

**Arbind Kumar Deb and ors. Vs. Rex**

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**Court :** Allahabad

**Decided On :** Dec-21-1948

**Reported in :** AIR1949All473

**Appellant :** Arbind Kumar Deb and ors.

**Respondent :** Rex

**Judgement :**

**Mushtaq Ahmad, J.**

1. The questions referred to the Full Bench are set out in the referring order in these terms:

(1) Does the mere possession of cloth which was not to be possessed after 31st December 1944, in view of Clause 14, Sub-clause (1) (a), Cotton Cloth and Yarn (Control) Order 1943, amount to so contravening the provisions of that Order as to be punishable under Rule 81 (4), Defence of India Rules or would it amount to such contravention if such possession be without lawful authority or lawful excuse?

(2) Whether the general consideration that the authorities did not, either in this Control Order or in directions issued thereunder, provide the mode in which the dealers were to act in the event of such cloth remaining with them undisposed of, would itself amount to a 'lawful excuse.'

(3) Whether the existence of lawful excuse depends on the dealers taking some active steps prior to 31st December 1944, for getting rid of the cloth before or after 31st December 1944.

2. The full facts of the cases in which the questions mentioned above have arisen are given in the referring order. All that is necessary for us to do is to indicate briefly, in outline, the salient features which have to be borne in mind in appreciating the points raised in these cases. All these cases, 25 in number, have been consolidated. In all of them admittedly retail dealers were found in possession of cloth after 31st December 1944. In consequence, all these dealers have been prosecuted for an offence under Rule 81 (4), Defence of India Rules, for contravening the provisions of Clause 14, Cotton Cloth and Yarn (Control) Order, 1943. In none of these cases has any dealer denied the recovery of cloth from his possession. Their defence, in the main, has been that they were, for one reason or another, quite unable to dispose of the cloth in their possession by the specified date, i.e., 31st December 1944. In some of these cases, the plea taken in defence, in terms, was that the respondents had tried their best to sell the cloth in their possession before the expiry of the period of time prescribed, but that they had failed in their attempt in spite of their best efforts. The trial Court, however, even in cases where it accepted the plea in defence that in spite of his best efforts the dealer was, unable to dispose of the cloth, convicted the accused. On appeal, the learned Sessions Judge set aside conviction. He appears to have done so on two grounds (i) that, in view of the provisions of Clause 15-A, the dealers could, in law, keep and sell any cloth and disposed of within the period specified in Clause 14 and (ii) that the dealers had a lawful excuse within the meaning of that expression as used in Rule 5, Defence of India Rules. The learned Judge appears to have been influenced to a large extent by the fact that no machinery for the disposal of the cloth lying undisposed of with the dealers by 31st December 1944, was provided in the Control Order. Against the order passed by the learned Sessions Judge, the Provincial Government has filed appeals in these cases.

3. We have listened to prolonged arguments, on the one hand, from the learned Government Advocate, who appears in support of the Government appeals, and, on the other, from different counsel who appear for different respondents. In the

course of their arguments, they have invited our attention to a large number of rulings- They have also brought to our notice the relevant provisions of the Control Order as well as of the Defence of India Rules relevant thereto, in support of their contentions. We shall revert to these rulings after considering the relevant provisions of the Control Order as well as of the Defence of India Rules.

4. The relevant provisions of the Cotton Cloth and Yarn (Control) Order, 1943, as they stood on the relevant date, are these:

Clause 14 (1) 'No dealer shall, after 31st December 1944, buy or sell or have, in his possession (a) any cloth or yarn manufactured in India before 1st August 1943, and (b) any cloth or yarn manufactured in India and packed after 31st July 1943, and before 1st January 1944.'

Clause, 15. 'The Textile Commissioner may by general or special order, exempt any cloth or yarn, or any class of cloth or yarn, from all or any of the provisions of Clauses 13 and 14.'

Clause 15-A. 'Notwithstanding anything contained in Clauses 14 (1) and 14 (2), cloth or yarn not disposed of within the period specified in these clauses may be kept and sold by a dealer subject to the conditions notified in this behalf by the Textile Commissioner prescribing the special markings to be made on such cloth or yarn, the agency by which the marking shall be made and the fee payable for such marking:

Provided, however, that no such cloth or yarn shall be kept undisposed of by any dealer, or by any person, holding on behalf of a dealer, for mote than six months after the date of such marking.'

Clause 18-B. 'The Textile Commissioner may, with a view to securing a proper distribution of cloth or yarn or with a view to securing compliance with this order, direct any manufacturer or dealer, or any class of manufacturers or dealers'

(a) to sell to such person or persona such quantities of cloth or yarn as the Textile Commissioner may specify;

(b) not to sell or deliver cloth or yarn of a specified description except to such person or persons and subject to such conditions as the Textile Commissioner may specify, and may issue such further instructions that he thinks fit regarding the manner in which the direction is to be carried out.'

N.B.-The new Clause 18-B was inserted in the Control Order on 16th December 1944.

5-6. The respondents have been prosecuted for an offence under Rule 81 (4), Defence of India Rules, in respect of an alleged 'contravention' of Clause 14, Cotton Cloth and Yarn (Control) Order, 1943. Rule 81 (4), Defence of India Rules, as amended, reads thus:

If any person 'contravenes' any order made under this Rule, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both and if the Order so provides any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty.

The question that arises immediately for consideration is this : What is the meaning of the word 'contravention,' or 'contravenes' as used here? For purposes of the Defence of India Rules, the word 'contravention' has been used in a technical sense and the word, with its grammatical variations, has been defined in Rule 6, Defence of India Rules. Rule 5, as it stood at the relevant date, is this:

If any person to whom any provision of these Rules relates, or, to whom any order made in pursuance of these Rules is addressed or relates, or who is in occupation, possession or control of any land, building, vehicle, vessel or other thing to which such provision relates, or in respect of which such order is made-

(a) fails without lawful authority or excuse himself, or in respect of any land, building, vehicle, vessel or other thing of which he is in occupation, possession or control, to comply, or to secure compliance, with such provision or order, or

(b) evades, or attempts to evade, by any means such provision, or order,

he shall be deemed to have contravened such provision or order; and in these Rules the expression 'contravention' with its grammatical variations includes any such failure, evasion or attempt to evade.

7. Possession of cloth (manufactured in India before 1st August 1943) by a dealer after 31st December 1944, clearly amounts to a failure to comply with the requirements of Clause 14 of the Control Order. In other words, it is a violation of the mandatory provisions of Clause 14, (1) of the Order. Till that date, the Textile Commissioner had not, in any way, authorised possession of such cloth after the due date. Prior to 31st December-1944, it is common ground, that the Textile Commissioner had not passed any general or special order, under Clause 15, exempting any cloth or yarn, or any class of cloth or yarn, from all or any of the provisions of Clauses 13 and 14. Similarly, it is admitted on all hands that, under Clause 15-A, also the Textile Commissioner had not till 31st December 1944, notified the conditions subject to which cloth or yarn not disposed of within the period specified in Clauses 14 (1) and 14 (2) of the Order might be kept and sold by a dealer. Further it is clear that the Textile Commissioner had not issued any direction to any dealer such as is specified in Clause 18 B of the Control Order which was promulgated only on 16th December 1944 about a fortnight before the expiry of the period specified in Rule 14 (1), i.e., 31st December 1944. Therefore on the expiry of 31st December 1944, the position in which a dealer stood was this. His continued possession of cloth after 31st December 1944, amounted to a violation of the provisions of Clause 14 of the Order and there were no directions from the Textile Commissioner issued under any of the provisions of the Control Order which might authorise him to retain possession. The question, however, is whether mere non-compliance with the provisions of Clause 14 of the Control Order i.e., mere possession of cloth after 31st December 1944 amounts to a 'contravention' of the Control Order. Rule 5, Defence of India Rules, makes it clear that a mere breach of Clause 14 of the Control Order is not a contravention of it but the failure to comply with it would amount to a contravention of it only if it is without lawful authority or excuse. In this connection reference may be made to the case of *Chotey v. Emperor* 1947 A.I.R. H.C.P. 89 decided by two learned Judges of this Court. In this case the learned Judges, after expressing their disagreement with the view expressed by the Nagpur High Court in the case of

Provincial Government, C.P. and Berar v. Shamsherali and Anr. A.I.R. (32) 1946 Nag. 249, in regard to the applicability of Rule 5, observed at p. 107:

In our judgment Rule 5, Defence of India Rules is intended to enlarge the scope of contravention and not to limit or curtail it. Rule 5 is intended to widen the field of contravention by including within its ambit an act which, though it may not be a prima facie breach of any provision, is yet an evasion of or an attempt to evade that provision. The Rule has no application to an act which is clear and direct breach of a prohibitory provision. It is important to note that Rule 5, after referring to certain acts says that the person committing those acts 'shall be deemed to have contravened such provision or order.' Where an act is a clear and direct breach of a prohibitory provision there is no question as to whether it has to be deemed to be a contravention of that provision.

8. The provisions of Rule 5, Defence of India Rules are divided into two sub-rules. Sub-rule (a) deals with a person's failure to comply with an order passed in pursuance of any of the Defence of India Rules whereas Sub-rule (b) deals with an evasion or attempt at evasion, of any rule or order made thereunder. It is difficult to see how one's failure to comply with any provision of any of the rules, or with an order passed under any of the rules, can be anything other than a direct breach of the prohibition or other provision of any of the rules or of an order made thereunder. If Rule 5 contained no provision like that comprised in Sub-rule (a) and were confined merely to what is contained in Sub-rule (b), the observations of the learned Judges in the case noted above might undoubtedly have full force. But in the presence of sub r. (a) which deals with one's failure to comply with any provisions of the Defence of India Rules or with an order passed in pursuance of those rules, it is difficult to see how a failure to comply with a prohibitory provision or other direction should be considered, apart from the question of the existence of lawful authority or excuse for such failure. With great respect therefore we dissent from the view expressed by the learned Judges in this case.

9. In the case of Ram Sarup v. Emperor A.I.R. (34) 1947 ALL. 250, Allsop J., accepted the decision of the Nagpur High Court in the case of Provincial Government, C. P. & Berar v. Shamsherali and Anr. A.I.R. (32) 1945 Nag. 249, in

so far as it was held there that person charged with the contravention of Clause 14, Cotton Cloth and Yarn (Control) Order, 1943, should not be convicted for being in possession of cloth against the provisions of the order if they had a lawful excuse for such possession. To the same effect is the view expressed by Sinha J., in criminal Reference Nos. 513 and 602 of 1946 decided on 5th August 1946. Sinha J. has expressed his agreement with the views taken by the Nagpur High Court in Shamsherali's case A.I.R. (32) 1945 Nag. 249, as well as by the Oudh Chief Court (as it then was) in the case of Murli Dhar v. Emperor A.I.R. (33) 1946 Oudh 234. It must, however, be noted that in the cases decided by Sinha J., there was no application by the prosecution, for a summary trial and the trial on that ground was held to be illegal. The view expressed by us above to the effect that Rule 5 itself makes it clear that a mere breach of Clause 14 of the Control Order does not technically amount to a 'contravention' of it, but the failure to comply with it would amount to a 'contravention' of it only if it is without lawful authority or excuse finds support from decisions of other High Courts as well. In the recent Full Bench decision of this Court in the case of Laljee v. Emperor : AIR1948 All38 in which the leading judgment was delivered by Malik J. (now Malik C.J.), it was observed at p. 541, that the question of lawful excuse did not arise in that case. The argument based on Rule 5 which was urged in that case before the Full Bench is, however, noticed, but as the point did not directly arise for decision, no opinion was expressed on it. The learned Judge, however, went on to observe:

I am inclined to the view that the words 'lawful excuse' mean any excuse which is recognised as a good excuse in law. The words are not 'any reasonable excuse' but 'lawful excuse'; the excuse may be good in fact though not tenable in law.

It seems to us that it was held there that the defence of lawful authority or excuse contemplated by Rule 5 might be available in the case of a prosecution for contravention of Clause 14 of the Control Order.

10. In the case of Provincial Government, C. P. & Berar v. Shamsherali and Anr. A.I.R. (32) 1945 Nag. 249, two learned Judges of the Nagpur High Court dealt with the case of a prosecution for contravention of Clause 14, Cotton Cloth and Yarn (Control) Order, 1943. In this connection they had occasion to consider the

meaning of the word 'contravention' of an order as used in Rule 81 (4), Defence of India Rules. At p. 251, it was observed:

The prosecution was under Rule 81 (4), Defence of India Rules, for contravention of Clause 14, Cotton Cloth and Yarn (Control) Order, 1943. Contravention of an order has a technical meaning in the Defence of India Rules. Rule 5 of which the relevant portion is given below defines it:

5. 'If any person...to whom any order made in pursuance of these rules is addressed or relates or who is in...possession...of any other thing...in respect of which such order is made... (a) fails without lawful authority or excuse...himself, or in respect of any...other thing of which he is in...possession...to comply or to secure compliance with such...provision...he shall be deemed to have contravened such order.'

We have underlined (here italicised) a few words to bring out the full meaning of the rule. The failure to comply, or to secure compliance with Clause 14 of the Order by the dealere without lawful excuse is contravention of the order which is made punishable and not a mere breach of Clause 14 of the Order.

With regard to the other point decided by that Court in the same case, namely whether Clause 15-A of the Order overrides Clause 14 thereof, the position is that the recent Full Bench decision of our Court in Laljee's case : AIR1948 All38 , takes a different view and does not accept the Nagpur view. That, however, is a matter with which we are not concerned in this case. On the facts of the case before them, the learned Judges came to the conclusion that the dealers had lawful excuse for possession of cloth after 31st December 1944 and hence they had not contravened Clause 14 of the Order and were not punishable under Rule 81 (4), Defence of India Rules, To the same effect is the decision of a Bench of two learned Judges of the Oudh Chief Court in Murli Dhar v. Emperor A.I.R. (33) 1946 Oudh 234. The decision in this case runs more or less on parallel lines with the decision of the Nagpur High Court noticed above. In the case of a prosecution for contravention of Clause 14 of the Control Order, in circumstances very similar to those of the cases before us, the learned Judges observed at p. 236 thus:

The dealers were therefore left in an impossible position for they could not keep the cloth themselves nor could they hand it over to any one to keep on their behalf on account of Clause 14 (3) (1).

11. The learned Judges agreed with the view of the Nagpur High Court and in the circumstances of the case before them held that there was lawful excuse for being in possession of cloth on 1st January 1945.

12. Next we may refer to the case of Gokuldas Nensi v. Emperor A.I.R. (34) 1947 Bom. 28, decided by two learned Judges of that Court. The learned Judges were concerned with the case of a prosecution for contravention of Clause 15-A, Cotton Cloth and Yarn (Control) Order, 1943. At p. 29 it was observed:

Rule 81 (4), Defence of India Rules, makes it penal to contravene any order made under Rule 81 and the Cotton Cloth and Yarn Control Order 1943, having been made under Rule 81 (2), if, as is alleged, the appellant be proved to have contravened Clause 15-A of that Order, he would be liable to be convicted under Rule 81(4). 'Contravention' of an Order has a technical meaning in the Defence of India Rules and is defined in Rule 5.

After referring to the provisions of Rule 5 (a) of the Defence of India Rules, the learned Judges go on to observe:

This makes it clear that a mere breach of Clause 15-A of the Order is not 'contravening' it but the failure to comply with it would amount to a contravention of it only if it is without lawful excuse, and in this case we are satisfied that the appellant had a lawful excuse for keeping his undisposed of cloth since the Textile Commissioner issued no directions or instructions under Clause 18-B with a view to securing compliance with the various injunctions contained in the Cotton Cloth and Yarn (Control) Order, 1943.

13. In view of what has gone before, we, have reached the conclusion that mere possession of cloth which was not to be possessed after 31st December 1944 does not amount to a contravention of Clause 14, Sub-clause 1 (a) of the Control Order so as to be punishable under Rule 81 (4), Defence of India Rules. We are

further of opinion that Rule 8, Defence of India Rules, defines the word 'contravention' as used in Rule 81 (4) and it makes it clear that a mere breach of 14, Sub-clause (1) (a) would not amount to a contravention of it but the failure to comply with it would amount to a contravention of it only if it is without lawful authority or excuse.

14. It follows that the act or omission will be punishable only when it is without lawful authority or excuse. The onus would thus lie upon the prosecution to prove not only the act or omission but also the absence of lawful authority or excuse, just as absence of a licence is to be proved by the prosecution in a case under the Arms Act. This is the position, of course, in the absence of an express statutory provision to the contrary.

15. The next question which has to be considered is: What is the meaning of the expression 'lawful authority or excuse' as mentioned in Rule 5 (a), Defence of India Rules? Unlike the word 'contravention', this expression is not defined anywhere in the body of rules called the Defence of India Rules. We must, therefore, look to other sources for assistance in the interpretation of this expression. At the outset, it may be noted that besides Rule 5, this expression occurs in many other Rules, e.g., Rules 38 (1), 39 (1) and 48 (1). Rule 38 (1) deals with the prohibition of prejudicial acts, etc., and the expression there is: 'no person shall, without lawful authority or excuse (a) do any prejudicial act....' Similarly Rule 39 deals with illegal possession of certain kinds of information and it reads thus:

Rule 39 (2):- 'No person shall, without lawful authority or excuse, have in his possession (a) any information likely to assist the enemy...or (b) any document containing any prejudicial report....

Rule 48 deals with improper use of official uniforms etc. Rule 48(1) reads:

No person shall without lawful authority use or wear - (a) any official uniform, Indian, British or foreign or.

It would appear from a consideration of the provisions of these Rules, that a distinction is drawn by the rule-making authority between different kinds of

prohibitions. The phrase 'lawful authority' appears to be used in the case of some positive act being done i.e., that is being prohibited. The phrase 'lawful excuse', on the other hand appears to be used in connection with possession which indicates a negative aspect of prohibition. ,

16. At this stage it will be interesting as well as instructive, to note that the phrases 'lawful authority' and 'lawful excuse' have been in use in England for a long time and each has acquired a distinctive significance of its own. In the Coin Laws Consolidation Act (1832) (2 and 3 W. IV C. 34) by Section 10, 'lawful authority' was required for doing a positive act i.e., making tools for coining. But 'lawful excuse' was the expression used in connection with the possession of such tools. Similarly in Sections 11,12, 13 and 14 of that Act, the distinction between the two expressions was maintained. Similarly in the Forgery Act of 1830 (II Geo. IV and 1 w IV, C 66) in Sections 13,14,15, 16, 17,18 and 19 there is a sharp distinction drawn between the expression 'lawful authority' on the one hand and 'lawful excuse' on the other. The expression 'lawful authority' has been used generally in connection with the doing of a positive act e.g, making of foreign Bank notes, while 'lawful excuse' has been used in connection with the possession of a forged bank note, etc. From a study of the various provisions of these ancient statutes, it is clear that the two expressions 'lawful authority' and 'lawful excuse' have been used in the sense indicated above. In more recent statutes, however, the two expressions appear to be coupled together just as the subject-matters e.g., the making of tools for preparing forged articles and possession of the same as well as of forged articles are dealt with together. Reference may be made to the Coinage Offences Act of 1861 (24 and 26 Vict. c 99). In Sections 6, 7 and 8 both these expressions are used, but they are used in contradistinction with each other, 'Lawful authority' refers to a positive act which is prohibited whereas 'lawful excuse' is generally used in connection with the possession etc., indicating what might be described as the negative aspect of a prohibition. Similarly in the Forgery Act of 1870 (33 and 34 vict. c. 5]8), Section 5 which deals with the engraving of plates etc., for stock certificates uses the expression 'without lawful authority or excuse.' Again, in the Post Office (Protection) Act of 1884 (47 and 48 vict. C. 76) Section 7 shows that the two phrases viz., 'lawful authority' and 'lawful excuse' have been used each in its distinctive sense as in the earlier statutes. Again, in

Section 13 (9), Stamp Duties Management Act, 1891 (54 and 55 vict. C.38), which deals with certain offences in relation to dyes and stamps the expression used is "knowingly and without lawful excuse...has in his possession any forged dye or stamp.' Lastly reference may be made to the Forgery Act of 1918 (3 and 4 Geo. v.c. 27). In Sections 8 and 9 of the Act which deal with possession of forged documents, seals etc., and the making or having in possession paper or implements for forgery the expression used is 'without lawful authority or excuse.'

17. In the Full Bench case, *Laljee v. Emperor* : AIR1948 All38 , as noted in an earlier part of this judgment, Malik J. made an obiter dictum to the effect that 'lawful excuse' means any excuse which is recognised as a good excuse in law. The proposition as laid down there does not really help the question of interpretation of the expression 'lawful excuse' because it merely paraphrases the word 'lawful.' In the case of *Mithan Lal v. Emperor* : AIR1948 All165 , our learned brother Mootham J. while dealing with the case of a person prosecuted for, a contravention of Clause 14 (1), Cotton-Cloth and Yarn (Control) Order, 1943, had occasion to interpret the expression 'lawful excuse' as it occurs in Rule 5, Defence of India Rules. The learned Judge, however, only quoted with approval the opinion expressed by Malik J. in the Full Bench case and said lawful excuse means an excuse which is recognised as a good excuse in law. He added that the word used was 'lawful' and not 'reasonable' or 'good' as an adjective which qualifies 'excuse.' On the facts of the case before him, he came to the conclusion that the inability of an accused person to dispose of the cloth by 31st December 1944, did not afford a lawful excuse, but was merely a circumstance to which full weight might be given in assessing the sentence. This again, it seems to us, with great respect to the learned Judge, is not very helpful in determining the proper construction which has to be put on the words 'lawful excuse.' As mentioned already, there is no discussion or indication as to what in his opinion would amount to a lawful excuse. What excuse would be recognised as a good excuse in law remains to be examined.

18. The expression 'without lawful authority or excuse' as it occurs in Rule 38 (1), Defence of India Rules, was the subject-matter of decision in the case of *Kashinath Dayaram Chaudhari v. King-Emperor* A.I.R. (31) 1944 Bom. 248,

decided by a Bench of two learned Judges of the Bombay High Court. It was a case in which a communist had been prosecuted for instigating a strike among the labourers of a supply base depot. The question was whether he was guilty under Rule 38(5), Defence of India Rules, inasmuch as he had contravened the provisions of Rule 38(1), Defence of India Rules. At p. 441 it was observed by the learned Judges that the expression 'without lawful authority' is distinct from 'without lawful excuse.' 'With lawful authority' means sanctioned by some lawful authority, whereas 'with lawful excuse' means having an excuse which is not unlawful, that is to say, not prohibited by law. It was further observed that Rule 38 (1) prohibits the doing of a prejudicial act without lawful authority or excuse and does not require that the excuse should be reasonable or just.

19. Similarly, in *Be Alati Appalaswamy and Anr.* A.I.R. (29) 1942 Mad. 735, a learned Judge of the Madras High Court had to consider the scope of Rule 38 (1), Defence of India Rules. After stating that Rule 38 (1) provided that no person shall, without lawful authority or excuse (a) do any prejudicial act, the learned Judge proceeded to state that the simple question before him was whether the petitioners had a lawful excuse for calling a strike. It was held that the calling of a strike was not illegal. It was not with the object of impeding the war effort but with the object of remedying the real or supposed grievance of the union. In the circumstances, it was held that there was a lawful excuse for the strike.

20. In the case of *Bundoo and Ors. v. Emperor* : AIR1943 All15 , a learned Judge of this Court, Mulla J., had to deal with the case of a person who had been convicted under Rule 38 (5), Defence of India Rules. In that case Bundoo and some others had sacrificed a cow on the occasion of the Bahrid festival in the year 1941. Prior to the Bahrid festival of that year Bundoo had obtained a declaratory decree from a civil Court to the effect that the Muslim residents of the village were entitled to perform cow sacrifice on the occasion of the Bakr-Id festival. Bundoo asserted the right given to him by the civil Court decree and sacrificed a cow on the occasion of the Bakr-Id festival. The local authorities had not issued any prohibitory order against cow sacrifice. The learned Judge observed at p. 532:

It is evident that the prosecution is bound to prove that the act committed by the applicants which is the basis of the charge against them was committed without lawful authority or excuse and upon the admitted facts of the case there can be no doubt that the prosecution cannot prove that essential ingredient of the offence under Rule 38 (1), Defence of India Rules.

It was held that Bundoo had lawful authority for performing the cow sacrifice which he did perform. The learned Judge went on to observe:

It may also be reasonably contended that he had lawful excuse because it was the occasion of the Bakr-Id festival and as a Muslim he was performing a religious act.

21. Again in the case of *Emperor v. Bhangda Fakir* a : AIR1926 Bom530 , a Bench of two learned Judges of the Bombay High Court had to consider the meaning of the expression 'lawful excuse' in Section 61 (a), Bombay District Police Act (Bombay Act IV [4] of 1890). Fawcett J. observed at p. 531:

In my opinion the word 'lawful' as used with the word 'excuse', in Clause (a) of Section 61, Bombay District Police Act, conveys the idea of an excuse that is (a) reasonable and (b) not opposed to any law or principle of law.

But Shah J. at p. 532 observed:

Without attempting to define what a lawful excuse as it seems to me that it is a question, which must be determined on the facts and circumstances of each case.

22. In the well known English case, *Dickins V. Gill* (1806) 2 Q.B. 310, the question was whether possession of a dye for making a false stamp known to be such to its possessor was possession without lawful excuse. This was with reference to the provisions of Section 7 (c), Post Office (Protection) Act, 1884, which laid down:

A person shall not make, or, unless he shows a lawful excuse, have in his possession, any dye, plate, instrument, or materials for making any fictitious stamp.

It was held in effect that absence of knowledge might be a lawful excuse for the possession of a fictitious stamp, but innocence of motive was not. Further, there

could be no lawful excuse in the retention of a fictitious stamp or dye, after the proper authority had intervened.

23. Section 70, Contract Act provides:

Where a person lawfully does anything for another person...and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of...the thing so done or delivered.

In the case of Chedi Lal v. Bhagwan Das 11 ALL. 234, decided by two learned Judges of this Court, Straight and Mahmood JJ., it was observed that the word 'lawful' as used in that section had a wider significance than the word 'legal'. This case was followed by the Bombay High Court in Punja bhai v. Bhagwandas A.I.R. (16) 1929 Bom. 89, where it was observed:

The term 'lawful' no doubt has a wider meaning than the term 'legal'. 'Legal' is what is in conformity with the letter or rules of the law as administered in the Courts, 'lawful' is what is in conformity with (or frequently not opposed to) the principle or spirit of the law whether moral or judicial. In ascertaining whether an act is 'lawfully' done for another the test to be applied should be as was laid down by Straight and Mahmood JJ., in Chedi Lal v. Bhagwan Das 11 All. 234.

24. In the Law Lexicon of British India by Ramanatha Iyer the word 'lawful' has been defined as meaning that which in its substance is sanctioned or justified by law, as opposed to unlawful or illegal. 'Lawful' implies conformable to or enjoined by law. A lawful act is defined as meaning an act which is not forbidden by the Penal law.

25. On a consideration of the whole matter, it seems to us that the proper construction of the expression 'lawful excuse' would be an excuse which, though not expressly sanctioned by law, is reasonable and not prohibited by law, or opposed to any principle of law.

26. The next and the last question which it is necessary to consider, in view of the terms of reference, is: Would it be necessary for a dealer in every case to prove that he took some active steps prior to 31st December 1944 for getting rid of the

cloth in respect of which he is being prosecuted or would a mere proof of the fact that the authorities concerned did not, either in the Control Order, or in directions issued thereunder, subsequently provide the mode in which the dealers were to act in the event of such cloth remaining with them undisposed of itself amount to 'lawful excuse'? In this connection it may be noted that Ailsop J, in the case of *Ram Sarup v. Emperor* A.I.R. (34) 1947 ALL. 250 (ubi supra) and the Full Bench in the case of *Laljee v. Emperor* A.I.R. (38) 1948 ALL. 35 (ubi supra) appear to have held by implication that the mere omission of authorities to issue directions regarding the mode in which the dealers were to act in the event of cloth remaining with them undisposed of would not amount to 'lawful excuse'. But in some of the cases decided by other High Courts, referred to in an earlier part of this judgment, it has been clearly held that the omission of authorities to issue necessary directions might itself constitute a 'lawful excuse' e.g., in the case of *Murli Dhar v. Emperor* A.I.R. (33) 1946 Oudh 234 in the case of *Gokuldas Nensi v. Emperor* A.I.R. (84) 1947 Bom. 28, (ubi supra) and in the case of *Provincial Government, C. P. end Berar v. Shamsherali and Anr.* A.I.R. (32) 1945 Nag. 249 (ubi supra). In the case of *Superintendent and Remembrancer of Legal Affairs, Bengal v. Fatechand Baid* : AIR1948 Cal39 , the Court appears to have proceeded on the footing that the omission by the authorities to give necessary directions or instructions to the dealers might constitute a 'lawful excuse.' In some cases e.g. the case of *Emperor v. Bhangda Fakira* : AIR1926 Bom530 , it was definitely laid down by one of the learned Judges, at any rate, that what is a 'lawful excuse' is a question which must be decided on the facts and circumstances of each case. This might clearly include the difficult position of a dealer who might be genuinely anxious to avoid a contravention of the law but who might yet not know what he was to do with the cloth lying on his hands after the expiry of the due date simply because the authorities concerned had omitted to issue necessary directions in the matter. The position of a dealer in such circumstances becomes an impossible one. His possession which was lawful became unlawful on the stroke of 12 midnight of 31st December 1944. Even so late as the 16th December 1944, Clause 18B was newly added to the Control Order and the Textile Commissioner was expressly given power to issue directions with a view to securing compliance with this order and yet he never moved in this matter. It may be legitimately urged that the dealers

cannot be penalized for a breach of Clause 14, Control Order because the Textile Commissioner did not think it fit to issue necessary directions according to which undisposed of cloth or yarn could be possessed or dealt with after the midnight of 31st December 1944. We may note that after the insertion of the new Clause 14, Control Order, on 4th November 1944 the Textile Commissioner appears to have issued a press note on 8th November 1944 to the following effect:

The Government of India have by a notification in the Gazette of India, dated 4th November, 1944, amended Clause 14, Cotton Cloth and Yarn (Control) Order, 1943. Under clauses as amended it will be an offence for any dealer to buy or sell or have in his possession after 31st December 1944 any cloth or yarn manufactured and packed before the 1st January 1944. The clause further lays down that any cloth or yarn whether manufactured in India or imported must be finally disposed of within twelve months from the last date of the month marked on the goods; no such cloth or yarn shall be kept in unopened bales after six months from that date.

The Textile Commissioner desires it to be known that no extensions will be given in the time for disposal now laid down unless for the most compelling reasons, when the holder of the goods can show that they could not be sold due to causes entirely beyond his control.

Handloom cloth is exempted from the above provisions.

27. It will be noted that even this press note provides for an exception in the case of compelling reasons when the holder of goods can show that they could not be sold due to causes entirely beyond his control.

28. On a careful consideration of all the relevant provisions as well as the existing case-law on the point, we feel that it is impossible to escape the conclusion that, situated as they were, many of the dealers would find it impossible to know how to proceed in the emergency with which they were suddenly confronted on 1st January 1945. It is difficult to accept the view that the framers of the Control Order intended to legislate in such a way as to penalise dealers who, for reasons beyond their control, were not able to dispose of the cloth or yarn by 31st December 1944.

We are accordingly of opinion that the fact that the authorities did not, either in this Control Order or in directions issued thereunder, provide for the mode in which the dealers were to act in the event of such cloth remaining with them undisposed of, would itself amount to 'lawful excuse' does not necessitate any active steps on the part of the dealers prior to 31st December 1944, for getting rid of the cloth either before the expiry of the period or afterwards.

29. To sum up, our answers to the three questions referred to us are these:

(1) Mere possession of cloth which was not to be possessed after 31st December 1944 does not amount to a 'contravention' of Clause 14, Control Order so as to be punishable under Rule 81 (4), Defence of India Rules. Further, a mere breach of Clause 14, sub Clause (1) (a) would not amount to a contravention of it, but the failure to comply with it would amount to a contravention if it is without lawful authority or excuse:

(2) The fact that the authorities did not either in this Control Order or in directions issued thereunder, provide for the mode in which the dealers were to act in the event of such cloth remaining with them undisposed of, would itself amount to lawful excuse.

(3) The existence of lawful excuse does not necessitate any active steps on the part of the dealers prior to 31st December 1944, for getting rid of the cloth either before the expiry of the period or afterwards.

30. Let the records of these cases along with our answers be placed before the Bench concerned.