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Court : Karnataka

Decided On : Aug-20-1979

Reported in : AIR1980Kant130

Judge : K.S. Puttaswamy, J.

Acts : [Constitution of India](#) - Articles 14, 19(1), 141, 226 and 245; Cotton Textiles (Control) Order, 1948; Essential Supplies (Temporary Powers) Act, 1946 - Sections 3 and 8

Appeal No. : W.P. Nos. 5069 to 5073 etc. of 1978 and 1282, 2207 to 2217, 6162 to 6170 and 6857 of 1979

Appellant : Basappa and ors.

Respondent : The Textile Commissioner, Bombay 1 and ors.

Advocate for Def. : U.L. Narayanarao, Sr. Central Govt. Standing Counsel and ;R.N. Byra Reddy, Adv. General

Advocate for Pet/Ap. : S.C. Javali, Adv. for ;B.V. Deshpande, Adv., ;R.G. Banakar, ;C.N. Kamath and ;I.G. Cachinamath, Advs.

Judgement :

ORDER

1. As common questions of law arise for determination in these cases. I propose to dispose of them by a common order.
2. Among others, the petitioners, who own less than five powerlooms claim to be solely engaged in the manufacture of coloured sarees in the several parts of Karnataka State but with considerable concentration at places like Banahatti, Rabkavi, Terdal, Mahalingapur and some other places of Bijapur, Dharwar and Belgaum Districts.
3. In exercise of the powers conferred on him by Clause 20 of the Cotton Textiles (Control) Order 1948 (hereinafter -referred to as the Control Order), the joint Textile Commissioner, Government of India (hereinafter referred to as 'the Commissioner') by Notifications Nos. CER/10/77 and CER/2/77 dated 15th April, 1977, has issued various directions regulating the production of cotton textiles by different manufacturers in the country to be in force till 31-8-1982. By one of the directions, owners of less than five powerlooms are prohibited from producing coloured sarees except for purposes of export from this country. As a result of the above directions, coloured sarees for internal market in the country can be exclusively produced on handlooms and no other. The petitioners claim, that the directions of the Commissioner would put them out of their trade and business, and therefore they have moved this Court under Article 226 of the Constitution, challenged the validity of Clause 20 of the Control Order and the said directions on diverse grounds.
4. The respondents have resisted the claim of the petitioners. They have urged that Clause 20 of the Control Order and the directions issued thereunder by the Commissioner are valid.
5. In order to appreciate the rival contentions of the parties it is useful to briefly notice the history of the legislation and the events that have led to the issue of the impugned directions.
6. In the wake of the Second World War, the Defence of India Act, 1948, was enacted under which various regulations and control orders were issued, inter alia regulating the production, supply and distribution of cotton textiles in the Country.

Before the said Act ceased to be effective on 1-10-IM, the British Parliament enacted the India (Central Government and Legislature) Act, 19' (9 and 10 Co. 6 Ch. 89) enabling the Indian Legislature to continue the laws relating to controls over the essential commodities. S. 2 of that Act invested the Indian Legislature with powers to legislate, on matters relating to controls for a period of one year from 1-4-1994, on which day the proclamation of emergency declared during the Second World War ceased to operate. On 1st Oct. 1946, the Essential Supplies (Temporary Powers) Ordinance, 1946 was promulgated, which was replaced by the Essential Supplies (Temporary Powers) Act, 1946 XXI of 1946) on 7th Dec. 1946. In exercise of the powers conferred by Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, the Central Government on 2-8-1948 promulgated the Cotton Textiles Control Order, 1948 in the main providing for the regulation or production of textiles in the country.

7. The period during which Indian Legislature could exercise the powers under S. 2 of the British Parliament Act was to expire on the 1st April. 1947. This was, however, extended by another year by the Governor-General as provided for under S. 2 of the said Act by notification of the Legislative Department No. 7 WL (i)/47, dated 3rd Mar. 1947. The period was further extended by another year i. e. up to the 1st April, 1949 by a Resolution of the Constituent Assembly of India (legislative) No. 7 WL(i)/47 dated the d Mar. 1948. The last mentioned date, i. e. the 1st April 1949 on which the Legislative powers of the Indian Legislature were to expire was again extended to the 1st April. 1950 by the Ministry of Law Resolution No. F-WL-(i)/47, dated 25th Mar. 1949. Thereafter, Art. 369 of the Constitution gave a further lease of life for a period of five years from the commencement of the Constitution (i. e. up to the 25th Jan. 1955) to enactments such as the Essential Supplies (Temporary Powers) Act, 1946 covering commodities enumerated in the said Article.

8. The Essential Supplies (Temporary Powers) Act 1946 cease to have effect on, the expiration of the five-year the period as contained in Act 809, i. e. on, t e 26th an. 1955. The Essential Commodities ordinance, 1955, however, took its place. The scope of the Ordinance was not co extensive with that of the Act. The result was that the Ordinance did not cover certain commodities such as cotton which

were covered by the Act. This was due to the fact that entry 88 of List III of the Seventh Schedule to the Constitution, as it then stood, referred only to 'Trade and Commerce in and the production, supply and distribution of the products of Industries'. Subsequently entry 33, as amended by the constitution (3rd Amendment) the assent of the President on the 22nd Feb. 1955, was sufficiently enlarged to include foodstuffs, cattle-fodder, saw cotton including cotton seed and raw jute. In the light of the amendment effected by the Constitution. 3rd amendment) Act, 1954, the Essential Commodities Act, 1955 (No. 10 of 1955) (hereinafter referred to as the Act) was passed by the Parliament on the 1st Apr. 1955 replace in essential Commodities Ordinance 1955(1 of 1955). By virtue of the provisions of Section 16 of the said Act, all the Central Orders which were in force immediately before the passing of the said Act are saved and continue to be in force. With this brief history of legislation, I will pass on to notice the events.

9. On 15th Apr. 1950, the Commissioner in exercise of the powers conferred by Clause 20 of the Control Order, issued directions regulating the production of various types of textiles by the three manufacturers of textiles i. e. Modern Textile Mills Powerlooms and Handlooms to be effective from 1-6-1950. Modern Textile mills and powerlooms were prohibited from manufacturing different types of textiles mentioned in at order but reserved their production by handloom sector only. As regards the production of sarees that order directed as under:

'In exercise of the powers conferred on me by Clause 20 of the Cotton Textiles (Control) Order 1948. I hereby issue the following directions:

(i) These directions shall come into force on the 1st June, 1950;

(ii) Directions 9 (aa), 9 (b) and (c) shall be complied with by all producers who have a spinning plant. Directions 9 (d) and (f) shall be complied with by all producers who have no spinning plant. The remaining directions 2 to 8,9 (a), 9(e) 10 and 11 shall be complied with by producers, that is to say, both producers who have a spinning plant and those who have not;

xx xx xx (iv).These directions excepting No. 3

shall not apply-

- (a) to cloth manufactured for export and marked with export markings;
- (b) to be cloth which is produced on a powerloom in a Government institution and which is sold as Government Property;
- (c) to a producer who has less than five looms in his possession or under his control but is not a producer who, whether by himself or in partnership or Jointly with others, had five or more looms in his possession or under his control on 31st Mar. 1950.

xx xx xx 'Sarees

- (a) No producer shall produce any Sarees with borders exceeding 2 1/2' in width or use real or imitation zari in a Sarees border;
- (aa) No producer who has a spinning plant shall produce a Sarees with border of 3/4' or less in width and containing coloured yam in its border unless he has previously sent to the Textile Commissioner a sample of such cloth of the dimensions of 0' x 6' and has received the Textile Commissioner's approval of such sample for bulk manufacture.
- (b) No producer who has a spinning plant shall use gold coloured yarn, art silk yam in a Sarees border;
- (e) No producer who has a spinning plant shall use any coloured yam in the body of a Sarees except in a heading there of,
- (d) No producer who has no spin plant is produce a Sarees with a spinning or check pattern in which coloured yarn is used;
- (e) No producer shall produce any Sarees with heading more than 9' in width
- (f) No producer who has no spinning plant shall produce any Sarees in which the count of yarn is below 36 (whether warp or weft and whether single or folded).

Explanation-II: For the purposes of this direction, any type of mullis voiles and a width between 37' and 54' inclusive shall be considered as sarees.

Explanation-III: For the purpose of measuring the border of a Sarees, the width of the border shall mean the total width measured from the extreme end of the selvedge of the fabric to the portion enclosed by the innermost coloured end inserted in the border provided that the width covered by the total number of coloured ends in the border shall be at least 50 per cent of the width of the border or 1/2' whichever is, higher.

But those with less than five powerlooms. were exempted- from the operation of the said clause relating to coloured sarees (Vide sub-item No. (c) of sub-clause (iv) of Clause (1) In other words, owners of less than the powerlooms were free to produce coloured sarees. With this . impetus the powerloom sector made significant strides in the country and was crippling the growth of handloom sector.

10. On 8-1-1968, the Government of India appointed a committee called the Powerloom Enquiry Committee under the chairmanship of Sri Asoka Mehta (herein. after referred to as the Asoka Mehta Committee) to enquire into the problems of the powerloom industry in the country with the following terms of reference:

(i) to examine the structure and growth of the powerloom industry with special reference to the types, holdings, ownership, appliances, supply of raw materials sorts of fabrics produced, processing of fabrics, market inter financing and other factors relating etc;

(ii) to examine, the remunerative ness of the powerloom industry taking into account the costs of production and efficiency of working and the conditions of workers;

(iii) to consider the relative role to be played by the powerloom industry vis-a-vis that of the handloom and mill industry and to recommend targets of production,

(iv) to account for the phenomenal growth of unauthorised powerlooms in the past and devise means to prevent future un authorised expansion;

(v) to examine the desire ability and scope for the conversion of handloom co-operatives into powerloom co-operatives; and

(vi) to make for the establishment of the powerloom industry on a stable footing within the field of operation which should be allowed to it.

After an extensive and intensive study of the problems the committee submitted its report to the Government of India on ' 1964. The Asoka Mehta Committee recommended that the production of coloured sarees should be reserved exclusively to handloom sector and its recommendations in that behalf reads thus:

'Even with the phased programmes of introduction of power looms in the handloom sector, the handloom sector would continue to play a prominent role for some decades. It will be necessary therefore to ensure that this sector is given assistance by a further reservation of field of Production. It has been explained to us that the total production of authorities by the textile mill industry has been going down. Against 682 million metres of dhothies produced in the year 1952, the present production is of the order of about 330 million metres only. A similar reduction in the manufacture of sarees also has taken place. The total production has declined from 536 million metres in 1952 to about 317 million metres currently. The fall in production of dhotis by the textile mill sector would seem to have been filled mainly by powerlooms. We recommend it the production of dhoties and sarees by the textile mills may be pegged at the 1968 level. We also recommend that the production of coloured sarees should be reserved exclusively for the handlooms. Textile mills and large powerloom establishments are already prohibited from producing these types of sarees as a measure of protection to the handloom industry. However, small powerloom units with four looms and below are free to manufacture these sarees. In view of our re commendation to install powerlooms in the handloom sector in a big way, it will be necessary to take positive measures of increasing the protection offered to those who stiff continue to ply the handlooms by preventing production of coloured sarees by the small powerlooms also whether they are in the co-operative fold or outside. The centres which will be principally affected restriction are Burhanpur, Malegaon and Jabalpur where such powerlooms are producing these colour sarees. A change over to the

weaving of other than fabrics in these center should be however preceded by giving facilities to the power looms for obtaining yam in sized beams. We recommend that Government may take all the steps necessary to ensure that adequate facilities to supply sized beams are provided within a period of three years in these centres by setting up sizing units either in the co-operative sector or otherwise so that simultaneously the powerlooms could change over to the weaving of fabrics other than coloured sarees .

11. On 2-6-1966 the Government of India accepted the recommendations made by the Asoka Mehta Committee and decided that production of coloured sarees should be exclusively reserved to handloom sector in these terms.

With a view to afford protection to the handloom industry the committee has recommended that -(a) production of dhoties and sarees by textile mills should be pegged at 1963 level; and (b) that the production of coloured sarees should be reserved exclusively for the handlooms and that even small powerloom establishments with four looms or below should not be allowed to produce coloured sarees. In certain centres where there is large scale production of coloured sarees by power, looms there should be restriction on production of coloured sarees and change over to other varieties should be brought about gradually within a period of three years and the existing units should be assisted in obtaining the requirements of sized beams. The Government accept these recommendations'.

12 With the object of effectuating the aforesaid policy decision of the Government of India, the Commissioner by his Notification No. CER/10/66 dated 9th Nov. 1966, issued necessary amendments to his directions dated 15th Apr.- 1950, withdrawing the exemption granted to the owners of less than 5 powerlooms. In order to enable the powerloom owners who were then engaged in the business to smoothly switch over to the production of other types of clothes other than coloured sarees, the said exemption was not enforced for a period of three years and various incentives were offered to them for the smooth switch over. But, for reasons that are neither necessary nor relevant to notice, the powerloom owners belied the expectations of Government. When the authorities started implementing

the aforesaid directions, the power loom owners in different parts of the country moved the respective High Courts challenging its validity. Before this Court the challenge made was unsuccessful (vide Ramappa Bhimappa v. Union of India, : AIR1975 Kant215 and : AIR1977 Kant100 A similar challenge made before the High Court of Gujarat in S. C. A. Nos 1346 of 1969, 972 and 1527 of 1970 was successful, the correctness of which was challenged by the Union of India before the Supreme Court in Rangaswamy v. The Sagar Textile Mills (P) Ltd., C. A. Nos. 1182, 1545 and 1546 of 1972 Decided on : [1977]2SCR825 , the Supreme Court dismissed the paid appeals on the short ground that the said directions with out specifying the period for which it should operate, was invalid, leaving open all other questions.

13. Before the Supreme Court decided the aforesaid appeals, the Government of India by its order dated 29-12-1973 appointed a 'High Powered Study Team' under the Chairmanship of Sri B. Sivaraman, who was then the Vice-Chairman, National Commission on Agriculture and Member, Planning Commission (hereinafter referred to as 'the Study Team' to study in depth all the problems of the handloom industry and weavers and suggest a programme of development of that sector in the V plan period. The Study Team examined the matter in depth and recommended that the production of coloured sarees should be exclusively reserved to the handloom sector in these words:

'It will be noticed that three items are reserved exclusive for the handloom sector whereas eight items are reserved both for the handlooms and powerlooms units having up to 4 powerlooms. Any breach of these orders is punishable under the Essential Commodities Act. In actual practice, however, the orders are honoured more in breach than in compliance and there is very little of prosecution under the Essential Commodities Act. The most glaring example of such breach is the production of coloured cotton sarees by the powerlooms of Maharashtra. Litigation of various nature is entered into by the powerloom sector to delay the process of law. As a result, even the little punitive action that is attempted becomes infructious. There is also the inherent difficulty of dealing with the eight items which are also open to powerloom units with four looms and less. Once the goods leave a powerloom it becomes very difficult to establish whether these were produced in

a unit with more than four powerlooms or in a smaller unit. As a result, the protection supposed to have been given to the handloom sector by reserving certain items of production for the sector has been substantially only on paper and the powerloom sector has been producing the reserved items whenever it has found it profitable to do so. The Team recommends that the eight items which are also open to powerloom units with four looms and less shall be reserved exclusively for the handloom sector.

14. In the light of the principles enunciated by the Supreme Court in Rangaswamy case, the Commissioner re-examined the whole matter. By his Notification No. CER/25/77 dated 14-4-1977 the Commissioner rescinded all the earlier notifications and having regard to the recommendations made by the Asoka Mehta Committee, the Study Team and the policy decisions taken by the Government of India, has issued the impugned directions, inter alia reserving the production of coloured sarees exclusively to the handloom sector. These in brief are the events that have led to the directions.

15. On 15th May, 1977, some of the petitioners from Rabkavi and Banahatti towns approached the Commissioner to exempt them from complying with the impugned directions. On 15th May, 1977, the Commissioner rejected the application made by them in these words:

'Sub: Exemption from compliance of the directions in our notification No. CER/10/77 dated 15th April. 1977.

Please refer to your representation dated 19th May. 1977 regarding the above subject. As per policy notification issued on 15th April. 1977, providing for reservation of certain items to the handloom industry, it is regretted that your request for exempting you from the provisions of this notification cannot be considered at present'.

16. At the threshold, Sri U. L. Narayana Rao, learned Senior Standing Counsel for the Central Government, contended that the Supreme Court in P. S. K. Shamugarajan A. v. Textile Commr., W. P. No. 4709 of 1978, D/- 19-2-1979 has upheld the validity of the impugned directions and the same is binding on this

Court under-Art. 141 of the Constitution. In answer to this contention of Sri Narajoarn ao, Sri S. S. Javali, learned counsel.the petitioners contended that the dismissal of the writ petition of P. S. K. Shamugarajan at the preliminary hearing stage was not on merits but on the ground that the matter could be agitated before the appropriate High Court for which reason, the same neither operates as resjudicata nor as declaration of law under Article 141 of the Constitution.

17. By the 42nd Amendment to the Constitution that came into force from 1-2-1977, Arts. 131-A and 228-A were introduced conferring exclusive jurisdiction on the Supreme Court to determine all questions relating to the Constitutional validity of Central Laws. When the above provision the Constitution were in force Sriyuth P. S. K. Shamugarajan of Tamil Nadu filed writ petition before the Supreme Court challenging the validity of the impugned directions. In that writ petition, the Supreme Court had ordered notices before issuing rule nisi. Before the said writ petition could be heard, the 43rd Amendment to the Constitution came into force on 13-4-1978, which made substantial amendmetns to Arts. 181-A and 226-A of the Constitution and restored to the High Courts, the power of examining the validity of Central laws as it stood prior to 1-2-1977. In that situation the respondents therein, inter alia urged as under:

'The petitioners could have moved the Madras High Court Instead of directly coming over to Supreme Court as others have done while approaching the various High Courts in the country since the power of issuing writs has been restored unreported restored of the High Court',

On 19-2-1979, the Supreme Court after hearing both the parties, dismissed the said petition at the preliminary hearing stage in these words:

'Upon hearing counsel, the Court dismissed the writ petition-. (Exhibit-RI)

From this order it appears to me, the Supreme Court dismissed the said writ petition on the stand taken by the Central Government in para. 8 of its counter-affidavit and has not examined the validity of the impugned directions on merits. As the petitioners were not parties to the above case, the decision of the Supreme Court thereto cannot bind them and does not operate as res judicata. Assuming

that the petitioners were parties even then as ruled by the Supreme Court in *Daryao v. State of Uttar Pradesh*, : [1962]1SCR574 , the dismissal of that writ petition at the preliminary hearing, stage in which reasons are not , would not operate as *res judicata* in my considered opinion, such a decision cannot be taken as declaring the law within the meaning of Art. 141 of the Constitution and cannot bind a subordinate Court. For these reasons, I reject the preliminary objection of Sri Narayana Rao. I therefore now proceed to examine the cases on merits.

18. In conformity with the stand taken by the petitioners, Sri Javali urged that on the expiry of the Essential Supplies (Temporary Powers) Act, 1946 (Act No. 24 of 1946) on 25th Jan. 1955, the Control Order made thereto also had expired.

19. While noticing the history of legislation, I have pointed out that Control Order had at no time lapsed. As on the day the Act came into force, the control order was in force. Sub-section (2) of Section 16 of the Act declares that the said order that was in force should be deemed as an order made under the Act and provides for its continuance. In this view the Control Order had not lapsed and continues to be in force. I therefore reject this contention of Sri Javali.

20. Sri Javali next contended that Clause 20 of the Control Order confers unguided, uncontrolled, uncanalised. and arbitrary power on the Commissioner and is violative of Section 8 of the Act.

21. Sri Narayana Rao contended that CL 20 of the Control Order carries out the objects and purposes of S. 3 of the Act and does not suffer from the vice of excessive delegation. In support of his contention Sri Narayana, Rao relied on an unreported ruling of the High Court of Bombay in *Novelty Dyeing and Printing Works v. Sri Rangaswamy, Textile Commr. Misc. Petn. No 274 of 1968* Decided on 12/13-11-1968.

22. Section 8 of the Act empowers the Central Government to promulgate or make orders, to control production, supply and distribution of essential commodities. An order can be made for maintaining or increasing supplies, or for securing their equitable distribution and availability at fair prices or for securing that commodity for the Defence of India or efficient conduct of military operations. For achieving

any or all of the above purposes, it is open to the Central Government to regulate or prohibit the production, supply and distribution thereof and trade and commerce therein of the Essential Commodity. An order may provide for all or any of the above matters as also any or all of the specific matters enumerated in sub-section (2) of S. 3 of the Act.

23. An examination of the matters, provided in the Control Order shows that the same achieves the purposes and objects of S. 8 of the Act in so far as it relates to one of the Essential Commodities viz., Cotton Textiles. Clause 20 of the Control Order confers power on the Textile Commissioner, which term is defined in sub. (k) of Clause 3 of that order, to issue directions from time to time in respect of the matters enumerated in that clause which are part of or attributable to the matters provided by S. 3 of the Act. Every one of the matters on which the Commissioner can issue his directions carries out the purposes and objects of S. 3 of the Act. In issuing his directions under Clause 20 of the Control Order the Commissioner a fairly high authority, is not conferred with any unguided, uncanalised, uncontrolled or arbitrary powers. In this view Clause 20 of the Control Order is neither violative of Section 3 of the Act nor suffers from the vice of excessive delegation.

24. M/s. Novelty Dyeing and Printing Works Misc. Petn. No. 274 of 1968, D7 13-11-1968 (Bom), were one of the independent processors engaged in printing sarees, bedspread, bed-cover and table cover produced on powerlooms. By his notifications dated 22-12-1966 and 12-4-1967 the Deputy Textile Commissioner, prohibited the independent processors from printing sarees etc., produced on power looms. In those circumstances, M/s. Novelty Dyeing and Printing Works challenged the validity of CL 20 of the Control Order and the directions of the Deputy Textile Commissioner issued thereto. In repelling (a) No producer shall produce any the contention that Clause 20 of the Control Order was ultra vires of S. 3 of the Act V. D. Tulzapurkar J. (as he then was) observed thus.-

'Clause 20 of the Cotton Textiles (Control) Order, 1948, which authorises the Commissioner to give directions which will have the effect of total prohibition or reduction in the production of essential commodity, would be perfectly within the power contained in S. 3 of the Act.'

I am in respectful agreement with the same. For all these reasons, I do not see any merit in the challenge of the petitioners to Clause 20 of the Control Order and, 1, therefore, reject the same.

25. Sri Javali mounted a fourfold attack on the validity of the impugned directions. Briefly stated at this stage they are: (1) the directions violate the freedom of trade and business guaranteed by Art 19(1)(g) of the constitution; (2) the directions are violated of Art. 14 of the constitution; (3) that the directions had been issued without the application of mind and consideration of the relevant circumstances and material.

26. Sri Narayana Rao and Sri R. N. Byra Reddy, learned Advocate General for the State of Karnataka supported the impugned directions and urged that, they neither violate Arts. 14 and 19(1)(g) of the constitution nor Sec- u 3 of the Act.

27. In order to appreciate the rival contentions, it is first useful to notice the material parts of the directions and their true scope and ambit in that order. Now these are the material directions:

'No. CER/10/77:- In exercise of the powers conferred on me by Clause 20 of the Cotton Textile (Control) Order, 1948, I hereby the following directions:

(i). These directions shall come into force immediately and shall continue to be in force till the 31st Mar. 1982.

(ii) These directions shall be complied with by all producers.

xx xx xx (iv). These directions excepting direction No. 8 shall not apply-

(a) to cloth manufactured for export and marked with export markings, and

(b) to cloth which is produced on a power loom in a Government institution which is sold as Government property.

perty.

9. Sarees:-

(a) No producer shall produce any Sarees with borders exceeding 6.35 cms. In width or use real or imitation Zari in a Sarees border;

(aa) No producer who has spinning plant shall produce a Sarees with border of 1.90 cms. Or less in width and containing coloured yarn in its border unless he has previously sent to the Textile commissioner a sample of such cloth of the dimensions of 15.24 cms. X 15.24 cms and has received and Textile commissioners approval of such sample for bulk manufacture;

(b) no producer who has a spinning plant shall use gold coloured art silk yarn in a Sarees border.

(c) no producer shall use any coloured yarn in body of a Sarees except in a border or heading thereof;

(d) no producer shall piece-dye any same

(e) no producer shall produce any, Sarees with a heading more than 22.86 cms in width;

(f) no 7,ducer who has no spinning plant shall produce, any Sarees in which me count yam is below 36s (whether warp or weft and whether single or folded).

Explanation:- I. For the purposes of this direction, 'Sarees' means any type of grey or bleached cloth, whether or not mercerized or plain weave which

(i) is manufactured either wholly from cotton or partly from cotton and partly from any other materials;

(ii) contains coloured yam or white yarn on its borders or headings.

(iii) has a width ranging between 94 centimeters and 187 centimeters (mclusive); and

(iv) is commonly known by that name.

Explanation II:- The term 'heading' in para. (e) of this direction means heading woven with coloured or grey yarn.

Explanation III:- For the purpose of measuring the border of a Sarees, the width of the border shall mean the total width measured from the extreme 'end of the selvedge of the fabric to the portion enclosed by the innermost coloured end inserted in the borders provided that the width covered by the total number of coloured ends in the border shall be at least 50 per cent of the width of the border or 1.27 cms. whichever is higher.'

28. Firstly, the directions will be operative till 31st Mar. 1982. Secondly, Otherwise directions apply to all producers. The term 'producer' means a person engaged in the production of cloth or yarn or both by power as defined in S. 2(g) of the Factories Act 1948 (vide sub-c - (h) of, Clause 3 of the Control Order). Thirdly, the directions except that relating to Item viz., lungis and gamchas do not apply to cloth, manufactured for export with export marking. Items 2 to 12 of the directions dated 15-4-1977 prohibit the producers from producing dhoties, lunges it gain , chaddars, bed-sheets,, bed-covers and counterpane, low reed pick cloth, table cloth and , dusters, cloth of plain weave, sarees, towels, mashru cloth and cotton crepe fabrics of the descriptions specified against the respective entries. The result of these prohibitions against these producers is the types of clothes specific in the aforesaid entries, can be produced only by handloom sector

29. Sri javali contended that by profiting the petitioners from producing coloured sarees, their guaranteed by Art 19(1)(g) of the constitution to carry on their occupation, trade or business is infirngled.

30. The petitioners have not challenged the validity of the Act or any of its provisions. I have earlier found that Clause 20 of the Control order made under S. 3 of the Act is valid. Assuming that the directions are in conformity with Clause 20 of the Control Order, I seriously doubt whether it is open to the petitioners to contend that the directions are violative of Article 19(1)(g) of the Constitution. But I will assume, that that is not the position and examine the attack based on Art. 19(1)(g) of the Constitution

31 As noticed earlier, the directions do not completely prohibit the petitioners from manufacturing cotton textiles of every description but only restrict or prohibit them from manufacturing certain types of cloth. it is common knowledge that coloured

cotton sarees are used by most of the Indian women folk in particular, by the poorer and middle classes, throughout the length and breadth of the country as their Daily wear. Coloured sarees have therefore, a ready internal market in the country. In the absence of prohibition on the mill and powerloom sectors, the handloom sector providing gainful employment and living conditions to a large number of weavers and artisans in the ages and small towns, throughout the length and breadth of the country, will face near extinction. Our Constitution does not guarantee absolute and unregulated freedom of trade and business or a laissez faire economy in the country. In any event, the restrictions placed on the powerloom owners are reasonable restrictions conceived in the interest of the general public and are therefore, saved by sub-art. (6) of Art. 19 of the Constitution. In this view, the challenge of the petitioners: based on Art. 19(1)(g) of the Constitution has no merit and I reject the same.

32. Sri Javali, then urged that the directions are violative of Art. 14 of the Constitution. Elaborating his contention, Sri Javali maintained that the classification of the producers into powerlooms and handlooms, was for the sole purpose of Promoting the interests of owners of handlooms at the cost of the owners of powerlooms and such a classification had no rational relationship to the object of legislation. In support of his contention, Sri Javali strongly relied on the ruling of the High Court of Gujarat in *Ramanlal Nagardas v. M. S. Palnitkar*, : AIR1961 Guj38 .

33 The meaning and scope of Art. 14 of the Constitution has been authoritatively laid down by the Supreme Court in a larger number of cases and it is unnecessary to refer to all of them. From the decided cases the following principles may be taken as well settled.

34.. Article 14 of the Constitution guarantees equality of treatment to equals and not unequals. Art. 14 of the Constitution forbids class legislation but does not forbid reasonable classification for the cases of legislation. To pass the test of permissible classification, two conditions must be fulfilled namely - (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and

(ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases namely geographical, or according to objects or occupations or the like.

35. In our country, cotton textile are manufactured by three sectors - viz., (i) Modern Textile Mills, or Mill Sector. (ii) Powerloom Sector and (iii) Handloom Sector. The three sectors have their separate and distinct characters of their own. One cannot be compared with the other. One cannot stand the competition of the other. The mill sector using advanced technology and machinery, which can produce all types of cloth, if allowed without protection either to the powerloom sector or handloom sector, will eliminate both the sectors in no time. The same is true of the powerloom sector vis-a-vis the handloom sector. The powerloom sector wants protection against mill sector, but it contends that it should stop with that and should not be extended to the hand loom sector which in the very nature of things, cannot stand its competition. S. 3 of the Act, the validity of which is not challenged and has been upheld by the Supreme Court, permits the regulation of production and prohibition of production anyone or the sector by reserving a particular type of cloth to a particular sector. In these circumstances, there is no Infraction of Art. 14 of the Constitution. But in any event by providing for the reservation to the handloom sector, it cannot be said that the object of the statute viz., proper function, distribute consumer is not achieved, a; contended by Sri Javali.

36. Sri Javali contended that the conditions in different parts of the country are not one and the same and therefore, the Commissioner should not have issued under form directions.

37. It is common knowledge that conditions for the production of textiles by three sectors throughout the length and breadth of the country are more or less the same and are even uniform. In the very nature of things, eve small distinction and detail cannot be taken into consideration by an authority in deciding such matters. Secondly, the petitioners except badly stating that conditions in different parts of the country are different, have not even pleaded all those differences much less they have placed any reliable material in that behalf and thus they have not

discharged the initial burden that lies on them to examine their plea of violation of Art. 14 of the Constitution. In this view, also, the challenge of the petitioners is liable to be rejected.

38. In Ramanlal Nagardas's case, : AIR1961 Guj38 on which Sri Javali placed very great reliance, the Gujarat High Court had to consider the validity of each elusively entrusting co-operative societies with wholesale distribution of an essential commodity like sugar vis-a-vis the private wholesale dealers who similarly held licenses under the Bombay Sugar Dealers Licensing Order, 1959 made under the provisions of the Act. Applying the well known tests for classification, the Gujarat High Court invalidated the same on the ground that it violated Art. 14 of the Constitution.

39. As observed in Ramanlal Nagardas's case : AIR1961 Guj38 and other cases noticed in that case, the true scope and ambit of Article 14 of the Constitution have been well settled by the various rulings of the Supreme Court and the principles to be applied in determining the validity of any classification in a given case are also well settled, but the difficulty arises in applying those principles to a given case. In my opinion, the same is true in these cases also. In Ramanlal Nagardas's case the court was concerned with determining whether two wholesale dealers who were similarly placed, could be treated differently merely on the ground that one was a co-operative society and the other a private dealer. In these cases, that is not the position and therefore, the ratio in that case has no application at all. For all these reasons' I hold the impugned directions do not contravene Art. 14 of the Constitution

40. Sri Javali contended that the sole object and purpose of the Act is to ensure the supply of an essential commodity at fair prices to consumers and the same cannot be used for protecting the interest of one sector at the cost of another sector.

41. The words in the preamble of the Act indicate clearly the object and purpose of the statute. The Act has been enacted in the interest of the general public, for the control of the production supply and distribution of trade and commerce in essential commodities. S. 3 of the Act empowers the Central Government to make

an order for maintaining or increase in supplies or for securing their fair e distribution and availability at prices or securing that commodity for the Defence of India or the efficient conduct of military operations. An order made by the Central Government under Section 3 of the Act and the directions that may be issued under a control order can provide for all or any of the above matters. S. 3 in terms confers power on the Central Government and its sub-delegate by virtue of S. 5 of the Act in some cases to control the entire process or every aspect of an essential commodity commencing from the field to the stage of supply to the ultimate consumer. An essential commodity that reaches the consumer must undergo more than one process at more than one stage. Without effective control of an essential commodity at more than one stage, It would be Im. possible for the Executive Government to achieve the purposes of the Act. The extensive powers conferred on the Central Government and its legatees has not been conferred exclusively for the purpose of supplying essential commodities at a fair price to the consumer. That is not the only and sole object of the Act or, Section 8 of the Act. In my opinion, the construction suggested by Sri Javali on Section 8 of the Act besides being too narrow and restricted would result in rewriting that section and also defeat the scope and object of that section as also the Act. I therefore, hold that it is open to the Central Government and the Commissioner as its delegatee to regulate the production of different types of clothes by different manufacturers or Produces as the circumstances Justify.

42. Sri Javali next contended that before issuing the directions, the Commissioner had not taken into consideration, relevant principles and material and had been influenced by irrelevant considerations like safeguarding the interests of the handloom sector.

43. The Asoka Mehta Committee and High Powered Study Team on an extensive and intensive study of the problem and the material, recommended for the reservation of Floured sarees to handloom sector. Earlier, I have held that it was permissible or the Commissioner to control pro duction and provide for reservation of certain types of clothes to handloom sec tor. Every one of the factors and the material taken by the commissioner was relevant and no irrelevant principles or material had been taken by him in deciding the question. Once this court finds, the

authority has acted on relevant considerations and material, then it is not open to this court to examine such decision as an appeal and reach a different conclusion. In Special Civil Appl. 2782 of 1977 and 93 of 1978 decided on 10-10-1978, a Division Bench of the Bombay High Court, while upholding the validity of the impugned directions also found that the directions issued by the commissioner were based on event considerations and material. I am in the agreement with the reasoning the conclusions of the High Court of Bombay in those cases on this aspect. I therefore, reject this contention of Sri Javati.

44. Sri javati contended that the order dated 15-7-1977 of the Commissioner rejecting the application made by some of the petitioners seeking for exemption from the operation of the directions was not in conformity with sub-clause (4) of Clause 20 of the Control Order and is therefore, illegal.

45. Learned counsel for the respondents fairly stated that the reason given by the Commissioner was not in conformity with sub-clause (4) of CL 20 of the control Order.

46. Sub-clause (4) of Clause 20 of the Control Order that is material for our purpose reads thus:

'(4) Where, on an application made by any manufacturer or class of manufacture or otherwise, the Textile Commissioner is satisfied that any direction Issued by him under this clause will, cause undue hardship or difficulty to any such manufacturer or class of manufacturers he may, by order and for reasons so be recorded in writing, direct that the directions shall not a ply, or shall apply subject to such modifications as may be specified in the order, to such manufacturer or class of manufacturer.

This sub-clause in clear and unambiguous terms confers power on the Commissioner to exempt any manufacturer or elm of manufacturers if he is satisfied that the directions issued by him will cause any undue hardship or difficulty to any such manufacturer or class of manufacturers. The terms undue hardship or difficulty are not terms of art and are not capable of a precise legal import Whether the case a manufacturer or class of manufacturers falls within the

mean in of those terms, necessarily depends on the facts and circumstances that are pleaded or placed before the Commissioner, and as proceed by him after such enquiry as he may consider appropriate in the circumstances. Two other re Decrements of this sub-clause am, that if the Commissioner is satisfied that the case of a manufacturer or class of manufacturers, calls for exemption he can do so by an order in writing recording his reasons for the same subject to such modifications as may be specified by him in his order. Exemption from the directions can be claimed only if there is a direction and not before. The existence of the directions, is the very condition precedent for claiming exemption. With this analysis of sub-clause (4) of Clause 20 of the Control Order, let me now examine the validity of the reasons given by the Commissioner.

47. The two reasons given by the Commissioner for rejecting the application are (1) that a direction has been issued on 15-4-1977 and (2) that the same cannot be considered at present. The first reason given by the Commissioner viz, that there was an earlier direction issued by him, is plainly opposed to sub-clause (4) of Clause 20 of the Control Order. The fact that there is a direction cannot be a ground for rejecting an application for exemption. On the other hand, that is the very foundation for considering an application for exemption. In this the first reason given by the Commissioner cannot be upheld. The other reason given by the Commissioner that it cannot be considered 'at present, does not also flow from sub-clause (4) of Clause 20 of the Control Order. Sub-clause (4) or any other clauses do not say that an application can be rejected for the present. When an application for exemption is made, particularly having regard to the penal consequences that flow on a manufacturer or a class of manufacturers, it is required to be considered by the Commissioner with utmost expedition and cannot be deferred or rejected on the ground that it is not advisable to examine such an application for the present. The words 'at present' are also indefinite and vague. The directions issued by the Commissioner are to be operative% 319 Mar. 1982. An application made by a manufacturer or a class of manufacturers if not considered before that date, would be of no avail to such an applicant. In this view, the second reason given by the Commissioner is- also illegal and cannot be upheld.

48. Sub-clause (iii) of direction No. 1 also empowers the Textile Commissioner or such other officer as he may appoint in that behalf to exempt a producer for sufficient reasons. The words 'sufficient reasons' occurring in this direction should be read as having reference to the words used in sub-clause (4) of Clause 20 of the Control Order viz. that the directions issued will cause undue hardship or difficulty to a manufacturer or class of manufacturers. In the very direction itself, the Textile Commissioner has reserved- to himself or to such officer as he may appoint, power to exempt a producer from the directions issued by him. Evidently, the Commissioner has overlooked the very provision made by him in his directions. For all these reasons, I hold the Commissioner acted illegally in rejecting the application and his order is therefore-, liable to be quashed. But that does not mean this court can grant the same. The proper order in the circumstances to be made is to direct the Commissioner to dispose of the application afresh.

49. Sub-clause (4) of Clause 20, while directing the Commissioner to give reasons for granting exemption, does not direct him to give reasons for rejecting an application. By reason of that only, the Commissioner cannot reject an application without giving reasons. As pointed out by the Supreme Court in *Siemens Engineer and . v. Union of India*, : AIR 1976 SC1785 , the requirement to give reasons is one of the basic requirements of the principles of natural justice, An order made by the Commissioner under this clause is also appealable to the Central Government (Vide Clause 36 of the Control Order). When an order is made appealable, it is all the more necessary for the Commissioner to give reasons even if he were to reject an application. I have, no doubt, the Commissioner would bear all these aspects and dispose of the application afresh by giving his genuine consideration to the claim made therein.

50. Learned Counsel for the petitioner submitted that since the Commissioner had rejected the application made by some of the petitioners on 15-7-1977, the others did not make applications apprehending that their applications would meet the same fate as the one met by the producers of Rabkavi, Banahatti area. In these circumstances, they submitted that the other petitioners would file similar or appropriate applications before the Commissioner and that he should be directed

to consider and dispose of them also. Learned counsel for the petitioners, are right in their submission that -the Commissioner would have rejected other applications of other petitioners also for the very reasons found against others. By the use of the words 'otherwise! sub-clause (4) empowers the Commissioner to suo motu consider the case of a manufacturer or class of manufacturers. In any event, every application to be made by a manufacturer or class of manufacturers, as and when filed is required to be considered by the or an officer to be appointed by him. In view, It is open to others to make applications and f have no doubt that they will all be considered in accordance with law.

51. Learned counsel for the lastly submitted that the considers , and decides, their applications this Court should issue a direction to him to keep the impugned directions In once to avoid the injury, hardship and also penal consequences that flow against them.

52 As noticed earlier, I have upheld the validity of the directions. Whether any or all the petitioners are entitled for exemption is a matter primarily for the Commissioner to decide. On the final disposal of the cases, it is not open to this (Court) to issue an order suspending the operation of the impugned directions till such time the Commissioner decides the &applications.; As early as in the year 1952 the Supreme Court in State of Orissa v. Madan Gopal : [1952]1SCR28 , has deprecated- the issue of such directions. In my view, this request of the petitioners cannot be granted. I therefore, reject the same. But the same does not prevent the petitioners from approaching the Commissioner to keep his order in abeyance or for the Commissioner himself to keep his order in abeyance if he so desires. Whether the Commissioner should keep his directions in abeyance till the applications are decided by him is a matter exclusively for him to decide. But this should not be understood by the Commissioner as this Court having decided that such an application is maintainable and if maintainable should be granted b him Both these are matters for the Commissioner to decide.

53 now summarise my conclusions as thereunder:

54 (a) that the Cotton Textiles (Control) order of 1948 which was in force as on 1-4-1955 on which date, the Essential Commodities Act of 1955 came into force, has

not lapsed and continues to be in force by operation of S. 16 of the said Act;

(b) that clause 20 of the control order is not violative of S. 3 of the Act,

(c) that the impugned directions issued by the Commissioner are not violative of Arts. 14 and 19 of the Constitution and Clause 20 of the Control Order and are valid, and

(d) the applications made by some of the petitioners seeking for exemption under sub-clause (4) of Clause 20 of the Control Order have been illegally rejected by the Commissioner and he is required to reconsider them in accordance with law.

54. In the light of my above discussions and conclusions I make the following Order:

(1) That the challenge made by the petitioners to Cl 20 of the Control order and the impugned directions are rejected and their writ petitions to that extent are dismissed. Rule issued to that extent in all these cases is discharged.

(2) I quash the order No. HB/10-17/CS/ dated 15-7-1977 of the joint Textile Commissioner, Government of India, Bombay, (Exhibit-E) in W. P. Nos. 5069 to 5073 of 1978 and direct the Textile Commissioner, Bombay-respondent No. 1 or such other officer he may appoint to dispose of all such applications made for exemption with all such expedition as is possible in the circumstances, in accordance with law and in the light of the observations made in this order. Rule issued in the cases is made absolute to this extent only.

55. In view of their divided success and failure, I direct the parties to bear their own costs.

56. In order to enable the Textile Commissioner to expeditiously deal with the applications, I direct the office to communicate him with a copy of this order within 15 days from this date.

57. Order accordingly.

