
N.K.S.

Before S. S. Kang & M. M. Punchhi, JJ.

BAKSHISH SINGH AND OTHERS,—Petitioners.

versus

THE REGISTRAR, CO-OPERATIVE SOCIETIES,

AND OTHERS—Respondents.

Civil Writ Petition No. 505 of 1981.

January, 1984

Punjab Co-operative Societies Act (25 of 1961)—Section 85—Punjab Co-operative Societies Rules, 1963—Rule 45—General instructions issued under Rule 45 by the Registrar to Co-operative Societies regarding conduct of their business—Rule 45—Whether confers arbitrary powers on the Registrar and, therefore, ultra vires—Rules required to be laid before the Legislature—Effect of.

(3) A.I.R. 1983 S.C. 462.

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Held, that the modern Legislature seldom has enough time to deal with all matters or detail in legislation. It often is content to lay down the guidelines and leave the details to be worked out by expert executives. Such delegated legislation is by now well-known. Sometimes, danger crops up when an indifferently made delegated legislation wrecks the plain legislation. That is true in the case of legislation in which the Legislature does not keep control but leaves it to the good sense of the Executive or the Court to find faults therewith. But, sometimes, a Legislature, as in the present case, controls the Executive and, in the Act itself, provides the device of 'laying before the Legislature'. If the act of 'laying before the Legislature' has been accomplished, the delegated legislation then, in essence, ceases to be delegated legislation and becomes legislation itself. The powers conferred on the Registrar under Rule 45 of the Punjab Co-operative Societies Rules, 1963 cannot be said to be very wide and, in any case, are not arbitrary and unguided. The wisdom of the Legislature to place such powers on the Registrar is not for the Court to suspect. Power conferred on a functionary of high office under the Act is presumed to be well-guided and controlled by the provisions of the Act. The intention of the Legislature in that regard has to be gathered from a variety of factors, such as the scheme underlying the legislation, the preamble, the provisions and the object which it seeks to achieve. The placement of such power in the hands of the Registrar, Co-operative Societies to ensure successful conduct of business does need a guiding figure in that venture. Thus, no question of conferring arbitrary powers on the Registrar arises merely because he can issue directives as to the manner in which the Co-operative Societies shall conduct their business successfully.

(Paras 16 and 20).

Gobind Ram etc. vs. State of Punjab, etc., 1972 Current Law Journal, 425.

Over-ruled.

Case referred by a learned Single Judge, Hon'ble Mr. Justice M. M. Punchhi on January 13, 1982 for the decision of the important question of law involved in this case. The Division Bench consisting of the Hon'ble Mr. Justice S. S. Kang and the Hon'ble Mr. Justice M. M. Punchhi, finally decided the case on merits on January, 19, 1984.

B. S. Khoji, Advocate, for the Petitioner.

S. S. Shergill, A.A.G., Punjab, for the respondent Nos. 1 to 3.

JUDGMENT

M. M. Punchhi, J. (Oral):

(1) These are nine petitions of a bunch (C.W.P. Nos. 164, 373, 471, 505, 740, 1300, 1431, 2288 and 2434 of 1981) in which identical questions of law and facts have been raised.

(2) For facility of disposal, let broad facts in C.W.P. No. 505 of 1981 be taken note of.

(3) Petitioners Nos. 1 to 59 are members of a co-operative society arrayed as petitioner No. 60. The society on 7th June, 1980 purchased from the Markfed a given quantity of fertiliser. On 8th June, 1980, the Government of India increased the maximum price of fertilisers in exercise of its powers under clause 3 of the Fertiliser Control Order, 1957 issued under the Essential Commodities Act, 1955. The petitioners claim that despite the enhanced maximum price which became effective from 8th June, 1980, the society sold the fertiliser to petitioners Nos. 1 to 59 on 9th June, 1980 at the old rates, since no minimum price was fixed for the purpose.

(4) It appears that alive to the situation, the Registrar, Co-operative Societies on 18th September, 1980 issued general directions, Annexure P.2, to the concerned subordinate officers of the field intimating that sales of fertiliser had in certain cases been shown on 7th June, 1980 whereas in fact such sales had taken place thereafter and in this manner the societies have been put to loss. It was thus directed by him to ensure that all sales which have not been accounted for up to 7th June, 1980 in the bank, those should be charged at the enhanced rates and difference of new and old rates be recovered from the concerned loanees. On 22nd October, 1980,—*vide* Annexure P.3, the Registrar further clarified the manner in which the new rates were required to be debited to the loan account of a member and the requisite information be sent to the bank, so as to debit the sum in the personal ledger of a particular member. Yet again on 29th October, 1980,—*vide* Annexure P. 4, the Registrar further clarified that the pre-dated cheques, dated 7th June, 1980 or amounts which had not been accounted for in the accounts of the society, either at the society level or at the bank level on 7th June, 1980, will not be valid for the sale of fertilisers at

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the old rates and for such sales enhanced rates will apply. Accordingly, he advised that difference of old and new rates was to be recovered from the concerned loanees in such cases. It is in obedience to the directions of the Registrar that the society, petitioner No. 60, issued notices to petitioners Nos. 1 to 59, intimating them that a demand had been created against them for the difference in the price of fertiliser which had been supplied to them. The notices afore-referred to are of the kind of Annexure P.1 pertaining to one petition.

(5) In the first instance, petitioners Nos. 1 to 59 filed C.W.P. No. 28 of 1981 in this Court in which notice of motion was issued. The matter came up for consideration before a Motion Bench consisting of S. P. Goyal and J. V. Gupta, JJ., where the petitioners were confronted with the situation that it was the societies for whom instructions (Annexure P.2 to P.4) had been issued by the Registrar, and it was for those societies to challenge those instructions if they did not want to obey them. The view taken was that the petitioners had no *locus standi* to challenge those instructions when in the said petition there was no challenge to the increased rate on the sale of fertilisers, which was in essence the matter under challenge. The Bench then expressed its inability to go into the matter, framed as it was in that manner. The learned counsel for the petitioners Nos. 1 to 59 then got the said writ petition dismissed as withdrawn so that he be in a position to file a fresh petition to challenge the increase in the rates on the sale of fertilisers. Accordingly, that petition was dismissed as withdrawn on 22nd January, 1981.

(6) Thereafter the present petition was filed by petitioners Nos. 1 to 59, as also the society as petitioner No. 60, to challenge both the matters inasmuch as the power of the Registrar to issue such directions/instructions, as also the demand of the maximum price of fertiliser as fixed by the Central Government, which had been treated to be the maximum price on which fertiliser was saleable. The power of the Registrar under rule 45 of the Punjab Co-operative Societies Rules, 1963 (for short the Rules) was also challenged on the plea that the rule was struck down as *ultra vires* of Article 19 of the Constitution by B. R. Tuli, J., of this Court in *Gobind Ram, etc. v. The State of Punjab, etc.* (1). And lastly the

impugned action was challenged, as the fertiliser having been supplied by the society to its members was not for sale, and even if it was so, the bargain already having been finalised, the price could not unilaterally be altered to the disadvantage of petitioners Nos. 1 to 59.

(7) The broad facts as noticed herein from the petition are not disputed by the Assistant Registrar, Co-operative Societies, who has filed a return. But assertion has been made with regard to the legality of the action. The directions of the Registrar have been sought to be justified on the strength of rule 45 of the Rules, as these being directions which were general in nature and in the interest of the co-operative societies and their members. It was pleaded that certain influential members of societies had in connivance of certain committee members of the respective societies, obtained undue benefit of price hike by getting fertiliser at old rates in back dates and since the matter had been raised in the Public Grievances Committee, it was thought proper to take the impugned action. The action was also sought to be justified with an old instance when the rate of fertiliser was reduced and the society had to suffer loss at the cost of profit to the members, but now the prices had increased enabling the society to get a nominal profit and consequently the members had to bear the burden. Yet it was emphasised that members being real owners of the society are ultimately the sharers of its profit and loss.

(8) Besides the return, learned counsel for the State appearing in the respective petitions have taken aid of a decision rendered at the motion stage in *Hardev Singh and others v. State of Punjab and others* (2) by S. S. Sandhwalia, C.J., and Surinder Singh, J., in which the petitioners were relegated to their ordinary remedy under the statutory or the general law of the land while dismissing the petition. It was held therein that in essence the plea raised on behalf of the petitioners was primarily and directly a dispute about the quantum of price, payable for the fertiliser purchased by them from the society and, since in the return a contentious dispute of facts had been raised both with regard to the quantum of price payable as also the date of the supply made and the price applicable to the transaction, the Bench expressed its inability to find the matter to be worth going into in the writ jurisdiction. This decision is the sheet anchor of the learned

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counsel for the State to non-suit the petitioners Nos. 1 to 59 of the present case, as also the petitioners in other eight cases, who are all members of their respective co-operative societies.

(9) Mr. B. S. Khoji, learned counsel for the petitioners, contends that the petition on behalf of the society (petitioner No. 60) was in all events maintainable as directions of the Registrar were issued to it as also to the other societies. And if directions as embodied in Annexures P.2 to P.4 were to be quashed by this Court, the resultant beneficiaries would be the remaining petitioners in the instant case as also the petitioners in the remaining eight petitions. He contends that decision in C.W.P. No. 28 of 1981 clearly permitted such a challenge at the instance of the society and decision in C.W.P. No. 527 of 1981 could not stand in the societies' way, as the dispute therein was between members of a co-operative society against the State of Punjab, the Registrar, and the co-operative society. Additionally, he submits that the action is sought to be justified under rule 45 of the Rules which has been struck down in *Gobind Ram's case* (supra).

(10) In *Gobind Ram's case* (supra), B. R. Tuli, J., had spelled out the *locus standi* of members of a co-operative society to approach this Court in petitions under Article 226 of the Constitution of India and had held that the relationship between the members and a co-operative society was in the nature of "one for all and all for one". When any such right of theirs was interfered, the aggrieved persons could approach this Court under Article 226 of the Constitution of India. This has only been noticed as a passing reference. The real controversy is with regard to rule 45. The Hon'ble Judge observed as follows :—

:"Section 85 of the Act empowers the Government to make rules to carry out the purposes of the Act and in subsection (2) thereof particular items are mentioned for which the State Government can make rules, one of them being item (xxi), which relates to the payment to be made and conditions to be complied with by members applying for loans, the period for which any loans may be made and the maximum amount which may be lent to any member. It is the admitted case of the parties that no rule has been framed by the State Government

on this subject except rule 45, which reads as under:—

'Directives by Registrar for the successful conduct of the business :—

The Registrar may, from time to time, issue such directives as he considers necessary for the successful conduct of the business of a co-operative society or class of co-operative societies.'

Item (xxi) of sub-section (2) of section 85 gives power to the State Government to make rules with regard to the matters stated therein and has not given the State Government any power to delegate its rule-making power further to the Registrar, Co-operative Societies. Rule 45 gives the Registrar a general power without indicating any guideline for his actions in issuing directions. So the Registrar has been given an arbitrary power to issue directions as to the manner in which co-operative societies shall carry on their business without any fetter and without any guideline. This rule is, therefore, not consistent with the power vested in the State Government by the Legislature under section 85 of the Act. The State Government, of course, can make rules on the subject but it has not done so. The rule-making power is subject to the draft rules being placed before the State Legislature for a period of ten days and if no objection is raised to these draft rules by the members of the Legislature, they become statutory rules. The proper way to exercise power under section 85 of the Act is to frame rules in accordance with section 85(3) of the Act, and not by issuing executive directions by the State Government or the Registrar. Their Lordships of the Privy Council have laid down in *Esthughay Eleco v. Officer Administering the Government of Nigeria and another* (3), as under :—

'The executive can only act in pursuance of the powers given to it by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject

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except on the condition that he can support the legality of his action before a Court of Justice.'

This rule applies to the executive in this country also. It was, therefore, necessary for the respondents to point out the statutory power under which the impugned letters have been issued, which they have failed to do."

To me it appears that the true impact of section 85(3) of the Act which is to the following effect has not been appreciated in the said decision :—

"Every rule made under this section shall be laid soon as may be after it is made before the House of the State Legislature while it is in session for a total of ten days which may be comprised in one or in two successive sessions, and if before the expiry of the session in which it is laid, or the session immediately following the House agrees in making any modification in the rule or the House agrees that the rule should be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Wayback the Supreme Court in *Express Newspaper (Private) Ltd. and another, etc. v. The Union of India and others* (4), had observed at page 635 of the report in this manner :—

"The rule was framed by the Central Government by virtue of the authority vested in it under Section 20 of the Act and was a piece of delegated legislation which if the rules were laid before both the Houses of Parliament in accordance with Section 20(3) of the Act acquired the force of law. After the publication of these rules, they became a part of the Act itself and any decision thereafter reached by the Wage Board by a majority as prescribed therein was therefore lawful and could not be impeached in the manner suggested."

Somewhat similar was the view of the Supreme Court in *re The Kerala Education Bill, 1957(5)*, wherein it was held that the rules owe their efficacy to the tacit assent of the Legislative Assembly itself. On the principle so enunciated, it seems to me clear that rule 45 does not stand apart or in isolation of the statute, to keep seeking its strength and efficacy from the statute itself, and in case of its being rubbed against the touchstone of the statute, must on failure fall on its knees before the parent Act. That was the view taken in *Gobind Ram's case* (supra) and rule 45 was held to be beyond the rule-making power. But as it appears to me, whatever way the power may have been exercised by the Government in framing rule 45, the fact that it was laid before the Legislature under section 85(3), of the Act, would lend it the colour of the statute itself, as it would then be embedded in it as its own part. And nobody can dispute that the Legislature could confer such power on the Registrar to issue directions from time to time as he considers necessary for the successful conduct of the business of a co-operative society or class of co-operative societies. The guideline for the purpose would be available from the Act and the rules for he becomes a creature of the Act and a functionary under the rules. The rule having been raised to the status of a part of the Act appears to me to have put beyond the pale of questioning whether or not the State Government had any power to make such rule delegating its rule-making power further to the Registrar, Co-operative Societies, as mooted in *Gobind Ram's case* (supra). This decision, as at present advised, appears to be in conflict with the well settled principles of jurisprudence, authoritatively laid down by the Supreme Court in *Express Newspaper (Private) Ltd.'s case* and the *Kerala Education Bill's case* (supra):

(11) It was pointed out that the State did not choose to file a letters patent appeal in *Gobind Ram's case* (supra) and was rest content with the rule laid down by this Court. It was further pointed out that there have been many amendments to the Act and the rules thereafter, but the Legislature or the rule-making body has not stepped in to rectify the interpretation by legislative process and on that score it should be taken that the State has conceded to the view. I regret my inability to subscribe to the view canvassed. Amusingly, the State has pleaded specifically in its return in all these cases that the source of power of the Registrar in issuing the directions was rule 45. Nowhere in

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Gobind Ram's case (supra) has the rule been specifically held to be *ultra vires* of Article 19 of the Constitution, but all what is said is that the rule is not consistent with the power vested in the State Government by the Legislature under section 85 of the Act. And even then it has not been declared to be *ultra vires* of the Act in so many words.

(12) For the foregoing discussion, the rule laid down in *Gobind Ram's case* (supra) deserves reconsideration by a larger Bench. Consequently, let the papers of these cases be placed before my Lord the Chief Justice for his pleasure of constituting a larger Bench for the purpose, for a very early date, since realisation of huge amounts have been stayed all over the State of Punjab and the matter is of public importance.

Division Bench Judgment delivered by M. M. Punchhi, J.

(13) The detailed referring order has itself focussed the question involved herein, placed before us for resolving. Minimally, we may notice that the Registrar, Co-operative Societies in the State of Punjab, to conduct their business in a particular manner in the wake of change of price of fertilizer fixed by the Government of India under the Fertilizer Control Order, 1957, and those directives being the subject-matter of challenge, attracted one of its defences that the Registrar was authorized to issue such directives in exercise of his power under rule 45 of the Punjab Co-operative Societies Rules, 1963, which reads as under :—

“Directives by Registrar for the successful conduct of the business :—

The Registrar, may, from time to time, issue such directives as he considers necessary for the successful conduct of the business of a co-operative society or class of co-operative societies.”

It was maintained on behalf of the petitioners that rule 45 had been struck down in *Gobind Ram, etc. v. The State of Punjab, etc.* (supra), by B. R. Tuli, J., and thus it could not be adopted as a measure of defence by the respondent-Registrar. It was maintained on the other hand, that the rule laid down in *Gobind Ram's*

case (supra) needed reconsideration. As is plain, the necessity of it was spelled out in the referring order.

(14) In *Gobind Ram's case* (supra), B. R. Tuli, J., had taken the view that the rule was not consistent with the power vested in the State Government under section 85 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act) whereunder power to frame Rules had been conferred on the State Government. It seems that the provisions of sub-section (3) of section 85 of the Act were not read before the Hon'ble Judge in the right perspective. These may well be reproduced here:—

“Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is laid or the session immediately following the Legislature agrees in making any modification in the rule or the Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

Undeniably; the rule in question was placed before the State Legislature. Rather, no data has been placed on the record to show that it was not so placed. It has thus to be assumed that it was so placed.

(15) Mr. Khoji, learned counsel for the petitioners, on the strength of parliamentary practice, maintained that such rules are seldom placed before the Legislature and, possibly in the observance of that practice, the rule perhaps was not placed. On the anvil of *Megha Singh and Co., and others v. The State of Punjab and others*, (6), it was suggested that in any case “non-laying of the rule before the Legislature” would not have invalidated such legislation. That apart, the concluding portion of sub-section (3) of section 85 of the Act makes the intendment of the Legislature clear that the rule becomes effective on its promulgation, and for

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the interregnum till it is placed before the State Legislature, anything previously done under that rule shall be valid in the event of any modification thereto or annulment. So, in either event, even if a rule has not been placed before the House, or has been placed, within and for the statutory period, but not modified or annulled, the rule is valid. However, two different consequences follow. In the first event, it remains delegated legislation and has to meet the test of being not inconsistent with the provisions of the Act. But, in the other event, it having received the tacit approval of the Legislature, becomes part and parcel of the Act and gets placed at a higher pedestal. In that case, even if it is inconsistent with some provision of the Act, the Court applies the rule of harmonious construction and finds a way to resolve the conflict. It finds out which out of the two is the leading provision, which the subordinate one and which must give way to the other. But, as said before, no data has been pleaded from which it could be deduced that the rule was not placed before the Legislature under section 85(3) of the Act.

(16) It stands recognized that the modern Legislature seldom has enough time to deal with all matters or detail in legislation. It often is content to lay down the guidelines and leave the details to be worked out by expert executives. Such delegated legislation is by now well-known. Sometimes, danger crops up when an indifferently made delegated legislation wrecks the plain legislation. That is true in the case of legislation in which the Legislature does not keep control but leaves it to the good sense of the Executive or the Court to find faults therewith. But, sometimes, a Legislature, as in the present case, controls the Executive and, in the Act itself, provides the device of "laying before the Legislature". If the act of "laying before the Legislature" has been accomplished, the delegated legislation then, in essence, ceases to be delegated legislation and becomes legislation itself.

(17) In *Express Newspaper (Private) Ltd., and another v. The Union of India and others*, (supra), an argument raised by the petitioners challenging the constitution of the Wage Board and a decision made by it being beyond the Act and, therefore, *ultra vires*, was repelled by the Supreme Court in the following words:—

"The rule was framed by the Central Government by virtue of the authority vested in it under section 20 of the Act

and was a piece of delegated legislation which if the rules were laid before both the Houses of Parliament in accordance with section 20(3) of the Act acquired the force of law. After the publication of these rules, they became a part of the Act itself and any decision thereafter reached by the Wage Board by a majority as prescribed therein was, therefore, lawful and could not be impeached in the manner suggested."

Much case law has developed on that line, the latest being *Delhi Cloth & General Mills Co. Ltd., v. Union of India and others*, (7), *Associated Cement Company Limited v. Commercial Tax Officer* (8), is also of the same kin. On the authority of all precedents on the subject, it stands crystallized that the requirement for placing rules before the Parliament is, in any case, sufficient safeguard against the abuse of excessive delegation. Thus, for all intents and purposes, rule 45 in the instant case was a part of the Act and the decision of B. R. Tuli, J., in *Gobind Ram's case* (supra) treating it to be an incidence of mere delegated legislation or a draft rule, is an expression unwarranted by law, with utmost respect to the Hon'ble Judge.

(18) Mr. Khoji also maintained that, after the rule was struck down, no effect was made either by the Legislature or the Executive to have it revived. He brought to our notice a report of the Committee on Subordinate Legislation for the year 1972-73, wherein on rule 45 the Committee's view was that, while it was necessary that some sort of power should be given to the Registrar, it was equally felt necessary that such powers should not be excessive or so vast so as to curb or retard the co-operative movement. It, therefore, recommended that this rule should be amended accordingly. However, the departmental representatives, who appeared before the Committee, apprised it of the decision of the High Court (probably in *Gobind Ram's case*, supra) wherein the rule had been struck down. The Committee then desired that a copy of the new rule, as framed in the light of the High Court judgment, should be supplied to the Committee, when a notification publishing it was issued. Mr. Khoji further brought to our notice that on 12th January, 1983, the Governor of Punjab, in exercise of the powers conferred by section 85 of the Act, had substituted rule 45 of the

(7) (1983) 4 S.C.C. 166.

(8) (1981) 4 S.C.C. 578.

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Punjab Co-operative Societies Rules, 1963. The amended rule of the same number reads as follows :—

“45. *Powers of the Registrar to give directions.*—(1) The Registrar may, from time to time, give directions consistent with the provisions of the Act as he considers necessary for the beneficial and efficient functioning of any co-operative society or class of co-operative societies.

(2) If any question arises whether any directions given under sub-rule (1) are necessary for the beneficial and efficient functioning of the co-operative society or class of co-operative societies, as the case may be, the concerned co-operative society or class of co-operative societies may refer such question to the Government whose decision thereon shall be final.”

(19) Mr. Khoji contended that if the *vires* of the original rule is restored, it will be in conflict with the new rule. However, we find no such conflict emerging therefrom. The rule has not been added or renewed in the old terms but has been substituted, i.e., there is a new one for the old one. In any event, we are concerned with the rule 45 as it then existed at the time when the impugned directives were issued.

(20) Mr. Khoji lastly contended that the powers conferred on the Registrar were very wide and, in any case, arbitrary and unguided even though the rule as such did not come in conflict with any provision of the Act. The wisdom of the Legislature to place such powers on the Registrar is not for the Court to suspect as was done by Tuli, J., in *Gobind Ram's case* (supra). Power conferred on a functionary of high office under the Act is presumed to be well-guided and controlled by the provisions of the Act. The intention of the Legislature in that regard has to be gathered from a variety of factors, such as the scheme underlying the legislation, the preamble, the provisions and the object which it seeks to achieve. The placement of such power in the hands of the Registrar, Co-operative Societies, to ensure successful conduct of business does need a guiding figure in that venture. Merely

because, in the new rule, the right to representation has been given against framing of a rule on which the Government's decision is final, does not lead to the conclusion that the power of the Registrar under the original rule 45 was excessive or arbitrary. In *Gobind Ram's case* (supra), the rule was held to be arbitrary merely because the Government, as a delegate for subordinate legislation, conferred it on another functionary and it was taken that the power thus given was arbitrary and unguided without further rules. Thus, for the view we have taken, no question of conferring arbitrary powers on the Registrar arises merely because he can issue directives as to the manner in which the Co-operative Societies shall conduct their business successfully.

(21) For the foregoing reasons, we are of the considered view that *Gobind Ram's case* (supra) was wrongly decided and is hereby overruled, holding that rule 45, as it then stood, was *intra vires*. The petitions shall now be disposed of on merits by the Bench hearing them.

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