health and neuro-sciences, utilising the advances in information technology;
- (e) to make an in-depth study and research in the field of mental health, neuro-sciences and allied specialities.

14. Functions of Institute.—With a view to the promotion of the objects specified in Section 13, the Institute may—

- (a) provide for undergraduate and postgraduate teaching in the science of modern medicine and other allied sciences including

- physical and biological sciences;
- (b) provide facilities for research in the various branches of such sciences;
- (c) provide for the teaching of humanities;
- (d) conduct experiments in new methods of medical education, both undergraduate and postgraduate, in order to arrive at high standard of such education;
- (e) specify courses and curricula for both undergraduate and postgraduate studies;
- (f) notwithstanding anything contained in any other law for the time being in force, establish and maintain,—
- (i) one or more medical institutions with different departments staffed and equipped to undertake education and conduct research in different subjects,
- (ii) one or more well equipped hospitals to provide clinical services;
- (iii) nursing colleges staffed and equipped for the training of nurses;
- (iv) rural and urban health centres which will form centres for the field training of the medical and nursing students of the Institute, and
- (v) other institutions for the training of different types of health workers such as physiotherapists, occupational therapists and medical technicians of various kinds;
- (g) trained teachers from different medical colleges in India;
- (h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in undergraduate and postgraduate medical, nursing and allied specialities education as may be laid down in the regulations;
- (i) induct and appoint persons as professors, readers, lecturers and in posts of other description in accordance with regulations;
- (j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be;
- (k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in Section 12;
- (l) demand and receive with the prior approval of the Central Government such fees and other charges as may be specified;
- (m) construct quarters for its staff and allot such quarters to the

staff in accordance with such regulations as may be made in this behalf;

- (n) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute;
- (o) do all such other acts and things as may be necessary in furtherance of the objects specified in Section 13.

15. Vesting of property.—(1) The properties of the National Institute of Mental Health and Neuro-Sciences, Bangalore, registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act XVII of 1960) shall, on the date of commencement of this Act, vest in the Institute.

(2) All income and property of the Institute shall be applied towards the promotion of the objects thereof as set forth in this Act.

(3) No portion of the income and property of the Institute shall be paid or transferred, directly or indirectly, by way of profit to the persons, who at any time, or have been members of the Institute:

Provided that nothing herein contained shall prevent the payment of remuneration and other allowances to any member thereof or other persons for the services rendered to the Institute.

16. Payment of Institute.—The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as may be considered necessary for the exercise of its powers and discharge of its functions under this Act.

17. Fund of Institute.—(1) The Institute shall maintain a Fund to which shall be credited—

- (a) all moneys provided by the Central Government and the State Government of Karnataka;
- (b) all fees and other charges received by the Institute;
- (c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and
- (d) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under Section 14.

18. Budget of Institute.—The Institute shall prepare in such form and at such time every year a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure of the Institute and shall forward to the Central Government such number of

copies thereof as may prescribed.

19. Accounts and audit.—(1) The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may prescribe, and in accordance with such general directions as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute as well as of the institutions established and maintained by it.

(4) The accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both the House of Parliament.

20. Annual report.—The Institute shall prepare for every year a report of its activities during that year and submit the report to the Central Government in such form and on or before such date as may be prescribed and a copy of this report shall be laid before both House of Parliament within one month of its receipt.

21. Pension and provident funds.—(1) The Institute shall constitute for the benefit of its officers, teachers and other employees in such manner and subject to such conditions as may be specified such pension and provident funds as it may deem fit.

(2) Where any such pension or provident fund has been constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 (19 of 1925) shall apply to, such fund as if it were Government Provident Fund.

22. Authentication of orders and instruments of Institute.—All orders and decisions of the Institute shall be authenticated by the Director or any other member authorised by the Institute in this behalf and all other instruments shall be authenticated by the signature of the Director or such officers as may be authorised by the Institute.

23. Acts and proceedings not to be invalidated by vacancies, etc.— No act done or proceeding taken by the Institute, Governing Body or any standing or ad hoc committee under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of the Institute, Governing Body or such standing or ad hoc committee.

24. Grant of medical degrees, diplomas, etc., by Institute.— Notwithstanding anything contained in any other law for the time being in force, the Institute shall have the power to grant medical and nursing degrees, diplomas, certificates and other academic distinctions and titles under this Act.

25. Recognition of medical qualifications granted by Institute.— Notwithstanding anything contained in the Indian Medical Council Act, 1956 (102 of 1956), the Rehabilitation Council of India Act, 1992 (34 of 1992), the Indian Nursing Council Act, 1947 (48 of 1947) and the University Grants Commission Act, 1956 (3 of 1956), the medical degrees, diplomas, nursing degrees and certificates granted by the Institute under this Act shall be recognised medical qualifications for the purposes of the Acts aforesaid and shall be deemed to be included in the Schedule to the respective Acts.

26. Control by Central Government.—The Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

27. Resolution of differences.—If in, or in connection with, the exercise of its powers and discharge of its functions by the Institute under this Act, any dispute or difference arises between the Institute and the Central Government, the decision of the Central Government thereon shall be final.

28. Returns and information.—The Institute shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

29. Transfer of service of existing employees.—Subject to the provisions of this Act, every person who is employed in the National Institute of Medical Health and Neuro-Sciences, Bangalore, immediately before the commencement of this Act, shall, on and from such commencement, become an employee of the Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of commencement of this Act if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations:

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government.

30. Power to make rules.—(1) The Central Government may in consultation with the Institute by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) the manner of nomination of members under clauses (j) and (k) of sub-section (1) of Section 5;
- (b) the manner of filling vacancies of members under sub-section (8) of Section 6;
- (c) the powers and functions to be exercised and discharged by the President of the Institute under sub-section (2) of Section 7;
- (d) the allowances to be paid to the President and other members of the Institute under Section 9;
- (e) the control and restrictions in relation to the constitution of standing and ad hoc committees under sub-section (5) of Section 11;
- (f) appointment of Director and other officers and employees and salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute under Section 12;
- (g) the form in which, and the time at which, the budget and reports shall be prepared by the Institute under Section 18;
- (h) the form of annual statement of accounts including balance-sheet under sub-section (1) of Section 19;
- (i) the form of annual report under Section 20;
- (j) any other matter which has to be or may be prescribed by rules.

31. Power to make regulations.—(1) The Institute with the previous approval of the Central Government, may by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for—

- (a) the summoning and holding of meetings, other than the first meeting, of the Institute, the time and place where such meetings are to be held and the conduct of business at such meetings under Section 10;
- (b) the manner of constituting the Governing Body and standing

and ad hoc committees, the term of office of, and the manner of filling vacancies therein, the allowances to be paid to the members and the procedure to be followed by the Governing Body, standing and ad hoc committees in the conduct of their business, exercise of their power, discharge of their function under Section 11;

- (c) the powers and duties of the Director of the Institute under sub-section (4), the designations and grades of other officers and employees under sub-section (5) and other conditions of service under sub-section (6) of Section 12;
- (d) the power of the Institute under Section 14, to specify—
 - (i) courses and curricula for undergraduate and postgraduate studies under clause (e);
 - (ii) hold examination and grant degrees, diplomas, certificates and other academic distinctions and titles under clause (h);
 - (iii) the professorship, readership, lecturerships and other posts which may be instituted and persons who may be appointed to such posts under clause (i);
 - (iv) the management of the properties of the Institute under clauses (k) and (m);
 - (v) the fees and other charges which may be demanded and received by the Institute under clause (l);
- (e) the manner in which, and the conditions subject to which, pension and provident funds may be constituted for the benefit of officers, teachers and other employees of the Institute under sub-section (1) of Section 21;
- (f) any other matter for which under this Act provisions may be made by regulations.

(2) Notwithstanding anything contained in sub-section (1), the first regulations under this Act shall be made by the Central Government; and any regulations so made may be altered or rescinded by the Institute in exercise of its powers under sub-section (1).

32. Laying of rules and regulations before Parliament.—Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without

prejudice to the validity of anything previously done under that rule or regulation.

33. Power to remove difficulties.—(1) If any difficulties arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

¹ Received the assent of the President on September 1, 2012 and published in the Gazette of India, Extra., Part II, Section 1, dated 14th September, 2012, pp. 1–9, No. 45

ALL INDIA INSTITUTE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi-29

No.F.35-21/98/2020 (PNM/Committee)-Estt. I

Dated the:

28 MAY 2021

OFFICE MEMORANDUM

Sub: Re-Constitution of PERMANENT NEGOTIATING MACHINERY (PNM) COMMITTEE at the AIIMS, New Delhi - Reg.

In supersession of all previous orders of even number on the subject mentioned above the Director, AIIMS has been pleased to re-constituted "PERMANENT NEGOTIATING MACHINERY (PNM) COMMITTEE" at the AIIMS, New Delhi. The composition of the committee as under :

- | | | | |
|-------|-------------------------------|---|------------------|
| (i) | Dean (Academic) | - | Chairman |
| (ii) | Medical Superintendent (H) | - | Member |
| (iii) | Chief of Centres | - | Member |
| (iv) | Representatives of Employees- | | Member |
| (v) | Dy. Director (Admn.) | - | Member Secretary |

This Committee will follow the observation and directions mentioned in the Hon'ble High Court of Delhi Judgement dated 20.05.2002 in the matter Court On its Own Motion Vs AIIMS (copy enclosed)


(KUSHAL KUMAR)
ADMINISTRATIVE OFFICER

Encl. As above

Distribution: All concerned

Copy forwarded for information to:

- 1) All Chief of Centres/Head of Departments/Units/Sections
- 2) The PPS to Director/PS to Dean (Research/Acad/Exam)/MS/DD(A)/Sr. FA/CAO/Dy. Secy / Superintending Engineer, AIIMS, New Delhi.
- 3) All Sr. Admn. Officer/ Administrative Officer of Establishment Section (Hospital /CNC/Dr.RPC / CDER/JPNATC/Dr.BRA, IRCH/CRHS Ballabgarh/NCI, Jhajjar /NDDTC/ESD/ Faculty Cell/ Rectt. Cell/Estate Section/Legal Cell/Co-ordination Cell/SC-ST-OBC-Women Cell/Hindi Section / Academic Section/Examination Section/Hostel Section/ Computer Facility/Research Section
- 4) All F & CAO/Accounts Officers (Cash Section/Audit Section/GPF/Pension Cell/Budget Section)
- 5) All Association (FAIMS, Officers' Association/Karamchari Union/Nurses Union/RDA/Student Union & SYS, AIIMS, New Delhi.
- 6) The Computer Facility - with a request to upload this on official website of the Institute
- 7) The Sr. Hindi Officer - with a request to provide the Hindi version of the same for uploading on AIIMS website.

Delhi High Court

Court On Its Own Motion vs All India Institute Of Medical ... on 20 May, 2002

Equivalent citations: 2002 (64) DRJ 418, 2002 (94) FLR 408, (2002) IILLJ 424 Del

Author: D Gupta

Bench: D Gupta, S Mukerjee

JUDGMENT Devinder Gupta, J.

1. This matter arose pursuant to suo motu notice taken by us in relation to the then on going strike by the Residents Doctors Association of AIIMS in the month of August, 2001.
2. Taking note of the observations of the Apex Court in *Surjeet Singh v. State of Punjab and Ors.* 1996(2) Supreme 11, it was felt that the right to life enshrined under Article 21 of the Constitution of India, would include the right against denial of treatment or even from being presented from availing the services of any doctor or any other member of the staff from attending to patients and rendering medical assistance to them. In doing so, we also relied upon the judgment in *Vincent v. Union of India ; Consumer Education and Research Centre and Ors. v. Union of India and Ors.* 1995 SCC (3) 42 ; and *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr.* . Learned Additional Solicitor General Sh. R.N. Trivedi was also requested to assist the Court in this matter being one of social importance and relevance.
3. On 29.8.2001, we were informed that the strike in AIIMS had been called off, but that the grievances of staff remained, and therefore certain permanent measures were required to tackle the problem.
4. We directed the management of AIIMS to indicate the progress in the enquiry stated to have been initiated and also to indicate the measures which can be taken for expeditiously looking into and resolving the grievances of the employees and the doctors working in the hospital, in order to avoid frequent resort by the aggrieved staff to strikes. Thereafter the matter was adjourned from time to time, and on 1.2.2002 we were informed that certain suggestions of the learned Addl. Solicitor General were being considered by the General Body of the AIIMS.
5. Lately an affidavit dated May 2002 has also been filed in this Court. We have heard the submissions of learned counsel for the parties, including learned Additional Solicitor General assisting this Court, and we consider it appropriate to dispose of this matter, with the consent of all parties by making the following observations and directions:-
 - (i). A permanent negotiating machinery (PNM) be set up by the AIIMS as per their affidavit dated 6.5.2002, subject to the modification which we are indicating hereunder:-
 - (a) That the Dean AIIMS shall be the Chairman;
 - (b) The Dy. Director (Admn.) will be the Member Secretary;
 - (c) The Medical Superintendent, AIIMS will be a member;

(d) The Chief of the Centre in question or the available next senior-most Professor of that Centre shall be a member; and

(e) One representative of the employees will be a Member.

Provided that the Director of the Institute may, in the interests of having a more broad-based representation, co-opt any two more members from amongst the categories mentioned in Annexure R-1 to the affidavit dated 6.5.2002, wherever the same be deemed by him to be required in the exigencies of the situation.

(ii). The said Committee will stand duly authorised to resolve any sudden incident which either disrupts or has the potential of disrupting the smooth functioning of the AIIMS.

(iii) The above said Committee will take a decision one way or the other, in any matter brought to its knowledge or coming before it in any manner whatsoever, within a maximum period of fifteen days of the matter coming up before it or coming to its knowledge. This period of thirty days is the outer limit indicted by us and within the said period of fifteen days also, the Committee shall always remain cognizant of relative urgency of each matter, and the exigency of each situation and the matter will be processed most expeditiously and if required on day to day basis.

(iv) Unless the period of thirty days is extended with the consent of all the parties, or a substantial number of them (in the meaningful sense of the term 'substantial' used by us in the previous phrase), those disputes which are not resolved by the PNM within fifteen days, would be referred to the adjudication of an Arbitration Tribunal comprising of the Health Secretary (Central Government), Director General of Health Services, Director AIIMS and Additional Secretary Labour or any other officer of equal rank from the Ministry deputed for the said purposes by the Labour Secretary, Government of India. This will however be subject to the condition that in the event of the dispute being one concerning any class of employees or any subject matter which is also subject to the jurisdiction of a statutory Tribunal under any Act of Parliament or under Government Rules, then unless they consent to decision by the Arbitration Tribunal, the party/parties will be entitled to avail the benefit of the statutory remedies.

It is however clarified that PNM/Arbitral Tribunal would not be empowered to entertain, decide or adjudicate any issue relating to policy matters, including those involving recruitment, promotion, pay scales and service conditions etc. of all employees/doctors and others working in the Institute.

(v). In case any party or parties are not prepared to submit themselves to the jurisdiction of the Arbitral Tribunal and opt/elect for other statutory remedies, they shall be subject to the condition that they will ventilate their grievances only by way of in those proceedings, and not by way of any direct action against the Institution or any other employee or category of employees, or any other person or persons.

(vi) The Arbitral Tribunal shall take a decision one way or the other in the matter within a period of three months which period shall only be extended with the consent of the parties. In case any of the

parties does not cooperate, the Arbitral Tribunal will be entitled to proceed to decide the matter on the available records within the stipulated period.

(vii) The AIIMS will modify its Service Rules and terms and conditions to incorporate the above directions within the said Rules, and shall take all steps necessary to make the same applicable and binding upon all categories of employees.

There shall be the following Code of Conduct applicable to all employees of AIIMS:-

- (i) No employee of staff of faculty member will cease work for any reason whatsoever or disrupt the work, or aid, or abet such disruption or cessation;
- (ii) No use of loud speakers or shouting of slogans, demonstrations, Dharna within the campus.
- (iii) No gate meetings or protest meetings of any kind whatsoever are to be held within the radius of 500 Mtrs. from the boundary of the Institute;
- (iv) No interference in any official work.
- (v) No resort to any disruptive activity.
- (vi) All Trade Union activities will be carried outside the campus;
- (vii) Any violation will result into disciplinary and other actions;

6. We are conscious of the fact that employees ordinarily also have a right to agitate their grievances by way of peaceful action including collective bargaining and collective action. However, considering the special circumstances of the AIIMS as an Institution and particularly the sensitive nature of such a super-speciality referral hospital requiring the uninterrupted and smooth functioning of each and every sphere of activity as also the space and locational constraints such as ICU/Emergency/Trauma Centre being all located close to the entrance and exist areas, and also Blood Bank facilities, life-saving medicines and devices being required at short notice, as well as unimpeded movement of medical and para-medical personnel having to be ensured at all times, it would be appropriate and in the interest of justice and also in public interest, that there should be no activity in the nature of strike, dharna or demonstration or gherao at, or in, or around the AIIMS at all.

7. The impact of a strike in a hospital is totally different from that in the case of a factory or trading establishment. Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as required constant and incessant attending and care and therefore unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking staff. Unlike financial losses, the loss of life or limb cannot be recouped. Reference may be made to the judgment of Single Judge of Bombay High Court in *Baratiya Arogya Nidhi Sheth Kantilal C. Parikh General Hospital v. Bombay Labour Union* 2001

LLR 587 (Bom HC).

8. Hospitals are also public utility service within the meaning of Industrial Disputes Act. It was also the intention of Parliament, as is envisaged by the 1982 amendment to the definition of 'industry' under the Industrial Disputes Act, that hospitals have been excluded from the scope of definition of industry and from the purview of the Industrial Disputes Act, 1947. Even though the said amendment has not been brought into force but it does reinforce the position that "hospitals" have to be treated as a class apart from "industry".

9. We also draw upon the ratio of the Apex Court decision reported as Communist Party of India(M) v. Bharat Kumar and Ors. taking note of the heightened applicability in the case of a hospital. We may also note that though learned counsel for Respondent No. 4 at one stage did not try to make certain submissions regarding the right to resort to what he described to be milder forms of protest such as "go slow" etc, but on our pointing out that even such type of protest is an anathema to activities involving matter of life and death such as administering of oxygen or transfusion of blood or reviving the heart etc, thereupon learned counsel did not press further that contention.

10. We however direct that any authority be it Police or the Labour Department or Civil or Delhi Administration or Health or Ministry of Health, to which any representation, or complaint or request for taking action for resolving any dispute, is referred or brought to their notice, or otherwise comes to their notice in a manner warranting action, then keeping in view the special circumstances of an Institution such as AIIMS, and our present orders, the necessary action by all the authorities referred to above and any other departments before whom such matters come up, shall be always dealt with and carried on utmost priority basis, and if possible out-of-turn, and at all times will be so conducted so as to give no occasion for any dispute or any disruption or prejudice to the smooth functioning of the hospital.

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**THE
SUPREME COURT CASES**
(1998) 2 SCC

c

(1998) 2 Supreme Court Cases 1

(BEFORE J.S. VERMA, C.J. AND B.N. KIRPAL AND M. SRINIVASAN, JJ.)

MALPE VISHWANATH ACHARYA AND OTHERS .. Appellants;

Versus

d

STATE OF MAHARASHTRA AND ANOTHER .. Respondents.

Civil Appeals Nos. 2797-98 of 1992[†] with Writ Petitions (C) Nos. 17 and 824 of 1996, decided on December 19, 1997

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A. Rent Control and Eviction — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947) — Ss. 5(10)(B), 7, 9(2)(b) and 12(3) — Standard rent — Determination and fixation of, by freezing or pegging down of rent as on 1-9-1940 or as on the date of first letting — Held, has become arbitrary and unreasonable in view of constant escalation of prices due to inflation and corresponding fall in money value with the passage of time — However, the Act being a temporary legislation which will elapse on 31-3-1998, its provisions need not be struck down — Standard rent — Fair rent — Constitution of India, Art. 14

f

B. Rent Control and Eviction — Generally — Rent control legislation — Should be in the larger interest of the society as a whole and should not confer any disproportionately larger benefit to one class viz. tenants to the disadvantage of the other class viz. landlords — It should be just to both by striking a balance between the rival interests of the two — For this purpose periodical review of the law necessary — Law has also to be examined from the perspective of Art. 14 to ascertain whether with the passage of time it has become arbitrary and unreasonable or not — Jurisprudence — Law — Can become outdated and arbitrary and unreasonable with passage of time — Constitution of India, Arts. 14 and 13 — Outdated legislation becoming unreasonable and arbitrary

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[†] From the Judgment and Order dated 16-11-1990 of the Bombay High Court in W.Ps. Nos. 2337 of 1986 and 2587 of 1990

2

SUPREME COURT CASES

(1998) 2 SCC

C. Constitution of India — Art. 14 — Arbitrariness — Lapse of time — A legislation which was initially justified may become arbitrary and unreasonable with the passage of time — Statute Law

D. Jurisprudence — Law — Justness of — Law should be just to all sections of the society — It should not be unjust to one and give disproportionate benefit to the other

Held :

A statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable. (Para 15)

State of M.P. v. Bhopal Sugar Industries Ltd., AIR 1964 SC 1179 : (1964) 6 SCR 846 : (1964) 52 ITR 443; *Narottam Kishore Deb Varman v. Union of India*, AIR 1964 SC 1590 : (1964) 7 SCR 55; *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., H.R.E. Deptt.*, (1979) 4 SCC 642 : 1980 SCC (Tax) 16 : (1980) 1 SCR 368; *Motor General Traders v. State of A.P.*, (1984) 1 SCC 222 : (1984) 1 SCR 594; *Bharyalal Shukla v. State of M.P.*, AIR 1962 SC 981 : 1962 Supp (2) SCR 257 : (1962) 13 STC 236; *Rattan Arya v. State of T.N.*, (1986) 3 SCC 385; *Synthetics and Chemicals Ltd. v. State of U.P.*, (1990) 1 SCC 109, *relied on*

In the Bombay Rent Act the standard rent as on 1-9-1940 or the first rent of the premises which was let out thereafter is the standard rent. The rapid increase in the expenses for repair and other outgoings and the decreasing net amount of rent which remains with the landlord, clearly show that the non-provision in the Act for reasonable increase in the rent, with the passage of time, is leading to arbitrary results. The pegging down of rent, coupled with the inability of the landlord to evict the tenants, has given rise to unlawful tendencies. The tenants are, by and large, now getting an unwarranted benefit or windfall. In the Statement of Objects and Reasons annexed to LA Bill No. 79 of 1986 introduced in the Maharashtra Legislature providing for amendment to the Bombay Rent Control Act, the legislature itself has taken notice of the fact that pugree system has become prevalent in Mumbai because of the Rent Restriction Act. The Supreme Court was also asked to take judicial notice of the fact that in view of the unreasonably low rents which are being received by the landlords, recourse is being taken to other methods to seek redress. These methods which are adopted are outside the four corners of the law and are slowly giving rise to a state of lawlessness where, it is feared, the courts may become irrelevant in deciding disputes between the landlords and tenants. This should be a cause of serious concern because if this extra-judicial backlash gathers momentum the main sufferers will be the tenants, for whose benefit the Rent Control Acts are framed. Although some amendments were made in 1987 which clearly indicate that the State Legislature was conscious of the fact that there was a need to increase the standard rent, but the amendment of 1987 does not do away with the principle of pegging down of the rent at a rate when the premises are first let out. Increase in the cost of maintenance or fall in the value of money or the rise in the cost of index does not entitle a landlord to any increase. There has been no other material change in the Act in this behalf. What the Amending Act of 1987 has done is merely to consolidate and rearrange the sections of the earlier Act. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent — the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context. Taking all the facts and circumstances into consideration, it must, therefore, be held that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be

MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA

3

reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary. (Paras 25, 22, 23, 28, 20, 29 and 31)

a *Sant Lal Bharti v. State of Punjab*, (1988) 1 SCC 366 : (1988) 2 SCR 107, *distinguished*

However, it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31-3-1998. The Government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and it is for the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992. (Para 31)

b

It is true that whenever a special provision, like the Rent Control Act, is made for a section of the society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole; but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary. (Para 27)

c

Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measures to try and offset the effects of inflation. (Para 29)

d

When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short-sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social legislation is treated with deference by the courts not merely because the legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account.

e

The legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency of giving undue preference to some over others. (Para 30)

f

R-M/T/19030/C

g Advocates who appeared in this case :

F.S. Nariman, Senior Advocate (Mulraj Shah, P.H. Parekh, Jagdish Karia, Subhash Sharma, Ms Dhun Chapgar, Ms Sunita Sharma, Nikhil Sakhardande and Sameer Parekh, Advocates, with him) for the Appellants;

M.S. Nargolkar, Senior Advocate (D.M. Nargolkar and S.M. Jadhav, Advocates, with him) for the Respondents.

M.N. Shroff and K.V. Sreekumar, Advocates, for Intervenor.

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4 SUPREME COURT CASES (1998) 2 SCC

<i>Chronological list of cases cited</i>	<i>on page(s)</i>	
1. (1990) 1 SCC 109, <i>Synthetics and Chemicals Ltd. v. State of U.P.</i>	12b, 12f	
2. (1988) 1 SCC 366 : (1988) 2 SCR 107, <i>Sant Lal Bharti v. State of Punjab</i>	12c	a
3. (1986) 3 SCC 385, <i>Rattan Arya v. State of T.N.</i>	11d, 12f	
4. (1984) 1 SCC 222 : (1984) 1 SCR 594, <i>Motor General Traders v. State of A.P.</i>	10g, 12a, 12b-c, 12f	
5. (1979) 4 SCC 642 : 1980 SCC (Tax) 16 : (1980) 1 SCR 368, <i>H.H. Shri Swamiji of Shri Amar Mutt v. Commr. H.R.E. Deptt.</i>	10c-d	
6. AIR 1964 SC 1590 : (1964) 7 SCR 55, <i>Narottam Kishore Deb Varman v. Union of India</i>	10a-b	b
7. AIR 1964 SC 1179 : (1964) 6 SCR 846 : (1964) 52 ITR 443, <i>State of M.P. v. Bhopal Sugar Industries Ltd.</i>	9f, 11a	
8. AIR 1962 SC 981 : 1962 Supp (2) SCR 257 : (1962) 13 STC 236, <i>Bhaiyalal Shukla v. State of M.P.</i>	11a	

The Judgment of the Court was delivered by

KIRPAL, J.— “*Lex injusta non est lex*”, unjust laws are not laws, is what is being contended by the landlords in their challenge in these appeals, and the connected writ petitions, to the validity of the relevant provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as “the Bombay Rent Act”) insofar as it provides that landlords cannot charge rent in excess of the standard rent.

2. The appellants are landlords or their representatives of different premises in Bombay which have been given on rent to various tenants. They had filed in the High Court of Bombay writ petitions challenging the constitutional validity of Section 5(10)(B), Section 11(1) and Section 12(3) of the Bombay Rent Act, inter alia, on the ground that the said provisions pertaining to standard rent were ultra vires Articles 14, 19 and 21 of the Constitution and consequently void. The main challenge to the said provisions was on the ground that the restriction on the right of the landlords to increase rents, which had been frozen as on 1-9-1940 or at the time of the first letting, was no longer a reasonable restriction and the said provisions had, with the passage of time, become arbitrary, discriminatory, unreasonable and consequently ultra vires Article 14 of the Constitution. By the impugned judgment the High Court dismissed the writ petitions, inter alia, holding that the object of the Bombay Rent Act was not to provide to the landlord an adequate return on its investment and it was not open to him to claim an increase in the rent by taking into account the increase in the land prices etc. The Court also observed that the writ petitions lacked particulars in order to satisfy the Court that the relevant provisions of the Bombay Rent Act were unreasonable or arbitrary.

3. The Bombay Rent Act came into force on 13-2-1938. This Act was meant to be a temporary measure. The original Act was enacted only for two years, with a power to the Government to extend the same by notification in this behalf. This Act has been extended from time to time at least on twenty occasions and the present extension remains in force up to 31-3-1998.

MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 5

Sections 5(10), 7, 9(2)(b) and 11(1)(a) which are being impugned in the present cases read as follows:

- a** “5. (10) ‘standard rent’ in relation to any premises means—
- (a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or
- (b) when the standard rent is not so fixed,—
- b** subject to the provisions of Section 11,
- (i) the rent at which the premises were let on the first day of September 1940, or
- (ii) where they were not let on the first day of September, 1940, the rent at which they were last let before that day, or
- (iii) where they were first let after the first day of September, 1940, the rent at which they were first let, or
- c** [(iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1-A) of Section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the amount equivalent to the amount of net return of fifteen per cent, on the investment in the land and building and all the outgoings in respect of such premises; or]
- d** (iv) in any of the cases specified in Section 11, the rent fixed by the Court;
- * * *
- e** 7. [(1)] Except where the rent is liable to periodical increment by virtue of an agreement entered into before the first day of September, 1940, it shall not be lawful to claim or receive on account of rent for any premises any increase above the standard rent, unless the landlord was, before the coming into operation of this Act, entitled to recover such increase under the provisions of the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or is entitled to recover such increase under the provisions of this Act [either before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1986].
- f** [(2)(a) No person shall claim or receive on account of any licence fee or charge for any premises or any part thereof, anything in excess of the standard rent and permitted increases (or, as the case may be, a proportionate part thereto), for such premises if they had been let, and such additional sum as is reasonable consideration for any amenities or other services supplied with the premises.
- g** (b) All the provisions of this Act in respect of the standard rent and permitted increases in relation to any premises let, or if let, to a tenant, shall mutatis mutandis apply in respect of any licence fee or charge and permitted increases in relation to the premises given on licence; and accordingly, the licensee or licensor may apply to the Court for the fixation of the licence fee or charge and permitted increases and the additional sum mentioned above.]
- h**
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6

SUPREME COURT CASES

(1998) 2 SCC

9. (2)(b) Before making any increase under clause (a), the landlord shall obtain a certificate from the local authority that he was required by it to make or to provide such additions, alterations, improvements or amenities and has completed them in conformity with its requirements. a

* * *

11. (1) [Subject to the provisions of Section 11-A in any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and circumstances of the case, the Court deems just— b

(a) where any premises are first let after the first day of September, 1940, and the rent at which they are so let is in the opinion of the Court excessive; or

(b) where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in [paragraphs (i) to (iii) of sub-clause (b) of clause (10)] of Section 5; or c

(c) where by reason of the premises having been let at one time as a whole or in parts and at another time in parts or as a whole, or for any other reason, any difficulty arises in giving effect to this Part; or

(d) where any premises have been or are let rent-free or at a nominal rent or for some consideration in addition to rent; or d

(d-i) without prejudice to the provisions of sub-section (1-A) of Section 4 and paragraph (iii-a) of sub-clause (b) of clause (10) of Section 5, where the Court is satisfied that the rent in respect of the premises referred to therein exceeds the limit of standard rent laid down in the said paragraph (iii-a); or

(e) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.”] e

4. Section 10 provides for an increase in rent where after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1986 a landlord is required to pay any fresh rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings. Section 10-A enables the landlord to make an increase in the rent of the premises by a percentage specified therein in respect of those premises which were let on or before the first day of September, 1940. Section 12, inter alia, provides that ordinarily there shall be no ejection of a tenant if he is ready to pay or is willing to pay the standard rent with permitted increase in the manner provided therein. f

5. From the aforesaid provisions it is clear that insofar as the question of fixation of standard rent is concerned when the Act was enacted the premises fell into two categories: (a) those let on 1-9-1940 and; (b) those let out for the first time after 1-9-1940. According to Mr Nariman these provisions provide as under: g

A. Premises let out before 1-9-1940.—In respect of (a) i.e. premises let out on or before 1-9-1940: rent paid on that date is the standard rent. h

MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 7

(i) and thus the rent is pegged at the rent paid as on 1-9-1940, subject to the increases mentioned below.

a (ii) Those increases are of three types:

(a) those permitted under Section 10-A

In respect of premises let on or before 1-9-1940; increases are permitted to the extent of 5% to 7.5% over the standard rent for residential premises:

b and 7.5%-12.5% in respect of non-residential premises—

This is a one-time permitted increase.

(b) Increase on account of heavy repairs, additional amenities and repairs required to be carried out under requisition from local authorities; increase in monthly rent is permitted to the extent of 15% per year on the actual cost incurred without interest (Section 9).

c (c) Increase in ground rent, in respect of leasehold premises paid to the Government, local authority and statutory authority is allowed to be passed on to the tenant by a proportionate increase in monthly rent (Section 10).

d (d) Increase in amount of property taxes after 13-2-1948 is allowed to be passed on to the tenant by proportionate increase in monthly rent (Section 10).

The costs which have to be absorbed and borne by the landlord (without entitlement to pass on to tenants) are therefore:

e Entire cost of “tenantable” repairs under Section 23, which if the landlord does not carry out, and the tenant carries out the same, the tenant is permitted to deduct and recover the same from the landlord from year to year to the extent of 3 months’ rent in a year together with interest at the rate of 15% p.a.; under Section 23 as amended in 1987 by Maharashtra Act No. 18 of 1987.

f Landlord has had to bear the repair cess from 1-1-1970: first levied under the Bombay Building Repair and Reconstruction Board Act, 1969 replaced by the Maharashtra Housing and Area Development Act, 1976 (MHADA) — to the extent of 10% of the “rateable” value (8.5% of actual rent in a year), which in effect works out to one month’s rent in a year.

g 50% of the total tax levied in lieu of the abolition of the Inami tenures (w.e.f. 1-4-1971) under Bombay City (Inami & Special Tenures) Abolition and Maharashtra Land Revenue Code (Amendment) Act, 1969: Sections 7, 8, 10.

h In case of leasehold land, the increase in ground rent paid by the landlord to private parties, i.e., parties other than Government, local authority, statutory authority, etc. the entire increase is to be borne by the landlord and no part of it can be passed on to tenant. (This is the effect of Section 10 as amended by Maharashtra Act No. 18 of 1987.)

8

SUPREME COURT CASES

(1998) 2 SCC

B. Premises let out for the first time after 1-9-1940.—Such premises fall into 2 categories:

(a) Where the landlord is himself the owner of the building in which flats are let to different tenants mostly from 1940-1950. a

(b) Where the landlord is himself a member of a cooperative housing society and holds the flat as owner member; but has let out the flat to a tenant — the rent will stand frozen at the amount paid on the date of the first letting: by reason of the definition of “standard rent” under Section 5(10)(b)(iii) of the Act (“where they were first let after the first day of September, 1940 the rent at which they were first let”). These are “ownership flats” in “cooperative society buildings” constructed in the post-1950 period. Almost all constructions after 1950 are on this pattern. b

(c) In the decades of the fifties, sixties and seventies, the landlord member is invariably out of pocket as the ever-increasing amounts of the outgoings and maintenance paid to the Society are invariably more than the actual amount of rent received (which had been frozen at first letting). c

In the decade of the eighties and nineties however, the amount of the first letting being considerably higher, this incidence does not occur. Since increase in maintenance charges is absorbed in the amount of rent fixed. d

In both classes of cases i.e. the premises let on or before 1-9-1940 and premises let on or after 1-9-1940, there are no statutory provisions which entitle the landlord to move the court for an increase in standard rent. The Scheme of the Act negatives any such right [see Section 5(10) read with Section 11(1)(a)]. e

6. Mr F.S. Nariman, learned Senior Counsel on behalf of the appellants, submitted that a legislation which, when enacted, was justified on considerations of necessity and expediency may, with the passage of time, become arbitrary and unreasonable in changing circumstances. In view of the constant escalation in prices due to inflation and corresponding fall in the value of the rupee, ceiling on rentals, such as the one imposed by Section 5(10)(a) and (b) read with Sections 7 and 11 of the Bombay Rent Act, is totally arbitrary and unrealistic and, therefore, unreasonable. f

7. In reply it was submitted by Mr N.S. Nargolkar, learned Senior Counsel for the respondents, that the writ petitions which were filed by the appellants did not give sufficient details as regards the rents which they were receiving from the tenanted premises. It was, therefore, contended that the claims made were hypothetical as there was no sufficient material to decide the truth of the assertions made by the appellants as regards negative returns from their rented properties. It was further submitted by the learned counsel that the respondent-State has become aware of the rising prices at least since 1986 and this had resulted in Maharashtra Act 18 of 1987 being passed whereby the Bombay Rent Act was amended. It was contended that an g
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MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 9

important concession which was made by the Amending Act was the introduction of Section 4(1-A) which provided that the provisions relating to

a standard rent and permitted increases was not to apply for a period of five years to any premises the construction or reconstruction of which was completed on or after the appointed date, namely, 1-10-1987. This Amending Act also introduced Section 9 which allowed a landlord to increase the rent for an improvement or structural alteration of the premises, excepting repairs under Section 23 of the Bombay Rent Act. Furthermore, it

b was submitted that the amended Section 6 also entitled a landlord to increase the rent by addition of an amount not exceeding 15 per cent of the expenses incurred on account of special additions or special alterations or additional amenities, improvements or structural alterations. The landlord was further entitled to temporarily increase the rent at a rate not exceeding 18 per cent of the standard rent for special or heavy repairs. Reference was also made to

c Sections 10 and 10-A introduced by the Amending Act of 1986 whereby the landlord could increase the rent in case he was required to pay fresh rates, charges etc. to the Government or if he was required to cover the increase in water and electricity charges. The learned counsel reiterated that the State was aware and conscious about the problem of the landlords and was proceeding in the right direction to obviate their difficulties. In this

d connection the attention of the Court was invited to the constitution of a committee headed by Mr V.K. Tembe in 1979 for the purpose of preparing a Unified Rent Control Act for the entire State. The State Law Commission had examined the recommendations of the Tembe Committee and submitted its report. The Cabinet Sub-Committee had considered this report as well as the Model Rent Control Bill, forwarded to it by the Central Government, and

e this had resulted in a new Rent Control Bill being introduced in the upper house of the State Legislature in July 1993. This bill has been referred to the Select Committee and it was accepted that the reading of the bill clause by clause will be commenced in the State Legislature.

8. There is considerable judicial authority in support of the submission of learned counsel for the appellants that with the passage of time a

f legislation which was justified when enacted may become arbitrary and unreasonable with the change in circumstances. In the *State of M.P. v. Bhopal Sugar Industries Ltd.*¹ dealing with a question whether geographical classification due to historical reasons would be valid this Court at SCR p. 853 observed as follows:

g “Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling

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1 AIR 1964 SC 1179 : (1964) 6 SCR 846 : (1964) 52 ITR 443

10

SUPREME COURT CASES

(1998) 2 SCC

forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.” a

9. In *Narottam Kishore Deb Varman v. Union of India*² the challenge was to the validity of Section 87-B of the Code of Civil Procedure which granted exemption to the rulers of former Indian States from being sued except with the consent of the Central Government. Dealing with this question it was observed at SCR p. 60 as follows: b

“If under the Constitution all citizens are equal, it may be desirable to confine the operation of Section 87-B to past transactions and not to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which Section 87-B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge.” c

10. In *H.H. Shri Swamiji of Shri Amar Mutt v. Commr. H.R.E. Deptt.*³ this Court was called upon to consider the validity of the continued application of the provisions of the Madras Hindu Religious Endowment Act, 1951 in the area which had formerly been part of State of Madras and which had latter become part of the new State of Mysore (now Karnataka) as a result of the States Reorganisation Act, 1956. In this connection at SCR pp. 387-88 it was observed by this Court as follows: (SCC pp. 658, para 29) d

“An indefinite extension and application of unequal laws for all time to come will militate against their true character as temporary measures taken in order to serve a temporary purpose. Thereby, the very foundation of their constitutionality shall have been destroyed, the foundation being that Section 119 of the States Reorganisation Act serves the significant purpose of giving reasonable time to the new units to consider the special circumstances obtaining in respect of diverse units. The decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because the relevance of historical reasons which justify the application of unequal laws is bound to wear out with the passage of time. In Broom’s *Legal Maxims* (1939 Edn., p. 97) can be found a useful principle, ‘*Cessante Ratione Legis Cessat Ipsa Lex*’, that is to say, ‘Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself’.” e

11. This Court in *Motor General Traders v. State of A.P.*⁴ had to consider the validity of Section 32-B of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. This section provided that the Act would not apply to buildings constructed after 26-8-1957. This exemption had continued for nearly a quarter of a century and it was argued that because of f

2 AIR 1964 SC 1590 : (1964) 7 SCR 55

3 (1979) 4 SCC 642 : 1980 SCC (Tax) 16 : (1980) 1 SCR 368

4 (1984) 1 SCC 222 : (1984) 1 SCR 594

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MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 11

a shortage of housing accommodation since the section had been valid from the commencement of the Act, therefore, it could not be struck down at any time after it came into force. While referring to earlier decisions in *Bhaiyalal Shukla v. State of M.P.*⁵ and *Bhopal Sugar Industries Ltd.*¹ it was observed at SCR p. 606 as follows: (SCC p. 232, para 16)

b “16. What may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of Article 14 of the Constitution if it is persisted in over a long period without any justification.”

Dealing with the contention that the impugned provisions had been in existence for over 23 years and had once been held to be valid by the High Court and therefore this Court should not pronounce upon its validity at this late stage, it was observed at SCR p. 614 that: (SCC p. 239, para 24)

c “What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. ... We are constrained to pronounce upon the validity of the impugned provision at this late stage because of garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge.”

d 12. In *Rattan Arya v. State of T.N.*⁶ this Court had to consider the validity of Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 which provided that tenants of residential building paying monthly rent exceeding Rs 400 were exempted from the protection of the Act whereas no such restriction was imposed in respect of tenants of non-residential buildings under the said Act. Holding that the tenants of the residential buildings required greater protection and that there was no justification in picking out the class of tenants of residential buildings paying a rent of more than Rs 400 per month and to deny them the right conferred generally on all tenants of buildings, residential or non-residential, and for this reason holding Section 30(ii) of the said Act as being violative of Article 14 at pp. 389 and 390 it was observed as follows: (SCC para 4)

f “It certainly cannot be pretended that the provision is intended to benefit the weaker sections of the people only. We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs 400 per month in 1973 will today cost at least five times more. In these days of universal day-to-day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can

h ⁵ AIR 1962 SC 981 : 1962 Supp (2) SCR 257 : (1962) 13 STC 236

⁶ (1986) 3 SCC 385

12

SUPREME COURT CASES

(1998) 2 SCC

only be considered to be totally artificial and irrelevant today. As held by this Court in *Motor General Traders v. State of A.P.*⁴ a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14.”

13. Lastly reference need be made to *Synthetics and Chemicals Ltd. v. State of U.P.*⁷ where at pp. 156-57 it was observed that “restriction valid under one circumstance may become invalid in changing circumstances”. Reliance in support of this view was not only placed on some American decisions but also on the decision of this Court in *Motor General Traders case*⁴.

14. Mr Nargolkar referred to the decision of this Court in *Sant Lal Bharti v. State of Punjab*⁸ and contended that the ratio of the said decision is clearly applicable to the present case. In *Sant Lal case*⁸ a two-Judge Bench of this Court was called upon to consider the validity of Section 4 of the East Punjab Urban Rent Restriction Act, 1949, which inter alia, provided that in determining the fair rent the rent controller shall fix the basic rent by taking into consideration the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during a twelve months’ period prior to 1-1-1939. It was held in that case that the Act in question had been passed in 1949 and it pegged the rent prevalent for similar houses in 1938 and as such it was not unreasonable per se. Even though there was an increase in the rents after the Second World War and the partition of the country, it was held that fixing of the rents at the 1938 level could not be regarded as unreasonable when one of the objects of the Act was to restrict the increase by providing for certain provisions as to fixation of a fair rent. In that case the main emphasis of the appellants was to assail Section 4 by comparing the said law with the legislation of different States. There was no argument raised or considered, as is being done in the present case, while relying on the decision of a three-Judge Bench in the cases of *Rattan Arya*⁶, *Motor General Traders*⁴ and *Synthetics and Chemicals*⁷ that with the passage of time and with the consequent change of circumstances the continued operation of an Act which was valid when enacted may become arbitrary and unreasonable.

15. The aforesaid decisions clearly recognise and establish that a statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable. It is, therefore, to be seen whether the aforesaid principle is applicable in the instant case. Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1947 the said provision, as amended, can still be regarded as valid now?

7 (1990) 1 SCC 109

8 (1988) 1 SCC 366 : (1988) 2 SCR 107

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MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 13

16. Reports of different committees and resolutions of the ministers have been placed on record in an effort to show that these official agencies have, since over the last two decades, themselves felt that increase in rents was called for. The correctness or the authenticity of this material has not, in any way, been doubted and therefore we see no reason as to why this cannot be taken into consideration in order to determine whether the submission of Mr Nariman merits acceptance. Reference may now be made to some of this material:

a *b* *c* *d*

1. A Rent Act Inquiry Committee of 1977 commonly known as Tembe Committee, was constituted by the Government of Maharashtra which in its Report submitted in the same year recognised that the pegging down of the rents to a date nearly thirty years back (at that time) had deprived the property owners of a reasonable return on their properties commensurate with the increase in the cost of living and the cost of building materials. It recognised that there were several small property owners all over the State who had invested their lifetime savings in building houses partly for residence and partly for being let out in order to assure a steady income in old age. As a result of Rent Control Act, the return they got is inadequate even for subsistence because of the steep increase in the cost of living. In para 6(10) it observed that “having regard to the general increase in the cost of living, the Committee is of the view that there is a case for some general increase although not to the extent claimed by the property owners as the period of twenty years has elapsed since the last increase was allowed”.

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2. The Maharashtra State Law Commission which submitted its Report in the year 1977 recommended the increase in the rents in the following terms “the Commission, feels that there is immediate need for reasonable increase in standard rent”.

3. In the 12th Report of the Maharashtra State Law Commission, 1979 on the rent control legislation, para 91 dealing with this aspect reads as follows:

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“The Commission does not want the rents to be static for long. The inflationary trend reflected by the rising consumer price index numbers at all centres in the State makes it imperative to make an objective assessment of the situation at regular intervals so that the remedial action may be possible by periodical variation in rents according as the situation demanded. Suggestions for such periodical survey was also made to the Commission by various representatives in evidence. The Commission feels that such a periodical survey would be much helpful in maintaining the balance between the landlord and the tenant. The possibility of the inflationary trend receding in future — though such possibility is not easy to entertain — cannot be totally ruled out, in which case the rents could be brought down to a reasonable level. If on the other hand, the inflationary trend continues unabated, then a reasonable

14

SUPREME COURT CASES

(1998) 2 SCC

rent increase may have to be resorted to. It is true that the Government can always take stock of the situation and come up with an appropriate measure to meet the situation at any given time. But the Commission does not want to leave the matter to an action being thought of by the Government. The Commission thinks that it would be proper to make a specific provision in the unified Act which would cast an obligation on the Government to hold periodical reviews and to take effective actions for rent variations accordingly as the circumstances may warrant.”

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The Commission further stated:

“In big cities like Bombay, a large number of slums have come into existence. If the rigours of the Rent Act had not been there, new houses would have been constructed. At present 30 lakh of people in the city of Bombay stay in slums and 1-1/2 lakh on pavement. If new buildings had been constructed, people who stay in slums today might have been in a position to get some decent accommodation.”

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It was further stated:

“The increase in the standard rent must be considered from the point of view of the Consumer Price Index.

It was pointed out to the Commission that 46 per cent of the lands belong to low income group, 27 per cent belong to middle income group, and only 25 per cent belong to the higher income group. These figures will indicate that 75 per cent of the so-called landlords are really people who depend upon the rent of the property for their livelihood. To designate them as ‘landlords’ itself is undesirable. When one considers the financial position of the tenants, compared to the positions in 1940s, one clearly sees that the monthly income of these tenants has gone up from 100 to 400 at least. However, there has not been a proportionate increase in the rents.”

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4. A Report of Economic Administrative Reforms Commission on Rent Control (commonly known as L.K. Jha Committee) was presented to the Government of India in September 1982. In para 51 of the said report, it stated as follows:

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“We now turn to the problem of existing tenancies. Many of these are very old and the rents were fixed a few decades ago. These old and frozen rents bear little relation to the present-day maintenance costs, or to the current returns from alternative investments, or to the prevailing market rents in respect of new accommodation. In the case of new construction we have suggested that the periodical revision of rents should be based on a partial neutralisation of the effects of inflation. Applying the same principle to existing tenancies where rents have remained frozen for at least 5 years, what needs to be done is to update those rents by neutralising

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MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 15

50 per cent of the inflation which has taken place from the time of initial determination of those rents up to the present time.”

a The report further reads as under:

“Similarly in the case of existing tenancies, all that needs to be done is to provide a formula for updating the old frozen rents, and thereafter periodically revising them.”

b 5. On 21-5-1987/22-5-1987 a Conference of the Housing Ministers of all the States was held to discuss various problems. Decisions taken at that Conference were recorded in the form of resolutions. With regard to Rent Control the unanimous resolution at the Conference of Housing Ministers reads as under:

“RESOLUTION NO. IV — RENT CONTROL

4.1 Realising the existing Rent Control Laws, have resulted in:

- c (i) disincentive to further investment in construction of houses for rental purposes;
- (ii) neglect of timely repairs and maintenance of existing rental housing stock; and
- d (iii) debilitating the resources of municipal bodies by virtually freezing their income from property taxes which are based on rateable values.

4.2 This Conference urges upon the Government of India to formulate and communicate to the State Governments for necessary action suitable guidelines as soon as possible during the current year for their consideration so as to provide for the expeditious amendment of Rent Control Laws with a view to providing for:

- e (a) a reasonable return on investment in housing which will be comparable to, if no more favourable than, the return from and other avenues of investment,
- (b) *periodical upward revision of rents to neutralise the erosion in the real value of rents,*
- f (c) enabling expeditious resumptions of possession of a dwelling unit for self-occupation by a landlord who is the owner of only one such dwelling unit;
- (d) delinking of municipal property taxation from rateable values to the extent they are regulated by the Rent Control Laws,
- (e) leave and licence system,
- g (f) period tenancy,
- (g) protection to tenants from arbitrary eviction,
- (h) exemption from the provisions of the Act of new construction less than 5 years,
- h (i) obviating delays in litigation by laying down suitable expeditious procedures, only one appeal to a higher authority instead of multi-level appeals, constitution of tribunals to deal

with disputes arising under the Act and barring the jurisdiction of Civil Court Act.”

6. In the letter dated 24-7-1987 from the Ministry of Home Affairs, Government of India while communicating President’s assent to 1987 Amendment to the Bombay Rent Act it was stated as follows: a

“It is suggested that the State Government may make subsequent amendments to the Principal Act preferably within next 6 months by incorporating the following recommendation of the above Conference (Housing Ministers’ Conference). b

(a) Periodical upward revision of rents to neutralise the erosion in the real value of rents.”

7. A conference of Chief Ministers of all States was held at New Delhi in 1992. One of the topics discussed pertained to static rents and the problems arising therefrom. A unanimous recommendation of this conference made on 9-3-1992 in this regard was as under: c

“4.3 The frozen rents have led to emergence of practices like key money. This apart from creating a black market in rental housing, the Act has reduced the accessibility of low income groups to rental housing, as they cannot afford to pay large deposits for rented premises. d

4.4 The widening divergence between the interests of landlords and tenants has not only led to increased litigation under Rent Control Acts (the rent control cases make for a majority of the cases in courts) but also to increased crimes. A large number of criminal cases have their origin in disputes over rented properties.”

The recommendation further reads: e

“The important principle is that while the tenant will enjoy security of tenure in controlled premises, he should agree to pay a rent that provides adequate return on investment and provides for proper maintenance and taxes, so that he does not enjoy an unfair advantage over the landlord.” f

17. A perusal of the aforesaid extracts of reports and resolutions clearly demonstrates that since the last two decades the authorities themselves seem to be convinced that the pegging down of the rents to the pre-war stage and even thereafter, is no longer reasonable. Unfortunately apart from lip service little of note has been done. Even the Rent Control Bill introduced in 1993 has not yet become law. g

18. It was submitted by Mr Nariman that even after the promulgation of the Rent Control Act, 1948 during the 1950s and 1960s there was not much escalation in the market rents. The rents which were determined during this period have become the standard rent by virtue of the definition in Section 5(10) of the Bombay Rent Act. In the last few years, due to rapid inflation there has been steep escalation of the expenses which the landlords have to incur without there being any corresponding increase in the rents. This has h

MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 17

resulted, it was submitted, in the buildings not being repaired as the expenses involved made it uneconomical for the landlords to undertake this task.

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19. As already noticed it had been contended by Mr Nargolkar that realising the need being there for providing some relief to the landlords amendments were made in the Bombay Rent Act in 1987. It was submitted that as a result of these amendments the landlords will be able to charge more rents and it cannot now be said that the Rent Control Act is not valid.

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20. It is true that some amendments were made in 1987 which clearly indicate that the State Legislature was conscious of the fact that there was a need to increase the standard rent. The question, however, is whether the exercise which was undertaken was merely cosmetic or did it bring about any tangible increase in the standard rent. Section 4(1-A) was incorporated which provides that the provisions relating to standard rent would be inapplicable for a period of five years in respect of premises constructed or reconstructed after the appointed date, namely, 1-10-1987. Once this "holiday" comes to an end the tenant would be entitled to get the standard rent fixed. The amendment of 1987 does not do away with the principle of pegging down of the rent at a rate when the premises are first let out.

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Increase in the cost of maintenance or fall in the value of money or the rise in the cost of index does not entitle a landlord to any increase. There has been no other material change in the Act in this behalf. What the Amending Act of 1987 has done is merely to consolidate and rearrange the sections of the earlier Act. Provisions contained in the present Sections 9, 10 and 10-A were found earlier, prior to the amendment in 1987, in Sections 10, 10-A, 10-AA, 10-AAA, 10-C, 10-D, 10-E and 10-G. The only change introduced in these sections was that the rate of return on the expenses incurred for additional amenities for heavy repairs has been increased. The following tabulated comparative statement of the relevant provisions before and after 1-10-1987 will bring out the effect of the alteration, if any.

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TABULATED COMPARATIVE STATEMENT

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After Amending Act of 1987

Before Amending Act of 1987

Section 9(1) increase in rent on account of structural alterations or improvement made with tenants' written consent.

Identical provision in Section 9 which is there in the original Act since 1948.

Section 9(2) increase on account of special additions or additional amenities.

Similar provision in Section 10-D(1) which was introduced in 1953.

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Section 9(3) increase on account of additions, improvements or additional amenities ordered by local authority.

Similar provision in Section 10-D(4) which was introduced in 1953.

Section 9(3)(a) temporary increase in rent on account of special or heavy repairs.

Similar provision in Section 10-E introduced in 1964.

Section 10 increase in or fresh rate, cess, charge or tax paid to local authority.

Similar provisions in Section 10 (since inception of Act) Section 10-A (introduced in 1949), Section 10-AA (introduced in 1953), Section 10-AAA

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18

SUPREME COURT CASES

(1998) 2 SCC

(introduced in 1962).

Section 10 increase in rent on account of increase in ground rent paid to Government local authority or statutory authority. Section 10-G introduced in 1973 permitted recovery of one-third of increase. a

21. During the course of his arguments Mr Nariman filed a statement indicating the financial impact of the rent restriction provisions on the assumption that the monthly rent on 1-9-1940 was Rs 100. This statement takes into account the permitted increases incorporated in the Act including that of 1987 from time to time. The submission was as follows: b

“Assumption: that monthly rent on 1-9-1940 was Rs 100 (exclusive of municipal taxes). This is an accurate approximate average of rents paid in September 1940 in respect of flats of large areas situated in good localities.

1(a) From September 1940 till 13-2-1948, when the Rent Act came into force, the landlord continued to retain Rs 100 since the burden of tenantable repairs was on the tenant under Section 108(m) of the T.P. Act. c

(b) After 13-2-1948 this burden has been transferred to the landlord (Section 23). From 1-10-1987 up to date, the tenant is permitted to carry out ‘tenantable repairs’ and recover the entire cost with interest at 15% per annum by deducting an amount equivalent to 3 months’ rent in a year. d

(c) Hence invariably the landlord gets 25 per cent less than Rs 100 (Rs 1200 per year reduced to Rs 900 per year) as ‘tenantable repairs’ are necessarily recurring in old buildings, and the cost of tenantable repairs keeps rising. e

2. From 1-1-1970 onwards the landlord has had to bear continuously ten per cent of ‘rateable value’ (equivalent to 8.5% of the yearly rent) as ‘repair cess’ i.e. one month’s rent in a year.

3. *Thus in case of all buildings constructed prior to 1-1-1970 — (date of levy of compulsory repair cess) — they constitute majority of buildings in all urban areas the landlord retains only 8 months’ rent in hand every year — as against 12 months’ rent he was getting in September 1940:* f

(a) this is without taking into consideration further inroads as a result of ground rent paid in respect of private leasehold lands where increase in ground rent is not permitted to be passed on (effect of Section 10). g

(b) this is also without taking into account ever-increasing outgoings and maintenance charges paid to Cooperative Housing Societies by landlord members: not permitted to be passed on to tenants. h

MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 19

4. Meanwhile all this is further accentuated by the fall in the value of the rupee and rise in the wholesale price index which has totally eroded the amount receivable as rent in the hands of the landlord:

(A) taking base in 1940 at Rs 100 the value of the rupee in 1996 was only Rs 1.5 in 1996.

(B) in 1940 the wholesale price index was 13.2. This has risen to 876 by 1996: 66 times.

(C) Value of one rupee silver coin of 1940, as on 5-12-1992 was Rs 44.

(D) Price of silver on 30-12-1939 was Rs 52 per kg. It rose to Rs 6945 per kg. On 31-12-1996, this is, by 133 times.

5. Thus if in 1940 the landlord was getting Rs 1200 per year as rent (exclusive of municipal taxes) in 1996 or 1997 he is getting Rs 800 per year and in terms of value of rupee in 1940, this amount of Rs 800 works out to only Rs 12.12 (800/66) — against Rs 1200 he was getting in 1940.”

To put it simply in a tabulated form the following is the comparative position of rent between 1940 and 1997 and the amount retained by the landlord:

	Per Month	
	1940	1997
(1) Rent per month inclusive of municipal taxes (Rs)	100	170.09
(2) Amount of municipal taxes to be paid by owner (Rs)	21.54	108.47
(3) Amount of repair cess to be paid by owner (Rs) @ 10% of rateable value	Nil	7.62
(4) Amount retained by owner after payment of municipal taxes & repair cess (Rs)	78.46	54.00

N.B.: No correction has been made for:

(1) The inflation/fall in purchasing value of the rupee which was about 66 times between 1940 and 1996 and the value of Rs 100 in 1940 has come down to Rs 1.5 in 1996.

(2) Further in 1940 the tenants could not deduct any amount towards repairs but under Section 23 of the Rent Act in 1997 they can deduct 3 months' rent per year.

22. The aforesaid illustration, which has not been seriously disputed, clearly brings out the arbitrariness of the standard rent provisions contained in the Bombay Rent Act. It is true that the aforesaid illustration has reference to the monthly rent of Rs 100 as on 1-9-1940 and does not relate to the premises which are let out after the Act had come into force. As far as Section 5(10) is concerned the standard rent of the premises let out after 1-9-1940 is that rent at which the premises were first let. Even so the rapid increase in the expenses for repair and other outgoings and the decreasing net amount of rent which remains with the landlord, clearly show that the non-provision in the Act for reasonable increase in the rent, with the passage of time, is leading to arbitrary results. This is also demonstrated from the

20

SUPREME COURT CASES

(1998) 2 SCC

facts in the case of Petitioner 3 who owns Unit No. A-18 on the first floor admeasuring 808 sq. ft. in the property known as Shri Ram Industrial Estate situated at 13 J.D. Ambedkar Road, Mumbai. The said building belongs to a cooperative society and Unit No. A-18 was given on lease and licence basis by an agreement dated 23-8-1964 by the appellant to Lokmitra Sahakari Printing and Publishing Society Ltd. on a monthly compensation of Rs 686.80 per month. Liabilities of repairs is on the appellant and according to it this amount received in respect of the said unit by the appellant is Rs 563.65 per month inclusive of all taxes. Out of this sum Appellant 3 has to pay Rs 216.33 as municipal taxes leaving a balance of Rs 320.22. From this amount the society outgoings is Rs 250 per month, leaving a balance of only Rs 70.20 per month with the said appellant. Another instance which has been given is that of Appellant 4 who owns a property known as Ram Mahal situated at 8, Dinshaw Vachha Road, Mumbai. The said building has 20 residential flats and the building was purchased by Appellant 4 in the year 1955, although it had been constructed prior to 1940. Flat No. 15 on the 5th floor of the said building had been let out by the previous owners to M/s Bennett Coleman & Co. Ltd., who were the sitting tenants at the time when the property was purchased. The flat measures 1710 sq. ft. and monthly rent for the same is Rs 460 per month inclusive of permitted increase and repairs. According to the appellant the income by way of rent has remained constant while the expenditure has been increased and the total gross rent of the building which he receives is Rs 1,72,032 per annum while it incurs an annual expense of Rs 1,93,245 consisting of BMC taxes, repairs, ground rent, maintenance charges inclusive of small electricity bill and the insurance premium. He is, therefore, suffering a loss of Rs 21,213 every year. It is not necessary to examine the correctness of these details except to note that what was reasonable on 1-9-1940 or in 1950s or in 1960s can no longer be regarded as reasonable at this point of time.

23. That the tenants are, by and large, now getting an unwarranted benefit or windfall can also be illustrated by taking an example of hypothetical tenant, i.e., an Assistant in the Government of India posted at Bombay in the year 1948. At that time the pay scale of the Assistant was Rs 160-10-300-15-450 + 20% HRA + Rs 15.50 CCA. On the basis that he was drawing the maximum of scale, his total monthly emoluments would be Rs 485.50 and if he had in 1948 taken premises on rent at Rs 100 per month, he would be paying approximately 20% of his total emoluments by way of rent, without taking into consideration any deduction for repairs. That Assistant in 1997, after the report of the 5th Pay Commission, would get a maximum basic salary of Rs 9000 + 30% HRA + Rs 200 p.m. as CCA making the total emoluments of Rs 11900 p.m. After taking into consideration the 1987 increase in rent, he would be paying about Rs 170 p.m. in respect of the same premises instead of Rs 100 which he was paying in 1948. This enhanced rent, would, however, represent only 0.9% of his salary. With the passage of time, the percentage of rent which would be paid by that hypothetical tenant would have gone down from 20% of his total

MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 21

a salary to only 0.9% and this would be the case of most of the tenants as we can take judicial notice of the fact that from 1948 till now, incomes have increased considerably, whereas the rent has increased only from Rs 100 p.m. to Rs 170 p.m.

b 24. On the other hand, in the aforesaid example, the hardship to the landlord is that it was only in 1940 that he had agreed to accept rent of Rs 100 p.m. That was the real income from rent which he had agreed to receive. Now with the increase in taxes etc., he gets only Rs 54 p.m. whereas in 1940, he got Rs 100 minus Rs 21.54 (municipal tax) i.e. Rs 78.46. So not only is he getting lesser amount in hand but in terms of real value, after taking inflation into account, he is getting only a pittance. For Rs 100 p.m. of gross rent which he was getting in 1940, he now in 1997 gets a gross rent of about Rs 170 which in real money terms, after taking the inflation into account, will be only about Rs 2 p.m. of the 1940 value. Had the Rent Control Act not been in force the landlord today may have been able to get today's equivalent of Rs 100 of 1940 as rent i.e. about Rs 6600 p.m.

c 25. It is true that one of the reasons for enacting the rent control legislation is to prevent exploitation of the tenants by the landlords. One of the protections which has been provided to the tenants in the rent legislation throughout the country is the concept of standard rent. Each State has definite laws with regard thereto. In some case, like in Delhi, the Rent Control Act is not applicable if the rent is Rs 3500 or more while in the other States Rent Control Act is not applicable to certain categories of persons. In the Bombay Rent Act, with which we are concerned, the standard rent as on 1-9-1940 or the first rent of the premises which was let out thereafter is the standard rent. The pegging down of rent, coupled with the inability of the landlord to evict the tenants, has given rise to unlawful tendencies. In the Statement of Objects and Reasons annexed to LA Bill No. 79 of 1986 introduced in the Maharashtra Legislature providing for amendment to the Bombay Rent Control Act with regard to clause 3 it was, inter alia, stated as follows:

d “The freezing of standard rent prevailing on 1st September, 1940 has deprived the landlords of getting reasonable and adequate return to undertake maintenance and repairs to the old buildings. Despite the penal provisions in the Act for charging any premium from a tenant, such freezing of rent results in charging ‘pugree’ or deposit or similar illicit payments which are widely prevalent. The construction of new tenements on rental basis has considerably ceased with the result that low and middle income groups are not getting premises on rent....”

e (emphasis added)

f 26. Notwithstanding the fact that the State Legislature was conscious of the illegal payments which are made because of the rent restriction law no effective steps have been taken so far to strike a balance between the interests of the landlords and the tenants.

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27. It is true that whenever a special provision, like the Rent Control Act, is made for a section of the society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary. a
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28. The legislature itself, as already noticed hereinabove, has taken notice of the fact that pugree system has become prevalent in Mumbai because of the Rent Restriction Act. This Court was also asked to take judicial notice of the fact that in view of the unreasonably low rents which are being received by the landlords, recourse is being taken to other methods to seek redress. These methods which are adopted are outside the four corners of the law and are slowly giving rise to a state of lawlessness where, it is feared, the courts may become irrelevant in deciding disputes between the landlords and tenants. This should be a cause of serious concern because if this extra-judicial backlash gathers momentum the main sufferers will be the tenants, for whose benefit the Rent Control Acts are framed. c
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29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, may, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent — the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context. e
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30. When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short-sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social legislation is treated with deference by the courts not merely because the legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the courts of law. But its power is g
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MALPE VISHWANATH ACHARYA v. STATE OF MAHARASHTRA (*Kirpal, J.*) 23

a coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others.

b 31. Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31-3-1998. The Government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model Law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good and compelling reasons in departing from the said Model Law. Mr Nargolkar assured us that this Model Law will be taken into consideration in the framing of the proposed new Rent Control Act.

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e 32. We, accordingly, dispose of these appeals without granting any immediate relief but we hold that the decision of the High Court upholding the validity of the impugned provisions relating to standard rent was not correct. We however refrain from striking down the said provisions as the existing Act elapses on 31-3-1998 and we hope that a new Rent Control Act will be enacted with effect from 1-4-1998 keeping in view the observations made in this judgment insofar as fixation of standard rent is concerned. It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence. The respondents will pay the costs.

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g 33. In view of the aforesaid the writ petitions are disposed of.

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SATYAWATI SHARMA v. UNION OF INDIA

287

(2008) 5 Supreme Court Cases 287

(BEFORE B.N. AGRAWAL AND G.S. SINGHVI, JJ.)

a SATYAWATI SHARMA (DEAD) BY LRS. . . Appellant;

Versus

UNION OF INDIA AND ANOTHER . . . Respondents.

Civil Appeals No. 1897 of 2003[†] with Nos. 1898 of 2003 and 5622 of 2006, decided on April 16, 2008

b A. Rent Control and Eviction — Bona fide requirement of landlord — Eviction on ground of — Non-residential buildings — S. 14(1)(e), Delhi Rent Control Act, 1958 making distinction between premises let for residential and non-residential purposes by restricting landlord's right to seek eviction of tenant from premises let for residential purposes only — Validity of — Challenge to, on ground of violation of Art. 14 of the Constitution — Sustainability — High Court upholding the validity of S. 14(1)(e) on ground of principle of reasonable classification — Held, the High Court did not, at all, advert to the question whether the reason/cause which supplied rationale to the said classification continued to subsist even after lapse of 44 years and whether the tenants of non-residential premises should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite see-saw change in the construction activity scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential purposes — Reason/cause which prompted the High Court in *H.C. Sharma case*, ILR (1973) 1 Del 90 (which formed basis of impugned judgment of High Court) to sustain the differentiation/classification of the premises with reference to the purpose of their user, was no longer available for negating the challenge to S. 14(1)(e) on ground of violation of Art. 14 — Such arbitrary classification could not be upheld ignoring the ratio of *Harbilas Rai Bansal case*, (1996) 1 SCC 1, which was reiterated in *Joginder Pal case*, (2002) 5 SCC 397 and approved in *Rakesh Vij case*, (2005) 8 SCC 504 — Discrimination latent in S. 14(1)(e) at the time of enactment of the Act concerned, with the passage of time (almost 50 years) had become so pronounced that the said provision could not be treated *intra vires* Art. 14 by applying any rational criteria — Hence, S. 14(1)(e) declared to be violative of Art. 14 insofar as it discriminated between the premises let for residential and non-residential purposes when the same were required bona fide by the landlord for occupation for himself or for any member of his family dependent on him — Clarified that S. 14(1)(e) was not struck down entirely but only to the extent of said discrimination — Remaining portion of S. 14(1)(e) to be read as given in para 42 of the present judgment — Explanation appearing below S. 14(1)(e) to be treated as redundant — Delhi Rent Control Act, 1958 (59 of 1958) — S. 14(1)(e) — Constitutional validity of — Held, partly unconstitutional

g B. Constitution of India — Art. 14 — Temporal reasonableness — Effect of passage of time on constitutionality — Legislation subsequently losing the rationale of classification on the basis of which it was enacted and becoming

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[†] From the Judgment and Order dated 27-8-2002 of the High Court of Delhi at New Delhi in CWP No. 1092 of 1999

288

SUPREME COURT CASES

(2008) 5 SCC

arbitrary and unreasonable with the lapse of time and/or due to change of circumstances — Power of court to strike down such legislation — Scope — Reiterated, even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same a

[Ed.: See also Art. 14 '(b)(2)(iv) Temporal reasonableness — Effect of passage of time', pp. 758 et seq. in Vol. 4, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

C. Constitution of India — Arts. 13 and 14 — Doctrine of severability — Application of — Discriminatory portion of impugned provision struck down after consideration of said doctrine — Rent Control and Eviction — Delhi Rent Control Act, 1958 (59 of 1958) — S. 14(1)(e) — Discriminatory portion served b

Whether Section 14(1)(e) of the Delhi Rent Control Act, 1958 (for short “the 1958 Act”) is ultra vires the doctrine of equality enshrined in Article 14 of the Constitution of India was the question involved in the present appeals. c

On 18-8-1953, a plot of land was leased out to one *J* by Delhi Improvement Trust. In terms of Clause 4(c) of the lease deed, the lessee was prohibited from using the land and building (to be constructed over it) for any purpose other than residence, with a stipulation that in case of breach of this condition, the lease would become void. After constructing the building, the lessee inducted two persons i.e. *N* and *T* as tenants in two portions of the building, who started using the rented premises for running watch shop and clinic respectively. The appellant herein purchased the building from legal heirs of the lessee. After purchasing the property, the appellant filed petitions for eviction of the tenants by claiming that she needed the house for her own bona fide need and also for the use and occupation of the family members dependent upon her. The appellant further pleaded that she wanted to demolish the building and reconstruct the same. She also alleged that tenants had been using the premises in violation of the conditions of lease and, therefore, they were liable to be evicted. d

The tenants contested the eviction petitions by asserting that the so-called need of the landlord was not bona fide; that there were no valid grounds for permitting the landlord to demolish the building and reconstruct the same and that they had not violated the conditions of lease. They further pleaded that the previous owner let out the premises for non-residential purposes; that the appellant was also issuing rent receipts by describing the rented portions as shop/clinic and that in view of Order dated 11-12-1978 issued by the Ministry of Housing and Urban Development, Delhi Development Authority was condoning violations of the lease conditions. e

The Additional Rent Controller dismissed the eviction petitions. He held that the appellant was owner and landlady of the suit premises but she failed to prove: (i) that portions thereof were let for residential purposes; (ii) that the appellant and her dependent family members did not have any suitable alternative accommodation except the one occupied by her elder son, who was under the threat of eviction; and (iii) that the need of the appellant was bona fide. It was further held that the tenants were guilty of violating Clause 4(c) of deed dated 18-8-1953. However, the Additional Rent Controller declined to pass order for recovery of possession by observing that under Section 14(1)(e) of the 1958 Act, such an order could be passed only in respect of premises let for residential purposes. The Additional Rent Controller also rejected other grounds of eviction put forward by the appellant. f

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SATYAWATI SHARMA v. UNION OF INDIA

289

a The appeal preferred by the appellant was dismissed by the Rent Control Tribunal. The Tribunal agreed with the order of the Additional Rent Controller. It held that the portions given to the tenants were being used for non-residential purposes and, therefore, they could not be evicted on the ground of bona fide need of the landlord.

b The appellant challenged the orders of the Additional Rent Controller and the Rent Control Tribunal by filing a civil writ petition. One more writ petition was filed with a prayer that Section 14(1)(e) of the 1958 Act be declared ultra vires Article 14 of the Constitution insofar as it did not provide for eviction of the tenant from the premises let for non-residential purposes. Both the writ petitions were heard by the Full Bench of the High Court along with other writ petitions and were dismissed. Hence, the present appeals.

Allowing the appeals, the Supreme Court

Held :

c Article 14 of the Constitution declares that the State shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject-matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. (Para 16)

d However, application of the doctrine of equality embodied in the said article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the directive principles of State policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations. (Para 16)

f *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538; *Mohd. Shujat Ali v. Union of India*, (1975) 3 SCC 76 : 1974 SCC (L&S) 454; *LIC of India v. Consumer Education & Research Centre*, (1995) 5 SCC 482, referred to

State of J&K v. Triloki Nath Khosa, (1974) 1 SCC 19 : 1974 SCC (L&S) 49; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, cited

g It is trite to say that a legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

(Para 32)

h *State of M.P. v. Bhopal Sugar Industries Ltd.*, AIR 1964 SC 1179; *Narottam Kishore Deb Verman v. Union of India*, AIR 1964 SC 1590; *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious & Charitable Endowments Deptt.*, (1979) 4 SCC 642 : 1980 SCC (Tax) 16; *Motor General Traders v. State of A.P.*, (1984) 1 SCC 222; *Rattan Arya v. State of T.N.*, (1986) 3 SCC 385; *Malpe Vishwanath Acharya v. State of Maharashtra*, (1998) 2 SCC 1, relied on

290

SUPREME COURT CASES

(2008) 5 SCC

Chintapalli Achaiah v. P. Gopalakrishna Reddy, AIR 1966 AP 51, *cited*

Broom: *Legal Maxims*, 1939 Edn., p. 97, *cited*

In the present case, the Full Bench of the High Court upheld the validity of Section 14(1)(e) of the Delhi Rent Control Act, 1958 mainly by relying upon the judgment of the Division Bench in *H.C. Sharma case*, ILR (1973) 1 Del 90 and of the Supreme Court in *Amarjit Singh case*, (1986) 4 SCC 736 and by observing that legislature has the right to classify persons, things, and goods into different groups and that the Court will not sit over the judgment of the legislature. The Full Bench did not, at all, advert to the question whether the reason/cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite see-saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes.

(Para 29)

The reasons which weighed with the High Court in *H.C. Sharma case* and the impugned judgment cannot in the changed scenario and in the light of the ratio of *Harbilas Rai Bansal case*, (1996) 1 SCC 1, which was approved in *Rakesh Vij case*, (2005) 8 SCC 504, and of *Rattan Arya case*, (1986) 3 SCC 385, as also the observations contained in the concluding portion of the judgment in *Gian Devi Anand case*, (1985) 2 SCC 683 now be made basis for justifying the classification of premises into residential and non-residential in the context of landlord's right to recover possession thereof for his bona fide requirement. In the rent control legislations made applicable to Delhi from time to time residential and non-residential premises were treated on a par for all purposes. The scheme of the 1958 Act also does not make any substantial distinction between residential and non-residential premises. Even in the grounds of eviction set out in proviso to Section 14(1) thereof, no such distinction has been made except in Clauses (d) and (e). The reason/cause which prompted the Division Bench of the High Court in *H.C. Sharma case* to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution. The court cannot uphold such arbitrary classification ignoring the ratio of *Harbilas Rai Bansal case*, which was reiterated in *Joginder Pal case*, (2002) 5 SCC 397 and approved in *Rakesh Vij case*. The discrimination which was latent in Section 14(1)(e) at the time of enactment of the 1958 Act has, with the passage of time (almost 50 years), become so pronounced that the impugned provision cannot be treated *intra vires* Article 14 of the Constitution by applying any rational criteria.

(Paras 30 and 31)

Harbilas Rai Bansal v. State of Punjab, (1996) 1 SCC 1; *Rattan Arya v. State of T.N.*, (1986) 3 SCC 385; *Rakesh Vij v. Dr. Raminder Pal Singh Sethi*, (2005) 8 SCC 504; *Joginder Pal v. Naval Kishore Behal*, (2002) 5 SCC 397; *Gian Devi Anand v. Jeevan Kumar*, (1985) 2 SCC 683; *Malpe Vishwanath Acharya v. State of Maharashtra*, (1998) 2 SCC 1, *followed*

Mohinder Prasad Jain v. Manohar Lal Jain, (2006) 2 SCC 724, *relied on*

H.C. Sharma v. LIC of India, ILR (1973) 1 Del 90; *Amarjit Singh v. Khatoon Quamarain*, (1986) 4 SCC 736, *distinguished*

Common Cause v. Union of India, (2003) 8 SCC 250, *referred to*

State of Haryana v. Ved Prakash Gupta, (1999) 1 RLR 689; *Pasupuleti Venkateswarlu v. Motor & General Traders*, (1975) 1 SCC 770; *Hasmat Rai v. Raghunath Prasad*, (1981)

SATYAWATI SHARMA v. UNION OF INDIA

291

3 SCC 103; *Bishambhar Dayal Chandra Mohan v. State of U.P.*, (1982) 1 SCC 39 : 1982 SCC (Cri) 53; *Prabhakaran Nair v. State of T.N.*, (1987) 4 SCC 238; *Special Courts Bill, 1978, In re*, (1979) 1 SCC 380; *Padma Sundara Rao v. State of T.N.*, (2002) 3 SCC 533, cited

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Satyawati Sharma v. Union of India, AIR 2002 Del 509, reversed

[**Ed.**: See also *Complete Digest of Supreme Court Cases*, 2nd Edn., Vol. 4, Art. 14 — Nature, Ingredients, Scope and Applicability — Temporal reasonableness — Effect of passage of time, pp. 758-59.]

b

In view of the above, it is held that Section 14(1)(e) of the Delhi Rent Control Act, 1958 is violative of the doctrine of equality embodied in Article 14 of the Constitution insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the landlord's right to seek eviction of the tenant from the premises let for residential purposes only. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) because it is neither pleaded nor argued that Section 14(1)(e) is unconstitutional in its entirety. Ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e). Therefore, Section 14(1)(e) is partly struck down. Section 14(1)(e) shall now read as follows:

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“that the premises are required *bona fide* by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation;

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* * *

(Paras 41 and 42)

As a sequel to the above, the Explanation appearing below Section 14(1)(e) will have to be treated as redundant. (Paras 43 and 44)

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While partly striking down Section 14(1)(e) of the Delhi Rent Control Act, 1958 as being violative of Art. 14 of the Constitution, the well-recognised rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible, has been kept in view. (Para 42)

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R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628; *Lt. Col. Sawai Bhawani Singh v. State of Rajasthan*, (1996) 3 SCC 105, relied on

D. Interpretation of Statutes — Particular statutes or provisions — Rent control statutes — Mode of construction of — Shift in court's approach as to — Indication of

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There has been a definite shift in the court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant. In these cases the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments.

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(Para 12)

292 SUPREME COURT CASES (2008) 5 SCC

Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1; *Joginder Pal v. Naval Kishore Behal*, (2002) 5 SCC 397, *relied on*

Mohinder Kumar v. State of Haryana, (1985) 4 SCC 221; *Prabhakaran Nair v. State of T.N.*, (1987) 4 SCC 238; *D.C. Bhatia v. Union of India*, (1995) 1 SCC 104; *C.N. Rudramurthy v. K. Barkathulla Khan*, (1998) 8 SCC 275, *referred to*

W-M/37734/C

Advocates who appeared in this case :

C.S. Rajan, T.S. Doabia, Senior Advocates (A.C. Gambhir, P.D. Sharma, Mohan Pandey, Shish Pal Laler, Balbir Singh Gupta, Ms Sadhana Sandhu, R.C. Kathiam, P. Parmeswaran, D.S. Mahra, B.V. Balram Das, Manu Nayar, K.K. Sharma, Hameed S. Shaikh, A.L. Trehan, Praveen Swarup and Ashwani Kumar, Advocates) for the appearing parties.

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2. (2005) 8 SCC 504, <i>Rakesh Vij v. Dr. Raminder Pal Singh Sethi</i>	296d, 313b, 315a-b, 315b-c, 316a, 318g, 319f-g	a
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14. (1987) 4 SCC 238, <i>Prabhakaran Nair v. State of T.N.</i>	296f-g, 301d, 304g	
15. (1986) 4 SCC 736, <i>Amarjit Singh v. Khatoon Quamarain</i>	294f, 295d-e, 297a-b, 318e, 322e, 323b, 323d	
16. (1986) 3 SCC 385, <i>Rattan Arya v. State of T.N.</i>	296d, 313b, 318g-h, 322b-c	
17. (1985) 4 SCC 221, <i>Mohinder Kumar v. State of Haryana</i>	304g	f
18. (1985) 2 SCC 683, <i>Gian Devi Anand v. Jeevan Kumar</i>	310d-e, 314f, 314f-g, 319a	
19. (1984) 1 SCC 222, <i>Motor General Traders v. State of A.P.</i>	313e, 321c, 321e, 322b-c	
20. (1982) 1 SCC 39 : 1982 SCC (Cri) 53, <i>Bishambhar Dayal Chandra Mohan v. State of U.P.</i>	323d	
21. (1981) 3 SCC 103, <i>Hasmat Rai v. Raghunath Prasad</i>	322f	
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23. (1979) 1 SCC 380, <i>Special Courts Bill, 1978, In re</i>	297b-c	
24. (1978) 1 SCC 248, <i>Maneka Gandhi v. Union of India</i>	310c	
25. (1975) 3 SCC 76 : 1974 SCC (L&S) 454, <i>Mohd. Shujat Ali v. Union of India</i>	308a-b	
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27. (1974) 1 SCC 19 : 1974 SCC (L&S) 49, <i>State of J&K v. Triloki Nath Khosa</i>	309e-f, 309g-h	

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

293

28. ILR (1973) 1 Del 90, *H.C. Sharma v. LIC of India* 294f, 296d, 316a-b, 318d-e, 318g, 319b-c
- a 29. AIR 1966 AP 51, *Chintapalli Achaiah v. P. Gopalakrishna Reddy* 321d
30. AIR 1964 SC 1590, *Narottam Kishore Deb Verma v. Union of India* 320d-e
31. AIR 1964 SC 1179, *State of M.P. v. Bhopal Sugar Industries Ltd.* 320a-b
32. AIR 1958 SC 538, *Ram Krishna Dalmia v. Justice S.R. Tendolkar* 307a
33. AIR 1957 SC 628, *R.M.D. Chamarbaugwalla v. Union of India* 324e-f

The Judgment of the Court was delivered by

b **G.S. SINGHVI, J.**— Whether Section 14(1)(e) of the Delhi Rent Control Act, 1958 (for short “the 1958 Act”) is ultra vires the doctrine of equality enshrined in Article 14 of the Constitution of India is the question which arises for determination in these appeals.

2. For the sake of convenience, we have noted the facts from Civil Appeal No. 1897 of 2003:

c (i) On 18-8-1953, Delhi Improvement Trust leased out a plot of land measuring 184 sq yd situated at Basti Reghar, Block ‘R’, Khasra Nos. 2942/1820 to 2943/1820 to Shri Jagat Singh, son of Pt. Ram Kishan. In terms of Clause 4(c) of the lease deed, the lessee was prohibited from using the land and building (to be constructed over it) for any purpose other than residence, with a stipulation that in case of breach of this condition, the lease shall become void.

d (ii) After constructing the building, the lessee inducted Shri Jai Narain Sharma and Dr. Ms Tara Motihar, as tenants in two portions of the building, who started using the rented premises for running watch shop and clinic respectively.

e (iii) Smt Satyawati Sharma (the appellant herein), who is now represented by her LRs, purchased property i.e. house bearing No. 3395-97, Ward No. XVI, Block R, Gali No. 1, Reghar Pura, New Delhi from legal heirs of the lessee.

f (iv) After purchasing the property, the appellant filed Petitions Nos. 184 and 187 of 1980 for eviction of the tenants by claiming that she needed the house for her own bona fide need and also for the use and occupation of the family members dependent upon her. The appellant further pleaded that she wanted to demolish the building and reconstruct the same. She also alleged that tenants have been using the premises in violation of the conditions of lease and, therefore, they are liable to be evicted.

g (v) The tenants contested the eviction petitions by asserting that the so-called need of the landlord was not bona fide; that there were no valid grounds for permitting the landlord to demolish the building and reconstruct the same and that they had not violated the conditions of lease. They further pleaded that the previous owner let out the premises for non-residential purposes; that the appellant was also issuing rent receipts by describing the rented portions as shop/clinic and that in view of Order dated 11-12-1978 issued by the Government of India, Ministry

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of Housing and Urban Development, Delhi Development Authority was condoning violations of the lease conditions.

(vi) By an Order dated 17-5-1991, Additional Rent Controller, Delhi dismissed the eviction petitions. He held that the appellant is owner and landlady of the suit premises, but she has not been able to prove that portions thereof were let for residential purposes; that the appellant and her dependent family members do not have suitable alternative accommodation except the one occupied by her elder son, who was under the threat of eviction and that the need of the appellant is bona fide. The Additional Rent Controller further held that the tenants are guilty of violating Clause 4(c) of deed dated 18-8-1953. He, however, declined to pass order for recovery of possession by observing that under Section 14(1)(e) of the Act, such an order can be passed only in respect of premises let for residential purposes. The Additional Rent Controller also rejected other grounds of eviction put forward by the appellant.

3. The appeal preferred by the appellant was dismissed by the Rent Control Tribunal, Delhi vide its judgment dated 10-11-1998. The Tribunal agreed with the Additional Rent Controller that an order of eviction of the tenant can be passed under Section 14(1)(e) only if the premises were let for residential purposes. The Tribunal then held that the portions given to the tenants were being used for non-residential purposes and, therefore, they cannot be evicted on the ground of bona fide need of the landlord.

4. The appellant challenged the orders of the Additional Rent Controller and the Rent Control Tribunal in Civil Writ Petition No. 1093 of 1999. She filed another petition, which was registered as Civil Writ Petition No. 1092 of 1999, with the prayer that Section 14(1)(e) of the Act be declared ultra vires Article 14 of the Constitution insofar as it does not provide for eviction of the tenant from the premises let for non-residential purposes. Both the writ petitions were heard by the Full Bench of the Delhi High Court along with other writ petitions involving challenge to the vires of Section 14(1)(e) and were dismissed by the order under challenge. The Full Bench referred to an earlier judgment of the Division Bench in *H.C. Sharma v. LIC of India*¹ and large number of judgments of this Court including *Amarjit Singh v. Khatoon Quamarain*² and held:

(i) Tenants of non-residential premises are a class by themselves. Parliament in its legislative wisdom did not think it fit to make any provision for eviction of a tenant from such premises on the ground of bona fide requirement of the landlord for residential purpose. Reference to Section 29(2)(r) of the 1995 Act, in our opinion, cannot be said to have any relevance whatsoever for the purpose of determining. Admittedly, the 1995 Act is yet to come into force. If the said Act is yet to come into force, the question of taking recourse to the provisions of the said Act would not arise more so because this Court in exercise of its

1 ILR (1973) 1 Del 90

2 (1986) 4 SCC 736

a jurisdiction under Article 226 of the Constitution of India would not be in a position to direct the Government to do so which is a legislative function. On the other hand, the very fact that the said Act is yet to come into force is an indicia to the fact that the Central Government does not in its wisdom consider that the said benefit should be extended to non-residential premises also.

b (ii) Judicial review of legislation is permissible only on limited grounds, namely, when a statute is enacted by a legislature which had no authority therefor or when it inter alia violates any of the provisions contained in Part III of the Constitution. Once it is held, as we are bound to, that the non-residential premises having regard to the interpretation clause, forms a separate class, such classification, having a reasonable nexus with the ground of eviction, cannot be said to be discriminatory in nature. Article 14 of the Constitution would apply only to persons similarly situated. Owners of residential and non-residential premises stand on different footing. In the event, the legislature in its wisdom thinks it fit to extend its protective wing to a class of tenants from being evicted on a particular ground, the same by itself cannot be said to be discriminatory so as to attract the wrath of Article 14 of the Constitution of India. The court in a situation of this nature is only entitled to see as to whether such classification is valid and rational. Once the rationality in such legislation is found, the court will put its hands off.

c (iii) Furthermore, the provisions of the said Act had been declared intra vires by the Apex Court in *Amarjit Singh v. Khatoon Quamarain*². In that case, an argument was advanced that unless the second limb of Section 14(1)(e) of the Act is read in such a way that it was in consonance with Articles 14 and 21 of the Constitution of India, the same would be void as being unconstitutional. The question raised therein has been dealt with by the Apex Court.

d (iv) In the instant case, the statute itself has indicated the persons or things to whom its provisions are recommended to apply. The said Act is a beneficial legislation. It seeks to protect the tenants. Tenants are broadly classified into three categories—residential, non-residential and/or other tenants. Such a classification as regards premises or tenancy cannot per se be said to be unreasonable.

e (v) In the instant case, so far as Sections 14(1)(e) and 14(1)(k) are concerned, the statute itself has indicated the persons to whom the provisions would apply. The provision is absolutely clear and unambiguous. In such a case the Court is only required to examine whether the classification is based upon reasonable differentia, distinguishing the person, group from those left out and whether such differentia has reasonable nexus with the objects to be achieved. The impugned provision indisputably was intended to beneficially apply to landlords and of one class of tenancy viz. tenancy in respect of the residential premises and not non-residential premises.

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296

SUPREME COURT CASES

(2008) 5 SCC

5. The Full Bench also noticed the judgment in *Harbilas Rai Bansal v. State of Punjab*³ whereby Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act 29 of 1956, was struck down but distinguished the same by making the following observations: a

“The objects and reasons of the said Act, thus, were considered having regard to the provisions made at the time of commencement of the said Act. Such a contingency does not arise in the instant case. Reasonable nexus to the objects to be achieved of the said Act having regard to the performance for which the building is being used must be found out from the legislative intent. Legislative intent may change from State to State.” b

6. Learned counsel for the appellants relied on the judgment of this Court in *Harbilas Rai Bansal v. State of Punjab*³ and argued that the classification made between the premises let for residential purposes and non-residential purposes in the matter of eviction of tenant on the ground of bona fide need of the landlord is irrational, arbitrary and violative of Article 14 of the Constitution. Shri A.C. Gambhir submitted that even though the constitutional validity of Section 14(1)(e) of the Act was upheld by the Division Bench of the High Court in *H.C. Sharma v. LIC of India*¹, that decision cannot, in the changed circumstances and in view of the later judgments of this Court in *Rattan Arya v. State of T.N.*⁴, *Harbilas Rai Bansal v. State of Punjab*³ and *Rakesh Vij v. Dr. Raminder Pal Singh Sethi*⁵ be treated as good law. He argued that the reason which prompted the legislature to exclude the premises let for non-residential purposes from the purview of Section 14(1)(e) of the 1958 Act and which found approval of the Division Bench of the High Court has, with the passage of time, become non-existent and the classification of the premises into residential and non-residential with reference to the purpose of lease has become totally arbitrary and irrational warranting a declaration of invalidity qua the impugned section. In support of this argument, the learned counsel relied on the judgment of this Court in *Malpe Vishwanath Acharya v. State of Maharashtra*⁶. c
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7. Shri Gambhir pointed out that in the Delhi Rent Control Act, 1995 (for short “the 1995 Act”), which was enacted by Parliament in the light of the National Housing Policy, 1992 and observations made by this Court in *Prabhakaran Nair v. State of T.N.*⁷, no distinction has been made between the premises let for residential and non-residential purposes in the matter of eviction of the tenant on the grounds of landlord’s bona fide need and argued that even though that Act has not been enforced, the Court can take cognizance of the legislative changes and declare the implicit restriction contained in Section 14(1)(e) on the eviction of tenant from the premises let for non-residential purposes as unconstitutional. f
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3 (1996) 1 SCC 1

1 ILR (1973) 1 Del 90

4 (1986) 3 SCC 385

5 (2005) 8 SCC 504

6 (1998) 2 SCC 1

7 (1987) 4 SCC 238 h

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

297

a 8. Shri C.S. Rajan, learned Senior Counsel appearing for the Union of India emphasised that the purpose of the Act is to protect the tenants against arbitrary eviction by the landlord and argued that the classification of the premises with reference to the purpose of lease should be treated as based on rational grounds because the same is meant to further the object of the enactment. Shri Rajan referred to *Amarjit Singh v. Khatoon Quamarain*² to show that challenge to the constitutionality of Section 14(1)(e) on the ground of violation of Article 14 has already been negated and argued that the vires of that provision cannot be re-examined merely because a similar provision contained in “the Punjab Act” has been declared unconstitutional in *Harbilas Rai Bansal v. State of Punjab*³. Learned Senior Counsel relied on the judgments of this Court in *Special Courts Bill, 1978, In re*⁸ and *Padma Sundara Rao v. State of T.N.*⁹ and argued that the Court should not attempt to rewrite Section 14(1)(e) so as to facilitate eviction of the tenants from the premises let for non-residential purposes. Shri S.P. Laler, learned counsel appearing for the respondents in Civil Appeals Nos. 1897 and 1898 of 2003 supported the judgment of the Full Bench of the High Court and argued that the distinction made by the legislature between the premises let for residential and non-residential purposes is based on rational ground i.e. acute shortage of non-residential premises/buildings and, therefore, the same cannot be treated as unconstitutional.

d 9. We have considered the respective arguments/submissions. For deciding the question raised in these appeals, it will be useful to notice the salient features of rent control legislations, which were made applicable to Delhi from time to time. These are:

e (i) In exercise of the power vested in it under Rule 81 of the Defence of India Rules, the Government of India promulgated the New Delhi House Rent Control Order, 1939. This Order was made applicable only to residential premises. Section 11 thereof provided that a tenant in possession of a house shall not be evicted therefrom whether in execution of a decree or otherwise and whether before or after the termination of the tenancy except on the grounds mentioned therein. Clause (iv) of sub-section (2) of Section 11-A was as under:

f “11-A. (2)(iv) that the landlord was at no time during the twelve months immediately preceding the date of his application residing within the limits of Delhi or New Delhi Municipality or the notified areas of the civil station, Delhi or Delhi Fort, that it is essential in the public interest that he should take up residence in that area and that he is unable to secure other suitable accommodation, the Controller shall make an order directing the tenant to put the landlord in possession of the house, and if the Controller is not so satisfied, he shall make an order rejecting the application.”

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h 2 (1986) 4 SCC 736
3 (1996) 1 SCC 1
8 (1979) 1 SCC 380
9 (2002) 3 SCC 533

(ii) On 15-10-1942, the Punjab Urban Rent Restriction Act, 1941 was made applicable to the Province of Delhi, except the areas to which the New Delhi House Rent Control Order was applicable. The definition of the expression “premises” in the Punjab Urban Rent Restriction Act made no distinction between “residential” and “non-residential” premises. Section 10(1) of that Act provided that no order for recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay rent to the full extent allowable by this Act and perform other conditions of the tenancy. However, in terms of proviso to Section 19(1), the court could make an order for recovery of possession if the landlord is satisfied that the prescribed notice had been served on the tenant. Sub-section (2) of Section 10 provided that where any order mentioned in sub-section (1) has been made on or after the first day of January, 1939 but not executed before the commencement of the Act, the court by which the order was made may if it is of the opinion that the order would not have been made if the Act had been in operation on the date the order was made, rescind or vary the order. The proviso to Section 10(2) enumerated the other grounds for eviction of the tenants. One of the grounds was that the premises are reasonably and bona fide required by the landlord for his own occupation.

(iii) In 1944, the Delhi Rent Control Ordinance, 1944 (25 of 1944) was promulgated. In this Ordinance, the word “premises” was defined to mean any building which is let separately for use as a residence or for commercial use or for any other purpose. Clauses (a) to (e) of Section 9 of the Ordinance specified the grounds on which the landlord could recover possession of the premises. One of the grounds was that the landlord requires the premises for his use as residence. This means the landlord could not recover possession of the premises if he needed the same for commercial use.

(iv) In 1947, the Delhi and Ajmer-Merwara Rent Control Act was enacted and was made applicable to all the parts of Delhi. Section 2(b) of the 1947 Act which contained the definition of the word “premises” read as under:

“2. (b) ‘premises’ means any building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose,....”

Section 9(e) which provided for eviction of the tenant on the ground of bona fide requirement of the landlord was as under:

“9. (e) that purely residential premises are required bona fide by the landlord who is the owner of such premises for occupation as a residence for himself or his family, that he neither has nor is able to secure other suitable accommodation, and that he has acquired his interest in the premises at a date prior to the beginning of the tenancy or the 2nd day of June, 1944, whichever is later, or if the interest has devolved on him by inheritance or succession, his predecessor had acquired the interest at a date prior to the beginning of the tenancy or the 2nd day of June, 1944, whichever is later;”

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

299

(v) The 1947 Act was replaced by the Delhi and Ajmer Rent Control Act, 1952. Section 13 of that Act enumerated various grounds on which a tenant could be evicted. Clause (e) of Section 13(1) was as under:

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“13. (1)(e) that the premises let for residential purposes are required bona fide by the landlord who is the owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation;

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Explanation.—For the purposes of this clause, ‘residential premises’ include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

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(vi) After six years, the Delhi Rent Control Act, 1958 was enacted. The Preamble of this Act shows that it is a legislation for the control of rents and evictions and of rates of hotels and lodging houses, and for the lease of vacant premises to the Government, in certain areas in the Union Territory of Delhi. Section 2(i) of that Act defines the premises to mean any building or part of a building which is intended to be or is let for use as a residence or for commercial use or for any other purpose. The definition of the term “standard rent” contained in Section 2(k) refers to the premises irrespective of its use. Section 3 which exempts certain premises from the operation of the Act also does not make any distinction between residential and non-residential premises. Clause (c) of that section which provides for exemption in the context of monthly rent speaks of residential as well as non-residential premises. Section 6 relates to standard rent. It deals with residential as well as non-residential premises. Para A of Section 6(1) specifies the standard rent for residential premises and Para B specifies such rent for premises other than residential premises. Sub-section (2) of Section 6 which provides for fixation of standard rent refers to premises irrespective of their user. The limitation prescribed (Section 12) for filing application for fixation of standard rent does not make any distinction between the premises let for residential, commercial and other purposes. Section 14(1) which contains prohibition against passing of an order or decree by any court or Controller for recovery of possession of any premises does not make any distinction between the premises let for residential, commercial or other purposes. Clauses (a), (b), (c), (f), (g), (j), (k) and (l) of proviso to Section 14(1) specify different grounds for recovery of possession of the premises irrespective of its user. Only Clauses (d) and (e) speak of premises let for use as residence or residential purposes. Sections 2(i) and 14(1)(d) and (e) of the 1958 Act which have bearing on the decision of the appeals, read as under:

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“2. *Definitions.*—In this Act, unless the context otherwise requires,—

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300

SUPREME COURT CASES

(2008) 5 SCC

(i) 'premises' means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes,—

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house;

* * *

14. *Protection of tenant against eviction.*—(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely—

(a)-(c) * * *

(d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation.—For the purposes of this clause, 'premises let for residential purposes' include any premises which having been let for use as residence are, without the consent of the landlord, used incidentally for commercial or other purposes;”

(vii) The 1958 Act was amended five times between 1960 to 1988, but demands continued to be made by the landlords and the tenants for its further amendment to suit their respective causes. In 1992, National Housing Policy was notified. One of the important features of that Policy was to remove legal impediments to the growth of housing in general and rental housing in particular. Both the Houses of Parliament adopted the Policy. Thereafter, the 1995 Act was enacted. Though the new Act has not been enforced so far and in *Common Cause v. Union of India*¹⁰ this Court declined to issue a writ of mandamus to the Central Government to notify the same, it will be useful to take cognizance of the Statement of Objects and Reasons and Section 22(2)(r) of the 1995 Act to which reference was made by the learned counsel during the course of hearing. The same reads as under:

10 (2003) 8 SCC 250

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

301

“*Statement of Objects and Reasons:*”

a 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 9-2-1959. 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.

b 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 the 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. Para 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 the State Governments. The Supreme Court of India has also suggested changes in rent control laws. In its judgment in *Prabhakaran Nair v. State of T.N.*⁷ 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.

c 3. In the light of the representations and developments referred to above, it has been decided to amend the rent control laws 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.

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

- e
- (a) exemption of certain categories of premises and tenancies from the purview of the proposed legislation;
 - (b) creation of tenancy compulsorily to be written agreement;
 - (c) compulsory registration of all written agreements of tenancies except in certain circumstances;
 - (d) limit the inheritability of tenancies;

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7 (1987) 4 SCC 238

(e) redefine the concept of rent payable and provide for its determination, enhancement and revision;

(f) ensure adequate maintenance and repairs of tenanted premises and facilitate further improvement and additions and alterations of such premises; a

(g) balance the interests of landlords and tenants in the matter of eviction in specified circumstances;

(h) provide for limited period tenancy and automatic eviction of tenants upon expiry of such tenancy; b

(i) provide for the fixing and revision of fair rate and recovery of possession in respect of hotels and lodging houses;

(j) provide for a simpler and speedier system of disposal of rent cases through Rent Authorities and the Rent Tribunal and by barring the jurisdiction of all courts except the Supreme Court; and

(k) enhance the penalties for infringement of the provisions of the legislation by landlords and tenants. c

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.

6. The notes on clauses appended to the Bill explain the various provisions of the Bill.”

“22. *Protection of tenant against eviction.*—(1)-(2) * * * d

(r) that the premises let for residential or non-residential purposes are required, whether in the same form or after reconstruction or rebuilding, by the landlord for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation: e

10. An analysis of the abovenoted provisions would show that till 1947 no tangible distinction was made between the premises let for residential and non-residential purposes. The implicit restriction on the landlord’s right to recover possession of the non-residential premises was introduced in the Delhi and Ajmer-Merwara Rent Control Act, 1947 and was continued under the 1958 Act. However, the 1995 Act does not make any distinction between the premises let for residential and non-residential purposes in the matter of eviction of tenant on the ground that the same are required by the landlord for his/her bona fide use or occupation. Even though, the 1995 Act is yet to be enforced and in *Common Cause v. Union of India*¹⁰ this Court declined to issue a writ of mandamus to the Central Government, for that purpose, we can take judicial notice of the fact that the legislature has, after taking note of the developments which have taken place in the last 37 years i.e. substantial increase in the availability of the commercial and non-residential premises or f
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10 (2003) 8 SCC 250

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

303

a the premises which can be let for commercial or non-residential purposes and meteoric rise in the prices of land and rentals of residential as well as non-residential premises, removed the implicit embargo on the landlord's right to recover possession of the premises if the same are bona fide required by him/her.

11. Section 13(3)(a) of the Punjab Act (unamended and amended), which came up for consideration in *Harbilas Rai Bansal v. State of Punjab*³ read as under:

b *Unamended Section 13(3)(a) of the Punjab Act*

“13. (3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) in the case of a residential or a scheduled building, if—

(a) he requires it for his own occupation;

c (b) he is not occupying another residential or a scheduled building, as the case may be, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(ii) in the case of a non-residential building or rented land, if—

(a) he requires it for his own use;

d (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be, and

(c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the urban area concerned;

e (iii) in the case of any building, if he requires it for the re-erection of that building, or for its replacement by another building, or for the erection of other buildings;

(iv) in the case of any building, if he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer or as a ‘registered practitioner’ within the meaning of that expression as used in the Punjab Medical Registration Act, 1916 (2 of 1916), or for the residence of his son who is married, if—

f (a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and

(b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned:

g Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period:

h Provided further that where that landlord has obtained possession of a residential, a scheduled or non-residential building or rented land under the provisions of sub-paragraph (i) or sub-paragraph (ii) he shall not be entitled

304

SUPREME COURT CASES

(2008) 5 SCC

to apply again under the said sub-paragraphs for the possession of any other building of the same class or rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-paragraph (iv) he shall not be entitled to apply again under the said sub-paragraph for the possession of any other building for the use of or, as the case may be, for the residence of the same son. a

(b) The Controller shall, if he is satisfied that the claim of the landlord is bona fide make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application: b

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.”

Amended Section 13(3)(a) of the Punjab Act c

“13. *Eviction of tenants.*—(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1949, as subsequently amended. d

(2) * * *

(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) in the case of a residential building, if—

(omitted as not relevant)

(ii) in the case of rented land, if— e

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land, and

(c) he has not vacated such rented land without sufficient cause after the commencement of this Act, in the urban area concerned; f

* * *

12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court’s approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant—*Mohinder Kumar v. State of Haryana*¹¹, *Prabhakaran Nair v. State of T.N.*⁷, *D.C. Bhatia v. Union of India*¹² and *C.N. Rudramurthy v. K. Barkathulla Khan*¹³. In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against g

11 (1985) 4 SCC 221

7 (1987) 4 SCC 238

12 (1995) 1 SCC 104

13 (1998) 8 SCC 275 h

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

305

exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof.

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However, a different trend is clearly discernible in the later judgments.

13. In *Malpe Vishwanath Acharya v. State of Maharashtra*⁶ this Court considered the question whether determination and fixation of rent under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, by freezing or pegging down of rent as on 1-9-1940 or as on the date of first letting was arbitrary, unreasonable and violative of Article 14 of the Constitution. The three-Judge Bench answered the question in affirmative but declined to strike down the provisions concerned on the ground that the same were to lapse on 31-3-1998. Some of the observations made in that judgment are worth noticing. These are: (SCC pp. 22-23, paras 29-30)

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“29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. *When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants.* It is not as if the Government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent—the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today’s context.

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30. When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have narrow or short-sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social legislation is treated with deference by the courts not merely because the legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This Article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others.” (emphasis supplied)

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14. In *Joginder Pal v. Naval Kishore Behal*¹⁴ the Court after noticing several judicial precedents on the subject observed as under: (SCC p. 404, para 9)

“9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords—both. *The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.*” (emphasis added)

15. We shall now deal with the core question whether Section 14(1)(e) of the 1958 Act can be treated as violative of equality clause embodied in Article 14 of the Constitution insofar as it differentiates between the premises let for residential and non-residential purposes in the matter of eviction on the ground of bona fide requirement of the landlord and restricts the landlord’s right only to the residential premises.

16. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject-matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the directive principles of State policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations.

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

307

17. In *Ram Krishna Dalmia v. Justice S.R. Tendolkar*¹⁵ this Court considered the interplay of the doctrines of equality and classification and held[†]: (AIR p. 547, para 11)

a “5. ... It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of [Supreme Court] that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

b Speaking for the Court, S.R. Das, C.J. enunciated some principles, which have been referred to and relied on in all subsequent judgments. These are: (AIR pp. 547-48, para 11)

c d “11. ... (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

e (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

f (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

g (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed (*sic* presumed), if there is

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¹⁵ AIR 1958 SC 538

[†] Quoting from *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191, p. 193, para 5.

nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.” a

18. In *Mohd. Shujat Ali v. Union of India*¹⁶ the Court observed that Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run “all its laws in the channels of general legislation”. It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. “To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic.”†† (SCC p. 103, para 23) The legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. “Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it.”††† (SCC p. 103, para 23) At the same time, the Court cautioned against the ready-made invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed: (SCC pp. 103-04, paras 24-26) b c d

“24. ... The equal protection of the laws is a ‘pledge of the protection of equal laws’. But laws may classify. And, as pointed out by Justice Brawer, ‘the very idea of classification is that of inequality’. The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialisation and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated.” e f

25. ... *A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same.* This is sometimes epigrammatically described by g

16 (1975) 3 SCC 76 : 1974 SCC (L&S) 454

†† Quoting from *Morey v. Doud*, 354 US 457, p. 472.

††† Quoting from *Home Insurance Co. v. New York*, (1819) 134 US 594, p. 606.

a saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. *The test which has been evolved for this purpose is—and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution—that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation.*

c 26. ... We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of J&K v. Triloki Nath Khosa*¹⁷ 'the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments'. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in *State of J&K v. Triloki Nath Khosa*¹⁷: (at SCC p. 42, para 57)

g '57. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have

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17 (1974) 1 SCC 19 : 1974 SCC (L&S) 49

310

SUPREME COURT CASES

(2008) 5 SCC

constitutional validity. To overdo classification is to undo equality.’”
(emphasis added)

19. In *LIC of India v. Consumer Education & Research Centre*¹⁸ the Court reiterated the abovenoted principle in the following words: (SCC pp. 502-03, para 30)

“30. ... The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. *Maneka Gandhi v. Union of India*¹⁹ ratio extricated it from this moribund and put its elasticity for egalitarian pathfinder lest the classification would deny equality to the larger segments of the society. The classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganised or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice.”

20. In *Gian Devi Anand v. Jeevan Kumar*²⁰ the Supreme Court considered the question whether the statutory tenancy in respect of commercial premises is heritable. The facts of that case were that one Wasti Ram was tenant in respect of Shop No. 20, New Market, West Patel Nagar of the respondents at a monthly rental of Rs 110. The tenancy commenced from 1-9-1959. In April 1970, the respondent landlord determined the tenancy by serving a notice to quit. In September 1970, he filed a petition under Section 14 of the Act for eviction of Wasti Ram on the grounds of non-payment of rent, bona fide requirement, change of user from residential to commercial, substantial damage to the property and sub-letting. He also impleaded one Ashok Kumar Sethi, as Defendant 2 by alleging that he had been unlawfully inducting a sub-tenant. The Rent Controller negatived all the grounds of challenge except the non-payment of rent. He held that the premises had been let out for commercial purpose and as such the ground of bona fide requirement was not available to the landlord for seeking eviction of the tenant. On the issue of non-payment of rent, the Rent Controller held that the tenant was liable to pay a sum of Rs 24 by way of arrears for the period from 1-3-1969 to 28-2-1970 after taking into consideration all payments made and a further sum of Rs 90 on account of such arrears for the month of September 1970. He, accordingly, directed eviction of the tenant. The landlord challenged the order of the Rent Controller by filing an appeal. The tenant,

18 (1995) 5 SCC 482

19 (1978) 1 SCC 248

20 (1985) 2 SCC 683

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SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

311

a namely, Wasti Ram, filed cross-objection on the findings recorded by the Rent Controller on the issue of default. The Rent Control Tribunal allowed the cross-objection of the tenant and held that there was no default in the matter of payment of rent. The Tribunal rejected the landlord's plea regarding damage to the property but remanded the matter to the Rent Controller for deciding the question of sub-letting afresh after affording opportunity to the parties to lead evidence. Smt Gian Devi Anand, the widow of the deceased tenant appealed against the order of the Tribunal. The landlord filed cross-objections to question the finding recorded by the Tribunal on the issue of default by the tenant in payment of rent. The High Court held that after the demise of the statutory tenant, his heirs do not have the right to remain in possession because the statutory tenancy was not heritable and the protection afforded to the statutory tenant was not available to the heirs. This Court reversed the order of the High Court and held: (SCC pp. 696-97, para 18)

c "18. ... We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has been determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises, which he occupies is derived from the provisions of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject-matter of tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises in his occupation. It is not possible to claim that the 'sanctity' of contract cannot be touched by legislation. It is therefore necessary to examine the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondent's predecessors-in-interest retained a heritable interest in the disputed premises even after the termination of their tenancy."

g In para 34 of the judgment, the Court highlighted difference between the residential and commercial tenancies and concluded that the legislature could never have intended that the landlord would be entitled to recover possession of the premises or the building let for commercial purposes on the death of the tenant of the commercial tenancies, even if no ground for eviction as prescribed in the Rent Act is made out. In the concluding part of the judgment, the Court took cognizance of the absence of provision for eviction of the tenant from non-residential premises even when the same were bona fide required by the landlord for his use or occupation and observed: (SCC pp. 714-15, para 39)

h "39. Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises,

whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. In spite of various restrictions put on the landlord's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. *A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property in spite of his letting out the same to a tenant. The legislature in its wisdom did recognise this fact and the legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions on some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well.* (emphasis added)

21. What is significant to be noted is that in para 34 of the aforementioned judgment, the distinction between residential and non-residential tenancies was made in the context of the rights of the heirs of the tenant to continue to enjoy the protection envisaged under Section 14(1). The Court was of the view that the heirs of the tenants of the commercial premises cannot be deprived of the protection else the family of the tenant may be brought on road or deprived of the only source of livelihood. The Court also opined that if the heirs of the individual tenants of commercial tenancies are deprived of the protection, extremely anomalous consequences will ensue because the companies, corporations and juridical entities carrying on business or commercial activities in rented premises will continue to enjoy the protection even after the change of management, but the heirs of individual tenants will be denuded of similar protection. At the same time, the Court noted that the landlord of a premises let for residential purpose may

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

313

a bona fide require the same for his own use or the use of his dependent family members and observed that the legislature should remove apparent discrimination between residential and non-residential tenancies when the landlord bona fide requires the same. If the observations contained in para 34 are read in any other manner, the same would become totally incompatible with the observation contained in the penultimate paragraph of the judgment and we do not see any reason for adopting such course, more so, because the later part of the judgment has been relied in *Harbilas Rai Bansal v. State of Punjab*³ and *Rakesh Vij v. Dr. Raminder Pal Singh Sethi*⁵.

b **22.** In *Rattan Arya v. State of T.N.*⁴ the Court considered challenge to the constitutionality of Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 under which residential buildings or part thereof occupied by any tenant paying monthly rent of more than Rs 400 were exempted from operation of the Act. It was urged on behalf of the appellant that distinction made between the residential and non-residential buildings in the matter of applicability of the Act was unreasonable, irrational and arbitrary. The Court referred to different rent control legislations applicable to the State of Tamil Nadu and observed that the scheme of the Act does not make any distinction between residential and non-residential buildings insofar as the rights of the tenants and obligations of the landlords are concerned and there are no special rights attached to the tenancies of the non-residential buildings as against the tenancies of residential buildings so as to warrant exemption only to residential buildings. The Court also took cognizance of enormous increase of rents throughout the country, referred to the judgment in *Motor General Traders v. State of A.P.*²¹ and struck down Section 30(ii) of the Tamil Nadu Act on the ground that the same is violative of Article 14 of the Constitution.

c **23.** In *Harbilas Rai Bansal v. State of Punjab*³ the Supreme Court examined the constitutionality of the amendment made in the Punjab Act, whereby the landlord was deprived of his right to seek eviction of tenant from non-residential building on the ground of bona fide requirement for his own use. This Court referred to the unamended and amended Section 13(1)(a) of the Punjab Act and observed: (SCC p. 7, paras 12-13)

d “12. The scheme of the Act, unmistakably aims at regulating the conditions of tenancy, controlling the rents and preventing unreasonable and mala fide eviction of tenants of the residential and non-residential buildings. For the advancement of these objects, tenants are invested with certain rights and landlords are subjected to certain obligations. These rights and obligations are attached to the tenants and the landlords of all buildings, residential or non-residential. None of the main provisions of the Act, to which we have referred, make any serious distinction between residential and non-residential buildings.

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3 (1996) 1 SCC 1
5 (2005) 8 SCC 504
4 (1986) 3 SCC 385
21 (1984) 1 SCC 222

13. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The Objects and Reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided—conforming to its objects and reasons—bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardships to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow up and need the premises for their personal use. It would be wholly arbitrary—in a situation like this—to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant’s death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises.”

24. For taking the aforesaid view, the Court drew support from the observations contained in the concluding portion of the judgment in *Gian Devi Anand v. Jeevan Kumar*²⁰. This is evident from para 17 of the judgment, which is extracted below: (*Harbilas case*³, SCC p. 9)

“17. In *Gian Devi case*²⁰ the question for consideration before the Constitution Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The abovequoted observations were made by the Bench keeping in view the hardship being caused to the landlords of commercial premises who cannot evict their tenants even on the ground of bona fide requirement for personal use. The observations of the Constitution Bench that ‘bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial’ fully

²⁰ (1985) 2 SCC 683

³ *Harbilas Rai Bansal v. State of Punjab*, (1996) 1 SCC 1

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

315

a support the view we have taken that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of Article 14 of the Constitution of India and are liable to be struck down.”

b 25. The ratio of *Harbilas Rai Bansal v. State of Punjab*³ was noted and approved in *Rakesh Vij v. Dr. Raminder Pal Singh Sethi*⁵ in the backdrop of the argument that the amendment made to the Punjab Act, 1956 was not applicable to the Union Territory of Chandigarh. While rejecting the argument, the three-Judge Bench referred to Article 13(2) of the Constitution, some of the judgments in which that Article was considered and observed: (*Rakesh Vij case*⁵, SCC p. 516, para 18)

c “18. We find sufficient force in the contention raised by the learned counsel for the respondent landlord. In *Harbilas Rai Bansal*³ this Court held in very clear terms that the classification created by the Amendment Act, 1956, by which the words ‘a non-residential building or’ occurring in Section 13(3)(a)(ii) were deleted and certain other amendments had been made, had no reasonable nexus with the object sought to be achieved by the Act and consequently the provisions of the Amendment Act were violative of Article 14 of the Constitution.”

d 26. The judgment in *Harbilas Rai Bansal v. State of Punjab*³ was recently noticed in *Mohinder Prasad Jain v. Manohar Lal Jain*²². The respondent in that case applied for eviction of the tenant (the appellant) from the shop in question on the ground of bona fide personal requirement i.e. for the purpose of running wholesale business in ayurvedic medicines. The Rent Controller dismissed the application on the ground that bona fide requirement of the landlord has not been proved. The appellate authority reversed the order of the Rent Controller and returned a finding that the landlord has been able to prove his bona fide requirement. In the revision filed by the appellant, reliance was placed on the judgment of the Full Bench of the Delhi High Court in *Satyawati Sharma v. Union of India*²³ (that judgment is under challenge in these appeals) and it was urged that an application for eviction of the tenant on the ground of bona fide requirement of the landlord is not maintainable in respect of non-residential premises. The learned Single Judge of the Punjab and Haryana High Court referred to an earlier judgment of the Division Bench of that Court in *State of Haryana v. Ved Prakash Gupta*²⁴ wherein the restriction imposed on the landlord’s right to evict the tenant under the Haryana Urban (Control of Rent and Eviction) Act, 1973, was struck down and held that the judgment of the Full Bench of the Delhi High Court cannot be relied on for granting relief to the appellant. This Court noted that a similar provision had been declared unconstitutional in *Harbilas*

3 (1996) 1 SCC 1

5 (2005) 8 SCC 504

h 22 (2006) 2 SCC 724

23 AIR 2002 Del 509

24 (1999) 1 RLR 689

316

SUPREME COURT CASES

(2008) 5 SCC

*Rai Bansal v. State of Punjab*³ which was approved by three-Judge Bench in *Rakesh Vij v. Dr. Raminder Pal Singh Sethi*⁵ and held that the tenant cannot question the landlord's right to seek eviction of the tenant from non-residential premises. a

27. We may now advert to the judgment of the Delhi High Court in *H.C. Sharma v. LIC of India*¹ and the one under challenge. The facts of *H.C. Sharma case*¹ were that the petitioner had leased out Flat No. 28-E, Connaught Place, New Delhi to National Insurance Company Limited for non-residential use. Subsequently, the National Insurance Company Limited became Life Insurance Corporation of India. The petitioner made efforts to convince the Corporation that the premises are required for his bona fide use and occupation but could not convince the authorities concerned. He, therefore, filed an application for recovery of possession. The same was dismissed by the High Court. He then filed writ petition questioning the constitutionality of Section 14(1)(e) on the ground that the classification of the premises into residential and non-residential is arbitrary and violative of Article 14 of the Constitution. The Division Bench of the Delhi High Court traced the history of rent control legislation applicable to Delhi, the background in which protection was extended to the tenants generally and the limited right given to the landlord to seek eviction of the tenants only from the premises let for residential purposes and observed: (ILR pp. 99 C-100 A) b

“In judging whether the restriction imposed by the impugned provisions is reasonable, the court can look into the circumstances under which the restriction came to be imposed. Judicial notice can be taken of the fact that in 1947 there was a large influx of refugees into Delhi. A large number of people who were uprooted from their hearths and homes in West Pakistan settled in Delhi. This resulted in acute shortage of house accommodation and business premises with the result that rents soared to a high level which necessitated the regulation of relations between landlords and tenants. c

... *The object in not providing for the eviction of a tenant from a non-residential premises on the ground specified in sub-clause (e) was to give security of tenure to a tenant of such premises. If a tenant of a non-residential premises was allowed to be evicted on the ground of personal requirement by the landlord, it would have had the effect of completely dislocating the business of the tenant and this in turn could have grave consequences on the social and economic fabric of the country, besides causing untold misery to the tenant.* (emphasis added) d

The Division Bench rejected the plea of discrimination and observed: (ILR pp. 104 A-105 D) e

“The grievance of the petitioner is that the discrimination between the two classes of landlords is without any rational basis. World War II f

3 (1996) 1 SCC 1

5 (2005) 8 SCC 504

1 ILR (1973) 1 Del 90 g

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

317

a broke out in 1939 and an acute shortage of housing accommodation developed. To control the rents and eviction of tenants, the Rent Control Order of 1939 was issued. A study of the relevant provisions of the rent control legislation discussed in the earlier part of the judgment would show that the restrictions imposed on the landlords to recover possession of residential premises were very stringent up to 1952. Under the Rent Control Order of 1939 and the Delhi Rent Control Ordinance, 1944 a

b landlord could recover possession of residential premises only when he had not resided within the limits of Delhi or New Delhi during the twelve months immediately preceding the date of the application and further satisfied the conditions that it was essential in the public interest that he should take up residence in that area and that he was unable to secure other suitable accommodation. Under the Rent Control Act of 1947, a

c landlord could recover possession of residential premises only if he did not possess other suitable accommodation and further, that he had acquired his interest in the premises at a date prior to the beginning of the tenancy or the 2nd day of June, 1944, whichever was later. The rigour of the restrictions qua residential premises was relaxed in the Act of 1952 and a landlord could recover possession of residential premises if he

d required it bona fide for occupation as a residence for himself or his family and he had no other suitable accommodation. In comparison to this the Rent Control Order, 1939 was not applied to non-residential premises. The Delhi Rent Control Ordinance did not place any bar on the right of the landlord to recover possession of non-residential premises. The only restriction placed was that the landlord could recover possession of the premises for his residential use. The bar against the

e eviction of tenants from non-residential premises was introduced in the Rent Control Act, 1947 and it has continued since then. A landlord cannot recover possession of non-residential premises on the ground of his personal need. *There is a clear object behind classification of the premises into 'residential' and 'non-residential'. We have earlier observed that in 1947, on partition of the country, there was a large*

f *influx of refugees into Delhi. The Government was faced with the problem of resettling the refugees. This necessitated the imposition of restrictions on the right to evict tenants both from residential and non-residential premises. The legislature keeping in view the needs of the people and other circumstances allowed the landlord to evict tenants from residential premises for his personal use in case he did not have any*

g *other suitable accommodation, but restricted the right of the landlord to recover possession of non-residential premises on the ground of personal need. The necessity behind this discrimination is to assure the security of tenure to the tenants of non-residential premises so that they can settle in their business without the fear of being ejected. ...*

h Owners of residential buildings and non-residential buildings each stand out as a class by themselves. The impugned provisions make no distinction inter se between the two classes of properties or their

318

SUPREME COURT CASES

(2008) 5 SCC

landlords. The impugned provisions take within their fold all the persons similarly situate. So long as there is equality under similar conditions and among persons similarly situated, there is no infringement of Article 14.” a
(emphasis added)

28. A critical analysis of the abovenoted judgment makes it clear that the main reason which weighed with the High Court for approving the classification of premises into residential and non-residential was that by imposing restriction on the eviction of tenants of premises let for non-residential purposes, the Government wanted to solve the acute problem of housing created due to partition of the country in 1947. The Court took cognizance of the fact that as an aftermath of partition many hundred thousands of people had been uprooted from the area which now forms part of Pakistan; that they were forced to leave their homes and abandon their business establishments, industries, occupation and trade and the Government was very much anxious to ensure resettlement of such persons. It was felt that if the landlords are readily allowed to evict the tenants, those who came from West Pakistan will never be able to settle in their life. Therefore, in the 1947 and 1958 Acts, the legislature did not provide for eviction of tenants from the premises let for non-residential purposes on the ground that the same are required by the landlords for their bona fide use and occupation. b
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29. Insofar as the judgment under challenge is concerned, we find that the Full Bench upheld the validity of Section 14(1)(e) mainly by relying upon the judgment of the Division Bench in *H.C. Sharma v. LIC of India*¹ and of this Court in *Amarjit Singh v. Khatoon Quamarain*² and by observing that legislature has the right to classify persons, things, and goods into different groups and that the Court will not sit over the judgment of the legislature. It is significant to note that the Full Bench did not, at all, advert to the question whether the reason/cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite see-saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes. e
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30. In our opinion, the reasons which weighed with the High Court in *H.C. Sharma v. LIC of India*¹ and the impugned judgment cannot in the changed scenario and in the light of the ratio of *Harbilas Rai Bansal v. State of Punjab*³, which was approved by three-Judge Bench in *Rakesh Vij v. Dr. Raminder Pal Singh Sethi*⁵ and of *Rattan Arya v. State of T.N.*⁴, as also the g

1 ILR (1973) 1 Del 90

2 (1986) 4 SCC 736

3 (1996) 1 SCC 1

5 (2005) 8 SCC 504

4 (1986) 3 SCC 385

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SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

319

observations contained in the concluding portion of the judgment in *Gian Devi Anand v. Jeevan Kumar*²⁰ now be made basis for justifying the classification of premises into residential and non-residential in the context of landlord's right to recover possession thereof for his bona fide requirement. At the cost of repetition, we deem it proper to mention that in the rent control legislations made applicable to Delhi from time to time residential and non-residential premises were treated on a par for all purposes. The scheme of the 1958 Act also does not make any substantial distinction between residential and non-residential premises. Even in the grounds of eviction set out in proviso to Section 14(1), no such distinction has been made except in Clauses (d) and (e).

31. In *H.C. Sharma v. LIC of India*¹ the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those uprooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set-up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non-residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of *Harbilas Rai Bansal v. State of Punjab*³, which was reiterated in *Joginder Pal v. Naval Kishore Behal*⁴ and approved by three-Judge Bench in *Rakesh Vij v. Dr. Raminder Pal Singh Sethi*⁵. In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of the 1958 Act has, with the passage of time (almost 50 years), become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria.

20 (1985) 2 SCC 683

1 ILR (1973) 1 Del 90

3 (1996) 1 SCC 1

14 (2002) 5 SCC 397

5 (2005) 8 SCC 504

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32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. In *State of M.P. v. Bhopal Sugar Industries Ltd.*²⁵ this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times observed: (AIR p. 1182, para 6)

“6. ... Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not, therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.”

33. In *Narottam Kishore Deb Verma v. Union of India*²⁶ the challenge was to the validity of Section 87-B of the Code of Civil Procedure which granted exemption to the rulers of former Indian States from being sued except with the consent of the Central Government. In the course of judgment, it was observed as under: (AIR p. 1593, para 11)

“11. ... If under the Constitution all citizens are equal, it may be desirable to confine the operation of Section 87-B to past transactions and not to perpetuate the anomaly of the distinction between the rest of the citizens and rulers of former Indian States. With the passage of time, the validity of historical considerations on which Section 87-B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge.”

34. In *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious & Charitable Endowments Deptt.*²⁷ this Court was called upon to consider the validity of the continued application of the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 in the area which had formerly been part of the State of Madras and which had later become part of the new State of Mysore (now Karnataka) as a result of the State Reorganisation Act, 1956. While declining to strike down the legislation on the ground of violation of Article 14 of the Constitution, the Court observed: (SCC p. 658, para 29)

²⁵ AIR 1964 SC 1179

²⁶ AIR 1964 SC 1590

²⁷ (1979) 4 SCC 642 : 1980 SCC (Tax) 16

SATYAWATI SHARMA v. UNION OF INDIA (*Singhvi, J.*)

321

a “29. ... An indefinite extension and application of unequal laws for all time to come will militate against their true character as temporary measures taken in order to serve a temporary purpose. Thereby, the very foundation of their constitutionality shall have been destroyed the foundation being that Section 119 of the States Reorganisation Act serves the significant purpose of giving reasonable time to the new units to consider the special circumstances obtaining in respect of diverse units. The decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because of the relevance of historical reasons which justify the application of unequal laws is bound to wear out with the passage of time. In *Broom’s Legal Maxims* (1939 Edn., p. 97) can be found a useful principle, *cessante ratione legis cessat et ipsa lex*, that is to say, ‘reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself’.”

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c **35.** In *Motor General Traders v. State of A.P.*²¹ validity of Section 32(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 was considered. By that section it was declared that the provisions of the main Act will not apply to the buildings constructed after 25-8-1957. The Court noted that exemption had continued for nearly a quarter century and struck down the same despite the fact that validity thereof had been upheld by the
d High Court in *Chintapalli Achaiah v. P. Gopalakrishna Reddy*²⁸. Some of the observations made in the judgment are worth noticing. These are:

e “16. What may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of Article 14 of the Constitution if it is persisted in over a long period without any justification.” (*Motor General case*²¹, SCC p. 232, para 16)

f “24. ... What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. ... We are constrained to pronounce upon the validity of the impugned provision at this late stage because the garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge.”

(SCC p. 239, para 24)

g “24. ... As already observed, the landlords of the buildings constructed subsequent to 26-8-1957 are given undue preference over the landlords of buildings constructed prior to that date in that the former are free from the shackles of the Act while the latter are subjected to the restrictions imposed by it. What should have been just an incentive has become a permanent bonanza in favour of those who constructed buildings subsequent to 26-8-1957. There being no justification for the continuance of the benefit to a class of persons without any rational basis whatsoever, the evil effects flowing from the impugned exemption have

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21 (1984) 1 SCC 222
28 AIR 1966 AP 51

322

SUPREME COURT CASES

(2008) 5 SCC

caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. ‘Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported.’* (SCC p. 239, para 24)”

36. In *Rattan Arya v. State of T.N.*⁴ the Court relied on the ratio of *Motor General Traders v. State of A.P.*²¹ and struck down Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 by observing that there was no rational basis in picking out the class of tenants of residential buildings paying a rent of more than Rs 400 per month and to deny similar right to tenants of other buildings and residential or non-residential premises.

37. In *Malpe Vishwanath Acharya v. State of Maharashtra*⁶, the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1-9-1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of the Bombay Rent Act was coming to an end on 31-3-1998.

38. Before parting with this aspect of the case, we may refer to the judgment of *Amarjit Singh v. Khatoon Quamarain*², on which reliance has been placed by the Full Bench of the High Court for negating the appellant’s challenge to Section 14(1)(e). In that case, the respondent sought eviction of the tenant from the first floor of the premises situated at Maharani Bagh, New Delhi on the ground of personal and bona fide necessity. The suit filed by the landlady was decreed by the learned Single Judge of the Delhi High Court and a direction was issued for eviction of the tenant (the appellant). This Court referred to the earlier judgments in *Pasupuleti Venkateswarlu v. Motor & General Traders*²⁹ and *Hasmat Rai v. Raghunath Prasad*³⁰ and held that in view of the availability of alternative accommodation to the landlady, the High Court was not justified in ordering eviction of the tenant.

39. A careful reading of the aforementioned judgment shows that the plea of unconstitutionality of Section 14(1)(e) of the 1958 Act was neither raised nor debated with any seriousness and the observation made by the Court in

* See W.A. Wynes: *Legislative, Executive and Judicial Powers in Australia*, 5th Edn., p. 33.

4 (1986) 3 SCC 385

21 (1984) 1 SCC 222

6 (1998) 2 SCC 1

2 (1986) 4 SCC 736

29 (1975) 1 SCC 770

30 (1981) 3 SCC 103

a that regard cannot be treated as the true ratio of the judgment, which as mentioned above, mainly rested on the interpretation of the expression “reasonably suitable residential accommodation”. The bedrock of the respondent’s claim was that she had a right to comfortable living and availability of alternative accommodation, by itself is not sufficient for declining eviction of the tenant. While rejecting this argument, the Court observed: (*Amarjit Singh case*², SCC pp. 744-45, para 17)

b “17. ... The logic of the argument of Shri Kacker is attractive, but the legality of the said submission is unsustainable. Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack-renting but restrictive so far as the landlord’s right or claim for eviction is concerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek comforts other than habitat—that right the landlord must seek elsewhere.”

c 40. Another contention raised on behalf of the landlady was that Section 14(1)(e) of the 1958 Act should be read in a manner which will make it in conformity with Articles 14 and 16 (*sic* Article 21) of the Constitution. This is evinced from para 18 of the judgment which is extracted below: (*Amarjit Singh case*², SCC p. 745, para 18)

d “18. Our attention was drawn to the decision in *Bishambhar Dayal Chandra Mohan v. State of U.P.*³¹ and our attention was drawn to the observations at pp. 66 and 67 of the said case in aid of the submission that right to property is still a constitutional right and therefore in exercise of that right if a landlord or an owner of a house lets out a premises in question there was nothing wrong. Shri Kacker submitted that the second limb of Section 14(1)(e) of the Act should be read in such a way that it was in consonance with Article 14 and Article 21 of the Constitution. Otherwise it would be void as being unconstitutional. As a general proposition of law this is acceptable.”

The Court rejected the argument and observed: (SCC p. 745, para 20)

f “20. The Act in question has the authority of law. There is no denial of equality nor any arbitrariness in the second limb of Section 14(1)(e) of the Act, read in the manner contended for by the appellant. Article 21 is not violated so far as the landlord is concerned. The rent restricting Acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The rent restriction Acts deal with the problem of rack-renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bona fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage

h ² (1986) 4 SCC 736

³¹ (1982) 1 SCC 39 : 1982 SCC (Cri) 53

324

SUPREME COURT CASES

(2008) 5 SCC

of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution.”

41. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter’s right to seek eviction of the tenant from the premises let for residential purposes only.

42. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:

“14. (1)(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation;

* * *

While adopting this course, we have kept in view well-recognised rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible—*R.M.D. Chamarbaugwalla v. Union of India*³² and *Lt. Col. Sawai Bhawani Singh v. State of Rajasthan*³³.

43. As a sequel to the above, the Explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant.

44. In the result, the appeals are allowed. The impugned judgment is set aside and Section 14(1)(e) of the 1958 Act is partly struck down. Section 14(1)(e) shall now read as indicated in para 42 above. Consequently, the writ petitions filed by the appellants shall stand allowed and the orders impugned therein shall stand quashed. The parties are left to bear their own costs.

32 AIR 1957 SC 628

33 (1996) 3 SCC 105