DR. INDRAMANI PYARELAL GUPTA

1962

April 11.

v.

W. R. NATHU AND OTHERS.

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Forward Contracts—Regulation of—Bye-laws empowering closing out of hedge contracts—Validity of—If can operate retrospectively—East India Cotton Association Bye-laws cl. 52A—Forward Contracts (Regulation) Act, 1952 (LXXIV of 1952), ss. 4, 11 and 12.

The appellants were members of the East India Cotton Association which was an association recognised by the Central Government under the Forward Markets Regulation Act, 1952. Prior to December 1955, they had entered into "hedge contracts" in respect of cotton for settlements in February and May 1956 in accordance with the bye-laws of the Association. Towards the end of 1955 it was apprehended that the forward market in cotton was heading for a crisis and the Central Government issued notifications directing the Association to suspend business in hedge contracts for February and May 1956 deliveries for short periods this did not improve the situation. On January 21, 1956, the Central Government, acting under s. 12 of the Act, made a new bye-law in substitution of bye-law 52AA of the Association which empowered the Forward Markets Commission, constituted under, the Act, to issue a notification closing out all hedge contracts at rates fixed by the Commission. On January 24, 1956, the Commission issued a notification closing out all hedge contracts including those subsisting on that date, and fixed the rates for the settlement of such contracts. The appellants contended that the amended bye.law 52AA was invalid as the power to close out hedge contracts could not be conferred upon the Commission and as the Association was in law incapable of conferring such a power on the Commission or on any other body and that in any cases the bye-law could not operate retrospectively so as to affect existing contracts.

Held, (per Sinha, C. J., Ayyangar, Mudholkar and Aiyar, JJ. Subba Rao, J. contra), that the amended bye-law 52AA was not ultra vires the Central Government and validly empowered the Commission to close all hedge contracts in cotton including existing contracts. Clause (f) of s. 4 of the Act provided that one of the functions of the Commission

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shall be to perform such other duties and exercise such other powers as may be assigned to the Commission "by or under the Act, as may be prescribed". There was no limitation upon the nature of the power that may be conferred under cl. (f) except that it must be in relation to the regulation of forward trading in goods. It was not possible to place any limitation on this power by invoking the rule of *ejusdem generis* as there was no common positive thread running through cls. (a) to (e) of s. 4. To judge whether legally a power could be rested in a statutory body the proper rule of interpretation was that unless the nature of the power was such as to be inconsistant with the purpose for which the body was created or unless the particular power was contra-indicated by any specific provisions of the Act, any power which furthered the provisions of the Act could be legally conferred. Judge by this test the power conferred by the bye-law could be validly vested in the Commission. The power was one conferred "under the Act". The words "under the Act" signified a power conferred by laws made by a subordinate law-making authority which was empowered to do so by the Act. The impugned bye-law was clearly well within the bye-law making power under ss. 11 and 12. The bye-law did not contravene articles 64 of the Articles of Association of the Association as articles 64 applied only to the Board and placed no restrictions on the power of the Association.

Western India Theatres Ltd. v. *Municipal Corporation of Poona*, [1959] Supp. 2 S.C.R. 71, *Hubli Electricity Co. Ltd.* v. *Province of Bombay*, 76 I.A. 57 and *Narayanaswamy Naidu* v. *Krishna Murthi*, I.L.R. 1958 Mad. 513, referred to.

Further, upon a proper construction of the amended bye-law it applied not only to contracts to be entered into in future but also to subsisting contracts. A statute which could validly enact a law with retrospective effect could in express terms validly confer upon a rule making authority a power to make a rule or frame a bye-law having retrospective operation. In the present case the power to make bye-laws so as to operate on subsisting constracts followed as a necessary implication from the terms of s. 11. There was no contra indication in the other provisions of the Act.

Per Subba Rao, J.—Under s. 12 (1) of the Act the Central Government had no power to make a bye-law with retrospective effect. The provision conferring rule making power must be strictly construed and unless it expressly conferred a power to make a bye-law with retrospective effect, it must be held that it was not conferred any such power. Evey if it was permissible to inter such a power by necessarn

implication, it could not be inferred in the present case. It could not be said that unless retrospective operation was given to the provisions of s. 12, the object of the legislature would be defeated or the purposes for which the power was conferred could not be fulfilled.

Further, the powers conferred on the Commission under the impugned bye-law could not be performed by the Commission under cl. (f) of s. 4. Clauses (a) to (e) of s. 4 showed that the functions of the Commission were wholly supervisory and advisory in nature; the functions described in cl. (f) were analogous to these and could only be supervisory or advisory. The Commission had no administrative functions or powers of management or powers of interference in the internal management of registered association which were vested in the Association. The power conferred upon the Commission was not conferred "under the Act". The words did not include a rule or a bye-law, and applied only to an assignment made in the exercise of an express power conferred under the Act. The Central Government had no power under s. 12 to make a bye-law assigning any function to the Commission.

Union of India v. *Madan Gopal Kabra* (1954) S.C.R. 541, *Modi Food Products Ltd.* v. *Commissioner of Sales Tax, U.P.*, A.I.R. 1956 All. 35, *Strawboard Manufacturing Co. Ltd.* v. *Gupta Mill Workers' Union*, (1953) S.C.R. 439, *India Sugar & Refineries Ltd.* v. *State of Mysore*, A.I.R. 1960 Mys. 326, *C.W. Motor Service (P) Ltd.* v. *State of Kerala*, A.I.R. 1959 Kerala 347, *Howell* v. *Falmouth Boat Construction Co. Ltd.* (1951) A.C. 837; *The Western India Theatres Ltd.* v. *Municipal Corporation of the City of Poona*, (1959) Supp. 2 S.C.R. 71 and *Hubli Electricity Co. Ltd.* v. *Province of Bombay* (1948) 76 I.A. 57, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 109 of 1957.

Appeal by special leave from the judgment and order dated March 1, 1956, of the Bombay High Court in Appeal No. 20 of 1956.

G. S. Pathak, K. H. Bhabha, H. M. Vakeel and *I. N. Shroff*, for the appellants.

C. K. Daphtary, Solicitor General of India, B. K. Khanna and *P. D. Menon*, for the respondents.

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C. K. Daphtary, Solicitor General of India, S. N. Andley, Rameshwar Nath and *P. L. Vohra,* for the Interveners.

1962. April 11. The Judgment of Sinha C. J., Ayyangar, Mudholkar and Aiyar, JJ., was delivered by Ayyangar, J., Subha Rao, J. delivered a separate judgment.

Ayyangar J.

AYYANGAR, J.—This is an appeal by special leave from the judgment of a Division Bench of the Bombay High Court affirming the judgment of a learned Single Judge whereby a petition filed under Article 226 of the constitution by the appellants was dismissed. By their petition, the appellants challenged the validity of a notification issued by Forward Markets Commission a statutory body created by the Forward Markets Regulation Act 1952 (LXXIV of 1952) (hereinafter referred to as the Act) to the authorities of the East India Cotton Association, Bombay (which will be referred to as the Association) intimating to them that the continuation of trading in certain types of forward contracts in cotton including that known as "hedge contracts" was "detrimental to the interest of the trade and the public interest and to the larger interests of the economy of India" and directed these contracts to be closed out, to be settled at prices fixed in the notification.

It is necessary to set out briefly certain facts in order to appreciate the points raised by the appeal. The East India Cotton Association is an "association" which has been recognised by the Central Government under s. 6 of the Act. The three appellants are members of the Association carrying on business in partnership. The appellants had, prior to December 1955, entered into "hedges contracts" in respect with other members of the Association for settlements in February and May 1956. There was no dispute that these

contracts were in accordance with the bye-laws of the Association as they stood at the date when the contracts were entered into. The terms and conditions of forward contracts in cotton including "hedge contracts", and the manner of their implementation, were governed by the provisions contained in certain bye-laws of the Association and of these that relevant to the consideration of the matters in this appeal was bye-law 52AA which on the date when the appellants entered into their contracts ran as follows:—

> "52-A.A. (1) whether or not the prices at which the cotton may be bought or sold are at any time controlled under the provisions of the Essential Commodities Act, 1955, if the Textile Commissioner with the concurrence of the Forward Markets Commission and after consultation with the Chairman (of the Board), be of opinion that the continuation of hedge trading is likely to result in a situation deterimental to the larger interests of the economy of India and so informs the Board, the Board shall forthwith cause a notice to be posted on the Notice Board to that effect and on the posting of such notice and notwithstanding anything to be contrary contained in these bye-laws or in any hedge or on call contract made subject to these Bye-laws, the following provisions shall take effect.
>
> (2) Every hedge contract and every on call contract in so far as the cotton is uncalled thereunder or "in so far as the price has not been fixed thereunder entered into between a member and a member or between a member and a non-member then outstanding shall be deemed closed out at such rate, appropriate to such contract as shall be fixed by the Textile Commissioner and the provisions

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of Clauses (3), (4) and (6) of Bye-laws 52A in so far as they apply to hedge and on call contracts, shall apply as if they formed part of this Bye-law. After the affixation of the said Notice on the Notice Board trading in hedge and on call contracts shall be prohibited until the Textile Commissioner with the concurrence of the Forward Markets Commission and after consultation with the Chairman, permits resumption".

Towards the end of 1955 the Chairman of the Association appears to have apprehended that the Forward Market in cotton was heading for a crisis which was in part due to the transacting of unbridled option business, which though prohibited by the Act and also by the bye-laws of the Association was nevertheless indulged in on a large scale. The chairman brought this situation to the notice of the members of the Board of the Association at a meeting held on December 16, 1955, and suggested that they should give serious thought to this vital problem. It may be mentioned that the government also were anxiously considering the steps to be taken to solve or avert the crisis. The action which the government took in this matter is reflected in a notification issued by them on December 23, 1955, by which in exercise of the powers conferred on them by s. 14 of the Act they directed the Association to suspend its business in Indian cotton hedge contracts for delivery in February 1956 and May 1956 for a period of 7 days with effect from the date of the notification. The situation did not apparently improve as a result of this temporary suspension so that before the expiry of the work fortnight, action under the same provision was again taken under a notification dated December 30. 1955, by which the period of 7 days was extended by a further period of 7 days i. e. till 6. 1. 56. A meeting of the Board of Association was held on

January 6, 1956, i. e., the day on which the suspension of forward business expired when the following resolution was unanimously passed :—

> "In view of the suspension of forward trading by government the Board hereby resolves under bye-law 52 that an emergency has arisen or exists and prohibits until further notice, subject to the concurrence of the Forward Markets Commission as from Saturday, the 7th January, 1956, trading in hedge contracts for February and May 1956, deliveries above a maximum rate of Rs. 700/- per candy".

Thereupon a suit (numbered as suit 2/1956) was filed by a member of the Association as representing himself and all other members, on the original side of the High Court, Bombay against the Association and its Board, challenging the validity of the notification of Government suspending forward trading, as also of the resolution of the Board, just now extracted. An application for the grant of interim stay was made for restraining the Board from giving effect to its resolution but this was refused by the learned trial Judge and an appeal was filed against the refusal.

While things were in this state the Central Government, in exercise of the powers conferred on them by s. 12 of the Act, made a new bye-law which was published in a Gazette of India Extraordinary dated January 21, 1956, in substitution of bye law 52 AA set out earlier. The new bye-law ran :—

> "52 AA (1) Whether or not prices at which cotton may be bought or sold are at any time controlled under the provisions of the Essential Commodities Act, 1955, if the Forward Markets Commission is of the opinion

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that continuation of trading in hedge contracts for any delivery or deliveries is detrimental to the interest of the trading or the public interest or to the larger interests of the economy of India and so notifies the Chairman, then notwithstanding anything to the contrary contained in these bye-laws or in any hedge or on call contract made subject to these bye-laws the following provisions shall take effect.

(2) Every hedge contract and every on call contract in so far as the cotton is uncalled thereunder or in so far as the price has not been fixed thereunder and relating to the delivery or deliveries notified under clause (1) entered into between a member and a member or between a member and a non-member then outstanding shall be deemed closed out at such rate appropriate to such contract and with effect from such date as shall be fixed by the Forward Markets Commission and the provisions of clauses (3), (4) and (6) of Bye-laws 52-A in so far as they apply to hedge and on call contracts shall apply as if they formed part of this Bye-law".

This bye law was communicated to the Board of the Association on January 23, 1956.

We might here state that the validity of this new bye-law has been impugned on various grounds and the alleged invalidity of this bye-law serves as the main foundation for challenging the validity of the notification of the Forward Markets Commission issued under the powers conferred by it.

On January 24, 1956, the appeal from the order refusing the interim injunction in Suit No. 2 of 1956 was settled between the parties on these terms :

"(1) The impugned resolution dated January 6, 1956, declared to be valid,

(2) The Board of Directors to meet on January 25, 1958, and consider under bye-laws 52 (2) whether the rate of Rs. 700 fixed under the said resolution should continue or whether it should be waived. In considering the same the Board will apply its own mind and exercise its own judgment".

On the same day, i.e. January 24, 1956, the Forward Markets Commission took action under the powers vested in them under the new bye-law 52 AA which had been made by government three days earlier. By a communication addressed to the Chairman of the Association, the Commission stated :

> "In pursuance of cl. (1) of the bye-law 52AA of the Bye-laws of the E.I.C.A. Ltd., Bombay I hereby notify to you that the Forward Markets Commission is of the opinion that continuation of trading in the hedge contracts for February and May 1956 delivery is detrimental to the interests of the trade and the public interest and the larger interest of the economy of India and fixed under cl. (2) of the said bye-law; that the rates prevailing at the time at which the trading in the said contracts closed on January 24, 1956, viz., Rs. 700/- for February and Rs. 686/8/- for May delivery as the rates at which and January 25, 1956 as the date with effect from which the hedge contracts and on call contracts in so far as the cotton is uncalled thereunder or in so far as the price has not been fixed thereunder relating to the said delivery shall be deemed to be closed out".

Thereupon the three appellants who are partners carrying on business in cotton under the name and style of Indramani Pyarelal Co. moved the High Court of Bombay by a petition under Art. 226 of the Constitution on January 27, 1956, for a writ of *mandamus* or a direction in the nature of

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mandamus against the members of the Forward Markets Commission who were individually impleaded as respondents to the petition, ordering them to cancel or withdraw the notification dated January 24, 1956, whose validity was impugned on various grounds. The petition was heard by a learned single Judge who dismissed it by his order dated February 23, 1956. An appeal was filed therefrom to a Bench of the High Court and when this was also dismissed the petitioners moved for a certificate of fitness to appeal to this Court but the same having been rejected, they applied for and obtained special leave from this Court, and that is how the matter is now before us.

The submissions of Mr. Pathak learned Counsel for the appellant in support of the appeal may be classified under three main heads : (1) The notification dated 24th January, 1956, served on the Board of the Association by the Forward Markets Commission was ultra vires for the reason that bye-law 52AA as amended by the Central Government on January 21, 1956, was invalid. (2) Assuming the byelaw to be valid it could not operate retrospectively or be availed of retrospectively so as to affect rights under existing contracts subsisting on the day the amended bye-law was notified in the Gazette but that it could if at all, be validly applied only to Forward hedge contracts entered into thereafter. (3) The notification by the Forward Markets Commission was improper and malafide and was therefore invalid.

It would be convenient to deal with these points in that order : (1) The first of the points raised raises the question of the validity of bye-law 52 AA as amended by the Central Government on January 21, 1956. Learned Counsel divided his submission on this matter into two sub-heads: (a) that the Forward Markets Commission could not, on a proper construction of the Act, be validly vested

with the power with which it was clothed by the amended bye-law, and (b) that it was beyond the power of the Association to have conferred the power which it purported to do under the amended bye-law 52AA. Put in other words, the objections were that the Forward Markets Commission could not, having regard to the terms of the statute under which it was created, be a proper recipient of the power with which it was vested by the bye-law and secondly that the Association was in law incapable of conferring that power on the Forward Markets Commission or on any other body.

We shall first take up for consideration the argument that the Forward Markets Commission was in law incapable of being the recipient of the power conferred by the bye-law under which it was empowered to issue the impugned notification. For this purpose it is necessary to examine in detail the relevant provisions of the Act. Section 2 (b) defines 'Commission' as meaning "The Forward Markets Commission" established under s. 3. Section 3 (1) enacts :

> "3. (1) The Central Government may, by notification in the Official Gazette establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act."

The point urged by learned Counsel was that the function or the duty cast upon it by the amended bye-law 52 AA was not such as could be assigned to the Commission *"by or under this Act."* The meaning of the words 'by or under' and the extent and nature of the duties assigned to the Commission by the Act will therefore require careful examination. Section 4 relates to the functions of the Commission and it is the proper construction of this

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section that has loomed large in the arguments on this point. It is, therefore, necessary to set this out in full :

"4. The functions of the Commission shall be—

(a) to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from any association or in respect of any other matter arising out of the administration of this Act ;

(b) to keep forward markets under observation and to draw the attention of the Central Government or of any other prescribed authority to any development taking place, in or in relation to, such markets which, in the opinion of the commission is of sufficient importance to deserve the attention of the Central Government and to make recommendations thereon ;

(c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to to such goods ;

(d) to make recommendations generally with a view to improving the organisation and working of forward markets ;

(e) to undertake the inspection of the accounts and other documents of any recognished association whenever it considers it necessary ; and

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed".

Pausing here it is necessary to add that the expression "prescribed" found at the end of cl. (f) has been defined by s. 2(h) of the Act to mean "Prescribed by rules made under the Act".

Before considering the points urged as regards the construction of this section taken in conjuction with the terms of s.3(1) we shall refer to a few other provisions which are of some relevance in the present context. Section 3(2) which confers power on the Central Government to call for periodical returns from Recognised Associations and to direct such enquiries as they consider necessary to be made, empowers the government to direct the Commission to inspect the accounts and other documents of any recognised Association or of any of its members and submit its report thereon to the Central Government [vide s. 3(2)(c)]. Sub-s. (4) of this section enacts :

"8(4). Every recognised association and every member thereof shall maintain such books of account and other documents as the Commission may specify and the books of account and other documents so specified shall be preserved for such period not exceeding three years as the Commission may specify and shall be subject to inspection at all reasonable times by the Commission".

Section 28 reads :

"28. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act,

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(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the terms and conditions of service of members of the Commission ;

(b) the manner in which applications for recognition may be made under section 5 and the levy of fees in respect thereof ;

(c) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted ;

(d) the particulars to be contained in the annual reports of recognised associations ;

(e) the manner in which the bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised be published for criticism ;

(f) the constitution of the advisory committees established under section 26, the terms of office of and the manner of filling vacancies among members of the committee ; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings ; and the matters which may be referred by the Central Government to the advisory committee for advice ;

(g) any other matter which is to be or may be prescribed."

The argument on this part of the case was briefly this : The Forward Markets Commission is a statutory body specially created for the purposes of the Act. The powers which may be conferred upon the Commission and the duties which it may be called on to discharge are therefore subject to the provisions of the Act. No more power can be conferred upon this body than what the Act allows

and the power under the amended bye-law 52AA is not one which is contemplated by the Act as conferable on it. Section 4 defines the functions of the Commission under five general heads (a) to (e) with a residuary clause contained in cl. (f). The powers or duties dealt with in cls. (a) to (e) are in their essence either recommendatory or advisory. In the context therefore "the other" duties or "other" powers which may be assigned to the Commission under cl. (f) must be either *ejuesdem generis* with advisory or recommendatory powers or of a nature similar to those enumerated in the previous sub-clauses.

In support of these submissions learned Counsel invited our attention to several decisions in which ancillary powers which might be implied from the grant of certain express powers were referred to. In particular it was submitted that the Court would not imply a power which it was not absolutely necessary to effectuate on express grant or was need to prevent the nullification of an express power that was granted. In our opinion, these decisions afford no assistance for resolving the controversy before us. There is no question here of deducing an implied power from the grant of an express one. What we are concerned with is the scope of an express power or rather whether the grant of the power conferred upon the Commission by the bye-law could be held to be a power which could be assigned to the Commission under cl. (f). So far as the terms of cl. (f) are concerned, there is no limitation upon the nature of the power that might be conferred except, of course, that which might flow from its having to be one in relation to the regulation of forward-trading in goods which the Act is designed to effectuate. Any limitation therefore would have to be deduced from outside cl.(f) of s. 4. Taking each of the clauses (a) to (e), it is not possible to put them positively under one genus in order

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that there might be scope for the application of the *ejusdem generis* rule of construction. Negatively, no doubt it might be said that none of these five clauses confer an executive power such as has been vested in them by the amended bye-law 52AA but this cannot be the foundation for attracting the rule of construction on which learned Counsel relies. On the other hand, if there is no common positive thread running through cls.(a) to (e) such as would bring them under one genus and negatively they do not expressly include any administrative or executive functions, that itself might be a reason why the expression "other" occurring in cl.(f) shoud receive the construction that it is intended to comprehend such a function. Learned Counsel further suggested that even if the rule of *ejusdem generis* did not apply, the allied rule referred to at page 76 of the report of *Western India Theatres Ltd.* v. *Municipal Corporation of Poona*, that the matters expressly referred to might afford some indication of the kind and nature of the power, might be invoked, but we consider that, in the context, there is no scope for the application of this variant either. What we are here concerned with is whether it is legally competent to vest a particular power in a statutory body, and in regard to this the proper rule of interpretation would be that unless the nature of the power is such as to be incompatible with the purpose for which the body is created, or unless the particular power is contra-indicated by any specific provision of the enactment bringing the body into existence, any power which would further the provisions of the Act could be legally conferred on it. Judged by this test it would be obvious that the power conferred by the bye-law is one which could be validly vested in the Commission.

A more serious argument was advanced by learned Counsel based upon the submission that a

power conferred by a bye-law framed under s. 11 or 12 was not one that was conferred "by or under the Act or as may be prescribed". Learned Counsel is undoubtedly right in his submission that a power conferred by a bye-law is not one conferred "by the Act", for in the context the expression "conferred by the Act" would mean "conferred expressly or by necessary implication by the Act itself". It is also common ground that a bye-law framed under s. 11 or 12 would not fall within the phraseology "as may be prescribed", for the "expression" 'Prescribed' has been defined to mean "by rules under the Act", i.e., those framed under s. 28 and a bye-law is certainly not within that description. The question therefore is whether a power conferred by a bye-law could be held to be a power "conferred *under* the Act". The meaning of the word *"under the Act"* is well-known. "By" an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words *"under* the Act" would, in that context, signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, by laws made by a subordinate law-making authority which is empowered to do so by the parent Act. This distinction is thus between what is directly done by the enactment and what is done indirectly by rule-making authorities which are vested with powers in that behalf by the Act. (vide *Hubli Electricity Company Ltd.* vs. *Province of Bombay*, and *Narayanaswami Naidu* vs. *Krishna-Murthi*.) That in such a sense bye-laws would be subordinate-legislation *"under* the Act" is clear from terms of ss. 11 and 12 themselves. Section 11 (1) enacts:

> "11. (1) Any recognised association may, subject to the previous approval of the Central

(1) 76 I.A. 57, 66.
(2) I.L.R. 1958 Mad 513, 547.

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Government. make bye-laws for the regulation and control of forward contracts",

and sub-s. (2) enumerates the matters in respect of which bye-laws might make provision. Sub-s. (3) refers to the bye-laws *as these made under this section* and the provisions of sub-s. (4) puts this matter beyond doubt by enacting:

> "11 (4) Any bye-laws made *under this section* shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of State in which the principal office of the recognised association is situate ;
> ....."

Section 12 under which the impugned bye-law was made states in sub-s. (2) :

> "12 (2) where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised association",

and in sub-s. (4):

> "12. (4). The making or the amendment or revision of any *bye-laws under this section* shall in all cases be subject to the condition of previous publication",
> ....."

Having regard to these provisions it would not be

possible to contend that not withstanding that the bye-laws are rules made by an Association under s. 11 or compulsorily made by the Central Government for the Association as its bye-laws under s. 18, they are not in either case Subordinate legislation under s. 11 or 12 as the case may be, of the Act and they would therefore squarely fall within the words "under the Act" in s. 4(f). Indeed, we did not understand Mr. Pathak to dispute this proposition.

His contention however was that when cl. (f) specifically made provision for powers conferred by "rules" by the employment of the phrase "or as may be prescribed" and, so to speak, took the "rules" out of the reach of the words "under the Act" it must necessarily follow that every power confered by Subordinate law-making body must be deemed to have been excepted from the content of that expression and that consequently in the Content the word "by the Act" should be held to mean "directly by the Act" i.e., by virtue of positive enactment, of the words "under the Act" should be held to be a reference to powers gatherable by necessary implication from the provisions of the Act. As an instance learned Counsel referred us to the power of the Central Government to direct the Commission to inspect the accounts and other documents of any recognised association or of any of its members and submit its report thereon to the Central Government under s. 8 (2)(c) and suggested that this would be a case of a power or duty which would be covered by the words "under the Act". We find ourselves wholly unable to accept this. If without the reference to the phrase "as may be prescribed" the words "under the Act" would comprehend powers which might be conferred under "bye-laws" as well as those under "rules" we are unable to appreciate the line of reasoning by which powers conferred by bye-laws have to be excluded, because of the specific reference to powers conferred by "rules".

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Undoubtedly, there is some little tautology in the use of the expression "as may be prescribed" after the comprehensive reference to the powers conferred "*under* the Act", but in order merely to avoid redundancy you cannot adopt a rule of construction which cuts down the amplitude of the words used except, of course to avoid the redundancy. Thus the utmost that could be that though normally and in their ordinary signification the words "under the Act" would include both "rules" framed under s.28 as well as "bye-laws" under s. 11 or 12, the reference to "rules" might be eliminated as tautologous since they have been specifically provided by the words that follow. But beyond that to claim that for the reason that it is redundant as to a part, the whole content of the words "under the Act" should be discarded, and the words "by the Act" should be read in a very restricted and, if one may add, in an unnatural sense as excluding a power confered by necessary implication, when such a power would squarely fall within the reach of these words would not, in our opinion, be any reasonable construction of the provision. We need only add that the construction we have reached of s.4 (f) is reinforced by the language of s. 3 (1) which is free from the ambiguity created by the occurrence of the expression "as may be prescribed" in the former. We have therefore no hesitation in holding that there was no incompetency in the Forward Markets Commission being the recipient of the power which was conferred upon them by bye-law 52AA as amended.

The next part of the submission in relation to this matter was that it was not competent for the Association to have framed this bye-law and that the powers of the Central Government under s. 12 and of the Association under s. 11 in regard to the framing of bye-law being co-extensive, the bye-law framed was not competent to confer any power on the commission.

This contention was urged with reference to two considerations:

(a) that a bye-law of the type now in controversy was not within s.11 of the Act, and (b) that having regard to the provision contained in the Articles of Association of the Association the bye-law was beyond the powers of the Association to frame. These we should deal in that order.

The first objection naturally turns upon whether the bye-law is one which could be comprehended with s. 11 of the Act. Its first sub-section enacts;

"11(1) any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contract."

That the impugned bye-law is one for the regulation and control of forward contracts cannot be disputed, and the terms being very general would include a bye-law of the type now impugned. In this connection reference may be made to bye-law 52AA which the impugned bye-law amended, under which power was vested in the Textile Commissioner with the concurrence of the Forward Markets Commission, (though after consultation with the Chairman of the Board) to direct the enclosure of hedge contracts and fix the rates at which such contracts might be closed out—a provision whose validity was not impugned in the present proceedings. Mr. Pathak no doubt submitted that he was not precluded from challenging before us even the earlier bye-law for the purpose of sustaining his argument that the amended bye-law was *ultra vires*. Nevertheless it must be apparent that it was always assumed that bye-laws which vest in authorities external to the Association the

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power to interfere with forward dealing was within the scope of the bye-law making powers under s. 11.

This general provision apart, sub-s. (2) of s. 11 enact:

> "11(2). In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—
>
> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d) fixing, altering or postponing days for settlement;
>
> (e) determining and declaring market rates, including opening, closing, highest and lowest rates for goods;
>
> (f) .....
>
> (g) .....
>
> (h) .....
>
> (i).....
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> (j).....
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> (k).....
>
> (l).....
>
> (m).....
>
> (n) the regulation of fluctuations in rates and prices;
>
> (o) the emergencies in trade which may arise and the exercise of powers in such emergencies including the power to fix maximum prices;

(p) ——————————————————————."

As the power of the Central Government to make bye-laws under s. 12 is admittedly co-extensive with the power of the Associations to frame bye-laws, it is not necessary, to refer to the terms of the latter section.

Before considering in detail the argument on this part of the case we consider it useful to set out a few of the bye-laws of the Association whose validity has not been challenged and which would show the manner in which the Association has been functioning in emergencies such as that for which the impugned bye-law provides, Bye-law 52 which still exists:

"52.(1) If in the opinion of the Board an emergency has arised or exists, the Board may, by a resolution,

(i) passed by a majority of not less than —— ——————————— ————, and

(ii) confirmed ——————————————————

prohibit, as from the date of such confirmation or from such later date as may be fixed by the Board in the resolution referred to in sub-clause (1),

(a) trading in the Hedge Contract for any delivery or deliveries —————————— or
(b) all trading in such contracts as are referred to in clause (a) for a specified period————

————————————————————————

"52A.—If the Board, at a meeting specially convened in this behalf, resolve that a state of emergency exists or is likely to occur such as shall in the opinion of the Board make free trading in forward contracts extremely difficult, the Board shall so inform the Forward Markets Commission and upon the

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Forward Markets Commission intimating to the Board its agreement with such resolution, then notwithstanding anything to the contrary contained in these bye-laws or in any forward contract made subject to these Bye-laws, the following provisions shall take effect—

(1) The Board shall at a meeting specially convened in this behalf,

(a) fix a date for the purpose hereinafter contained,

(b) fix settlement process for forward contracts,

(c) fix a special Settlement Day.

(2) .....Every hedge contract entered into between a member and a member or between a member and a non-member outstanding on the date fixed under clause (1)(a) hereof shall be demand closed out at the rate appropriate to such contracts fixed under clause (1)(b) hereof."

3—6———————————————————

and then follows Bye-law 52AAA.

Apart for the amended bye-law occurring in the group of existing bye-laws making provision for emergencies to which sub-clause (o) of s.11(2) refers, there is no dispute that there was an emergency in the forward market and that the impugned bye-law was framed to meet such a contingency. It was not contended before us that the method by which the emergency was resolved by the impugned bye-law – viz., by closing out subsisting contract was not the usual method employed for the purpose. If therefore the bye-law was provision for an emergency within s.11 (2)(o) then it would seem to follow that for the resolution of that emergency,

every one of the matters which could be included in such bye-laws would be attracted to it, and so we find it impossible to accept Mr. Pathak's submission regarding the invalidity of the bye-Law.

An analysis of the impugned bye-law 52AA and comparison of it with that which it replaced would show that the main point of difference is that whereas formerly action to stop forward trading and for closing out contracts and to fix the rate at which contracts were to be closed out was vested in the Textile Commissioner, acting with the concurrence of the Forward Markets Commission, under the amended bye-law the power is directly vested in the Forward Markets Commission itself. The arguments addressed to us on this point are concerned not so much with the propriety as with the vires of a provisions by which the power to close out contracts by the issue of a notification is vested in the Commission. Apart from an argument immediately to be noticed, we do not see how, if such a power could validly be conferred upon a Textile Commissioner or even exercised by the Board of the Association under a bye-law framed under s. 11, the same would be beyond the power to make bye-laws under s. 11 by the mere fact that the authority vested with the power is the Forward Markets Commission. We are clearly of the opinion that bye-law 52AA is well within the bye-law making power under s. 11 of the Act and therefore within s. 12.

It was then said that the amended bye-law 52AA was invalid as in violation of the Articles of Association of the Association being an impermissible delegation of the powers vested in the board of the Association by its Memorandum of Articles. In this context Mr. Pathak placed reliance on cl. 64 of the Articles as laying down the limits within which

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the Board might delegate their powers. He contended that the conferment of the power to take action on the Forward Markets Commission was thus contrary to and inconsistent with the powers of the Association under this Article. It would be seen that if learned Counsel is right, this would render invalid not merely bye-law 52AA as now amended but even the bye-law as it originally stood, but as already stated learned Counsel urged that he was not precluded from raising this contention. This point was not raised in the Court below but having heard arguments on it we shall pronounce upon it. We consider that there is no substance in this objection. Article 64 on which reliance was placed runs in these terms:

> "The Board may delegate any of their powers, authorities and duties to committees consisting of such members or members of their body or consisting of such other members or members Associate Members, Special Associate Members or Temporary Special Associate Members of the Association not being Directors, or partly of Directors and partly of such other members and/or Associate Members, Special Associate Members or Temporary Special Associate Members as the Directors may think fit. Any Committee so formed shall in the exercise of the powers so delegated conforms to any regulation that may from time to time be imposed on it by the Directors".

In so far as the Memorandum is concerned, its paragraph III states the objects for which the Association was established, as being, inter alia :

> "————————————————————"
>
> (e) To make from time to time bye-laws for———— ————————————the opening and closing of markets in cotton and the

times during which they shall open or closed; the making performance and determination of contracts——————the prohibition of specified classes of dealings and the time during which such prohibition shall operate; the provision of an dealing with 'Croners' or 'Bear Raids' in any and every kind of cotton and cotton transactions so as to prevent or stop or mitigate undue speculation inimical to the trade as a whole; the course of business between Original Members inter se or between any of them on the one hand, and their constituents on the other hand, the forms of contracts between them and their rights and liabilities to each other in respect of dealings in cotton——————"

The Articles dealing with bye-laws, the manner in which they are to be made as well as the subject to which they might relate is to be found in Articles 73 and 74. The relevant portion of Article 73 runs:

"Under and in conformity with any Statutory provisions for the time being in force, the Board may pass and bring into effect such bye-laws as may be considered in the interest of or conducive to the objects of the Association——————"

and Article 74 runs:

"Without prejudice to the generality of the powers to make bye-laws conferred by the Memorandum of Association and by these Articles and under or in the absence or any statute or statutes in force in that behalf, it is hereby expressly declared that the said powers to make, alter, add to, or rescined Bye-laws including power to do so in regard to all or any of the following matters——"

Sub-para (7) repeats inter alia the contents of

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Paragraph III (e) of the Memorandum of Association which we have extracted. The entire argument of Mr. Pathak on Article 64 was based on the footing that the power to make a bye-law was vested solely in the Board, because it is only the powers of the Board that are subject to the limitation imposed by Article 64. If however the power to make a bye-law was not confined to the Board but bye-laws might be framed by the Association itself, the argument based on Article 64 would be seen to have no validity. That the latter is the true position is clear from Article 73 which reads:

> "The Board's powers as aforesaid in relation to bye-laws shall not derogate from the powers hereby conferred upon the Association who may also in the same way and for the same purpose from time to time pass and bring into effect new bye-laws and rescind or alter or add to any existing bye-law by resolution passed by a majority of two-thirds at the least of the Members present and voting at the General Meeting previous to which at least fourteen day's notice has been given that a Member intends at such meeting to propose the making of such bye-law or the decision, alteration of or addition to a bye-law or bye-laws".

If therefore a bye-law could be made by the Association it is manifest that there is no limitation upon its powers such as is to be found in Article 64 which applies only to the Board. The validity of the bye-law therefore cannot be challenge by reference merely to the powers of the Board, because what is contemplated by s. 11 is the power of the "recognised Association" to frame the bye-law. We have therefore no hesitation in rejecting the contention that the bye-law as framed contravenes the rules of the Association.

Mr. Pathak next contended that the impugned bye-law was invalid because it operated retrospectively. This argument he presented under two heads. His first submission was that consistently with the rule that an enactment would not be construed as retrospective unless the same were to have that effect by express language or by necessary intendment, the impugned bye-law should be held to affect and close out only those contracts which were entered into after the date on which the bye-law came into operation and that if he was right in this construction, the impugned notification had gone beyond the powers conferred on the Commission by the new bye law. We are wholly unable to accept this submission as to the construction of the bye-law. The first paragraph of the bye-law by its last words points out the consequence of a notification by the Forward Markets Commission. It provides that if the Chairman were notified that the continuation of trading in hedge contracts for any delivery etc. "was detrimental to the interests of the general public or the larger interests of the economy of India," then notwithstanding anything to the contrary contained in the bye-laws of the Association or in any hedge etc. contract the provisions contained in the second paragraph should have effect. If one had regard only to paragraph I and nothing more there might be some room for a plausible argument that subsisting contracts were not to be affected, though the expression "notwithstanding anything to the contrary contained in any hedge etc. contract" would undoubtedly militate against any such contention. But such ambiguity ifany is cleared by the provision in paragraph 2 which has effect on the notification under paragraph I, for by express terms it refers to "every hedge contract" and "every on call contract" "in so far as cotton is uncalled thereunder or in so far as the price has not been fixed thereunder" This therefore places it beyond doubt that executory contracts

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which were subsisting on the date of the notification were within its scope and were intended to be affected by it. And this, if anything more were needed, is made more certain by the reference in parts (2) to the provisions of cls. (3), (4) and (6) of bye-law 52A. Bye-law 52A deals with cases where the Board of the Association resolves, to repeat its terms "that a state of emergency exists or is likely to occur which makes free trading in forward contracts difficult and on obtaining the concurrence of the Forward Markets Commission, then notwithstanding anything to the contrary contained in these Bye-laws *subject to these Bye-laws*. The following provision shall have effect :

> "(1) The Board shall at a meeting specially convened in this behalf,
>
> (a) fix a date for the purposes hereinafter contained,
>
> (b) fix settlement prices for forward contracts,
>
> (c) fix a special Settlement Day."

Clause (3) of bye-law 52A runs :—

> "52A (3) All differences arising out of every such contract between members shall be paid through the Clearing House on the Settlement Day fixed under clause (1) (c) hereof..... ....."

Clause (4)

> "52A (4) All differences arising out of every such contract between a member and a non-member shall become immediately due and payable."

and Clause (6)

> "52A (6) In hedge and on call contracts entered into between a member and a non-member and in contracts to which clause (5)

> applies, any margin received shall be adjusted and the whole or the balance thereof, as the case may be, shall be immediately refundable."

It is thus clear that the entire machinery for resolving emergencies such as is contemplated by bye-law 52A includes the suspension of forward business together with the closing out of forward contracts of hedge and on call types whose volume or nature had led to the emergency. It proceeds on the basis that the crisis could not be met unless subsisting contracts were closed out and, so to speak, a new chapter begun. That is the ratio underlying the combined effect of bye-laws 52AA and 52 A and in view of this circumstance the argument that on a reasonable construction of the amended bye-law it would apply to constracts to be entered into in future and not to subsisting contracts must be rejected.

If he was wrong in his argument that the bye-law on its proper construction did not affect subsisting contracts such as these of the Appellants, Mr. Pathak's further submission was that the impugned bye-law was invalid and ultra vires of the Act because it purported to operate retrospectively affecting vested rights under contracts which were subsisting on the day on which the bye-law came into force.

Mr. Pathak invited our attention to a passage in Craies' Statute Law, 5th Ed. p. 366 reading:

> "Sometimes a statute, although not intended to be retrospective, will in fact have a retrospective operation. For instance if two persons enter into a contract, and afterwards a statute is passed which, as Cockburn, C. J. said in Duke of Devonshire v. Barrow, etc., Co. (1877) 2 Q. B. D. 286, 289) 'engrafts an enactment upon existing contracts' and

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thus operates so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, in effect a retrospective operation."

The bye-law in so far as it affects executory contracts requiring such contracts to be closed out on a day not originally contracted for and at a price fixed by law is in the above sense undoubtedly retrospective. The submission of learned Counsel was that though a legislature which had plenary power in this regard could enact a statute having a retrospective operation, Subordinate legislation, be it a rule, a bye-law or a notification, could not be made so as to have retrospective operation and that to that extent the rule, bye-law or notification would be ultra vires and would have to be struck down, relying for this position on the decision of the Mysore High Court reported in AIR 1960 Mys. 326. We do not however consider it necessary to canvass the correctness of this decision or the broad propositions laid down in it. It is clear law that a Statute which could validly enact a law with retrospective effect could in express terms validly confer upon a rule-making authority a power to make a rule or frame a bye-law having retrospective operation and we would add that we did not understand Mr. Pathak to dispute this position. If this were so the same result would follow where the power to enact a rule or a bye-law with "retrospective effect" so as to affect pending transactions, is conferred not by express words but where the necessary intendment of the Act confers such a power. If in the present case the power to make a bye-law so as to operate on contracts subsisting on the day the same was framed, would follow as a necessary implication from the term of s. 11, it would not be necessary to discuss the larger question as to whether and the

circumstances in which Subordinate legislation with retrospective effect could be validly made.

Before proceeding further it is necessary to notice a submission that under the Act, far from there being a conferment of power to make a bye-law so as to affect rights under subsisting contracts, there was a contra indication of such a power being conferred. In this connection Mr. Pathak invited our attention to the terms of ss. 16 and 17 and 19 of the Act under which the Act has itself made special provision for affecting rights such as those if the appellants in the present case. Detailing the consequences of a notification under s. 15, s.16 (a) enacts :—

> "16 (a) Every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification and remaining to be performed after the said date and which is not in conformity with the provision of section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf.

S. 17 (3) enacts

> "17. (3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 15."

and f. 19 (2) runs:—

> "19 (2). Any option in good which has been entered into before the date on which

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this section comes into force and which remains to be performed, whether wholly or in part, after the said date shall, to that extent, becomes void."

Based on these provisions the submission was that Act had made special provisions for retrospective operation of certain notifications so as to affect rights under subsisting contracts and that in cases where there was no such specific provision it was not intended that a bye-law or a notification could have that effect.

We see no force in this argument. The fact that the Act itself makes provision for subsisting contracts being affected, would in our opinion far from supporting the appellants indicate that in the context of a crisis in forward trading the closing out of contracts was a necessary method of exercising control and was the machanism by which the enactment contemplated that normalcy could be restored and healthy trading resumed.

If therefore we eliminate the provisions in ss.16, 17 and 19 as not containing any indication that a power to frame a bye-law with retrospective effect was withheld from the Association, the question whether such bye-law-making power was conferred has to be gathered from the terms of s. 11 itself. Thus considered we are clearly of the opinion that a power to frame a bye-law for emergencies such as those for which a bye-law like 52 AA is intended includes a power to frame one so as to affect subsisting contracts for resolving crisis in Forward Markets. We have already referred to the terms of bye-law 52A which shows that when an emergency of the type referred to s. 11 (2) (a) arises it is not practicable to rescue a forward market from a crisis without (1) putting an end to forward trading, and (2) closing out subsisting contracts so as to start with a clean slate for the

future. When therefore under s. 11 (2) power is conferred to frame a bye-law to provide for:

> "(O) the emergencies in trade which may arise and the exercise of power in such emergencies including the power to fix maximum and minimum prices;"

and this is read in conjunction with clause (g) reading:

> "regulating the entering into, making, *performance, rescission and termination* of contracts....."

It is manifest that the section contemplates the making of a bye-law regulating the performance of contracts, the rescission and termination of contracts and this could obviously refer only to the bye-law affecting rights under contracts which are subsisting on the day the action is taken. It is therefore manifest that s. 11 authorises the framing of a bye-law which would operate retrospectively in the sense that it affects rights of parties under subsisting contracts. Finally it should be borne in mind is that ultimately what we are concerned in s. 11 of the Act is the power of the Association to frame the bye-law, for if the Association could validly frame such a bye-law, the Central Government could under s. 12 have a similar power. We did not hear any argument to establish that the Association had no such power.

There is one other aspect in which the same problem might be viewed and it is this: The contract entered into by the respondents purported to be one *under the bye-laws for the time being in force* and any change in the bye-laws therefore would seem to be contemplated and provided for by the contract itself, so that it might not be correct to speak of the new bye-law as affecting any accrued

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rights under a contract. For when those bye-laws were altered the changes would get incorporated into the contracts themselves, so as to afford no scope for the argument that there has been an infringement of a vested right. In the view however which we have taken about the validity of the bye-law on the ground that it was well within the terms of ss. 11 and 12 we do not consider it necessary to pursue this aspect further or to rest our decision on it.

What remains to consider is the challenge to the notification based on the ground that it was vitiated by having been issued malafide. The ground of malafides alleged was that the impugned notification was issued in order to prevent the Board of Directors of the Association from applying their minds and exercising their judgment which they were directed to do by the terms of the Consent Memo filed on which the appeal from the judgment in C.S. 2 of 1956 was disposed of on January 24, 1956. To the allegation made in this form in the petition the first respondent, the Chairman of the Forward Markets Commission, filed an affidavit in the course of which he pointed out that the continuance of trading in futures was in the circumstances then prevailing in the market detrimental to the interests of the trade and that a conclusion on this matter had been reached by the Commission even before bye-law 52 AA was amended, that the question of closing out existing contracts was engaging the attention of even the Board of the Association from as early as the beginning of January 1956 and it was for the purpose of enabling the Commission to take action to set right matters that bye-law 52AA was amended and that immediately the amended bye-law came into force the Commission took action and issued the notification now impugned. He also pointed out that the liberty given to the Association to consider the matter

under the terms of the Compromise Memo was a factor which had also been taken into account before the notification had been issued. The learned Judges of the High Court accepted this explanation of the circumstances in which the notification came to be issued and considered that on the allegation in the petition no malafides could be inferred. We are in entire agreement with the learned Judges of the High Court on this point. No personal motive or malafides in that sense has been attributed to the members of the Commission and in these circumstances we consider that there is no basis for impugning the notification on the ground that it was not issued bonafide.

This completes all the points urged by the learned Counsel for the appellants. We consider that there is no merit in the appeal which fails and is dismissed with costs.

Subba Rao J.

SUBBA RAO, J.—I regret my inability to agree with the judgment prepared by my learned brother Rajagopala Ayyangar, J. As the facts have been fully stated in the judgment of my learned brother, I need not repeat them except to the extent necessary to appreciate the two points on which I propose to express my opinion.

The appellants carry on business in cotton under the name and style of Indramani Pyarelal Gupta & Co. The said firm is a member of the East India Cotton Association Limited, which is a recognized Association within the meaning of the Forward Contracts (Regulation) Act, 1952, hereinafter called "the Act". The Association has been formed for the purpose of, *inter alia*, promoting and regulating trade in cotton and providing a cotton Exchange and a Clearing House. Under the Act a Forward Markets Commission was formed by the Central Government and respondent is its Chairman and respondents 2 and 3 are its Members.

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Prior to January 21, 1956, on behalf of themselves and their constituents, the appellants entered into hedge contracts in cotton for February 1956 and May, 1956 Settlements with other members of the Association in accordance with its bye-laws. When the said contracts were effected, bye-law 52 AA ran as follows :

> "(1) Whether or not the prices at which cotton may be bought or sold are at any time controlled under the provisions of the Essential Commodities Act, 1955, if the Textile Commissioner with the concurrence of the Forward Markets Commission and after consultation with the Chairman, be of opinion that the continuation of hedge trading is likely to result in a situation detrimental to the larger interests of the economy of India and so informs the Board, the Board shall forthwith cause a notice to be posted on the Notice Board to that effect and on the posting of such notice and notwithstanding anything to the contrary contained in these Bye-laws or in any hedge or on call contract made subject to these Bye-laws, the following provision shall take effect.
>
> (2) Every hedge contract and every on call contract in so far as the cotton is uncalled thereunder, or in so far as the price has not been fixed thereunder, entered into between a member and a member or between a member and a non-member then outstanding shall be deemed closed out at such rate, appropriate to such contract, as shall be fixed by the Textile Commissioner and the provisions of clauses (3), (4) and (6) of Bye-law 52-A, in so far as they apply to hedge and on call contracts, shall apply as if the formed part of this Bye-law. After the affixation of the said notice on the Notice Board, trading in hedge

and on call contracts shall be prohibited until the Textile Commissioner with the concurrence of the Forward Markets Commission and after consultation with the Chairman, permits resumption".

On January 21, 1956, the Central Government, in exercise of power conferred upon it by sub-s. (1) of s. 12 of the Act, notified a new bye-law 52-AA to be substituted in place of the earlier bye-law 52-AA. The new bye-law reads as follows :

"(1) Whether or not prices at which cotton may be bought or sold are at any time controlled under the provisions of the Essential Commodities Act, 1955, if the Forward Markets Commission is of the opinion that continuation of trading in hedge contract for any delivery or deliveries is detrimental to the interest of the trading or the public interest or the larger interests of the economy of India and so notified the Chairman, then notwithstanding anything to the contrary contained in these Bye-laws or in any hedge or on call contract made subject to these Bye-laws the following provisions shall take effect.

(2) Every hedge contract and every on call contract in so far as cotton is uncalled thereunder and relating to the delivery or deliveries notified under clause (1) entered into between a member and a member or between a member and non-member then outstanding shall be deemed closed out at such rate appropriate to such contract and with effect from such date as shall be fixed by the Forward Markets Commission and the provisions of Clauses (3), (4) and (6) of Bye-law 52A in so far as they apply to hedge and on call contracts shall apply as if they formed part of this Bye-law."

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On January 24, 1956, the Forward Markets Commission, in exercise of the power conferred on it under the new bye-law, issued a notification closing out all contracts of February 1956 and May 1956 Settlements at the rates mentioned in the said notification. The petition for a writ of *mandamus* filed by the appellants in the High Court of Judicature at Bombay for ordering the respondents to cancel or withdraw the said notification dated January 24, 1956, was dismissed in the first instance by Coyajee, J., and, the appeal preferred against the judgment of Coyajee, J., was also dismissed by a division Bench consisting of Chagla, C.J., and Tendolkar, J. Hence the appeal.

I purpose, as I have already indicated, to consider the following two questions, as in the view I will be taking on those questions, the appeal will have to be allowed, and no other question, therefore, will arise for consideration. The said questions are : (1) Whether under s. 12 (i) of the Act the Central Government has power to make a bye-law with retrospective effect; and (2) whether under s. 4 (f) of the Act, the Forward Markets Commission can exercise a power assigned to it under a bye-law made by the Government under s. 12 of the Act.

Before considering the scope of the power of the Central Government under s. 12 (1) of the Act, it is necessary to consider whether the new bye-law notified on January 21, 1956, has retrospective effect. There are material differences between the old bye-law 52-AA and the new one substituted in its place. Under the new bye-law the important provision is that all hedge contracts outstanding at the time it came into force shall be deemed to be closed out at such rates as shall be fixed by the Textile Commissioner. Whereas under the old bye-law the Textile Commissioner had to form his opinion with the concurrence of the Forward Markets Commission and after consultation with

the Chairman, under the new bye-law the said power of forming an opinion is conferred solely on the Forward Markets Commission. Whereas under the old bye-law the opinion and was in regard to the question whether hedge trading was likely to result in a situation detrimental to the larger interests of the economy of India under the new bye-law the opinion is in respect of the question whether the continuation of trading in hedge contracts will be detrimental to the interests of trading or the public interest or the larger interests of the economy of India. While under the old bye-law the question to be considered was in regard to hedge trading as such, under the new bye-law it is in respect of the continuation of trading in hedge contracts for any delivery or deliveries. While under the old bye-law the said opinion was comm. unicated to the Board for action, under the new bye-law it is notified to the Chairman. While under the old bye-law trading in hedge and on call contracts could be resumed if the Textile Commissioner, with the concurrence of the Forward Markets Commission and after consultation with the Chairman, permitted the resumption, under the new bye-law the said provision for resumption is omitted. It is, therefore, manifest that the power of closing out a contract under the new bye-law differs from that under the old bye law in respect of the purpose of closing out, the authority empowered to order the close out and the consequences of such closing out. It is idle to contend that the new bye law makes only inconsequential changes in the old bye-law. The new bye-law operates upon an important term of a contract entered into before it came into force, namely, the mode of performance: it carries on its face the vice of retroactivity. In Craies on Statutes, 5th Edn. p, 366, the following passage appropriate to the question now raised is found

".....if a statute is passed which

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renders the performance of a contract impossible, the rule of law is that the contract is frustrated by supervening impossibility, consequently in this case also the statute operates retrospectively."

The learned author proceeds to state at p. 367:

> "The principle of this case has been applied in later cases to contracts the performance of which in manner contemplated by the parties has been rendered impossible by reason of some change in the law."

It is, therefore, clear that the said bye-law, in so far as it purports to effect the mode of performance of the pre-existing contracts, is certainly retrospective in operation. I am assuming for the purpose of the present question that the bye-law cannot be construed in such a way as to confine its operation only to contracts that are entered into after it came into force. If so, the question arises whether the Central Government had power to make a bye law under s. 12 (1) of the Act with retrospective effect-Section 12 (1) of the Act reads:

> "The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognized association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye laws made by such association under that section.'

Section 11 enumerates the matters in respect of which the recognized associations can make bye-laws for the regulation and control of forward contracts. Neither s. 12 nor s. 11 expressly states that a bye-law with retrospective operation can be made under either of those two sections. Full effect

can be given to both the sections by recognizing a power only to make bye-laws prospective in operation, that is, bye-laws that would not affect any vested rights. In the circumstances, can it be held that the Central Government to which the power to make bye-laws is delegated by the Legislature without expressly conferring on it a power to give them retrospective operation can exercise a power thereunder to make such bye-laws. Learned counsel for the respondents contends that, as the Legislature can make a law with retrospective operation, so too a delegated authority can make a bye-law with the same effect. This argument ignores the essential distinction between a Legislature functioning in exercise of the powers conferred on it under the Constitution and a body entrusted by the said Legislature with power to make subordinate Legislation. In the case of the Legislature, Art. 246 of the Constitution confers a plenary power of Legislation subject to the limitations mentioned therein and in other provisions of the Constitution in respect of appropriate entries in the Seventh Schedule. This Court, in *Union of India v. Madan Gopal Kabra* (1), held that the Legislature can always Legislate retrospectively; unless there is any prohibition under the Constitution which has created it. But the same rule cannot obviously be applied to the Central Government exercising delegated Legislative power for the scope of their power is not co-extensive with that of Parliament. This distinction is clearly broughtout by the learned Judges of the Allahabad High Court in *Modi Food Products Ltd. v. Commissioner of Sales-Tax, U. P.* (2), wherein the learned Judges observed:

> "A Legislature can certainly give retrospective effect to pieces of Legislation passed by it but an executive Government exercising subordinate and delegated legislative

(1) [1954] S. C. R. 541. (2) A. I. R. 1956 All. 35.

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powers, cannot make legislation retrospective in effect unless that power is expressly conferred."

In *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers Union* (1) a question arose whether the Governor of U. P., who referred an industrial dispute to a person nominated by him with a direction that he should submit the award not later than a particular date could extend the date for a making of the award so as to validate the award made after the prescribed date. Reliance was placed upon s. 21 of the U. P. General Clauses Act, 1904, in support of the contention that the power of amendment and modification conferred on the State Government under that section might be so exercised as to have retrospective operation. In rejecting that contention, Das, J., as he then was, observed :

> "It is true that the order of April 26, 1950, does not *ex facie* purport to modify the order of February 18, 1950, but, in view of the absence of any distinct provision in section 21 that the power of amendment and modification conferred on the State Government may be so exercised as to have retrospective operation the order of April 26, 1950, viewed merely as an order of amendment or modification cannot, by virtue of section 21, have that effect."

This decision is, therefore, an authority for the position that unless a statute confers on the Government an express power to make an order with retrospective effect, it cannot exercise such a power. The Mysore High Court in a considered judgment in *India Sugar & Refineries Ltd. v. State of Mysore* (2) dealt with the question that now arises for consideration. There, the Government issued

(1) [1953] S.C.R. 439, 447-448. (2) A. I. R. 1960 Mys. 326.

there notifications dated 9-4-1956, 15-10-1957 and 13-2-1958 purporting to act under s. 14 (1) of the Madras Sugar Factories Control Act, 1949, whereby cess was imposed on sugarcane brought and crushed in petitioner's factory for the crushing season 1955-56, 1956 57 and 1957-58 respectively. One of the question raised was whether under the said section the Government had power to issue the notifications imposing a cess on sugarcane brought and crushed in petitioner's factory for a period prior to the date of the said notifications. Das Gupta, C. J., delivering the judgment of the division Bench, held that it could not. The learned Advocate General, who appeared for the State, argued, as it is now argued before us, that in a case where power to make rules is conferred on the Government and if the provision conferring such a power does not expressly prohibit the making of rules with retrospective operation, the Government in exercise of that power can make rules with retrospective operation. In rejecting that argument, the learned Chief Justice, delivering the judgement of the division Bench, observed at p. 332:

> "In my opinion a different principle would apply to the case of an executive Government exercising subordinate and delegated legislative powers. In such cases, unless the power to act retrospectively is expressly conferred by the Legislature on the Government, the Government cannot act retrospectively."

With respect, I entirely agree with the said observations. The same question was again raised and the same view was expressed by the Kerala High Court in *C. W. Motor Service (P) Ltd. v. State of Kerala* (1). There the Regional Transport Authority, Kozhikode, granted a stage carriage permit to the third respondent therein in respect of a proposed

(1) A. I. R. (1957) Ker. 347, 348.

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Ghat route. The grant of the permit was challenged on the ground that when that order was passed there was no constituted Regional Transport Authority for the district. It was contended on behalf of the contesting respondent that the said defect was cured by a subsequent notification issued by the Government whereby Government ordered the continuance of the Road Transport Authority from the date of the expiry of the term of the said Authority till its successor was appointed. The High Court held that the notification with retrospective operation was bad. In that context, Varadaraja Iyengar, J., observed :

> "The rule is well-settled that even in a case where the executive Government acts as a delegate of a legislative authority, it has no plenary power to provide for retrospective operation unless and until that power is expressly conferred by the parent enactment."

The House of Lords in *Howell v. Falmouth Boat Construction Co. Ltd.* (1) expressed the same opinion and also pointed out the danger of conceding such a power to a delegated authority. There, a licence was issued to operate retrospectively and to cover works already done under the oral sanction of the authority. Their Lordships observed:

> "It would be a dangerous power to place in the hands of Ministers and their subordinate officials to allow them, whenever they had power to license, to grant the licence *ex post facto*; and a statutory power to license should not be construed as a power to authorise or ratify what has been done unless the special terms of the statutory provisions clearly warrant the construction."

It is true that this is a case of a licence issued by an

(1) (1951) A. C. 837.

authority in exercise of a statutory power conferred on it, but the same principle must apply to a bye-law made by an authority in exercise of a power conferred under a statute. Our Constitution promises to usher in a welfare State. It involves conferment of powers of subordinate legislation on government and governmental agencies affecting every aspect of humman activity. The regulatory process is fast becoming an ubiquitous element in our life. In a welfare State, perhaps, it is inevitable, for the simple reason that Parliament or Legislature cannot be expected to provide for all possible contingencies. But there is no effective machinery to control the rule-making powers, or to prevent its diversion through authoritarian channels. If the conferment of power to make delegated Legislation *proprio vigore* carried with it to make a rule or bye-law with retrospective operation, it may become an instrument of oppression. In these circumstances, it has been rightly held that the provision conferring such a power must be strictly construed and unless a statute expressly confers a powers to make a rule or bye-law retrospectively, it must be held that it has not conferred any such power. It is said that such a strict construction may prevent a rule making authority from making a rule in an emergency, though the occasion demands or justifies a rule with retrospective effect. The simple answer to this alleged difficulty is that if the Legislature contemplates or visualizes such emergencies, calling for the making of such rules or bye-laws with retrospective effect, it should expressly confer such power. It is also said that the Government can be relied upon to make such rules only on appropriate occasions. This Court cannot recognize implied powers pregnant with potentialities for mischief on such assumptions. That apart, the scope or ambit of a rule cannot be made to depend upon the status of a functionary entrusted with a

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rule making power. In public interest the least the court can do is to construe provisions conferring such a power strictly and to confine its scope to that clearly expressed therein.

Applying that rule of strict construction, I would hold that s. 12 (1) does not confer a power on the Central Government to make a bye-law with retrospective effect and, therefore, the new bye-law made on January 21, 1956, in so far as it purports to operate retrospectively is invalid.

Assuming that it is permissible to infer such a power by necessary implication, can it be said that it is possible to so imply under s. 12 of the Act? The phrase "necessary implication", as applied in the law of statutory construction means an implication that is absolutely necessary and unavoidable; that is to say, a court must come to the conclusion that unless such an implication is made, the provisions of the section could not be given full effect on the wording as expressed therein. Under s. 12 of the Act, the Central Government may either on a request in writing received by it from the governing body of a recognized association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in s. 11 or amend any bye law made by such association under that section. Now s. 11 says that any recognized association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts; under sub s. (2) thereof, the association is authorized to make laws providing for any of the matters mentioned therein. A glance at those matters shows that all the bye-laws providing for those matters could be framed without giving s. 12 any retrospective effect. It is said that s. 11 (o) gives an indication that a bye-law contemplated by that sub-clause must necessarily provide for its retrospective operation. It reads:

"the emergencies in trade which may arise and the exercise of powers in such emergencise including the power to fix maximum and minimum prices;"

The learned Solicitor General contends that an occasion may arise when by a determined action of a "bear" or a "bull" the rates may about up beyond a reasonable level or fall down steeply below a particular point creating an emergency in the market and in that emergency it would be necessary for the authorities concerned to step in and close out the contracts, and unless the bye-law is made retrospective such an emergency cannot be met and, therefore, the power to make a by-law to meet an emergency contemplated in s. 11(o) of the Act must necessarily imply a power to make a bye-law retrospectively. There is an underlying fallacy in this argument. The conferment of a power on the Government to make a bye-law with retrospective operation must be absolutely necessary and unavoidable to provide for the matter mentioned in sub-cl. (o) of s. 11 or any other clause of sub-s. (2) of s. 11. A bye-law could certainly be made to provide for an emergency visualized by the learned Solicitor General or for any other emergency contemplated by that clause with only prospective operation. It cannot, therefore, be said that unless retrospective operation was given to the provisions of s. 12, the objects of the legislation would be defeated or the purposes for which the power was conferred could not be fulfilled. I, therefore, hold that s. 12(1) of the Act does not confer any such power on the Central Government by necessary implication.

The second question turns upon the interpretation of s. 4 of the Act. It reads:

"The function of the Commission shall be—

(a) to advise the Central Government in

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respect of the recognition of, or the withdrawal of recognition from, any association or in respect of any other matter arising out of the administration of this Act;

(b) to keep forward markets under observation and to take such action in relation to them as it may consider necessary, in exercise of the powers assigned to it by or under this Act;

(c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods;

(d) to make recommendation generally with a view to improving the organisation and working of forward markets;

(e) to undertake the inspection of the accounts and other documents of any recognized association or registered association or any member of such association whenever it considers it necessary; and

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed."

Two questions arise under this section, namely, (i) whether the duties imposed and the powers conferred on the Commission under cl. (f) of s. 4 shall

be read *ejusdem generis* with those imposed or conferred under cls. (a) to (e), and (ii) whether the powers assigned to the Commission by or under a bye-law can be performed by the Commission under cl. (f). To appreciate the first question it would be necessary to know the constitution of the Commission and its rule in the scheme of control provided by the Act. Under s. 2(b), "Commission" means the Forward Markets Commission established under s. 3. Section 3 empowers the Central Government to "establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act". Clauses (a) to (e) of s. 4 show that the function of the Commission are wholly supervisory and advisory in nature. It keeps the forward markets under observation, collects and publishes information, undertakes the inspection of the accounts and other documents, and makes recommendations to the Central Government in respect of matters mentioned in that section. Under s. 8(2)(c), the Central Government may also direct the Commission to inspect the accounts and other documents of any recognized association or any of its members and submit its report thereon to the Central Government. It is, therefore, manifest that the Commission has no administrative functions or powers of management or powers of interference in the internal management of the registered associations; on the otherhand, s. 11 and the bye-laws framed thereunder it is not necessary to go into them in detail show that the regulation and control of the business of forward contracts and other businesses is entirely in the hands of the Association. The doctrine of *ejusdem generis* is very well-settled. The expression of *ejusdem generis*" means "of the same kind", and "it is only an illustration of specific application of the broader maxim *noscuntur a sociia* i. e., general and specific

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words which are capable of an analogous meaning, being associated together, take colour from each other, so that the general words are restricted to a sense, analogous, to the less general". While to invoke the application of the doctrine of *ejusdem generis* there must be a distinct genus or category, that is to say, the specific words preceding the general word must belong to the same class, the maxim *noscuntur a sociis* is of wider application. This Court in *The Western India Theatres Ltd.* v. *Municipal Corporation of the City of Poona*, though did not expressly say so, in my view was dealing with the said two doctrines, and it observed therein:

> ".. .....although the rule of construction based on the principle of *ejusdem generis* cannot be invoked in this case, for items (i) to (x) do not, strictly speaking, belong to the same genus, but they do indicate, to our mind the kind and nature of tax which the municipalties are authorized to impose."

So, in the present case, it may be said that cls. (a) to (f) may not belong to the same class, but they indicate that the functions described in the said clauses, being supervisory and advisory in character, are so analogous to each other that they take colour from each other and therefore the general words following must be restricted to a sense analogous to the said functions. It is said that cl.(f) provides for duties and powers, whereas cls. (a) to (e) only deal with functions and, therefore, cl. (f) must be deemed to provide for altogether a different subject-matter. I cannot agree with this contention, for the heading of s.4 is "Functions of the Commission", and the action opens out with the words "The functions of the Commission shall be" and the functions are mentioned in cls.(a) to

(f). It is, therefore, manifest that the duties and powers mentioned in cl.(f) are also functions. To put it differently, all the clauses deal with functions of the Commission. That apart, a power and a duty are, the two facts of the same concept. Clauses (a) to (e) also, though *ex facto* they read as if they impose only duties, on a closer scrutiny indicate that the duties cannot be exer. cised without the corresponding powers for the discharge of those duties. I would, therefore, hold that the duties and powers that may be assigned to the Commission under cl. (f) can be only supervisory or advisory functions other than those mentioned in cls.(a) to (e). The power conferred on the Commission under the bye-law made by the Government to close out contracts and thus terminate the contracts is neither an advisory nor a supervisory power, and, therefore, the Commission cannot legally exercise the same.

The second question turns upon the interpretation of the provisions of cl. (f) of s.4. The said clause reads:

> "to perform such duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed."

The crucial words are "by or under this Act, or as may be prescribed". Under s. 2(h) of the Act "prescribed" means "prescribed by rules made under this Act"; and s. 2 (k) defines "rules" thus :

> "rules", with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association its memorandum and articles of association."

If read with the definition of the word "prescribed"

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cl. (f) indicates that the commission can perform the functions assigned to it by or under the Act, or as may be prescribed by the rules made under the Act. The specific mention of the rules made under the Act in the clause makes it abundantly clear that the phrase "under the Act" excludes a rule made in exercise of the power conferred under the Act, for if the said phrase takes in a rule, the word "prescribed" becomes redundant. Such ineptitude and went of precision in drafting shall not be attributed to the Legislature, except for compelling reasons. If a rule was not comprehended by the phrase "under the Act", it would be illogical to hold that it would take in a bye-law. It would mean that the Legislature specially provided for a rule, which has certainly a higher status than a bye-law in legislative practice, while it treated a bye-law as a provision of Act: that cannot be. The other reason that may be suggested is that the word "prescribed" was used in superabundant caution or by mistake. If superabundant caution was required to mention separately the rules, greater caution would have been necessary to provide separately for a bye-law. A court ordinarily shall attempt to give meaning to every word used by the Legislature, unless it is impossible to do so. Here there is not only no such impossibility, but there is also a good reason for the Legislature in excluding the bye-laws from the operation of cl.(f) of s. 4 of the Act.

Subordinate or delegated legislation takes different forms. Subordinate legislation is divided into two main classes, namely, (i) statutory rules, and (ii) bye-laws or regulations made, (a) by authorities concerned with local government, and (b) by persons, societies, or corporations. The Act itself recognizes this distinction and provides both for making of the rules as well as bye-laws. A comparative study of ss. 11 and 12 whereunder

power is conferred on the Central Government and the recognized associations to make bye-laws on the one hand, and s. 28, whereunder the Central Government is empowered to make rules on the other, indicate that the former are intended for conducting the business of the association and the latter for the purpose of carrying into effect the objects of the Act. In considering the question raised in this case in this distinction will have to be borne in mind.

It would be unreasonable to assume that a private association, though registered under the Act, could confer powers on a statutory authority under the Act. That is why under s. 4(f), the Legislature did not think fit to provide for the assignment of a function to the commission in exercise of a power under a bye-law. The non-mention of bye-law in cl. (f) is not because of any accidental omission but a deliberate one, because of the incongruity of an assignment of a function to the Commission under a bye-law. I would, therefore, contrue the words "by or under this Act, or as may be prescribed" as follows: "by this Act" applies to powers assigned *proprio vigore* by the provisions of the Act; "under this Act" applies to an assignment made in exercise of an express power conferred under the provisions of the Act; and "may be prescribed" takes in an assignment made in exercise of a power conferred under a rule. This construction gives a natural meaning to the plain words used in the section and avoids stretching the language of a statutory provision to save an illegal bye-law. In this context two decisions are cited at the Bar. The first is that of the Judicial Committee in *Hubli Electricity Company Ltd.* v. *Province of Bombay* (1). There, under s. 3(2)(f) of the Indian Electricity Act (No. IX of 1910) "the provisions contained in

(1) (1948) 76 I.A. 57.

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the Schedule shall be deemed to be incorporated with, and to form part of, every licence granted under this Part". Under s. 4(1)(a) of the said Act, "The Provincial Government may, if in its opinion the public interest so requires, revoke a licence", *inter alia*, if "the licensee in the opinion of the Provincial Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act". Under sub-cl. (6) of the Schedule, a licensee had to comply with certain conditions. The Government revoked the licence on the ground that the licensee did not comply with the conditions laid down in Schedule VI, which were deemed to be incorporated in the licence by virtue of s. 3(2), and therefore he did not do the thing required of him within the meaning of s. 4 of that Act. The Privy Council held that the performance by the licensee of the conditions of the Schedule to the Act was clearly required to be made under the Act. This decision does not help us very much in the present case, as the question of bye-law did not arise therein. Nor the decision of the Madras High Court in *Narayanaswamy* v. *Krishnamurthi* (1) is of any assistance. There the question was whether the regulations framed by the Life Insurance Corporation by virtue of the powers vested in it by Act 31 of 1956 prohibiting the employees from standing for election fell within the meaning of the words "under any law" in Art. 191 (1)(e) of the Constitution. The High Court held that the regulations were law made under the Act of Parliament. The conclusion was based on the principle that the rule made in pursuance of the delegated power has the same validity and has the same characteristic as a law made directly by the Parliament. Apart from the fact that the words to be construed there were different and in a sense wider than the words to be construed in the present case, the principle accepted in the decision is only

(1) I.L.R. 1958 Mad 513.

of a general application and does not help to construe the specific words of cl. (f) of s. 4 ; their meaning can be gathered only by interpreting the said words, having regard to the setting and the context in which they are used.

For the foregoing reasons, I would hold that the Government had no power under s. 12 of the Act to make a bye-law assigning any function to the Commission. It follows that notification dated January 24, 1956, by the Forward Markets Commission was illegal and the appellants would be entitled to the issue of a writ of *mandamus* in the terms prayed for. In the result, the appeal is allowed with costs.

ORDER

In view of the Judgment of the majority, the appeal stands dismissed with costs.