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State Vs. Haidarali

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Court : Madhya Pradesh

Decided On : May-03-1957

Reported in : AIR1957MP179; 1957CriLJ1266

Judge : Hidayatullah, C.J., Dixit and Samvatsar, JJ.

Acts : Constitution of India - Articles 19(1) and 245; Essential Supplies (Temporary Powers) Act, 1946 - Sections 3, 3(1) and 4; Iron and Steel (Scrap Control) Order, 1943; Iron and Steel (Control of Production and Distribution) Order, 1941

Appeal No. : Criminal Ref. Nos. 95 and 99 of 1956

Appellant : State

Respondent : Haidarali

Advocate for Def. : D.P. Bhargava and ;S.D. Sanghi, Advs.

Advocate for Pet/Ap. : K.A. Chitale, Adv.

Judgement :

Hidayatullah, C.J.

1. The order in this reference shall also govern the disposal of Criminal Reference No. 99 of 1956.

2. These two references have been made by the City and Additional District Magistrate, Indore City, in ten criminal cases in which certain persons are being prosecuted for having sold iron and steel and iron and steel scrap at above the controlled prices fixed by the respective Controllers under the Essential Supplies (Temporary Powers) Act, .1946. During the course of these cases the accused raised the plea, based upon a decision of the Punjab High Court in Bhananial Gulzari Mal Ltd. v. Union of India, Criminal Writ Case No. 36-D of 1954 decided on 14th February 1955 (A), that the Control Orders were unreasonable restrictions under Article 19(1)(f) and (g) of the Constitution. The learned Magistrate after giving his opinion that the impugned clauses of the Control Orders passed by the Central Government ''were ultra vires', referred the cases under Section 432 of the Code of Criminal Procedure for the determination of 'the constitutional point involved.

3. We have heard two separate arguments in the two batches of cases connected with the control of iron and steel and the control of iron and steel scrap respectively. For the State Government Shri Chitale contended that the Control Orders, both in their content and procedure, were perfectly valid and binding, while on behalf of the accused Shri S.D. Sanghi and Shri D.P. Bhargava contended that Clause 11-B of the Iron and Steel (Control of Production and Distribution) Order, 1941, and clause 8 of the Iron and Steel. (Scrap Control) Order, 1943, were illegal and ultra vires.

4. The case has been argued at length and we were taken through numerous decisions of the Supreme Court, both for and against the propositions respectively made by the contending parties. The first duty that ordinarily arises in such cases is to examine the schema of the Act under which these Controls have been imposed. The Patent Act under which the controls were initiated is the well-known Essential Supplies (Temporary Powers) Act, 1946. That Act, however, has been before the Supreme Court on more than one occasion, and in Hari Shankar Bagla v. State of Madhya Pradesh, 1955-1 SCR 380: (AIR ,1954 SC 465) (B), the validity of sections 3 and 4 of the Act was questioned while it appears that the decision of the Nagpur High Court declaring section 6 ultra vires the legislature was also before the Supreme Court.

Their Lordships, after considering the question of delegation and various other matters, held that sections 3 and 4 were intra vires the legislature and were perfectly valid. They also gave the opinion that section 6, which was declared ultra vires by the Nagpur High Court, was also a valid piece of legislation. We expressed at the hearing our opinion that it was no longer open to counsel to contend that these section were in any way defective. We were shown a passage in the decision of Mr. Justice Kapur of the Punjab High Court (now of the Supreme Court) where His Lordship has opined that the delegation which is made by section 3 of the said Act is bad, inasmuch as it constitutes an unreasonable restraint upon the freedom guaranteed by Article 19(1)(f) and (g) of the Constitution. With all due respect, we do not consider that the matter is open to debate in view of the clear pronouncement of the Supreme Court.

5. The matter was then taken over to the other measures empowering authorities by whom the controls have been imposed. Section 3 of the Act provides for delegation, and section 4 of the Act empowers sub-delegation. It was contended that though in making the delegation to the Central Government there might not be any illegal exercise of power but that in sub-delegation there was such conferment of naked and arbitrary powers as to make the restriction an unreasonable one, regard being had to the decisions of the Supreme Court.

6. To begin with, the question of delegation has now been settled by the Supreme Court in the leading case of the Delhi Laws Act, AIR 1951 SC 332 (C). In that case their Lordships of the Supreme Court were unanimous on one point, namely, that it is open to the Indian Legislature, both at the Centre and in the State, to delegate to an outside instrumentality the carrying into operation of the purpose of an enactment. The only condition which their Lordships laid down was that in making such delegation the Legislature itself must enact the policy and the purpose of the enactment and should not in other words abdicate or efface itself. This their Lordships laid down after a review of the authorities in England, America and the Colonies,

Though it was stated that the pattern of our Constitution was akin to that in America, it was held that the Supremacy of the Legislatures within the enumerated

fields was as great as that of the English Parliament. Their Lordships observed in that case that within the prescribed field the Indian Legislatures could do almost anything, and that they were only circumscribed in their action by the guarantees which modeled on the American Constitution, have been put in our Constitution. Their Lordships finally laid down that delegation is possible as it is indeed open in America and its validity should be judged from one view-point and one view-point only, viz., whether the Legislature in making the delegation has effaced itself and also if any fundamental rights are offended.

7. In England, there is only one check on the powers of Parliament, and that is that the Parliament cannot create a parallel body equal to itself by any mode or means. The same position obtains in our country also and the powers of Indian Legislatures within their fields are also equally great. We need not consider the question of delegation in greater detail than this. Time and again the Supreme Court has upheld delegated legislation, as it is called, and has laid down that such delegation is within the powers of the Indian Legislatures. Indeed, in Hari Shankar Bagla v. The State of M.P. (B), (cit sup.) not only delegation but also sub-delegation was held to be a feature of the legislative sphere in India. We therefore, do not attempt to reopen the question and examine whether the delegation made in this case to the Central Government is defective from that standpoint.

8. The next question which arises is whether in making the delegation or sub-delegation the Legislature or the delegate is required to lay down more than a statement of policy and the underlying purpose of the law. In other words, the question is whether on an examination of the scheme of the Constitution it is possible to read into our constitution doctrines derived from Montesquieu's theory ofseparation of powers. No doubt, there is not in our Constitution a declaration that the Legislature shall alone legislate, as we find in the first article of the American Constitution, and more particularly in some of the Constitutions of the American States. We do, however, find in the decisions of the Supreme Court that when their Lordships consider delegation, there is a reflection suggesting that the doctrine of separation of powers, though thinly, is incorporated.

Our Constitution recognizes three departments and vests powers in them which are distinct. No doubt, there are occasions, when these powers do overlap, and in the Constitution itself indications are to be found that these fields do actually overlap. The President in certain circumstances has been given legislative powers; the Judiciary has been given the power to make rules, and the Legislature has been given the power to set up Courts. These provisions do indicate that there is not a rigid division between the three departments of Government which Montesquieu laid down in his Spirit of Laws, or which has coloured the framing of the Constitutions in America and Australia. All the same, there is separation of powers. We do not, however, say that the doctrine of separation of powers is to be carried to any extreme in our approach to problems arising from delegation.

We have already indicated that the Supreme Court has clearly laid down that the powers of the Indian Legislatures in the field assigned to them by the Seventh Schedule to the Constitution are just as plenary and full as those of the English Parliament. This necessarily postulates ancillary and attendant powers which, according to the Report of the Committee on Minister's powers, are always included in the powers of the Parliament. Even in America, in spite of the separation of powers and a more rigid adherence to the doctrines of Montesquieu, it has been laid down in numerous cases that it is not necessary for the Legislature itself to indicate all the law, but that, the filling of details, particularly after inquiry and investigation, can be left to instrumentalities other than the Legislature.

This was laid down in the leading case of Marshall Field & Co. v. Clark, (1892) ,143 US 649 at p. 694: 36 Law Ed 294 (D), and a passage which has become almost classical by now may be quoted. This is what was observed in that case, quoting a passage from the Pensylvania Court in the well-known Locke's Appeal, 72 Pa 491 (E):

'The Legislature cannot delegate its power to make a Law; but it can make a law to delegate a power to determine some facts or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and,

must therefore, be a subject of inquiry and determination outside of the halls of legislation.'

The same was laid down in another case, namely, Panama Refining Co. v. Ryan, (1935) 293 US 388: 79 Law Ed 446 (F). There it was observed:

'The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies andestablishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion could be but a futility.'

See Laxmibai v. State, ILR 1951 Nag 563 at p. 578 et seq.: (AIR 195.1 Nag 94 at p. 98) (G).

9. It has to be noted that the last mentioned case from the United States Supreme Court was considered by their Lordships in Hari Shankar Bagla's Case (B) (cit. sup.) and their Lordships laid down that there is a different approach in India. They also considered these American cases in the Delhi Laws Act Case (C), (cit. sup.) and ruled that the doctrine which obtains in America is not to be rigidly applied to Indian conditions. We must thus remember that the Supreme Court has laid down in more than one case that where power is conferred upon a subordinate agency by the Legislature, it should be conferred in such a way as not to amount to an abdication of the Legislature itself, and also that uncontrolled and arbitrary and naked powers conferred upon an outside agency are unreasonable if they infringe the fundamental rights. It is, from this standpoint therefore, proper to look into (a) what is done in cognate cases in America to find out what action Legislatures do take to control their own subordinate instrumentalities, lest they be said to have abdicated themselves, and (b) in what way the reasonableness of the law is assured.

10. In America, the leading case before the second World War is (1935) 293 US 388 (F). That is the case which we have already cited above. Previous to this, the leading case on the subject of delegation was the famous case of Munn v. Illionois, (1877) 94 US 77 (H), which was soon given up by the Supreme Court by a process of overlooking, which is regarded as overruling in America. In Field v. Clark (D), (cit. sup.) the doctrine was laid down that delegation to an outside agency is permissible, and Wright on the Growth of American Constitutional Law has said that it will be regarded as the first leading case on the subject (page 145). There were, however, many cases between Field v, Clark, (D) (cit sup.) and Panama Refining Co. v. Ryan (F) (cit. sup.).

When the second World War broke out, many controls were imposed, and we get abundant cases in which the validity of delegated legislation was considered. Delegation was there questioned, both under the separation of powers and the due process clauses. It was laid down at first in the cases to which we shall refer presently that an uncontrolled delegation to the executive of quasi-legislative functions was a breach of the first article of the Constitution, because the Legislature must be taken to have abdicated its functions, and under the Constitution only the Legislature can legislate and not any other body.

11. Delegation was also successfully challenged sometimes under the due process clause. In doing so the Supreme Court of the United States examined the manner, the mode and the procedure under which the delegate was to operate. In our Constitution we need not consider both the aspects, but we can usefully derive some assistance from these cases to find out what is reasonable when the question of restriction of fundamental rights guaranteed by the Constitution arises. We make it clear that we do not refer to these American cases as precedents binding on us in any sense of the term. We only refer to them as reflecting the way in which controls have been bandied in America where the need for controls during the war-period was just as great as there is need for controls at the present moment for building up our special economy.

12. The first case to which we would refer is Wichita Railroad & Light Co. v. Public Utilities Commission, (1922) 260 US 48 (I). That case dealt with Public Service

Commission and change of certain rates ordered by the. Commission. The Commission was appointed under the Public Utility Law of Kansas, Chapter 238 Sessions Law of 1911. Hearings and investigations were enjoined before the Commission, but it was held that no finding being given by the Commission that the contract rates were unreasonable or unjust, an order changing the rates was void. Taft C.J., in delivering the opinion of the Supreme Court observed (at page 58) with regard to Section 13 of the law:

'That is the general section of the Act comprehensively describing the duty of the Commission, vesting it with, power to fix and order substituted new rates for existing rates. The power is expressly made to depend on the condition that, after full hearing and investigation, the Commission shall find existing rates to be unjust, unreasonable, unjustly discriminatory, or unduly preferential. We conclude that a valid order of the Commission under the act must contain a finding of fact after hearing and investigation, upon which the order is founded, and that, for lack of such a finding, the order in this case was void.'

The learned Chief Justice also laid down that the doctrine of the separation of powers did not limit the powers of the Legislature to delegate some of the regulatory police power of the State to an administrative agency. But to prevent a mere delegation of legislative power, the Legislature ''must enjoin a certain course of procedure and certain rules for decision in the performance of its function'. The essentiality of a condition to find some facts, so that the Courts may examine the reasonableness of the finding, was made a test, but if that was done and there was no abdication by the Legislature, delegation was taken to be good.

13. In the next case, which is J. W. Hampton Jr. & Co. v. United States, (1928) 276 US 394 (J), the Tariff Act of 1922, and particularly section 315 thereof, was in question. The President under the powers conferred by that Act issued a proclamation on May 19, 1924. Chief Justice Taft, in dealing with the delegation involved, laid down on the authority of Judge Ranney of the Ohio Supreme Court, in Cincinnati, W. & S. R. Co. v. Clinton Country, 1 Ohio St. 77 at p. 88 (K) :

'The true distinction, therefore, is, between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring

an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made'.

In dealing with the question of the powers of the President the Chief Justice observed :

'What the President was required to do was merely in execution of the act of Congress. It was not the making of law. He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect',

He also observed in an earlier passage that if Congress should lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates was directed to conform such legislative action was not a forbidden delegation of legislative power. This marked the approval of delegation to the executive of the power to effectuate laws in which the policy of the law and its purpose and intelligible standards were indicated by the Legislatures.

14. Then conies the case to which we have already referred earlier, that is to say, (1935) 293 US 388 (F). In that case also the principle which Taft C.J. had laid down was accepted; and though a dissent was entered by Justice Cardozo, it is interesting to note that the learned Judge accepted the general proposition that it is not necessary that the Legislature should enact all the law needed for a particular time, and that in suitable cases the filling in of details and of prescribing conditions for the operation of the law could be left to an outside agency. What was laid down, however, by the learned Judge was that it was necessary that there should be some standard prescribed according to which the agent was to operate and that a clear enunciation of the policy underlying the Act and the way in which that policy is to be effected was to be laid down in the law itself and not left to the delegate. Justice Cardozo said in the case:

''I concede that to uphold the delegation there is need to discover in the terms of the act a standard reasonably clear whereby discretion must be governed.'

He, however, denied that such a standard was lacking in respect of the prescription permitted by the Act there impugned and that what the standard was became the pivotal inquiry in that case. At a later stage in the same case the learned Judge observed as follows:

'I am persuaded that a reference, express or implied, to the policy of Congress as described in Article 1 is a sufficient definition of a standard to make the statute valid. Discretion is not unconfined and vagrant. It is canalized within bank that keep it from overflowing.'

The majority, however, held in clear terms that the law which authorises an outside agency to complete the details must be guided by a declaration of policy and also by certain standards which the law enacted must contain. It was observed; that--

'The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality which will enable it to perform the function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature isto apply. Without capacity to give authorisation of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.'

15. Two years later, the same point came before the Supreme Court, what is known as the Poultry Case, (1935) 295 US 495 (L). Chief Justice Hughes, dealing with Section 3 of the National Industrial Recovery Act (1933) under which the 'Live Poultry Code' was issued by the President observed:

'It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct tO' be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking

Section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion described in Section 1. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.'

16. A change thereafter is noticeable in the succeeding cases which come before the Supreme Court of the United States. In Currin v. Wallace, (1939) 306 US 1 (M), head-note No. 9 adequately represents the opinion of the Court:

'The Federal Tobacco Inspection Act, authorizing the Secretary of Agriculture to investigate the handling, inspection, and marketing of tobacco and to establish standards by which its type, grade, size, condition, or other characteristics may be determined, to designate markets thereof, at which after two thirds of the growers vote in favour thereof, no tobacco may be offered for sale at auction until it has been inspected by an authorized representative of the Secretary according to established standards, and authorizing the Secretary, in case competent inspectors are not available for all markets within a type area, first to designate those markets where the greatest number of growers may be served, sets forth the policy of Congress and establishes adequate criteria and standards for the guidance of the administrative agent, and does not involve any unconstitutional delegation of legislative power to the Secretary or to the growers'.

The Court held this because Congress had set forth its policy for the establishment of standards for tobacco according to type, grade, size, condition, and other determinable characteristics. It was conceded in that case that this was not different in principle from the authority conferred to establish standards of purity, quality and fitness of tea or that conferred on the Interstate Commerce Commission to fix standards for safety devices and equipment. It was concluded :

'The statute defines the policy of Congress and establishes standards within the framework of which the administrative agent is to supply details'.

17. In Mulford v. Smith, (1939) 307 US 38 (N), delegation was again upheld. There a law was made providing for establishment of marketing quotas and it was said that the dissatisfied producer who was affected by the Order has the right both to an administrative and a judicial review under the law. It was therefore held that, regard being had to the conditions and restrictions which had been laid down in the law itself, delegation was not unconstitutional. In the same volume is to be found the case of U.S. v. Rock Royal Co-operative Inc. (1939) 307 US 533 (O), which was a Price Control case.

There it was held that the Agricultural Marketing Agreement Act, which authorised the Secretary of Agriculture to issue orders to effectuate the declared policy of the Act to establish prices for agricultural commodities equivalent to the purchasing power of such commodities in the base period, did not involve an invalid delegation of power to the Secretary, because it provided further, that in fixing milk prices, the Secretary must determine such prices on that basis, considering the price and supply of feed and other pertinent economic conditions affecting the market for milk in the area in question, but that, if he found such prices unreasonable, he should then fix prices for milk at a level which would reflect the price and supply of feed and other pertinent economic conditions, provide adequate quantities of wholesome milk and be in the public interest.

It is to be, noticed that in that case the Supreme Court once again looked into the content of delegation with a view to seeing whether the Legislature, had prescribed an area for the action of the delegate and had by its own determination controlled the exercise of any arbitrary power. It was also laid down that procedural safeguards cannot validate an unconstitutional delegation of power, although they may furnish protection against an arbitrary use of properly delegated power.

18. In Sunshine Anthracite Coal Co. v. Adkins, (1940) 310 US 381 (P), which was also a Price Control Case, delegation was upheld as in the previous case. Justice Douglas in that case at page 398 distinguished the earlier cases, in the following words :

'The standards which Congress has provided here far exceed in specificity others which have been sustained. Certainly in the hands of experts the criteria which Congress has supplied are wholly adequate for carrying out the general policy & purpose of the Act. To require more would be to insist on a degree of exactitude which not only lacks legal necessity but which does not comport with the requirements of the administrative process. Delegation by Congress has long been recognized as necessary in order that the exertion of legislative power does not become a futility. 306 US 1 (15): 83 Law Ed 441 (451): 59 Set 379 (M), and cases cited.

But the effectiveness of both the legislative and administrative processes would become endangered if Congress were under the constitutional compulsion of filling in the details beyond the liberal prescription here. Then the burdens of minutiae would be apt to clog the administration of the law and deprive the agency of that flexibility and dispatch which are its salient virtues. For these reasons we hold that the standards with which Congress has supplied the Commission are plainly valid.'

And he relied on the Rock Royal Co-operative Inc. Case (O). It would appear from this that the earlier decision in Panama Refining Co. v. Ryan (F), (supra) and (1935) 295 US 495 (L), were being modified with regard to the exigencies of the situation and the Standard laid down therein was not to be so strictly followed;

19. In the next case also, Opp. Cotton Mills Inc. v. Administrator, (1941) 312 US 126 (Q), which was a Minimum Wage Prescription Case, delegation was upheld. The earlier two cases, to which we have referred, namely, Panama Refining Co. v. Ryan (F), (supra) and Schechter v. United States, (L), (supra), were watered down without reference to them. It is not that in America there was a change of face concerning the basic requirement of the Constitution, or the requirement that there should be by the Legislature itself a detailed laying down of the conditions under which the delegate has to act. The reason is plain. By that time the constant declarations of the Supreme Court had made the Legislatures intelligent, and they started putting in suitable criteria, so that delegation may not be challenged on the score that there were no criteria laid down. However, the Supreme Court, time and again, brought up the earlier decisions to declare invalid some delegations which

in the opinion of the Supreme Court were not proper, As observed by Wright at page 220 of the Growth of American Constitution :

'In spite of the breadth of discretion which these rulings and statements appear to make allowable, it is also evident that the Schechter case (L), has not been overruled. It stands as a warning to Congress and a weapon available to the Court, But so long as the Court abides by the principles more recently expressed, the shotgun behind the door should have the desirable effect of causing Congress to consider more carefully the terms of its legislation, without seriously impairing its ability to deal with the problems confronting it.'

The later cases, however, indicate a certain amount of liberality in the application of the doctrines laid down in the Panama Refining Co. Case (F). It must be remembered that by that time the second World War was in full swing and America, to preserve its economy and to deal effectively with the situation, had to harness all its resources and vast powers were lodged in the hands of the President, which in normal time would not have been possible. The Supreme Court, in such a situation, did not attempt to be too meticulous in the application of the doctrine, which it had laid down, and by a process of overlooking something here and something there, reached conclusions which led to the upholding of many pieces of delegation which in normal times might not have been so upheld.

20. In National Broadcasting v. U. S. (1943) 3,19 US 190 (R), Frankfurter J., dealing with the Federal Communications Act, 1934, which enabled the Federal Commissions to adopt regulations, laid down that 'the generality of the power granted to the Commission was limited by the purpose of the Act, the requirements it imposes and the context. There was no deep desire to look for specific provisions in theAct itself, delimiting the action of the agent. On the other hand, the Act was read as being an adjunct of the power and as controlling the action of the delegate though not limiting it. In a very elaborate judgment which dealt with the power of delegation it was concluded that the purpose of the Act, the requirements it imposes, and the context of the provisions have to be seen, to limit the power, even though the power may not be expressly limited by the law itself.

This was a new doctrine which was advanced for the first time, probably due to the exigencies of the situation in connection with the chain of broadcasting stations which were being established in the country. In the same way in Yakus v. United States, (1944) 321 US 414 (S), which was a Price Control matter, the Supreme Court was satisfied with the declaration of the policy and the manner in which the price control was to be exercised by the Price Administrator and held that though there was delegation, the limits of the delegate's powers were clearly laid down & that there was no breach either of the Constitution or of the general law as laid down by the Supreme Court

21. It is to be noticed that in that case the Supreme Court examined the opening words of the section conferring the power on the Price Administrator and said that the range of his action was clearly laid down. In dealing with the 'argument that the law was unconstitutional, Chief Justice Stone observed as follows:--

"In short, the purpose of the Act specified in Section 1 denotes the objective to be sought by the Administrator in fixing prices, the prevention of inflation and its enumerated consequences. The standards set out in Section 2 define the boundaries within which prices having that purpose must be fixed. It is enough to satisfy the statutory requirements that the Administrator finds that the prices fixed will tend to achieve that objective and will conform to those standards, and that the Courts in an appropriate proceeding can see that substantial basis for those findings is not wanting.'

Three things were therefore required (i) that there must be a statement of policy, (ii) that there should be a standard to which the Administrator was to conform, and (iii) that there should be a finding open for examination in Courts so that judicial and administrative review might be open. It was said that the law enacted in this manner could not be said to be unconstitutional. The case is important because it is directly connected with Price Control, and we shall refer to it subsequently when we examine the manner in which the price control under the impugned order is set up here.

22. The later cases also show a liberalisation of the law. In American P. and L. Co. v. Securities and E. Corn., (1946) 329 US 90 (T) and Fahey v. Mallonee, (1947)

332 US 245 (U), delegation was not successfully impugned. In the last mentioned case it was held that since no penal consequences of an extraordinary nature were either attracted or created and the law was only regulatory, the purpose of the Act, the requirements it imposes and the context in which the power was to be exercised, were sufficient to control the delegate and the law was, therefore, constitutional.

23. In subsequent Cases also, namely, United States v. Shaughnessy, (1950) 338 US 537 (V), there was a liberal approach to the problem of conferment of power upon another department by the Legislature. It is also to be noticed that in Leo Nebbia v. New York, (1934) 291 US 502 (W), which preceded the Panama Refining Co. v. Ryan (F) (cit. sup.), there is an indication when price control becomes unconstitutional. It was observed:--

'The Law-making bodies have in the past endeavoured to promote free competition by laws aimed at trusts and monopolies. The consequent interference with private property and freedom of contract has not availed with the Courts to set these enactments aside as denying due process. Where the public interest was deemed to require the fixing of minimum prices, that expedient has been sustained.

If the Law-making body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition and inadequate safeguard of the consumer's interests produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixed prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public.

And this is especially so where, as here, the economic maladjustment is one of price, which threatens harm to the producer at one end of the series and the consumer at the other. The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large or upon any substantial group of the people. Price control, like any other form of

regulation, is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy, the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty.'

It will be noticed that it becomes unconstitutional when there is public interest involved and also when the control is exercised contrary to the Constitution. The doctrine that a public interest must be found before the control can be imposed has to some extent not been accepted in our country, though the test was made use of at least in one case by the Supreme Court in India.

24. From an analysis of these cases it appears that though under the Constitution of America legislative power can only be exercised by the Legislature and cannot be delegated to any other department of Government, on a rigid but not too rigid, application of Montesquieu's doctrines, delegation to a subordinate agency, even executive, is permissible if the law is clear in its purpose, in its policy and the conditions under which the delegate is to make the rules and laws are clearly set out. Sometimes the purpose and context are supposed to indicate the area of the delegate's power and sometimes emphasis is placed upon express provisions which should figure in the law itself.

25. In dealing with the same subject the Supreme Court of India has approached the matter from a different angle. As we have already pointed out, in America delegation is examined on the basis of constitutionality and the requirements of the due process clause. In India, the Supreme Court early declared that the Indian Legislatures were patterned on the English Parliament and barring the restrictions which are placed upon their enumerated powers by the third part or other provisions of the Constitution, were sovereign and their powers as plenary as those of the English Parliament.

The Supreme Court thus effected a mean between the supremacy of Parliament and the limitations created by the third part of the Constitution. The due process clause not being available, the entire judging of delegation and the suitability of powers conferred upon the delegate is viewed from the angle of reasonableness under Article 19(1)(f) and (g) of the Constitution. There are many cases in which the power has been found to be defective, and there are yet other cases in which

the exercise of power has been upheld. An analysis of the Supreme Court decisions in India therefore at this stage is necessary.

26. We do not think that Dr. N.B. Khare v. State of Delhi, 1950 SCJ 328: (AIR 1950 SC 211) (X), which was cited by Shri Chitale can be used in this context. No doubt, there is the observation (which is relied upon by Mr. Chitale) that the question where the provisions of the Act provide reasonable safeguards against the abuse of the power given to the executive authority to administer the law is not relevant for the true interpretation of Clause 5) of Article 19 of the Constitution. But the purpose of the Act there was entirely different. The only thing which is useful for our purpose is that in considering the reasonableness of any restriction not only the substantive enactment but the procedural part of it should also be considered.

27. Chintamanrao v. State of M.P., AIR 1951 SC 118 (Y), however dealt with a case in which there was a prohibition against employment of agricultural labour in bidi trade. Their Lordships held that the effect of the provisions of the Act had no reasonable relation to the object in view but were so drastic in their scope that they went much in excess of that object. Their Lordships also laid down that where a law was couched in such general terms that there was a possibility of its being applied for purposes not sanctioned by the Constitution it could not but be held to be wholly void. It would, therefore, appear from that case that the possibility of abuse is a condition which must be borne in mind if it affects the fundamental rights and is restrictive of them.

28. Similar observations are to be found in many other cases to which detailed reference need not be made. Indeed the Supreme Court of America also said that the motives underlying a statute do not postulate constitutionality and also ruled that the possibility of abuse of power was a factor which must be taken into consideration in trying to find out whether the Legislature in conferring upon an outside agency has acted validly or not.

29. We are in this case concerned with an enunciation of the policy under Article 19 of the Constitution which is to be found in some cases and on which Kapur, J., has mainly relied. We shall referto the decision of Kapur, J., presently but we shall first advert to the cases decided by the Supreme Court in which some enunciation

of the policy of the Constitution and the laws is to be found. The most important case from our point of view is Messrs. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh, 1954 SCR 803: (AIR 1954 SC 224) (Z). That case dealt with the Uttar Pradesh Coal Control Order, 1953. The challenge to that order was not against all the terms of the order but only against Sub-clause (3) of Clause 4.

Their Lordships in dealing with that sub-clause dealt with the general power of the Legislature of Conferring authority upon a subordinate agency. Though the matter concerned only licensing, the question of fair prices was also gone into in view of the way Section 3 of the E. S. T. P. Act is enacted. Their Lordships in dealing with licensing observed as follows:--

'Nobody can dispute that for ensuring equitable distribution of commodities considered essential to the community and their availability at fair prices, it is quite a reasonable thing to regulate sale of these commodities through licensed vendors to whom quotas are allotted in specified quantities and who are not permitted to sell them beyond the prices that are fixed by the controlling authorities. The power of granting or withholding licenses or of fixing the prices of the goods would necessarily have to be vested in certain public officers or bodies and they would certainly have to be left with some amount of discretion in these matters.

So far no exception can be taken; but the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority. A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities, cannot but be held to be unreasonable.'

In this passage their Lordships dealt not only with the granting or withholding of licenses but also of fixing of prices, and the penultimate sentence of their Lordships' observation refers not only to the granting of licenses but also to the fixation of prices. Their Lordships also stated that a naked and arbitrary power, uncontrolled in any way, in the matter of regulating trade or business in normally available commodities must be held to he unreasonable. Though their Lordships

noticed that coal was an essential commodity under the Act, they said that coal was a normally available commodity but was classified for the purpose of regulation into an essential commodity. In such a context the exercise of power to control it must be clearly demarcated and the delegate must be told within what area be is to operate.

Their Lordships in a later passage again observed that -- there was in the Order no higher authority prescribed which could examine the propriety of the reasons recorded by the Controller and revise or review the decision of the Controller. Their Lordships further said that the recording of reasons was merely for the personal or subjective satisfaction of the licensing authority, and in view of the fact that the direction given to the' licensing and controlling authority was unlimited, the discretion mustbe held to be bad. Their Lordships declared the licensing to be bad, but they did not hold that the price fixation was defective. That was because there was a schedule on the basis of which the Controller was given directions how to fix prices, and their Lordships apparently held that this was a sufficient check upon the exercise of arbitrary power. They also observed:--

"The discretion given to the licensing authority in fixing these rates is, however, not an unlimited discretion, but has got to be exercised with reference to the condition prevalent in the locality with which the local officers must be presumed to be familiar."

After referring to the scheduled rates, their Lordships said that it was not open to them to substitute their own determination in the matter of fixing the prices for that of the licensing authority and all that they were required to do was to see that the discretion vested in a public officer was not an uncontrolled discretion and was not likely to result in unfair discrimination. On the material placed before them, viz., the schedule which was attached to the Control Order, they came to the conclusion that there was nothing unfair or discriminatory in it and that the power was not arbitrary,

30. The way in which the licensing and the price control are considered in the above cited case clearly shows that while uncontrolled power in one part was found to be defective, in the second part where the power was controlled it was

held to be good. It therefore appears that under our Constitution, in judging the reasonableness of any restriction one can look to the law to see, how the delegate, who is given the power to make regulations for the control of the guaranteed freedom, is to act. If it is found that a naked and arbitrary power is conceded, then the law must be a bad piece of legislation and must, be held to be unreasonable within Clause (6) of Article 19 of the Constitution.

31. A similar result was reached in the next case of the Supreme Court, namely, the State of Rajasthan v. Nath Mal, 1954 SCR 982: (AIR 1954 SC 307) (Z1). There were two orders which the Controller was authorised to pass. One was to freeze the stocks existing with any trader, and the other was to compel him to sell compulsorily to Government his stocks at prices to be fixed. The first part of the Control Order was not held invalid because it was related to the availability at fair prices of essential commodities and their equitable distribution. The second part of the law was declared ultra vires because it was held that there were no limitations upon the action of the agent in fixing the price of such frozen stocks.

It appears that the test of fair prices and availability at fair prices of essential commodities was not connected with the second part and it was taken to be a conferment of naked and arbitrary powers. We shall deal with these when we come to examine the Act and the Order with which we are concerned. Similarly, in Edward Mills Co. Ltd. v. The State of Ajmer, 1955-1 SCR 735: ((S)AIR 1955 SC 25) (Z2) and Bijay Cotton Mills Ltd. v. The State of Ajmer, 1955-1 SCR 752: ((S) AIR 1955 SC 33) (Z3), which were heard and disposed of together though by separate orders, the Supreme Court upheld the minimum wages mainly on the ground that the power to fix minimum wages was a controlled measure andpower was not conferred to be exercised arbitrarily or at the sweet will of the person on whom it was conferred.

Similarly, in 1955-1 SCR 380: (AIR 1954 SC 465 (B), the regulation of movement of cotton textiles was upheld because the purpose of the Act was to achieve equitable distribution. In all these cases we find that the Supreme Court looks to the parent statute to iind out the enunciation of the policy and the principles on which the legislation is to be framed; and if that is adequate, then the control is

said to be good. Where, however, the enunciation of the policy is not adequate to hold that the conferment of the power is legitimate, the Supreme Court examines also any ancillary provision which sets a limit to the restriction which the Controller is to impose.

Where these two are missing or they cannot be used, then the exercise of power by the Controller is declared to be illegal. It may be noticed also that in Tika Ramji v. State of U.P., 1956 SCJ 625: ((S) AIR 1956 SC 676) (Z4), the Sugarcane Control Order o9 the Uttar Pradesh was upheld mainly because there were adequate supplementary rules controlling the exercise of the power by the Controller. Without these, it is a moot question whether the application of the principles of Dwarkaprasad's case (Z) would not have made the impugned provisions illegal.

32. From all this discussion it therefore appears that though the Supreme Court in India has not accepted the doctrine of separation of powers as applied in the American and the Australian Constitutions, the Supreme Court has also laid down that all the essential law-making must be done by the Legislature itself. What is meant by 'essential law-making' is defined by them as the policy and the intent and purpose of the law. Thereafter, according to the Supreme Court, delegation is perfectly valid so that the details of the law may be filled in by the designated authority.

But even there, unless the intent and purpose and the policy of the law is clearly adequate, or there is some ancillary provision controlling the vagaries of the delegate, the law is found to be defective and has been struck down. We must, therefore, in examining the vires of the Order which has been placed before us for consideration, consider it from these angles. We lay down that it is not open, to us to go to any other standard and we must, therefore, confine our attention to seeing whether the parent Act under which the Control Order is issued has laid down clearly and adequately the policy and the purpose for which the law is to be enacted, and whether in conferring the power upon the delegate or sub-delegate there has been at any stage conferment of naked and arbitrary power, uncontrolled by any set standards or indication of policy in addition to the Act.

33. The Essential Supplies (Temporary Powers) Act, 1946, enumerates the essential commodities in respect of which the powers to control the production, supply and distribution of and trade and commerce in, is to be provided. Among them are iron and steel. Section 3 of the Act confers power to control production, supply, distribution, etc., of the essential commodities. The first sub-section of that section enacts as follows:--

"The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.'

Among the enumerated powers which are contained in Sub-section (2) is Clause c) which says that an order made under that section may provide 'for controlling the prices at which any essential commodity may be bought or sold'. Though the Act is prior to the present Constitution, in the Seventh Schedule in List No. 3, Item 34 includes 'price control'; and in so far as the present subject is concerned, it is covered by the Constitution. It will therefore appear that the power is conceded by the Act to the Central Government to make an order for controlling prices at which any essential commodity may be bought or sold. The power is qualified by making it depend upon the will of the Central Government as to how far the control or its operation is to go.

The words 'so far as it appears to it to be necessary or expedient' show that the Central Government has to apply its mind in determining how much control is needed for effecting the policy of equal distribution and availability at fair prices of essential commodities and also for maintaining or increasing supplies thereof. Section 4 of the Act allows a further delegation and it confers on the Central Government the power to re-delegate the powers to such officer or authority subordinate to the Central Government. In Section 4 the words are:--

'The Central Government may by notified order direct that the power to make orders under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by the

delegate.'

The words are clearly empowering and the use of the words 'if any' clearly shows that there is a discretion in the Government whether to specify conditions or not. However, it is manifest that where there is need for conditions they must be specified because the essence of delegation is to make the delegate conform to the requirements of the Act and to the policy laid down therein.

34. In pursuance of these powers the Control Order was passed by the Central Government. That is impugned in relation to the control of iron and steel and also in relation to the control of iron scrap. There are two separate Orders. The empowering of the Controller in each case is done by one of the clauses in the two Orders. In the Iron and Steel (Control of Production and Distribution) Order, 1941, the pertinent clause is 11-B, which in its first paragraph reads as follows:--

'Power to fix prices. -- (1) The Controller may from time to time by notification in the Gazette of India fix the maximum prices at which any iron or steel may be sold (a) by a producer, (b) by stock holder including a controlled stock holder, and (c) by any other person or class of persons. Such price or prices may differ for iron and steel obtainable from different sources and may include allowance for contribution to and payment from any equalisation fund established by the Controller for equalising freight, the concession rates payable to each producer or class of producers under agreements entered into by the Controller with the producers from time to time, and any other disadvantages.'

There are two other clauses which deal with fixation of prices, but we are not really concerned with them. Sub-clause (2) allows the Controller to classify any iron and steel for the purpose of Sub-clause (i) and, if no appropriate price has been so notified, fix such price as he considers appropriate. Under Sub-clause (2-A), the Controller is also empowered to direct by a notification that the maximum prices which he has fixed under Sub-clause (1) shall not apply to any particular stock of iron or steel and he may fix ad hoc maximum prices for such stock of iron or steel.

The third sub-clause prohibits any producer or stock-holder or other person either to sell or offer to self, and any person to acquire any iron or steel at a price

exceeding maximum price so fixed under the previous clauses. There is a further power conceded to the Central Government to make directions under Clause (12). That clause is mainly designed to enable the Central Government to give directions to the authorities in relation to Clauses (4) and (5) of the Order, but at the end of the clause it is put down that these directions may be issued generally for the purpose of giving effect to the provisions of the Order. Clause (12) is relied upon by Shri Chitale.

35. In so far as the Iron and Steel (Scrap Control) Order, 1943, is concerned, Clause 8 of that Order is analogous to Clause 11-B of the previous Order. There is, however, one notable difference and that is that the Controller in fixing the prices has to obtain the approval of the Central Government. All other clauses are practically the same and most of them are ipsissima verba. Whatever we say, therefore, with regard to the Iron and Steel (Control of Production and Distribution) Order must be deemed to apply also to the Iron and Steel (Scrap Control) Order, except in so far as any difference can be founded on the approval of the Government which is enjoined under Clause 8 of the second Order.

36. It is contended by Shri Chitale that the whole scheme of the Control Order is not only to control the commodity at the distribution end, but control runs right through from the time of the production of the commodity to its delivery to the consumer. He drew our attention to the scheme of the Order and how, from the time the producer produces the goods and they pass through the middleman, there is a, control over production and distribution of the essential commodity, namely, iron and steel, till at the final end, he contends, there is a fixation of the price. He also says that Clause 11-B must be read in relation to the declared policy of the law, namely, that the fixation of prices is to make goods available to the public at fair prices.

He contends further that there is a declaration of the policy and an ample limitation of the power of the Controller, because in any event he has to give effect to the declared policy of the law under Section 3 and fix prices which are fair. On the other hand, it is contended by the counsel impugning the law that the Controller has not been shown how the prices are to be fixed, and there is nothing laid down

in the Order controlling his action and that the power thus conceded is a naked and arbitraryone. We have, therefore, only to decide whether the restriction which is placed upon the fundamental right guaranteed by Article 19(1)(f) and (g) of the Constitution is reasonably curtailed, regard being had to the Supreme Court decisions to which we have adverted earlier.

37. One of the main contentions of Shri Chitale is that not only would it be impracticable to set out all the conditions under which the fixation of prices is to be made, but that the Controller has been given power to change the prices from time to time and from one area to another and in respect of goods produced by different producers. He contends, therefore, that the Legislature and the Central Government between them have enacted quite clearly the limits within which the Controller has to exercise his discretion and from the nature of the goods and the nature of the commodities which are to be controlled a certain amount of discretion has to be left to the Controller, and if he violates the policy laid down by the Act, the Central Government will of course give directions under Clause 12.

38. Reference may be made in this connection to the case of (1944) 321 US 414 (S), where the Price Administrator was conceded the power of fixing fair prices but there were instructions on which he was to act. The most important of these was the relation of the prices of the commodities controlled to a basic period between the 1st of October 1941 and 15th of October 1941. It will be noticed, therefore, that the fixation of price in America was upheld mainly because there was a standard set with the aid of which the control was to be ordered and there were other directions which were to be taken into account in departing from the basic price in the basic period.

Similarly, in the Price of Goods Act, 1939, though Parliament was acting in the full sovereignty of its powers, when it allowed the Board of Trade to fix prices, it also determined the basic period, namely, 24th August 1939 in relation to which the prices were to be made, fixed, and enacted, the changes which could be made in reaching the fair price. No such direction has been given in the Order which the Central Government had made. It is not stated what is the basic price with which one has to start as indicating the fair price at a given time. It must be remembered

that the determination of price depends upon economic factors of demand and supply.

The interplay of demand and supply and also the elasticity of demand determine price in an open market. Price levels are adjusted by competition and equality. When price is controlled there is not only a stoppage of these economic laws but also by the fact that there is no competition there is always a danger that the maximum which is fixed may never be brought down. Economic writers have said that the danger of price fixation is to be found also in the fact that after a maximum is fixed a commodity is never sold below that price. It is clear therefore that with the fixation of price, the economic forces are artificially stemmed and there is never any true price determined by the laws of demand and supply.

In such a case one would imagine that the Central Government, which by Section 4 could have given instructions was required in the present case to give such instructions. The Controls could go only as far as the Central Government thought necessary (Section 3). The Central Government has not provided for itsown approval in Clause 11-B. We have thus to see whether in conceding the power to the Controller to fix from time to time by notification the maximum prices at which a commodity was to be sold there is not a conferment of a naked or arbitrary power.

39. No doubt, Clause 11-B does give some directions, but it does not enact the manner in which the ultimate fixation of maximum prices is to be made. It does not refer to any basic period or any basic price. Similarly, the rest of the clause, namely, that such prices may differ for iron and steel obtainable from different sources merely empowers the Controller to make changes in regard to the commodities obtained from different sources; but it does not tell the Controller how he has to fix the prices in any particular area or in relation to any supplies from any particular source. The only direction that one finds is about the allowance for contribution to and payment from any equalisation fund and also that the Controller may provide for any other disadvantages,

40. Now, price if it is left to the laws of economics, would result from the operation of demand and supply. In an economic emergency, however, an artificial price is set by the producer, because due to the paucity of the commodity he can charge a

fancy price. It is for that purpose that some control has to be imposed and a maximum price fixed beyond which it would be an offence to charge. The Controller has been given the power to fix the maximum prices, but he has not been told what relevant factors he has to take into account. Shri Chitale drew our attention to the Schedule of Prices which the Controller in exercise of these powers has fixed. It will be noticed that there are numerous categories in which the maximum price has been fixed on the basis of an almost uniform allowance of Rs. 20 as profit to the last dealer or as an addition to the basic price in the hands of the middle men.

Similarly, between the producer and the second man, there is generally an allowance of Rs. 25 to 30. We pointed out to Shri Chitale that there is no set standard for equalising the profits on different commodities because the amount of Rs. 20 is allowable for commodities priced at very different levels. This shows an arbitrary fixation of prices, and even on the material which is present before us, it cannot be said that there is any rational standard here. A uniform allowance of Rs. 20 on all the commodities cannot be said to contain the quality of reasonableness because it is patent that some of the commodities are much more eagerly sought after than others, and by the interplay of demand and supply, the prices of the commodities more sought after would be rushed up beyond those which are not so much required.

41. The short question is whether this Court can declare the clause in question as being an unreasonable restriction on the fundamental right guaranteed by Article 10 of the Constitution. It will be noticed that in all the cases of the Supreme Court to which we have referred a clause has been upheld only when it is related to some ancillary matter prescribing the details of working and laying down a standard which was found to be valid. In the present case, there is no standard at all, and we do not think that it is possible to correlate the declaration of the policy in Section 3 to Clause 11-B, because fair pricesare the objective but the method of achieving those prices is nowhere to be found.

There is also no provision for reasons, findings, review or approval of some higher authority. In Balkrishan v. State of Madras, AIR 1952 Mad 565 (Z5), a Division

Bench of the Madras High Court laid down that in delegating the power to fix prices or to control commodities or trade it is necessary that not only the purpose and intent of the law should be clear but that the mode and manner in which the control is to be exercised should also be indicated. We respectfully agree that this is the true test to apply to such controls.

42. Similarly in the case of Dwarka Prasad v. The State of Uttar Pradesh (Z) (cit, sup.), their Lordships of the Supreme Court have quite clearly observed that up to a point the authorisation may be good, but it will not be good if it confers naked and arbitrary powers on the delegate. The restriction placed upon the fundamental right should be not only reasonable but should be manifestly reasonable. There should be some standard which the Courts can see and examine and from which they can determine whether the restriction is reasonable or not. It in any given ease it is not possible for the Courts to see on the face, of the law a reasonable restriction, but on the other hand a delegation of arbitrary and naked power is evident, the restriction cannot be said to be reasonable and the control would be invalid. Applying this standard and the tests laid down to Clause 11-B, we think that there is nothing on the face of it which shows that the Controller was himself controlled in his action by any rule or by any direction.

No doubt, under Clauses 11-B and 12 the Central Government could have sent him directions, but no direction has been brought to our notice, and we do not think that we can take the bare possibility of sending the directions into account. The law itself said that the Central Government was to satisfy itself as to the need of Control and its extent and the Central Government was authorised to prescribe conditions, and we think this was eminently a case in which the Central Government should have laid down the conditions for the operation of the Controller's discretion. In the absence of such a direction in the Control Order, we respectfully agree with Kapur, J., that the clause must be declared to be illegal and unconstitutional.

43. ft will also be pertinent to say that unlike Clause 3 of the Iron and Steel (Scrap Control) Order, 1943, there is no condition that the approval of the Central Government be obtained. In the absence of any direction which the Central

Government might have issued under Clauses 11-B and 12, the powers of the Controller, so far as we can see, are plenary. There is nothing in the rule nor in the body of the Order which compels him to consult anybody or to call for any information) or to make any particular investigation. No doubt, the Controller in the bona fide and legitimate exercise of his power, may do all that but it is not laid down either by the Legislature or by the Central Government.

What is needed is that at least at some stage the subordinate agency should be shown the area of his discretion, the limits within which, and the conditions under which it has to be exercised. There is no such thing here as we find in the statute described in the Yakus v. United States case (S), or in the Price of Goods Act, 1939, in England. It is also manifest that it directions could be given in America and in England, there is no reason why something on the same lines could not also be done in India. We in our country are as much bound by law as these countries, and any attempt to give unlimited powers to an individual uncontrolled by law or by Courts cannot be tolerated in our country.

We find in the Control Order no indication of how the action of the Controller can be brought before any superior authority, The approval of the Government has not to be obtained; there is no administrative machinery under which his action can be reviewed; and it is idle to think that the matter can be brought before this Court or the Supreme Court for examination of the price levels fixed by the Controller. The commodities arc numerous, the rates are different, and the Controller fixes rates from time to time. It would be impossible and inconceivable that the prices of, say, screws or nails or angles or crowbars can be brought for examination before the Court either under Article 226 or Article 32 of the Constitution.

Such an inquiry, would be futile. It would be impossible for this Court to reach a decision except on evidence which this Court or the Supreme Court would not record. It, therefore, follows that when such power is conceded to an executive, whose decision to all intents and purposes is final, at some stage in the process of delegation there must be a clear indication of the area of his discretion and the range within which that discretion should operate. The law of course has declared the policy and made a statement of the objectives. That is quite clear, viz., that the

Central Government must fix fair prices.

But after that, there is a blank, and we do not know how the Controller is to act, with what advice and in consultation with whom, The Central Government had the power under Section 4 of the Act to prescribe conditions for his guidance. The Central Government has not done so and has given unlimited power to the Controller to fix maximum prices as he likes. This, in our opinion, is an unconstitutional exercise of power and the clause, as it stands, imposes a restriction upon the fundamental rights of traders and holders of stocks without any standard and is therefore unreasonable.

44. This brings us to the second Control Order. There the Central Government has chosen to reserve unto itself the final power. Clause 8 of the Order enjoins upon the Controller the obtaining of the approval of the Central Government. This, at any rate, is a salutary check because; the Central Government, with all its machinery and all its experts, is likely to review the methods adopted by the Controller in reaching a particular result. The Central Government is also likely to consult other departments and also the Tariff Board to find out what exactly should be the price in a particular area. We think that the Iron and Steel (Scrap Control) Order must stand on a different footing, Since the final approval of the Central Government has to be obtained, the fixation of the price is by the Central Government and Section 3 of the Act being valid there can be no further challenge.

The Supreme Court has also stated that where the action is subject to scrutiny by some other authority, the conferment of power cannot be said to be arbitrary or naked. It is because of this that we think that in contrast with Clause 11-B of the Iron and Steel (Control of Production and Distribution) Order, 1941, Clause 8 of the Iron and Steel (Scrap Control) Order, 1943, is on a different footing. There the judgment of the Controller is subject to a scrutiny by the Central Government and in view of this and the declaration in Hari Shankar Bagla's case (B), that Section 3 is intra vires we cannot say that the, restriction which the fixation of prices entails is unconstitutional. In our opinion, Clause 8 is enacted in a way which makes that clause legal and there is no exercise by the Controller of absolute, arbitrary and

naked powers.

45. We have stated in an earlier portion of this order that we do not go to consider whether Sections 3 and 4 of the E. S. T. P. Act are ultra vires the Constitution, It appears that the attention of Kapur, J., was not drawn to the decision in Hari Shankar Bagla v. State of M. P. (B) (cit, sup.), where the legality of these two sections was upheld by the Supreme Court. The observation of Kapur, J., is to be found in the following passage:--

'The criteria to guide a Controller for the fixing of prices must, in my view, be given by the statute and must not be left to be regulated by formula which will again be dependent upon vagaries of the executive, and that seems to be supported by the rule in 1954 SCR 803: (AIR 1954 SC 224) (Z), where the formula given in Schedule III which was attacked on the ground of its being per se unreasonable was held not to be so.'

We respectfully disagree with this observation and: wet say that we find no fault with Sections 3 and 4 of the E. S. T. P. Act which have been declared intra vires by the Supreme Court. What we have stated is that having given the power to the Central Government to impose controls as it thought fit, and also allowed it an option to set out the conditions under which it should delegate the power further, Clause 11-B of the Iron and Steel (Control of Production and Distribution) Order, 1941, should have, looking to the circumstances under which the power was to be exercised, stated the conditions under which the maximum prices were to be fixed and the relevant factors which should have been taken into consideration.

We think it is necessary to indicate that the prices should be related to some basic period or some basic price which should be the foundation of increase or decrease, as the case may be, and the circumstances and the factors which have to be taken into account, must at least prima facie be indicated. When this is not done the exercise of the power must be described as falling within the rule of the Supreme Court that it is arbitrary and naked.

46. For these reasons we declare Clause 11-B of the Iron and Steel (Control of Production and Distribution) Order, 1941, as ultra vires amounting to an

unreasonable restriction upon the fundamental rights guaranteed by the Constitution. We do not give the same declaration in respect of Clause 8 of the Iron and Steel (Scrap Control) Order, 1943, for the reason which we have indicated. The references are answered accordingly. The papers shall now be returned to the Magistrate. There shall be no order about costs.

47. As the case involves interpretation of Article19(1) of the Constitution, we think that a substantialquestion under Article 132(1) of the Constitution asto the interpretation of the Constitution is involved.We accordingly grant leave to both the parties toappeal to the Supreme Court.

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