1985 LAB. I. C. 1523

(ANDHRA PRADESH HIGH COURT)

JEEVAN REDDY AND SARDAR ALI KHAN, JJ.

The Vijayawada Chambers of Commerce and Industry, Petitioner v. The Government of A. P. and others, Respondents.

Writ Petn. Nos. 7754 and 7335 of 1979, etc. etc., D/- 28-11-1984.

(A) Andhra Pradesh Muttah, Jattu, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act (61 of 1976), S. 3 — Act does not suffer from vice of excessive delegation of legislative power. (Constitution of India, Art. 245).

The Andhra Pradesh Act 61 of 1976 does not suffer from vice of excessive delegation of legislative power. S. 3 of the Act provides ample guidance in the matter of framing of schemes. Sub-section (1) refers to the criteria which must underline any such scheme viz., ensuring an adequate supply and full and proper utilisation of unprotected workers in scheduled employments, making better provision for the terms and conditions of employment of such workers, whether registered or not, and to provide for the general welfare. Sub-sec. (2) elaborates the same and specifies the several aspects which must be kept in mind, and provided for in such schemes. Apart from S. 3, the Act itself provides ample guidance to the authority framing the scheme, as to the object, spirit and the direction which should underline any such scheme. In the face of such elaborate criteria and guidance in the Act, it is idle to contend that the Legislature has abdicated its essential function and that, S. 3 is bad for excessive delegation of legislative power. AIR 1963 SC 1232 Ref. (Para 13)

(B) Andhra Pradesh Muttah, Jattu, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act (61 of 1976), S. 2 (11) — Act is not beyond competence of State Legislature — Creation of privity of contract between principal employer and workers — Valid. (Constitution of India, Art. 246, Sch. 7, List III, Entries 23 and 24).

The A. P. Act 61 of 1976 is one falling under Entries 23 and 24 of List III in 7th Schedule of Constitution of India. Whatever is necessary for ensuring employment and to reduce unemployment, as also for the welfare of labour including conditions of work, etc., can be provided for by the Legislature. The main objection is to the creation of a privity of contract between what is called the 'principal employer' and the workers. It is contended that, where an employer does not himself employ any labour but engages a contractor for that purpose, and the contractor engages the labour to do the work, there is no privity of contract between the workers and the employer; if so, it is not open to the Legislature to bring into existence a contract or privity as between them. The objection is to the definition of the expression "principal employer" in Cl. (11) of Section 2, and the liability created upon such principal employers to pay the wages, and to make other contributions provided by the Act and the scheme, including the liability under the Workmen's Compensation Act, Payment of Wages Act, and the Provident Funds Act. There is no reason to see as to why such a liability cannot be created by law. Indeed, this is not a new thing, for the concept of a principal employer obtains even under the Industrial Dispute Act. It cannot also be said that there is a total absence of any connection between the principal employer and the workers; instead of employing the workers directly, he employs the agency of a contractor; yet, the fact remains that the workers do his work. It may be that he pays them through the contractor, but it is certainly open to the Legislature to ignore the contractor, who is really an agent, and create and recognise the priority directly between the worker and the employer who is called the principal employer. In this view of the matter, it is beside the point to argue that the Legislature cannot impose a worker upon the employer. (Para 14)

(C) Andhra Pradesh Muttah, Jattu, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act (61 of 1976), S. 3 — Scheme under — Act does not impose unreasonable restrictions upon fundamental right guaranteed under Art. 19 (1) (g) of the Constitution. (Constitution of India, Art. 19 (1) (g).)

A. P. Act 61 of 1976 to be effective, must apply to all the employers and the employees in scheduled employments, in a given area. If it is left to the dis-

option of the employers to register or not, the very scheme will not work, because no one may choose to register, for, he may think that he would get the workers to do the same work outside the registered pool and at lesser rates. This will defeat the very object of the enactment. It is also not correct to say that, the wages cannot be fixed unless a machinery like the one obtaining under the Minimum Wages Act is created. Already certain rates are obtaining; but, they may fluctuate and vary from season to season, or from time to time, and from place to place. There are several notifications issued by the Government fixing minimum wages for workers in various employments. All this material furnishes sufficient guidance in the matter of fixing of wages which has to be done by the Board, wherein the employers are also represented. Moreover, this is only a hypothetical argument. So far as wages have been fixed under the scheme, and it is not contended that the wages so fixed are so high that they practically make it impossible for the employers to continue in the business. Further, as pointed out hereinbefore, the scheme contemplates certain preliminary work to be done before the scheme is implemented. The preliminary work consists of the fixation of the number of workers in a given area in the scheduled employments, and the registration of employers. The fixing of the number of workers in a given area is done in consultation with the employers, which is a sufficient in-built safeguard. Similarly, all the employers in the area engaged in selling, purchasing, trading, or acting as agents in the area to which the scheme applies, are registered, pool registers are prepared, and then the scheme is brought into force. The whole idea is that, the Board should act as a statutory medium between the employers and the workers. The employers are ascertained; the workers are also determined. If any employer has any work to be done, he must approach the Board for allotment of the requisite number of workers, and the Board will do so. The employer has to pay the fixed wages; he has also got to make other contributions provided for by the scheme to maintain the health and welfare of the workers. After all, ensuring the health and welfare of the workers is ultimately to the benefit of the employers themselves, because a healthy and contended worker will contribute and turn out better work; his productivity will be more. In the face of the scheme, it cannot be contended that the employers should be free to engage workers themselves or not, and that they should be free to have the same work done through permanent employees of theirs, or through the employees of transporters, or any third parties.

(Para 15)

Every such welfare measure does impose certain restrictions, both upon the employers and the employees; but, if the restrictions imposed by the Act and the scheme concerned herein, must be held to be reasonable and necessary for a proper and effective implementation of the welfare scheme. Similarly, the argument that all the matters now provided for by the Act and the scheme, except the rate of wages, are already provided for by the Shops and Establishments Act, is wholly untenable. Neither the Shops and Establishments Act contemplates, nor any scheme has been framed thereunder providing for the matters, now provided by the present Act and the scheme.

(Para 16)

(D) Andhra Pradesh Muttah, Jatta, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act (61 of 1976), S. 3 — Scheme under, published in A. P. Gazette Part II — Extraordinary dated 24-3-1973, clause 40 — Levy by employer — Procedure for fixing it is not unreasonable or unguided. (Constitution of India, Art. 14).

Clause 40 of the Scheme framed under S. 3 of A. P. Act 61 of 1976 does provide a measure in the matter of determining the levy payable by each employer, viz., the number of workers allotted to, and engaged by him, and the total wage bill in that behalf with a ceiling of 50%. The argument is that, this will be a very heavy burden upon the employers. But, in advancing this argument, it is forgotten that the Board consists of representatives of employers as well. The representatives of the workers are not in majority; the Board consists of the representatives of the workers, employers, and the Government, which is provided with a view to ensure a fair and unbiased approach. Moreover, there is also an Advisory Committee, which is again composed of the representatives of employers, workers and the Government, to advise the Board on

several matters. The entire cost of implementing the scheme is not imposed upon the employers alone; there are other moneys available with the Board, and the income under clause 40 is one of the sources. So far, no levy has been fixed. Be that as it may, it cannot be contended that there is no guidance in the matter of fixing the rates of levy under clause 40, nor can it be contended that the procedure prescribed by Cl. 40 in the matter of fixing the rates of levy is unreasonable, or unguided. There are sufficient in-built safeguards. (Para 17)

(E) Andhra Pradesh Muttah, Jattu, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act (61 of 1976), S. 3 — Scheme under, published in A. P. Gazette, Part II, Extra-ordinary, dated 24-3-1979 — Scheme is not discriminatory. (Constitution of India, Art. 14).

The scheme is not guilty of hostile discrimination against the employers, on the ground that while for violation of any provision of the scheme a punishment is provided for the employer, no such punishment is provided for the worker. It may, however, be noticed that in the present conditions, labour is available in abundance. If any labourer refuses to act according to the instructions given to him, he can be taken out of the pool, which would be a grave punishment for him; but, so far as the employer is concerned, any such removal from the register would be to his benefit and, therefore, the Act provides for prosecution and punishment of employers violating any provision of the scheme, or the instructions given thereunder. Because of the different circumstances of the employers and the employees, this differential treatment is provided, which cannot be attacked as discriminatory.

(Para 21)

Cases Referred: Chronological	Paras
AIR 1963 SC 1232	13
AIR 1962 SC 1402	19
AIR 1958 SC 578	19

V. Jagannadha Rao; N. Rajeswara Rao; Krishna Mohana Rao; Challa Sitaramayya, for Petitioner; Govt. Pleader for Industries, for Respondents.

JEEVAN REDDY, J.:— The constitutional validity of the Andhra Pradesh Muttah, Jattu, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, being Act 61 of 1976, and the schemes framed thereunder, is challenged in these writ petitions. The writ petitions are filed by several Associations of traders, like "Andhra Pradesh Grain and Seeds Merchant's Association", "Fruit Commission Agents' Association", "Groundnut, Cotton and Kapas Commission Agents' Association", "Cloth Merchants' Association", "Iron and Steel Merchants's Association", and Vijayawada Chamber of Commerce".

2. The Act has been made by the Andhra Pradesh Legislature to provide "for regulating the employment of unprotected manual workers such as Muttah, Jattu and Hamal engaged in market areas, factories and the like in the State of Andhra Pradesh in connection with loading, packing, carrying, weighing, measuring, stiching, etc., for ensuring an adequate supply and full and proper utilisation of such workers to prevent avoidable unemployment, for securing to such workers better terms and conditions of employment and for matters connected therewith". The Act is modelled on a similar enactment pertaining to dock-labour. It is also stated that a similar enactment obtains in the State of Maharashtra and that the present Act and the scheme is almost identical to the Maharashtra Act and scheme. It has been brought into force by the State Government as contemplated by Section 1 (4) of the Act. Section 2 is the definition clause. The following definitions, viz., "contractor" "employer" "establishment", "principal employer" and "scheduled employment", occurring in clauses (3), (4), (5), (11) and (12) respectively, are relevant herein. They read as follows:—

"(3) 'contractor' in relation to an unprotected worker, means a person who undertakes to execute any work for an establishment by engaging such workers on hire or otherwise, or who supplies such workers either in groups, gangs (muttah or Jattu), or as individuals, and includes a sub-contractor, an agent, a mukaddam or a maistry;

(4) 'employer' in relation to any unprotected workers engaged by or through contractor, means the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment and includes any other person to whom the affairs of such establishment are entrusted, whether such person is

called an agent, manager or is called by any name prevailing in the scheduled establishment.

(5) 'establishment' means any place or premises including the precincts thereof, in which or in any part of which any scheduled employment is being or is ordinarily carried on;

xx xx xx

(11) 'principal employer' means an employer who engages unprotected workers by or through a contractor in any scheduled employment.

(12) 'scheduled employment' means any employment specified in the Schedule hereto or any process or branch of work forming part of such employment;....."

3. Section 3 provides for framing of schemes for ensuring regular employment of unprotected workers; ('unprotected worker') means a manual worker who is engaged or to be engaged in any scheduled employment; vide clause (14) of Section 2). Section 3 (1) reads as follows:—

"3 (1): For the purpose of ensuring an adequate supply and full and proper utilisation of unprotected workers in scheduled employments, and generally for making better provision for the terms and conditions of employment of such workers, whether registered or not, the Government may by means of a scheme, provide for the registration of employers and unprotected workers in all or any of the scheduled employments and provide for the terms and conditions of work of such unprotected workers whether registered or not, and make provision for their general welfare."

Sub-section (2) elaborates the matters which may be provided for in a scheme framed under sub-sec. (1). The scheme may provide for the obligations of employers and unprotected workers; for regulating the recruitment and entry into the scheme of unprotected workers, registration of employers and workmen; regulation of employment of unprotected workers; securing of minimum wage; prohibiting the employment of unprotected workers otherwise than under the scheme, welfare, health and safety measures for workmen, and other incidental and supplemental matters.

4. Sub-section (3) lays down that the scheme may provide that a contravention of any of the provisions of the scheme shall be punished with imprisonment for such term as may be specified, or with fine. Section 4 empowers the Government to vary or revoke the scheme. Section 6 provides for establishments of a Board to be known by such name as may be specified in the notification, for any scheduled employment in any area; the Government may establish one Board for two or more scheduled employments, or areas. The Board shall be a body corporate and shall consist of members nominated by the Government, representing the employers, the unprotected workers, and the Government; the members representing the employers and unprotected workers shall be equal in number, and the members representing the Government shall not exceed one-third of the total number of members representing the employers and workers; the Chairman of the Board has to be nominated by the Government from among the members representing the Government.

Section 7 sets out the powers and duties of the Board. According to it, the Board shall be responsible for administering a scheme, and shall perform such functions as may be conferred on it by such scheme; it shall take appropriate measures for administering the scheme and shall submit annual reports to the Government about the working of the scheme; it shall be bound by such directions as the Government may give from time to time, for reasons to be recorded in writing. Section 8 provides for accounts, and audit of the acocunts and other relevant records and statements maintained and reported by the Board. Sections 9 to 11 deal with the disqualifications of members, resignation and filling of vacancies on the Board. Section 13 says that monies due to the Board can be recovered by the Collector as if they are arrears of land-revenue. Section 14 provides for constitution of an Advisory Committee. The Advisory Committee has to be constituted by the Government, to advise upon matters arising out of the administration of the Act, or any scheme made thereunder; the members thereof have to be appointed by the Government. The Government, however, has to appoint equal number of members representing the employers, workers and the Legislature of the State, the members representing the Government not exceeding one-fourth of the total strength. Section 15 provides for appointment of Inspectors for the purpose

of the scheme, and their powers. Sections 18 to 20 apply certain Central enactments, like the Workmen's Compensation Act, Payment of Wages Act, and Maternity Benefit Act, to the workers covered by the scheme. Section 22 confers the power of exemption upon the Government, while Section 23 empowers the Government to investigate or enquire into the working of any Board of scheme, from time to time, through such person as it may appoint. Section 24 empowers the Government to supersede the Board on any of the grounds specified therein; Section 25 says that, no one is entitled to contract out of the provisions of the Act. Section 28 confers the rule-making power upon the Government.

5. The schedule to the Act mentions the employments to which the Act applies. It is made applicable to markets and shops dealing in several goods, and matters mentioned therein.

6. Rules have been made and published in G.O.Ms. No. 144, dated 19-2-77, under the said Act. The Rules mainly deal with the constitution of an Advisory Committee, the term of office and other aspects concerning the members of the Advisory Committee, the procedure for their meetings, maintenance of accounts, and appointment of officials, etc.

7. Several schemes have been framed under the Act, as contemplated by Section 3. It is not necessary for the purpose of these writ petitions to refer to all of them; it is sufficient if we refer to the one contained in G.O.Ms. No. 194, dated 19-3-1979 and published in the A. P. Gazette, Part-II, Extraordinary, dated 24th March, 1979 (concerned in W. P. No. 7754/79). The said scheme applied to the areas covered by the Municipal limits of the twin cities of Hyderabad and Secunderabad. Vijayawada Town, and Adoni Town. It applies to the scheduled employments mentioned therein, viz., loading, unloading, packing, carrying, weighing, measuring, or such other work including work preparatory or incidental to such operations, in the iron and steel markets or shops, in cloth and cotton markets or shops, in grocery markets or shops, in vegetable and fruit markets, and in markets or subsidiary markets established under the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act, 1966, and employment in connection with the loading, unloading and carrying of foodgrains into godowns, and such other work incidental or connected thereto. Clause 2 of the Scheme is the definitions clause. According to it, "employer" means the employer whose name is, for the time being, entered in the register of employers; "monthly worker" means a worker who is employed by an employer or a group of employers on contract, on monthly payment basis, and who is registered with the Board; "pool" means a list of workers maintained by the Board, but does not include monthly worker; "worker" means a worker whose name is, for the time being, entered in the register of pool workers, or in the register of monthly workers.

8. Clause 5 sets out the functions of the Board. In short, it says that the Board shall take all such measures as it may consider desirable for carrying out the objects of the scheme, including the several measures detailed in the said Clause. Inter alia, it is empowered to fix the number of workers to be registered under the various categories; increase or decrease the number of workers in any category, registration of workers from time to time as may be necessary after a periodical review of the said register; to determine the wages, allowances and other conditions of service including the age of retirement of workers; fix the rate of levy under clause 39 (1); and settle disputes between the employers and workers, etc.

9. Clause 12 provides that the Board shall maintain a register of employees, as also a register of workers, called 'monthly register' pertaining to employees and workers registered under the scheme, and a 'pool register' relating to other workers known as 'pool workers'. Clause 13 empowers the Board to classify the workers in suitable categories, from time to time. Clauses 14 and 15, which were brought into force immediately on the date of publication of the scheme in the Gazette (other clauses of the scheme are to come into operation on such date as the State Government may fix in the A. P. Gazette), provide for fixation of number of workers on the registers, and the registration of employers. Clause 14 says that, the Board shall, before the commencement of registration in any category determine the number of workers required in that category in consul-

tation with the employers. Clause 15 provides that, every employer engaged in selling, purchasing, or trading or acting as agent in the area to which the scheme applies, shall get himself registered with the Board by applying in Form-A appended to the scheme; such registration shall be valid for a period of one year; he is bound to renew his registration every year. Clause 16 provides for registration every year. Clause 16 provides for registration of existing and new workers. According to it, all the workers working in the schedule employments in the areas concerned, shall be registered under the scheme; new workers shall be registered having regard to the requirements, and subject to other conditions specified therein, clause 17 provides for promotion and transfer of workers, while clause 18 provides for arranging medical examination of the workers. Clause 19 provides for registration fee. Clause 20 provides that, every worker shall be supplied with an identity card, an attendance card, and wage slips in the forms prescribed by the Board. Clause 21 directs the Board to maintain the service record of every monthly and daily worker. Clause 22 requires the Secretary of the Board to maintain a record-sheet in respect of each employer.

Clause 25 provides that, a monthly worker of a particular category allotted to an employer or group of employers, shall be entitled to be employed for work in that category by that employer or group of employers, in preference to any worker of the same category in the pool. Clause 27 provides for what is called "non-appointment money". It says when a worker in the pool presents himself for work, but for some reason the work for which he has been allotted, cannot commence or proceed with and no alternative work can be found for him and he is relieved within two hours of his attending for work, he shall be entitled to non-appointment money from the employer at a rate fixed by the Board; however, a worker detained for more than two hours shall be entitled to his full wages, inclusive of dearness allowance. Clause 30 prescribes the obligations of the workers. A worker who is registered under the scheme is deemed to be in the employment of the Board and is entitled to be paid the attendance allowance at the prescribed rates; he is bound to do the work allotted to him. Clause 33 says that, the wages, allowances and other conditions of service of the workers shall be, as may be prescribed by the Board for each category of workers. Clause 34 says that, the Board may permit the employers to pay wages and other allowances to the monthly workers directly, after making the prescribed deductions. Similarly, in respect of pool workers also, the payment can be made directly to them after making the prescribed deductions; the employer, however, has to notify such payment to the Board from time to time. Clauses 36 and 37 provide for appeal by the worker, and the employer, respectively, against the several orders passed by the Board under the scheme. The chairman is vested with the power of revision; stay can also be granted, under clause 39, where an appeal is preferred. Clause 40 provides how to defray the cost of operating the scheme. Sub-clauses (1), (2) and (3) of clause 40 are relevant, and may be set out :—

"40. Cost of operating the Scheme :

(1) The cost of operating this scheme shall be defrayed by payments made by the employers The Board should create an Administrative Fund for this purpose. Every employer shall pay to the Board such amount by way of levy in respect of workers allotted to and engaged by him as the Board may, from time to time, specify by written order to the employers and in such manner and at such time as the Board may direct.

(2) In determining that payments are to be made by the employers under sub-clause (1), the Board may fix different rates of levy for different categories of work or workers, provided that the levy shall be so fixed that the same rate of levy will apply to all employers who are in like circumstances.

(3) The Board shall not sanction any levy exceeding fifty per cent of the estimated total wage bill calculated on the basis of the daily time rate wage without the prior approval of the State Government.....".

10. Clause 41 obliges the Board to frame and implement schemes of contributory Provident Fund for the workers. Clause 43 provides that, every employer shall accept the obligations under the said scheme and that, subject to clause 25 he shall not employ a worker other than a worker who has been allotted to

him by the Secretary in accordance with clause 9 (c) of the scheme.

11. Counsel for the petitioners challenged the constitutional validity of the Act and the scheme, on the following grounds, viz.,(i) that, the Act suffers from the vice of excessive delegation; the Act does not lay down the principles or the criteria, for the schemes to be framed, nor does it provide any guidance in the matter of framing and implementing the schemes; the whole thing is left to the Government, which amounts to abdication of essential legisaltive function; (ii) that, the Act is beyond the competence of the State Legislature, inasmuch as it is not warranted by Entries 23 and 24 in List-III of the Seventh Schedule to the Constitution; particularly in so far as the Act and the Scheme purports to create and bring into existence a statutory contract where none exists, it is beyond the competence of the Legislature; (iii) the Act and the scheme impose unreasonable restrictions upon the fundamental right guaranteed to the petitioners by clause (g) of Article 19 (1) of the Constitution, and is not saved by clause (6) of Art. 19; and (iv) that, the levy imposed by clause 40 of the scheme is heavy and has the effect of practically debilitating the business in the schedule employment.

12. It is clear from a perusal of the provisions of the Act that, this Act is made as a measure of workers' welfare and to improve their conditions of service. The idea is to create a statutory Board which shall have a pool of workers registered with it, and a pool of employers also registered with it. Every employer who has some work to be done by these workers, has to approach the Board the Board will allot the requisite number of workers to such employer; the rates of payment are fixed; the employer cannot employ any other person than the registered pool workers in any scheduled employment. In the first instance, the Act and the scheme contemplate that the Board shall fix the number of workers for each area and each category, in consultation with the employers. Similarly, it shall also register the employers, and then the scheme will be enforced. The scheme provides for the several conditions of service, the payments to be made, the manner of payment and the other contributions which the employers will have to make towards the workers' welfare. In short, it is a measure conceived to advance socio-economic justice as ordained by the Constitution. Just as the workers are obliged to do the work, which they are allotted, the employers too are obliged to engage the workers allotted to him. It i not open to an employer to say that he will have the same work done through regular employees of his, or workers engaged by him, or through other persons, whether engaged by him or by any other person, like transporter, purchaser, or seller, as the case may be. Such a restriction is indeed necessary for an effective and proper working of the scheme. Evidently, this measure has been brought about to prevent the exploitation of workers, to standardize their wages, and to ensure proper payment. We are told that, mostly the wages are paid not on daily basis, but on piece-rate basis. So far as the Act and the scheme is concerned, that has not been changed, we are told. Be that as it may, it is indeed a matter of regret that such a welfare scheme which was proposed to be brought into force in 1979 itself could not be brought into force because the employers challenged the same and obtained orders from this Court staying their prosecution for non-compliance with their duties and obligations under the Act and the scheme, with the result that the scheme could not be brought into force; the entire legislation, including the statutory schemes, have practically been a dead letter for more than five years.

13. Now coming to the contentions urged on behalf of the petitioners, we are unable to see any substance whatsoever in the first contention of the learned counsel. Section 3 of the Act provides ample guidance in the matter of framing of schemes. Sub-section (1) refers to the criteria which must underline any such scheme viz., ensuring an adequate supply and full and proper utilisation of unprotected workers in scheduled employments, making better provision for the terms and conditions of employment of such workers, whether registered or not, and to provide for the general welfare. Sub-section (2) elaborates the same and specifies the several aspects which must be kept in mind, and provided for in such schemes. We have already referred briefly to the several matters provided for by sub-section (2). Apart from Section 3, the

Act itself provides ample guidance to the authority framing the scheme, as to the object, spirit and the direction which should underline any such scheme. In the face of such elaborate criteria and guidance in the Act, it is idle to contend that the Legislature has abdicated its essential function and that Section 3 is bad for excessive delegation of legislative power.

The principles in this behalf are well stated by the Supreme Court in its decision in Delhi Municipality v. B. C. S. and W. Mills, AIR 1963 SC 1232. It is stated that, while essential legislative function, viz., determination of legislative policy and its formulation as a binding rule of conduct, cannot be delegated and that Legislature must retain its own hands the essential legislative function, the task of subordinate legislation necessary for implementing the object and purpose of an Act, can be delegated. It held that, if a legislative policy is enunciated with sufficient clarity, or a standard is laid down, the Court would not interfere. The amount of guidance which should be furnished is a matter depending upon the facts of each case. In this behalf, the nature of the authority to whom the power is delegated has also been held to be relevant. Indeed, the trend of decision of the Supreme Court is towards permitting more and more field to the delegate, so long as the basic principles and the policy are enunciated with sufficient clarity in the Act. The Essential Commodities Act, which is now on the statute-book, and the Defence of India Act—which was enacted during the II World War — are examples where the Legislature has provided a vast field for the delegate, and yet they have not been found to be objectionable. For the above reasons, the first contention is rejected.

14. The second contention of the learned counsel is that, it is not open to the Legislature to create or bring into existence a statutory contract, where none is existing. It is contended that Entries 23 and 24 in List-III of the Seventh Schedule to the Constitution, do not empower the Legislature to create such a contract. We are unable to appreciate this contention as well. Entries 23 and 24 are mere legislative heads. They read as follows:—

"23. Social security and social insurance; employment and unemployment;

24. Welfare of labour including conditions of work, Provident Funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits".

Undoubtedly, the present legislation is one falling under both the Entries. Whatever is necessary for ensuring employment and to reduce unemployment, as also for the welfare of labour including conditions of work, etc., can be provided for by the Legislature. The main objection of the learned counsel for the petitioners is to the creation of a privity of contract between what is called the 'principal employer' and the workers. It is contended that, where an employer does not himself employ any labour but engages a contractor for that purpose, and the contractor engages the labour to do the work, there is no privity of contract between the workers and the employer; if so, it is not open to the Legislature to bring into existence a contract or privity as between them. The objection is to the definition of the expression "principal employer" in Cl. (11) of Section 2, and the liability created upon such principal employers to pay the wages, and to make other contributions provided by the Act and the scheme, including the liability under the Workmen's Compensation Act, Payment of Wages Act, and the Provident Funds Act. We are unable to see as to why such a liability cannot be created by law. Indeed, this is not a new thing, for the concept of a principal employer obtains even under the Industrial Disputes Act. It cannot also be said that there is a total absence of any connection between the principal employer and the workers; instead of employing the workers directly, he employs the agency of a contractor; yet, the fact remains that the workers do his work. It may be that he pays them through the contractor, but it is certainly open to the legislature to ignore the contractor, who is really an agent, and create and recognise the priority directly between the worker and the employer who is called the principal employer. In this view of the matter, it is beside the point to argue that the Legislature cannot impose a worker upon the employer. The second contention too is, accordingly, rejected.

15. The third and the last ground upon which the Act and the scheme are

challenged is that, they impose unreasonable restrictions upon the fundamental right guaranteed to the petitioners under Art. 19 (1) (g) of the Constitution of India. The argument is that, after the enforcement of the scheme, the employers cannot employ any Hamal or a person other than the registered worker to be supplied by the Board; that, while fixing the wages, no standard has been adopted, no enquiry has been made, nor has any machinery been created like the one under the Minimum Wages Act, to fix the wages, and that, it is not clear whether the standard adopted is that of minimum wage, a fair wage, or living wage. It is also argued that, the scheme should not be implemented unless and until an enquiry is conducted and a market survey is made with a view to determine the number of employees required in a particular area in the scheduled employments, and the need of each employer is determined. It is further contended that, there cannot be a compulsion upon the employers to be registered and that, they must be free either to register or not to do so. We are not impressed by any of these arguments.

As we have pointed out hereinbefore, such a measure, to be effective, must apply to all the employers and the employees in scheduled employments, in a given area. If it is left to the discretion of the employers to register or not, the very scheme will not work, because no one may choose to register, for, he may think that he would get the workers to do the same work outside the registered pool, and at lesser rates. This will defeat the very object of the enactment. It is also not correct to say that, the wages cannot be fixed unless a machinery like the one obtaining under the Minimum Wages Act is created. Already certain rates are obtaining; but, they may fluctuate and vary from season to season, or from time to time, and from place to place. There are several notifications issued by the Government fixing minimum wages for workers in various employments. All this material furnishes sufficient guidance in the matter of fixing of wages which has to be done by the Board, wherein the employers are also represented. Moreover, this is only a hypothetical argument. So far as wages have been fixed under the scheme, and it is not contended that the wages so fixed are so high that they practically make it impossible for the employers to continue in the business. Further, as pointed out hereinbefore, the scheme contemplates certain preliminary work to be done before the scheme is implemented. The preliminary work consists of the fixation of the number of workers in a given area in the scheduled employments, and the registration of employers. The fixing of the number of workers in a given area is done in consultation with the employers, which is a sufficient in-built safeguard. Similarly, all the employers in the area engaged in selling, purchasing, trading, or acting as agents in the area to which the scheme applies, are registered, pool registers are prepared, and then the scheme is brought into force. The whole idea is that, the Board should act as a statutory medium between the employers and the workers. The employers are ascertained; the workers are also determined. If any employer has any work to be done, he must approach the Board for allotment of the requisite number of workers, and the Board will do so. The employer has to pay the fixed wages; he has also got to make other contributions provided for by the scheme to maintain the health and welfare of the workers. After all, ensuring the health and welfare of the workers is ultimately to the benefit of the employers themselves, because a healthy and contended worker will contribute more, and turn out better work; his productivity will be more. In the face of such a scheme, it cannot be contended that the employers should be free to register themselves or not, or that, they should be free to have the same work done through permanent employees of theirs, or through the employees of transporters, or any third parties.

16. Every such welfare measure does impose certain restrictions, both upon the employers and the employees; but, all the restrictions imposed by the Act and the scheme concerned herein, must be held to be reasonable and necessary for a proper and effective implementation of the welfare scheme. Similarly, the argument that all the matters now provided for by the Act and the scheme, except the rate of wages, are already provided for by the Shops and Establishments Act, is wholly untenable. Neither the Shops and Establishments Act contemplates, nor any scheme has

been framed thereunder providing for the matters, now provided by the present Act and the Scheme.

17. The final argument on this aspect relates to clause 40 of the scheme, the relevant portion whereof we have already set out hereinbefore. Clause 40 provides that, the cost of operating the scheme shall be defrayed by payments made by the employers and, for that purpose, the Board shall create an Administrative Fund. Every employer is obliged to pay such amount by way of levy in respect of workers allotted to, and engaged by him, as the Board may, from time to time, specify by a written order to the employer, and in such manner and at such time as the Board may direct. The rates of levy can go up to 50% of the estimated total wage-bill. If, however, the levy proposed exceeds this ceiling, prior approval of the Government has to be obtained. Clause 5 (3) of the Scheme directs that the Board shall have and maintain its own fund, to which it shall credit all monies received by it from the State Government, all fees, wages and levies received by it under the scheme, all moneys received by way of sale and disposal of properties and other assets, interest on investments in securities and deposits, rents, and all moneys received by it in any other manner or from any other source. The income of the Board is drawn from several sources, such as registration fees, moneys contributed by the Government, and also through levies imposed under clause 40. Clause 40 does provide a measure in the matter of determining the levy payable by each employer, viz., the number of workers allotted to, and engaged by him, and the total wage bill in that behalf with a ceiling of 50%. The argument is that, this will be a very heavy burden upon the employers. But, in advancing this argument, it is forgotten that the Board consists of representatives of employers as well. The representatives of the workers are not in majority; the Board consists of the representatives of the workers, employers, and the Government, which is provided with a view to ensure a fair and unbiased approach. Moreover, there is also an Advisory Committee, which is again composed of the representatives of employers, workers and the Government, to advise the Board on several matters. The entire cost of implementing the scheme is not imposed upon the employers alone; there are other moneys available with the Board, and the income under clause 40 is one of the sources. So far, no levy has been fixed. Be that as it may, it cannot be contended that there is no guidance in the matter of fixing the rates of levy under clause 40, nor can it be contended that the procedure prescribed by clause 40 in the matter of fixing the rates of levy is unreasonable, or unguided. There are sufficient in-built safeguards.

18. The learned counsel for the petitioners relied upon the observations of the Supreme Court in paragraph 160 of the decision in Express News Paper Ltd v. Union of India, AIR 1958 SC 578. A reading of the said paragraph in our opinion, really goes to support the scheme concerned herein, rather than against it. In this paragraph, it is observed by N. H. Bhagwati, J., that, since it is not possible for the State to take up all the industries together for implementing the schemes for amelioration of the conditions of workmen, it can take up one employment after the other and that such a course cannot be attacked as indicative of any undue preference, or prejudicial treatment, since the main object is the amelioration of the conditions of the workers. The argument of ulterior motive, or the consequent liability of the employers to share a greater financial burden, were held to be irrelevant. It was observed that, these are all incidental disadvantages which may manifest themselves in the future working of the industry, but it could not be said that the Legislature, in enacting that measure, was aiming at these disadvantages when it was trying to ameliorate the conditions of the workmen. It was also observed that, the fact that some employers who are marginally situated may not be able to bear the strain and, in some cases, may disappear after closing down their establishments, is also not a circumstance for attacking the reasonableness of the scheme. It was further observed that the several sanctions provided in such schemes for a proper and effective implementation thereof, are the necessary ingredients of such schemes, and cannot be objected to.

Learned counsel also relied upon certain observations in the said judgment dealing with the principles which the

Court should keep in mind, while judging the reasonableness of restrictions. The principles in this behalf are, by now, well settled and there can be no quarrel with those principles. The more relevant question is: which particular provision of the Act or the scheme does operate as an unreasonable restriction? We find none. The obligation to contribute towards a Fund established for the welfare of the workers is equally incidental to a proper and effective implementation of the scheme.

19. Another contention urged is based upon the decision of the Supreme Court in M/s. Orissa Cement Ltd. v. Union of India, AIR 1962 SC 1402. There, the attack was on the Employees' Provident Fund Scheme. The Court held that, while the scheme seeks to secure certain benefits to the employees who are employed through contractors, the principal employer is disabled from exercising, as against contract-labour, the right given to him, under paragraph 32 of the scheme, to deduct from the wages of an employee the amount paid by the employer towards Provident Fund on account of the employee. It was observed that the intention of the Legislature as expressed in Section 6 (1) of the Employees' Provident Funds Act, was to make the employer liable only for a moiety of the Provident Fund and that, while the scheme framed thereunder is well designed to carry out the said intention, the scheme breaks down by reason of the combine operation of paragraphs 30 and 32. In short, the objection was that the scheme disables the principal employer from deducting from the wages of an employee the amount paid by him towards Provident Fund on account of the employee. We are unable to see the relevance of this decision in the facts of the present case. No clause of the scheme, concerned herein, is brought to our notice, corresponding to paragraph 30, or paragraph 32 of the Employees' Provident Fund Scheme, considered by the Supreme Court. Moreover, here there is no question of engaging a worker through a contractor or a middleman, any more. Hereafter, every employer has to approach the Board and obtain the requisite number of workers; record is available with the Board, and if any contribution demanded is questioned on the ground of an error, it can always be checked and verified with reference to such record.

20. For the above reasons, it must be held that the attack upon the Act and the scheme on the ground of unreasonableness, must fail.

21. Lastly, it was contended that the scheme is guilty of hostile discrimination against the employers, inasmuch as, while for violation of any provision of the scheme a punishment is provided for the employer, no such punishment is provided for the worker. It may, however, be noticed that, in the present conditions, labour is available in abundance. If any labourer refuses to act according to the instructions given to him, he can be taken out of the pool, which would be a grave punishment for him; but, so far as the employer is concerned, any such removal from the register would be to his benefit and, therefore, the Act provides for prosecution and punishment of employers violating any provision of the scheme, or the instructions given thereunder. Because of the different circumstances of the employers and the employees, this differential treatment is provided, which cannot be attacked as discriminatory.

22. In conclusion, we must say that it is too late to attack such welfare measures on the ground that they inhibit and restrict the freedom of contract, and the freedom of choice of the employers. Many such schemes have been repeatedly challenged, but upheld. Indeed, the present scheme is modelled upon the dock-workers scheme which has been in operation for quite a few years in all the port areas of the country.

23. The writ petitions, accordingly, fail and are dismissed with costs. Advocate's fees Rs. 250/- in each.

24. Learned advocates appearing for the petitioners made on oral request for leave to appeal to the Supreme Court under Article 133 of the Constitution. We are not, however, persuaded that these cases involve any substantial question of law of general importance which, in our opinion, needs to be considered by the Supreme Court.

25. The oral request is accordingly rejected.

Petitions dismissed.