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Dua, J.

Tribunal it was not seriously challenged before it that the allegations in the petition against Suraj Bhan did amount to allegations of corrupt practice; we nevertheless heard the appellant on this point but I have not been able to persuade myself to agree with his contention.

The respondent also tried to attempt to argue that Ch. Devi Lal and Prof. Sher Singh were also candidates and, therefore, necessary parties and that the conclusion of the Tribunal to the contrary is wrong but the counsel soon realised the futility of his attempt and dropped the point.

The result of the foregoing discussion must be against the appellant. It is of course unfortunate that on account of a defect which arose out of the amendment permitted by the Tribunal and which defets the Tribunal is, according to the decided cases, unable to remedy by permitting amendment, the enquiry into the entire election petition has been throttled. But that is a matter of policy of the law with which this Court is not concerned. Our duty is only to administer law as we find it, wholly unconcerned with its wisdom. In consequence, I am constrained to dismiss the appeal but without any order as to costs.

A. N. GROVER, J.—I agree.

B.R.T.

Grover, J.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and A. N. Grover, J.

HARBANS SINGH AND OTHERS,—*Petitioners.*

versus

THE PEPSU LAND COMMISSION AND ANOTHER,—*Respondents.*

Civil Writ No. 389 of 1961.

1963

Sept., 3rd

Pepsu Tenancy and Agricultural Lands Rules, 1958—Rule 30—Provisions of, relating to wool-raising farms—Whether valid.

Held, that the portion of rule 30 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, referring to specialized wool-raising farms is not valid and must be struck down on the ground that the phrase "sheep of standard breeds" is too vague, the standard breeds having not been defined. The term "standard" implies recognition by some authority as such and the names of such recognised breeds of sheep should be specified in the rule instead of the words "sheep of standard breeds" or "animals of standard breeds" used in items (i) and (ii) of the rule which are vague. The whole rule is bad and has to be struck down, notwithstanding that no objection can be raised to some portions of it, on the principle that if the rule is bad on one or two important grounds which go to the root of its main purpose and object, it must be struck down as a whole even if quite a number of its provisions are held to be reasonable in themselves.

Case referred by Hon'ble Mr. Justice A. N. Grover on 30th November, 1962, to a larger Bench for decision of an important question of law involved in the case and the case was finally decided by a Division Bench consisting of Hon'ble the Chief Justice D. Falshaw and Hon'ble Mr. Justice Grover. on 3rd September, 1963.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus, certiorari, *or any other appropriate writ, order, or direction be issued quashing the orders of respondent No. 1, dated 30th November, 1960, refusing the petitioners exemption under (clause (ii) of sub-section (1) of section 32-K of Pepsu Tenancy and Agricultural Lands Act, 1955.*

C. L. LAKHANPAL, ADVOCATE, for the Petitioners.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

Falshaw, C.J.

FALSHAW, C.J.—This petition filed under Article 226 of the Constitution by Harbans Singh, his wife Mohinder Kaur and son Satinderjit Singh challenging an order passed by the first respondent, the Pepsu

Land Commission, on the 30th of November, 1960, has been referred to a larger Bench.

The case has arisen in the following way. The Pepsu Tenancy and Agricultural Lands Act of 1955 fixes a ceiling on the holding of any individual landowner, the normal ceiling being 30 standard acres, the actual area of which will vary in accordance with the quality of the land. Section 32-A provides that notwithstanding anything to the contrary in any law, custom, usage or agreement, no person shall be entitled to own or hold as landowner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit. However, certain exemptions are contained in section 32-K of the Act, relevant portion of which reads—

"(1) The provisions of section 32-A shall not apply to—

(i) .....;

(ii) specialised farms engaged in cattle breeding, dairying or wool raising".

Section 32-P provides for the constitution of a Land Commission to be called the Pepsu Land Commission and to consist of a Chairman, who is or has been a Judge of the High Court, and two members to be nominated by the State Government having special knowledge or practical experience of land or agricultural problems. Among the duties of the Land Commission specified in sub-section (4) is that of advising the State Government with regard to exemption of lands from the ceiling in accordance with the provisions of section 32-K. Sub-section (5) provides that the advice given by the Land Commission under sub-section (4)(c) shall be binding on the State Government, and "notwithstanding anything in section

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32-D no final statement shall in a case in which exemption is claimed under section 32-K be published unless such advice is included therein." In other words, whenever exemption is claimed in respect of any land under section 32-K the advice of the Land Commission must be obtained by the Government and must be followed by it.

In the present case the petitioners claimed exemption in respect of 20 standard acres of their holding under section 32-K (1)(ii) on the ground that in that area they were maintaining a specialised farm for wool raising for which purpose they were keeping a flock of about 150 sheep described in the petition as of *Munjran* type.

The matter duly came for consideration by the Land Commission which by the impugned order held that no exemption could be allowed to the petitioners. Their ground was that the petitioners' farm did not comply with certain provisions of rule 30 of the Pepsu Tenancy and Agricultural Lands Rules of 1958. Two of these rules 30 and 31, which are framed under the provisions of the Act, are clearly intended for the guidance of the Land Commission in the matter of exemptions claimed under section 32-K. Various parts of rule 30 lay down certain standards to be observed in respect of orchards, specialised farms engaged in cattle breeding, dairying or wool raising and sugarcane farms operated by sugar factories while rule 31 deals with exemption of efficiently managed farms covered by section 32-K (1)(iv). The provisions in respect of specialised farms engaged in wool raising read—

> "A specialised farm engaged in wool raising may be a farm where—
>
> (1) the unit comprises not less than 100 sheep of standard breed and whose area is

not less than twenty standard acres, that is to say, one standard acre for every five sheep;

(2) animals of standard breed are maintained;

(3) the wool record of individual animal is maintained;

(4) culling of undesirable progeny is carried out;

(5) flock is tested for Brucellosis periodically;

(6) the ram is replaced after two years;

(7) in case of unit exceeding 500 animals, the management has engaged full-time qualified Veterinary personnel;

(8) animals are branded or tattooed for purposes of identification;

(9) one-third area of the farm is under leguminous fodder crop and the remaining two-third area is reserved for grazing purposes; and

(10) free inspection of the farm by the Officers of the Animal Husbandry Department once a year is allowed."

The order of the Land Commission is quite brief and may be reproduced in full. It reads—

"Harbans Singh petitioner has claimed exemption under clause (ii) of sub-section (1) of section 32-K on the ground that he is maintaining a specialised farm engaged in wool raising. He has examined a couple of witnesses. The first witness is his employee who keeps his account. He deposed that the petitioner originally purchased 120 sheep and later on the number of the sheep went up to 150. The other witness averred that he sold 150 sheep to the petitioner and

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they were of Munjran type. In reply to a question put to him by us, he admitted that he did not know what were the different breeds of sheep, what is the main distinction between Munjran and Desi breeds. All that he could say was that the wool of the Munjran breed was more than that of Desi. It was admitted before us on the last hearing by the petitioners Mukhtiar that none of the sheep were branded or tattooed and the first witness examined today admitted that wool account of individual animal is not kept. This means that the petitioner has failed to establish (i) that the sheep kept by him are of a standard breed and (ii) that the important requirements of clause (iii) of rule 30 were satisfied. In the reslut no exemption can be allowed to the petitioner."

In the writ petition the validity of practically the whole of the Act as well as the Rules has been challenged, but this sweeping condemnation has now been abandoned and the main argument has been directed against the validity of the portion of rule 30 referring to specialised wool-raising farms, particularly reliance being placed on the fact that in *Shivdev Singh and another* v. *The State of Punjab and another* (1), rule 31 which laid down the tests for granting exemption in respect of the efficiently managed farms was held to be invalid as a whole although certain parts of it were held to be reasonable.

There is no point in going into that decision of the Supreme Court at any length since the rule was in very different terms from the part of rule 30 which is now under consideration. It is sufficient to say that rule 31 provided an elaborate system of awarding marks by the Land Commission in respect of various

(1) A.I.R. 1963 S.C. 365.

features of the farm claimed to be exempted. The reasonableness of the marking system in general was upheld by the learned Judges of the Supreme Court, but the rule as a whole was held to be invalid on two grounds. The first of these was that in sub-rule (2) it was provided that on the total marks found and considered by the Land Commission, farms should be classified as follows:—

Class A—If it is awarded 80 per cent or more marks.

Class B—If it is awarded 60 per cent to 80 per cent marks.

Class C—If it is awarded less than 60 per cent marks.

It was further provided that a Class A farm should be deemed to be an efficiently managed farm, and 50 per cent of the area under Class B farm should, subject to the choice of the landowner, be deemed to be an efficiently managed farm, while no area under a farm of Class C should be deemed to be an efficiently managed farm. It was held that this went beyond the section which only provided for exemption for an efficiently managed farm and made no provision for, as it were, a semi-efficiently managed farm.

The other reason for striking down the rule as a whole was that out of the marks awarded a very large proportion, 500 out of 1,000, were to be in respect of the productivity which was to be judged in accordance with standard yields specified in Schedule 'C'. Although different standards were laid down in Schedule 'C' for different districts regarding different crops, only two classifications of land were recognised, namely, 'irrigated' and 'unirrigated', there being no distinction made between land of good and poor quality. It

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was held that the quality of the land was a factor which could properly be taken into account by the Commission, but since as the proviso to rule 31(4)(b) stood the Commission was bound to apply Schedule 'C' on a mathematical basis without consideration of other factors, the intention of the Legislature underlying section 32-K (1) (iv) would be subverted because of the proviso. Moreover, the Schedule left out of account another factor, the rotation of crops which requires all good farmers to leave some part of their lands fallow by turns for a whole year in order that the fertility of the soil can be preserved. It was, therefore, held that the proviso to rule 31(4)(b) be struck down as beyond the rule-making power of the State Government, and as soon as the proviso was struck down it would be impossible to work rule 31 properly and so the whole rule must fall.

Reverting to the provisions of the portion of rule 30 dealing with specialised wool raising farms I do not think that any exception can be taken to most of the tests provided there in such as those providing for not less than 100 sheep to be kept on not less than 20 standard acres, and even the maintaining of a wool record of each individual animal as required in item (3), the failure to carry out which is one of the reasons given in the order of the Commission in the present case for refusing exemption. The main difficulty arises in that part of item (1) which refers to "sheep of standard breed" and item (2) "animals of standard breed are maintained". The petitioners' case is that nobody, even the Members of the Land Commission, knows what constitute the standard breeds of sheep. The petitioners had alleged in their petition that the sheep they were keeping were of *Munjran* breed and this is referred to in the order of the Land Commission, but there is no finding that this is not a standard breed.

The petitioners' objection is contained in paragraph 8 (vii) of the petition which reads, "that the

reasons given by the Commission (respondent No. 1) for rejecting the petitioners' claim were wholly insufficient. Definition of a standard breed of a sheep is nowhere laid down. The Commission itself has not given a finding as to whether the sheep maintained by the petitioners are of a standard breed or not. In the absence of such data, the finding of the Commission (respondent No. 1) is bad in law."

The reply is in the form of an affidavit of an Under-Secretary to Government, Punjab, in the Revenue Department. The only reply to paragraph 8(vii) of the petition is a single word 'denied', which hardly seems to be an adequate reply to the objection raised.

The case came up for hearing a week ago and even then the learned Deputy Advocate-General when pressed by us was unable to give any indication of the meaning in the rule of the term 'standard breed', and it was for the purpose of obtaining some enlightenment on this point that the case was adjourned until today. He has now produced a publication of the Indian Council of Agricultural Research, Miscellaneous Bulletin No. 75 (1956) entitled "Breeds of Sheep in the Indian Union" by H. K. Lall, B.Sc., M.R.C.V.S., Deputy Director, Animal Husbandry, Uttar Pradesh. In this publication it is stated that there are several well-known breeds of sheep in the Indian Union and the names of a number of such breeds are given together with information about them illustrated with photographs.

It may be that in this context "well known" means the same as "standard", but the publication does not use the term "standard" in reference to breeds, and the difficulty lies in understanding what breeds are recognised as standard by the authorities who framed

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the impugned rule, and who presumably had in mind breeds recognised as standard in the area of Pepsu and surrounding regions. The very term "standard" implies recognition by some authority as such, and it is very difficult to understand why instead of using the term "standard", which as it stands is vague, the names of the breeds of sheep recognised by the authorities as standard were not specified in the rule.

The learned counsel for the State made available to us a copy of a statement of the Punjab Government's own Sheep and Wool Expert made before the Pepsu Land Commission on the 15th of May, 1961, in connection with a similar claim for exemption. This was several months after the decision in the present case. I think it was generous on his part to help us in our search for enlightenment on the matter under discussion by furnishing a document which rather helps the case of the present petitioners. The statement is made by Mr. Kehar Singh, P.V.S., Sheep and Wool Development Officer, Hissar, a Veterinary graduate with a post-graduate diploma in sheep and wool and also with nine months' training in Australia under the Colombo Plan, Australia being perhaps the most famous wool producing country in the world. The following passage occurs in the statement of Mr. Kehar Singh:—

> "The Government of India have not yet standardised the breeds of sheep, but the work is in progress. The following three breeds, however, exist in the Punjab:—
>
> (1) *Gaddi.*—It is predominant in hilly areas consisting of Kulu hills and other parts of Kangra District, Chamba and the adjoining areas of Himachal Pradesh.
>
> (2) *Lohi.*—This is found in parts of Bhatinda and Ferozepore Districts, but only scattered flocks of this breed can be

seen in these districts. The original home of this breed is Montgomary and Multan Districts which now form part of Pakistan.

(3) *Bikaneri Breed.*—It is a main breed and there are three types of it,—

(i) Chokla breed,

(ii) Magra,

(iii) Nali which people commonly describe as *Munjar* or *Munjlan.*

It is to be noted that the last-named is the breed which the present petitioners alleged that they were keeping and there is a detailed description of the type later in the statement. The part of the statement made in reply to questions on behalf of the petitioners in that case reads—

"The above breeds mentioned by me are recognised and are superior breed.

Q. Would you call them as standard breeds?

A. When they are recognised breeds they might be regarded as standard breeds."

In the course of questions asked by the Members of the Commission, which is apparently the nearest approach to cross-examination which goes on in these proceedings, he said that no work was done in Punjab regarding breeds of sheep. He said that the Veterinary Department, Punjab, had recognised the breeds which he had described earlier, though he did not know of any notification or order of the Veterinary Department or of the Government about it. He said that the breeds were recognised by his Department

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because under the scheme for development of sheep and wool in this State they were giving emphasis on the improvement of these breeds.

If, as may be gathered from the statement of this witness, certain breeds of sheep are unofficially recognised by the Punjab Veterinary Department as suitable for the encouragement of breeding, it seems to me that official recognition should be given without delay by notifying these breeds as standard breeds, and also by naming them in the impugned rule instead of merely using the words "standard breed" when there are in fact no officially recognised standard breeds, and in my opinion as long as the rule stands in its present form it is bad on account of vagueness, having no clear meaning either to persons wishing to run wool-raising farms or even, it would seem, to the Members of the Pepsu Land Commission.

It was argued on behalf of the State in this case that the order of the Commission should be upheld simply on the strength of the finding, the correctness of which is not disputed, that condition No. (3) in the rule was not complied with, namely, that the wool record of each individual animal kept by the petitioners was not maintained, this clearly being a reasonable requirement to be met where exemption is claimed.

Although, however, the rule which was considered and struck down by the Supreme Court was very different in terms from the rule now under consideration, the decision ni that case must be regarded as laying down the proposition that if the rule is bad on one or two important grounds which go to the root of its main purpose and object, it must be struck down as a whole even if quite a number of its provisions are held to be reasonable in themselves. In the present case the obvious foundation of a wool-raising farm, and by far the most important single element included therein, is the flock of sheep which is kept for the

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production of wool and it follows that the most important provision in the rule is that which lays down what kinds of sheep may be kept. Therefore, if this part of the rule is too vague to help persons who wish to claim exemption on this ground the whole rule as it stands must be held to be bad and the order of the Land Commission based on it must also fall. It may, however, be pointed out that all that is required, in my opinion, in order to make the rule good is to specify the breeds of sheep recognised as standard in item No. (2). In the circumstances I would accept the writ petition and quash the order of the Land Commission leaving the parties to bear their own costs.

A. N. GROVER, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

MOTI LAL AND ANOTHER,—*Petitioners*

versus

NANK CHAND AND OTHERS,—*Respondents*

Civil Revision No. 27-D of 1963

1963

Sept., 9th.

Delhi and Ajmer Rent Control Act (XXXVIII of 1955)—Ss. 2(g) and 13(1) (e)—Building let out by one lease-deed for commercial and residential purposes—Landlord—Whether entitled to bring an application for eviction of the tenant from the residential portion.

Held, that a land-lord is fully entitled to bring an application under section 13(1) (e) of the Delhi and Ajmer Rent Control Act, 1952, with regard to the portion of the premises which is exclusively used for residential purposes although the other portion was let out and is used for commercial purposes. It hardly matters that the document of lease for