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Court : Chennai

Decided On : Sep-07-1951

Reported in : AIR1952Mad565; (1952)1MLJ514

Judge : Rajamannar, C.J. and ;Venkatarama Ayyar, J.

Acts : Cotton Textiles (Control) Order, 1948; ;Constitution of India - Articles 14, 19(1), 19(5), 19(6) and 358; Cotton Textiles (Control) Act, 1946 - Sections 3(1)

Appeal No. : C.M.P. Nos. 6181 to 6183 of 1951

Appellant : R. Balakrishnan

Respondent : State of Madras Represented by the Director of Controlled Commodities, Khaleel Mansions, Mount Road,

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : K.V. Venkatasubramaniam and ;A. Ramachandran, Advs. for Row and Reddy

Judgement :

1. In these two applications some of the provisions of the Cotton Textiles (Control) Order, 1948, were challenged as being opposed to certain articles of the Constitution of India. This order was made by the Central Government in exercise

of the powers conferred by Section 3 of the Essential Supplies (Temporary Powers) Act, 1946. It came into force on 2nd August 1948 in the place of an earlier order of February 1948. Two classes of special officers to work the provisions of this order are contemplated. One is the controller who is the principal officer appointed by a provincial Government for the administration, of the textile control and the other is the Textile Commissioner appointed by the Central Government. This order provides for the control of raw materials and stores as well as cloth and yarn. In these two applications we are only concerned with the provisions relating to cloth and yarn. Clause (12) of the order runs as follows:

"12 (1) No producer who has no spinning plant shall work or cause or permit to be worked, (a) looms in excess of the number of looms working in the undertaking on the 30th September 1944.

(b) Any loom for a period which in any one month exceeds the average number of hours of work per loom per month in the undertaking during the year ending 30th September 1944.

(2) No producer who has a spinning plant shall in any quarter --

(a) purchase a quantity of yam exceeding 1/4 of-the quantity of yarn purchased by him in the year 1944;

(b) sell a quantity of yarn less than 1/4 of the quantity of yarn sold by him in the year 1944;

(3) No producer who has no weaving plant shall instal or cause or permit to be installed any loom in his undertaking.

(4) No person shall acquire or Instal any loom to be worked by power as defined in Section 2(f) of the Factories Act, 1934.

(5) Any person having in his possession any loom which he is not entitled to work or cause or permit to be worked in accordance with this clause snail forthwith report the fact to the Controller and shall take such action as to its sealing or storage as the controller may direct."

2. The clause has to be read subject to Clause 33 which provides for exclusion from and modification and relaxation of Its operation. Clause (1) runs as follows:

"The Textile Commissioner may by a general or special permit exclude from or modify or relax to such extent as may be specified by him, the operation of any such provision in respect of any person, act or thing or any class of persons, acts or things."

3. Clause 30 confers certain powers on the Textile Commissioner in respect Of the distribution of cloth and yarn. It is in the following terms:

"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 persons such quantities of cloth or yarn as the Textile Commissioner may specify; and

(b) not to sell or deliver cloth or yam 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 as he thinks fit regarding the manner in which the direction is to be carried out."

4. The petitioner in these two petitions is the properietor of Sundararaj Textiles situated at Kalapalti Post Coimbatore district. It is exclusively a weaving mill and not what is referred to in the affidavits as a composite mill, i.e., both a spinning and a weaving mill. In 1944, the petitioner had 10 power looms installed in his factory. In 1946 he added another 14 power looms with the permission of the Government and ever since he has been manufacturing cloth in these 24 power looms. In July 1949 he applied to the Textile Commissioner who had his office in Bombay for permission to acquire and instal 50 more power looms, as such permission was necessary under the provisions of the Cotton Textile Control Order 1948. According To the petitioner, one important reason for this application to Instal more looms was his desire to purchase, what is described as, a preparatory machinery for making, warping and sizing. This machinery was only available 5n

units to serve 100 to 120 power looms in the count of yarn used by the petitioner's looms. As the petitioner had only 24 power looms he wanted to acquire further looms. The Textile Commissioner advised the petitioner to apply through the Provincial Textile Commissioner at Madras. The petitioner made an application accordingly on the 19th August 1949. This application was refused by the Government on 6th December 1949. He repeated his request and was informed by the Director of Controlled Commodities in his letter dated 17th March 1950, that Permission for additional looms would not be granted in view of the meagre supply position of yarn In the State. The petitioner again made representations to the Minister for Industries with no success. On 5-7-1950 he received a communication from the Secretary to Government Development Department, that in view of the difficult conditions of yarn supply, the petitioner's request for permission to instal 36 additional looms would not be considered at present. Meanwhile the petitioner had purchased the preparatory machinery at a cost of about a lakh of rupees.

5. In the affidavit filed in support of C.M.P. No. 6181 of 1951, the petitioner stated that after 29-1-1950, i.e., after the Constitution came into force, Clause 12 (4) of the Order became void as being inconsistent with the fundamental rights granted to him, more particularly by Article 19(1)(f) and (g). The ground of attack is that the said clause, namely, 12 (4) absolutely prohibits the acquisition of installation of power looms and the prohibition is arbitrary and unreasonable. Ho also submitted that the restriction, if any, imposed under that clause was an excessive restriction not necessary in the Interest of the general public. Clause 33 of the Order is attacked as being contrary to Article 14 of the Constitution inasmuch as it prescribes no standard of the basis on which any provision can be relaxed or excluded in respect of any person. The clause being discriminatory in character cannot be valid. In further support of his plea, the petitioner referred to other textile mill owners who had acquired and installed new power looms, though the petitioner was himself refused. This the petitioner says is discriminatory.

6. The petitioner also complains against the conduct of the Government officers in their allotment of yarn per loom per month. He was being allotted 400 lbs. of yarn per loom per month in 1949. In January 1950 this quantity of 400 was reduced to 200 and again in September 1950 it was further reduced to 150 lbs. and in April

1951 still further to 100 lbs. per loom per month. This restriction was apparently imposed under Clause 30 of the Order. This action on the part of the Government, i.e., the State as represented by the Director of Controlled Commodities is impugned as being unreasonable and arbitrarily discriminatory. The petitioner mentions concrete instances in which even purely weaving mills like the petitioner's were being given 300 to 400 lbs, of yarn per loom per month, though he was given considerably less. He alleges that with the amount of yarn allottment now being made it was not possible to run the mill. This might lead to even closing down the business. Both Articles 14 and 19(1)(f) and (g) or the Constitution were infringed and Clause 30 as well as the orders of Government were 'ultra vires' and invalid.

7. The petitioner also complains that even the allotment of yarn made to him was not being regularly supplied every month in C.M.P. No. 6181 of 1951 the petitioner's prayer is for the Issue of Writ of a Mandamus or an order directing the respondent namely, the State of Madras represented by the Director of Controlled Commodities to forbear from and in any way interfering with the acquisition and installation by the petitioner of additional power looms in his mill. In the second application (C.M.P. No. 6182 of 1951), the petitioner prayed that a Writ or order may issue directing the respondent to allot and supply to the petitioner 400 lbs of yarn per loom per month.

8. On behalf of the State an Upper Division clerk in the Office of the Director of controlled Commodities swore to a counter-affidavit traversing the allegations and charges made by the petitioner in his affidavit. The learned Advocate-General confessed that the counter-affidavit could have been filed by some one morel responsible than a clerk. The legal position taken up in this counter-affidavit was that the Textile Commissioner had full discretion to grant or refuse permission for acquisition and installation of new looms. The refusal to give to the petitioner permission to instal new looms was said to be due to the acute scarcity of yarn in the State. A reference is made to an All-India Yarn Distribution Scheme which provided for the internal distribution of cotton yarn to miscellaneous consumers including power looms. As regards the facts, the deponent of the affidavit put the petitioner to strict proof of several allegations in the affidavit.

9. The petitioner filed a reply affidavit In which he mentioned in detail several instances in which there had been discrimination as regards the grant of permission to acquire and instal new power looms and as regards the allotment of yarn, A further counter-affidavit on behalf of the state was filed during the hearing of the applications by the Assistant Director of Cotton. In this affidavit, he set out the history of cotton and yarn control from 1943 onwards. Provisions in the earlier orders similar to the impugned provisions pf the new order are referred to. Clause 30 was in place of Clause 18-B of the Cloth and Yarn Control Order, 1943. The purpose of this clause is said to be to secure proper distribution of yarn and proper distribution is understood to mean and means that the distribution is to be in accordance with the basic principles enacted in the order; that is to say, that while the scarcity continued, the distribution must be on the basis of the All India Yarn Distribution Scheme. As regards Clause 33, It is stated that exceptions are made under this clause after careful consideration of the various factors and almost always subject to the condition that supply of free yarn to the distribution pool is not impaired. The permissions are given according to the deponent only on specific recommendations received from the Provincial State Controller. Though there is no obligation cast on the Textile Commissioner or the Provincial Controller to feed new looms which are installed, it is pointed out that any unrestricted increase of looms will tend to affect the availability of free yarn to the pool and provide an incentive to mills and the merchants to take to blackmarket activities. The restrictive provisions to be found in Clause 18 of the Order is an attempt to limit such tendencies to a reasonable minimum. The petitioner filed a supplementary reply affidavit in which he gave instances of permission being granted to new factories, e.g., 200 power looms to a new factory in Virudhunagar and 20 power looms to a new mill in Cannanore. He also gave instances of unequal allotment of yarn among several mills.

10. The argument of Mr. Venkatasubramania Aiyar, learned Counsel for the petitioner was in the main based on Article 14 of the Constitution which ensures to all persons equality before the law and equal protection of the laws from the State. The definition of "State" in Article 12 includes besides the Government and Parliament of India and the Government or Legislature of each of the States, also local or other authorities within the territory of India or under the control of the

Government of India. Taking first the provisions regarding acquisition of looms, he contended that Clause 12 (4) of the Cotton Textiles Control Order, though in terms prohibits any acquisition or Installation, must be read with Clause 33 which empowers the Textile Commissioner to exempt wholly or in part certain cases from the operation of the provision. The combined effect of Clauses 12 (4) and 33 (1) would therefore be that unless permitted by the Textile Commissioner no new looms can be acquired or installed. Clause 33 (1) does not mention the grounds or circumstances which should influence the Textile Commissioner in granting or withholding special permission. Ultimately it comes to this, namely, that the Textile Commissioner's discretion is completely unfettered. The legal position taken up in the counter-affidavit filed on behalf of the State is just this. Learned Counsel contended that conferment of such arbitrary power on the Textile Commissinoer Itself offends against the guarantee declared by Article 14 of the Constitution as such power gives ample room for discrimination. He also contended that in actual practice also the -orders of the Textile Commissioner have been discriminatory.

He strongly relied on the leading decision of the 'United States Supreme Court in 'Yickwo v. Hopkins', (18(6) 118 U S 356: 30 Law Ed

220. The city and county of Sanfranscico made an ordinance that it shall be unlawful for any person to engage in the laundry business within the corporate limits without having first obtained the consent of the Board of Supervisors, except the same be located in a building constructed either of brick or stone. In sanfrancisco there were about 320 laundaries managed by the Chinese. Of them only about 10 were in brick buildings. The remainder were in wooden buildings, with the result that so far as the majority of the Chinese laundries were concerned, it depended entirely on the pleasure of the Board of Supervisors whether any of them would or would not be permitted to engage in the business in the wooden buildings. Actually it was found that the white launderers who were carrying on business in woolen buildings were given permission; the Chinese were refused permission. The validity of the Ordinance was challenged on the ground that it was capable of being and was so operated and enforced as to discriminate against the Chinese laundries and therefore offended Section 1 of the Fourteenth Amendment of the Constitution. The Supreme Court held that the ordinance was invalid

because:

"It confers a naked arbitrary power upon the Board to give or withhold consent and makes all engaged in the business, the tenants at wilt as to their means of living under the Board of Supervisors."

The following passages from, the Judgment of Mr. Justice Matthews were relied on in particular by petitioner's Counsel, Ex. 1 :

"When we consider the nature and theory of our institutions of Government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power..... But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possession, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilisation under the reign of just and equal laws, so that in the famous language of the Massachussets Bill of Bights, the Government of the Commonwealth 'may be a Government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living or any material right essential to the enjoyment of life, at the mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

Mr. Justice Matthews quoted with approval the following observations made by the Court of Appeals of Maryland in the case of 'Baltimore v. Radecke', 49 Md 217 :

"But it commits to the unrestrained will of a single public officer the power to notify every person who now employs a steam engine in the prosecution of any business in the City of Baltimore, to cease to do so, and by providing compulsory fines for every day's disobedience of such notice and order of removal, renders his power over the use of steam in that city practically absolute, so that he may prohibit its use altogether. But if he should not choose to do this, but only to act in particular cases, there is nothing in the Ordinance to guide or control his action. It lays down no rules by which its impartial execution can be secured or partiality and

oppression prevented. It is clear that giving and enforcing these notices may, and quite likely will, bring ruin to the business of those against whom they are directed, while others from whom they are withheld, may be actually benefited by what is thus done to their neighbours; and, when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives easy of concealment and difficult to be detected and exposed it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

Learned counsel referred to the several instances mentioned in the affidavits filed by the petitioner as demonstrating the arbitrary nature of the power conferred on the Textile Commissioner by Clause 33. There is no use, Counsel urged, relying upon any presumption that the Textile Commissioner would not do anything improper or unjust or unreasonable. It is dangerous that the rights of persons should depend upon any personal quality of a particular officer, in a recent case 'M. B. Namazi v. Depute Custodian Of Evacuee Property, MADRAS', , relating to the Administration of Evacuee Property Ordinance, XXVI of 1949, this Court was called upon to pronounce on the validity of certain, of its provisions. Section 20 of the Ordinance prohibits an intending evacuee from transferring in any manner whatsoever any immovable property in which he has any right or interest except with the previous approval of the Custodian, and any transfer made in contravention of the section shall be void. It was conceded that there were no rules laying down the grounds on which any transfer could be approved or refused. Meeting the argument that the Custodian would not ordinarily refuse to approve any transfer unless for proper grounds, I said:

"But surely that would be gambling on the reasonableness of the Custodian. As the section stands, there is nothing to prevent the Custodian from most unreasonable refusing to approve of any transfer by an intending evacuee."

Reliance was placed on these remarks by the learned Counsel for the petitioner. Reference was also made to the decision in 'Anumathi Sadhu-Khan v. A. K. Cratterjee', for the general

proposition that deprivation of valuable rights of property without the necessity of giving any reasons for the action would be unconstitutional. Bose, J., observed in that case thus:

"An order which arbitrarily or excessively invades the right of an individual cannot be said to contain the quality of reasonableness, Clauses 9 and 13 of the Rice Mills Control Order which no doubt empower cancellation or refusal of a licence already issued and refusal to issue a new licence without assigning any reasons. But there can be no doubt that these provisions overstep the limits of reasonableness and must be held to be invalid in the face of the written Constitution of India. It is clear law that an arbitrary or capricious exercise of the power is no exercise at all. If no reasons are assigned it is not possible to know or judge whether the order is a valid or a mala fide or arbitrary order."

11. More or less the same line of reasoning was adopted when the learned Counsel also invoked the provision of Article 19(1)(f) and (g) of the constitution read with Article 19(5) and (6). It was contended that a total prohibition of acquisition and installation of looms would not be a reasonable restriction and the decision of the Supreme Court of India in 'Chintamanrao v. State Of Madhya Pradesh', 1950 S C J 571, was Cited in support of the contention. In that case the impugned Act totally prohibited the carrying on of the business of manufacture of beedies in certain villages within the agricultural season. Their Lordships held that this was not in the nature of reasonable restriction within the meaning of Article 19(6). Mahajan, J., who delivered the judgment of the Bench construed the phrase "reasonable restriction" in the following manner:

"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be

said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality."

12. The learned Advocate-General did not completely endorse the legal propositions set out in the counter-affidavit filed on behalf of the State as regards the arbitrary and unfettered discretion of the Textile Commissioner. He relied in general upon circumstances which compelled the State to regulate the' proper distribution of yarn and manufactured cloth and the acute shortage of yarn. He also relied on the circumstance that the main Act, Essential Supplies (Temporary Powers) Act, was itself a temporary measure. Any scheme devised by the Government for a fair and equal distribution of essential commodities cannot be said to be imposing unreasonable restrictions though the scheme may certainly affect prejudicially some persons. It will be difficult and improper for the Court to embark on the actual measure taken by the Government or its special officers to secure a fair and equitable distribution. He cited to us two decisions of the United States supreme Court which dealt with this question of distribution.

In 'Railraod Commission Of Texas v. Rowan And Nicholas Oil Co.', (1940) 310 US 573:84 Law Ed 1368 the validity of an order promulgated by the Rail Road Commission of Texas came up for consideration. The statutes empowered the Railroad Commission to make rules and regulations for the prevention of waste of oil and natural gas. It was specially provided that in the exercise of the powers conferred on them, the commission shall in the event of any regulation was adopted limiting the production of oil and natural gas in any pool, prorate or apportion the allowable production of the pool among the various producers on a reasonable basis. The Railroad Commissioner made a proration order tinder which allowances were based upon the hourly potential capacity of the well. The result was a flat per well allowance to the producers. The validity of the Order was challenged on the ground that it was opposed to the Fourteenth Amendment because the proration order was not reasonable and it was arbitrary. An alternative mode of distribution was suggested as better than the principle adopted by the Railroad commission in their order. The Supreme Court held that the order in question wag quite valid and that a Court in reviewing the action of an

administrative agency to which the promotion and execution of State Policy has been entrusted must not substitute its notions of expediency and fairness for those which have guided such agency. Whether in prorating oil production, any particular system was better than the others wag a question not for the Courts but for the administrative agency entrusted by the state with the duty of making such proration. Mr. Justice Frankfurter who delivered the opinion of the Court pointed out the innumerable difficulties in trying to adjust the many conflicting interests and that the commitments of a delicate process of adjustment to the administrative process will not escape challenge in Courts, but such cases, were only episodes in. the evolution of adjustment among private interests and on the reconciliation of all the private interests with the underlying public interests in vital sources of energy,

13. In the other American case, 'Secretary Of Agriculture v. Central Roig Refining Co.', (1950) 338 U S 604:94 Law Ed 381, an order of the Secretary of Agriculture allotting sugar quota among various refineries under the provisions Of the Sugar Act of 1948 came up for review. To counteract the serious evils resulting from an uncontrolled sugar market and to rationalise the mischievous fluctuations of a free sugar market, the legislature adopted the devise of a quota system and the volume of sugar moving to the continental. United States Market was controlled to secure an harmonious relation between supply and demand. Under the Act of 1948, five sugar producing areas were defined and to each area was allotted an annual quota of sugar. Under Section 205-A of the Act the Secretary of Agriculture was authorised to allot the refined sugar quota as well as the inclusive allowance of a particular area among those marketing sugar on mainland from that area. The section inter alia provided that allotment shall be made in such manner and for such amounts as to provide a fair, efficient and equitable distribution of such quota or proration thereof by taking into consideration three factors (1) proceedings of sugar to which proportionate shares pertained, (2) past marketings; and (3) ability to market the amount allotted. An allotment made by the Secretary in exercise of the power conferred by the section was challenged on the ground that the Act, itself was not valid under due process clause of the Fifth Amendment, besides other grounds. It was held that the Act did not offend the due process clause because of the alleged discriminatory character. Mr. Justice Frankfurter who

delivered the opinion of the Court after referring to the old and obstinate sugar problem of the country and the necessity for some sort of regulation to ameliorate the effect of disorderly competition observed that it was not for the Court to substitute its notion of expediency and fairness for that of the Congress. He said: "It would be a singular intrusion of the Judiciary into the legislative process to extrapolate restrictions upon the formulation of such an economics: policy from those deeply rooted notions of justice which the due process clause express." and again:

"This Court is not a tribunal for relief from the crudities or inequities of complicated experimental economic legislation."

14. The learned Advocate-General also cited to us a decision of the High Court of Australia in Mccarter v. Brodie', 80 C L R 432. The Transport Regulation Act provided that a commericial goods vehicle should not operate on any public highway unless licensed in accordance with the Act. The Transport Regulation Board was empowered to grant such licences, and it was provided that in granting or refusing licences the Board should have regard to the interests of the public generally and should take into consideration the advantages of the service proposed to be provided, its convenience to the public, the adequacy of the existing transportation etc. It was held that the Act did not contravene Section 92 of the Constitution which provided that:

"Trade, commerce and intercourses among the States, whether by means of internal carriage or ocean navigation shall be absolutely free."

It was held that Section 92 did not preclude the commonwealth or State Parliament from in any way regulating or controlling inter-State trade and commerce and what was not permitted was prohibition and not regulation. Latham, C. J., posed the question in issue thus:

"Is the effect of a challenged Act in relation to inter-state trade and commerce direct or remote? If it is remote no question in relation to Section 92 arises. Next, where the effect of the Act is direct, is the Act in its true character regulatory and not merely prohibitive? If it is truly regulatory and not prohibitive it will not be

invalidated by Section 92. The question, therefore, is whether the Transport Regulation Acts of Victoria are regulatory or prohibitive."

15. I shall first take up Clause 12 (4). In terms this provision imposes an absolute prohibition of acquisition and installation of new looms. I have grave doubts if such a total prohibition would be valid, having regard to the fundamental rights conferred on the citizen by Article 19(1)(i) and (g). Can total prohibition from the exercise of any right be ever justified as a reasonable restriction within the meaning of that expression as it occurs in Article 19(5) and (6). I am inclined to think that a total prohibition unless it be for a short and prescribed time will be invalid. I quite realise that there may be emergent situations when such absolute prohibition may be necessary. But such contingency is provided for by Article 358 of the Constitution. When the President is satisfied that a grave emergency exists whereby the security of India, or any part of the territory thereof is threatened whether by war or external aggression or internal disturbance, he may by proclamation make a declaration to that effect (Article 352). While such proclamation is in operation nothing in Article 19 shall restrict the power of the state to make any law or to take any executive action which the State would but for the provisions contained in Part III of the Constitution be competent to make or to take (Article 358). In such a state of emergency a total prohibition of the exercise of the right conferred by Article 19 may be valid, but otherwise, I am of opinion that it would be unconstitutional. An illustration of this principle is to be found in the 'BEEDI CASE'. 'Chintaman Rao v. State Of Madhya Pradesh', 1950 S C J 571. Clause 12 (4) by itself must therefore be held to be 'ultra vires' and void after the coining into force of the Constitution.

16. But both sides argued before us on the footing that there was really no absolute prohibition but there was only a restriction, because Clause 12 (4) has to be read with Clause 33 which gave power to the Textile Commissioner to permit in particular cases the acquisition and installation of new looms. What the petitioners' Counsel urged before us was that there was nothing in Clause 33 to indicate the factors which should be taken into account in the exercise of the Textile Commissioner's discretion. If his discretion is completely unfettered, as was suggested in the counter-affidavit filed on behalf of the State, can it Be said that

the provision does not conflict with the right of equal protection conferred by Article 14 Is there not scope for if the clause does not really invite discrimination? Can valuable rights of citizens be left entirely to the arbitrary discretion of the Textile Commissioner? I think that such an arbitrary and unfettered discretion would not amount to a reasonable restriction within the meaning of Article 19(5) and (6). It would be unreasonable to gamble on the reasonableness of the Textile Commissioner, to use the language in an earlier decision of this Court in 'M. B. Namazi v. Dy. Custodian of evacuee property madras', . The salutary principle enunciated in 'Yick Wo v. Hopkins', (1886) 118 D S 356 : 30 Law Ed. 220, would render such a provision obnoxious to the Constitution. So long as the possibility of a provision like Clause 33 being applied in a manner not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly void. As the Supreme Court observed in 'ROMESH THAPPER v. STATE of MADRAS', 1950 S C J 418 at P. 428 :

"Where a law purports to authorise the imposition of restrictions on a fundamental light in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such rights it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out; it must be held to be wholy unconstitutional and void."

17. The petitioner has also mentioned concrete instances to show that there has been discrimination in the grant of exemptions under Clause 33 of the order. It is not necessary for us to discuss whether the exemption in each case was justified or not. What is of significance is that there is scope for discrimination. In the absence of any statutory rules to indicate the manner in which the discretion of the Textile Commissioner should be exercised it is impossible to say whether his discretion in a particular case is or is not justified. If the yardstick is only the personal opinion of the Officer concerned, it is plainly a case of a naked and arbitrary power. It is therefore not only desirable but also necessary that proper rules should be framed and general principles laid down to govern the discretion vested in the Textile Commissioner under Clause 33. If that is done and individual

cases are dealt with accordingly without making any discrimination there could be no valid complaint.

18. The proper order in the circumstances which I think should be passed on this petition (C.M.P No 6181 of 1951) is to direct the respondent to deal with and dispose of the petitioner's application without making any discrimination on any ground, in the light of the observations made herein.

19. In C.M.P. No. 6182 of 1951 relief is sought in respect of the allotment of yarn. Clause 30 of the Order already extracted above confers on the Textile Commissioner power to direct any manufacturer or dealer or any class of manufacturers or dealers to sell to specified person only-such quantities of cloth or yarn as the Commissioner may specify, and likewise not to sell or deliver cloth or yarn except to specified persons. Besides the indication in the opening words of the clause, namely "with a view to securing a proper distribution of cloth or yarn or with a view to securing compliance with this order", there Is no rule laid down as to the manner in which the proper distribution has to be effected among the several concerned persons. The petitioner complains that in actual practice the Textile Commissioner has discriminated between person and person but apart from actual discrimination, he also challenges the validity of the provision on the ground that It contravenes the principle Of equal protection of the laws and also that it is not a reasonable restriction on the exercise of the right conferred by the Constitution under Article 19(1)(f) and (g). In the original counter-affidavit filed on behalf of the State, except stating that the petitioner's request to allot 400 lbs. of yarn per month cannot be complied with in view of the acute scarcity of yarn in the State and that supplies of yarn are being regulated to the power looms month after month on the basis of the yarn, allotments made to this State by the Textile Commissioner, Bombay, there is nothing else which gives us any information as to the principles on which the distribution is made. In the petitioner's affidavit it was definitely alleged that certain purely weaving mills i.e., mills belonging to the same category as that of the petitioner were still being given 300 to 400 lbs. of yarn per month and that he was being discriminated unreasonably and arbitrarily, in the counter affidavit, there is only a bare denial and the petitioner is put to strict proof of the allegations. I must confess that I am surprised at this attitude on behalf of the

State. Even in the affidavit subsequently filed by the Assistant Director of Cotton, Bombay, there is no indication as to the basis on which the yarn is allotted to the several mills.

20. I quite realise that during periods of acute shortage of essential goods and commodities, it is not only desirable but also imperative that the state should take steps to regulate their purchase and sale with a view to an equitable distribution among all the consumers. Legislation undertaken with this object, though it may in a sense, be restrictive of free trade, cannot be declared to be unconstitutional so long, of course, as restrictions are necessary in the interests of the general public and the restrictions are reasonable. It is also clear that legislation in the matter of controls cannot go into the minutest detail of the actual distribution. As Mr. Justice Frankfurter observed in 'Rail-Boad Commission Of Texas v. Rowen And Nicholas Oil Co.', (1940) 310 U S 573: 34 Law Ed. 1368, "merely writing laws is only the beginning of the matter. The Administration of these laws is full of perplexities". The commitment of the delicate task of adjusting many conflicting interests and overcoming innumerable difficulties in making an equitable distribution must needs be to administrative agency. But the question is whether the administrative agency should have an arbitrary and unfettered discretion or should be bound by certain broad principles and rules which it could not transgress. In 'Secretary Of Agriculture v. Central Roig Repining Co.', (1950) 338 U S 604 : 94 Law Ed 381 the same learned Judge (Mr. Justice Frankfurter) made the following illuminating observations in speaking of the administrative function entrusted to the Secretary of Agriculture in allotting sugar quotas,

"He could not be left at large and yet he could not be rigidly bounded. Either extreme would defeat the control system. They could be avoided only by laying down standards of such breadth as inevitably to give the secretary leeway for his expert judgment. Its exercise presumes a Judgment at once comprehensive and conscientious."

21. It will be seen that in the two American cases above referred to on which the learned Advocate General placed reliance, the administrative officer was not left at large. In the Oil case there was a general rule of prorata allotment. In the sugar

case the legislature laid down three factors which had to be taken into consideration in making the quotas. But in the present case no rules or principle nave been made or laid down which should guide the Textile Commissioner in making a proper distribution of cloth or yarn. As the clause stands, there is nothing to prevent the Textile Commissioner from Issuing any arbitrary order. He can exclude for no reasons certain persona altogether in his scheme of distribution. He can also discriminate. The petitioner's definite charge that mills placed in the same position as his mill have been allotted more quantities of yarn than his mill stands unrefuted.

22. The question then is what this Court should do in these circumstances. Learned counsel for the petitioner asked us to declare Clause 30 to be wholly ultra vires and void. The result of such a declaration would be to destroy the whole scheme of textile control. I spent anxious thought on the disastrous consequences of such a course. I have already said that during the periods of acute shortage of essential goods there could be indeed, there should be a certain amount of regulation with a view to ensure fair and equitable distribution. I have already referred to observations of learned Judges of the Supreme Court of the United States that the details of any scheme of regulation or control can only be worked out by administrative agency and not by definite provisions in the Statute. In this connection I found the following passage in Willis' Constitutional Law very suggestive,

"Is it proper classification to put in one class those who get the consent of a board or of an official and into another class those who do not where no standard is set up to control the action of the board or official? Some cases answer this question in the affirmative, while other cases answer it in the negative. Perhaps the best view on this subject is that due process and equality are not violated by the mere conference of un-guided power but only by its arbitrary exercise by those upon whom conferred.

If a Statute declares a definite policy, there is a sufficiently definite standard for the rule against the delegation of legislative power, and also for equality if the standard is reasonable. If no standard is set up to avoid the violation of equality,

those exercising the power must act as though they were administering a valid standard. For this reason there is a need for a judicial review to see whether or not power delegated has been exercised arbitrarily."

23. Clause 30 lays down the ultimate end in view, namely, a proper distribution of cloth and yarn. If in accordance with and in pursuance of this policy, the Textile Commissioner had arrived at a scheme of distribution on a certain and ascertainable basis which is free from any charge of discrimination and he had placed that scheme before this Court and convinced us that the petitioner before us has been allotted the proper quota in accordance with the scheme, then we would have been loth to interfere, unfortunately however, and presumably in spite of the efforts of the learned Advocate General, we have not been informed of any such general scheme. There is no doubt a reference to an All India Yarn Distribution scheme in the counter affidavit filed on behalf of the State, but no particulars of the scheme have been put before us. We are unable to know if the quota allotted to the petitioner is covered by this scheme. The petitioner has stated in his affidavit that mills practically in the same category as his mill have been allotted 400 lbs. per loom per month. This allegation has not been shown to be wrong. Nor has it been shown, that owing to other valid reasons, the quota of 400 lbs. should be reduced. In the absence of any justification for discriminating against the petitioner in this matter, we are compelled to hold that there has been a breach of the guarantee of the equal protection of laws vouchsafed by Article 14 and of the fundamental right declared by Article 19(1).

24. At the same time I am not disposed in this application to declare that Clause 30 is totally void. It appears to me that if in the exercise of the powers granted under Clause 30, the Textile Commissioner has evolved a proper scheme of distribution which does not offend either against Article 14 or Article 19(1)(f) and (g) read with Article 19(5) and (6) then there is no room for complaint by any person on the ground that his rights have been unlawfully affected to his prejudice, if till now the authorities concerned have not evolved any general scheme it will be open to them to hereafter at least lay down the general principles of distribution.

25. In the circumstances I think the proper order for us to make is to direct the respondent to consider the application of the petitioner for allotment of yarn on its merits without making any discrimination and in accordance with general rules as to fair and equitable distribution that may be made on the subject.

26. The petitioner will have his costs in the two applications; advocate's fee Rs. 250 in each.

Venkatarama Aiyar, J.

27. These are petitions filed under Article 226 of the Constitution raising the question of the validity of some of the provisions of the Cotton Textiles Control Order, 1948. The petitioner is the proprietor of a Weaving Factory called Sundararaj Textiles at Kalapatti in Coimbatore district. In 1944 the factory was equipped with ten power looms. In 1946 the petitioner applied to the Government for permission to instal 14 more power looms and the same was granted and the factory has been working ever since with 24 power looms. The Cotton Textiles Control Order, 1948, with which we are now concerned came into force on 2nd August 1948. Clause 12(4) of this Order runs as follows:

"No person shall acquire or instal any loom to be worked by power as defined in Section 2(f) of the Factories Act, 1934."

Clause 33(3) of the Order is in these terms:

"Notwithstanding anything contained in this order the provisions of the clauses specified in schedule C shall have the effect subject to the powers of the Textile Commissioner under Sub-clauses. 1 and 2 to withdraw or relax any order of all the restrictions enacted in those provisions."

Clause 12 is one of the provisions included in Schedule C.

28. In 1949 the petitioner applied under Clause 33(3) for permission to instal 50 more power looms, but that was refused by a communication dated 6-12- 1949. The petitioner made further representations in the matter to the Government and again permission was refused by an order dated 17th March 1950. The ground for

refusal being the meagre supply position of yarn in the country. The petitioner contends that Clause 12(4) is an invasion of the rights to acquire property and to carry on trade conferred on him under Article 19(1)(f) and (g) and that the power conferred on the Textile Commissioner to withdraw or modify the restrictions in Clause 12(4) is arbitrary and discriminative and void under Article 14 of the Constitution.

29. The petitioner also complains that the quantity of yarn allotted to him by the Textile commissioner has been undergoing a steady decline that starting with 400 lbs. per loom per month it has now been reduced to 100 lbs. per loom per month and that even that quantity is not regularly supplied and that under the circumstances it has become impossible to carry on business. Clause 30 of the Cotton Textile Control Order which empowers the Textile Commissioner to control the distribution of yarn is as follows:

"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 persons 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 instruction as he thinks fit regarding the manner in which the direction is to be carried out."

The contention of the petitioner is that this clause also is repugnant to Article 14 as it confers wide and arbitrary powers on the Textile Commissioner and that it is therefore void. Thus the points for determination are the validity of Clause 12 (4), CL 33(3) and Clause 30 of the Cotton Textile Control Order, 1948.

30. I shall first set out the relevant legislative provisions bearing on the question. Under 9 and 10 George VI, Chap. 39 India (Central Government and Legislature) Act, the British Parliament conferred on the Central Legislature certain powers. In

the exercise of those powers, the Indian Legislature passed the Essential Supplies (Temporary Powers) Act, XXIV of 1946. The preamble to the Act shows that the object of the Legislation was to continue the war-time control of the production, supply and distribution of essential articles for a further period.

31. Section 3(1) enacts:

"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 for securing their equitable distribution and availability of fair prices, may by notified order provide for regulating or prohibiting the production, supply or distribution thereof and trade and commerce therein."

Section 3, Clause (2) provides for the regulation of the production, manufacture, acquisition and transport etc., of the essential commodities by licences. Section 4 enacts that the Government might exercise these powers through any officer subordinate to the Central Government or through the provincial Government or any officer subordinate to the Provincial Government as may be specified. Under Section 14(1) no order made in exercise of any power conferred by the Act could be called in question in any Court. The life of this Act has been extend-ed from time to time by resolutions of the legislature dated 25-2-1948, 23-3-1949 and 20-12-1949 and finally it has been extended upto 31-12-1952 by Act LII of 1950. The Cotton Textiles Control Order now under consideration was made in the exercise of the powers conferred under Section 3(1) and came into force on 2-8-1948. There is no question but that this order was valid when it was made. What is in dispute is whether the impugned clauses have become void under the Constitution,

32. It will be convenient to deal first with the question whether Clause 33(3) is void under the Constitution. This clause undoubtedly confers on the Textile Commissioner a Wide and unrestricted power to withdraw or modify Clause 12(4) in such manner as he pleases. It lays down no principles which he has to observe in exercising this power. No rules have been made prescribing the conditions on which the applicant is to get exemptions or modification. No directions are given controlling in any manner the discretion of the commissioner. He is not bound to

give any reasons for his orders. On the language of Clause 33(3) there is nothing to prevent the commissioner from granting exemption to some and refusing it to others at his own will and pleasure, indeed the petitioner complains in his affidavits that there has been such discrimination and he has given particulars therefor.

33. The counter affidavit contains a general denial and avoids an answer to the particulars but it is unnecessary to decide whether the complaints of the petitioner are well founded and whether there has been discrimination or not, because the validity of the provisions does not depend upon the result of their working. A valid statute cannot be rendered void by the incompetence of the person who has been charged with its administration any more than a void statute can be rendered valid by an efficient officer working it to satisfaction. In either case the validity of the enactment should be determined, on its own merits. If the impugned provisions confer an absolute and un-restricted power, discrimination is inherent in their very nature and they must be declared void without further investigation as to whether in fact there has been discrimination or not. The well-known observation occuring in 'John H. Reagan v. Farmers Loan & Trust Co.', (1694) 154 US 362: 38 Law Ed 1014 at 1024, "This, as has been often observed, is a Government of laws and not a government of men" seems eminently adapted to this context.

34. I shall now deal with the authorities cited on either side. Mr. K. V. Venkatasubramania Aiyar the learned advocate for the petitioner relied on the decisions in 'YICK WO. v. HOPKINS', (1886) 118 U S 356: 30 Law Ed 220, 'Anumathi Sadhu-Khan v. A. K. Chatterjee', and the observations in 'Namazi v. Deputy Custodian Of Evacuee Property, Madras', . In 'Yick Wo, v.

Hopkins', (1886) 118 U S 356: 30 Law Ed 220 an order of the city and county of San Francisco provided that it would be unlawful for any person to engage in laundry business in buildings other than those constructed of brick or stone without the permission of the Board of Supervisors. No regulations were made prescribing conditions to be complied with for obtaining the consent. In holding that this provision was invalid Mathews J. delivering the unanimous opinion of the Court observed as follows:

"There is nothing in the Ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer and actually do confer not a discretion to be exercised upon a consideration of the circumstances of each case but a naked and arbitrary power to give or withhold, consent, not only as to places but as to persons,"

"It is purely arbitrary and acknowledges neither guidance nor restraint." (Pp. 356-374).

In 'Anumathi Sadhukhak v. A. K. Chatterjee', , the

question was about the validity of an order passed under West Bengal Bice Mills Control Order, 1949. Clause 9 of this order is as follows:

"Notwithstanding anything contained in this order the Commissioner may, without assigning any reason, direct any application for the issue of a licence or for the renewal of a licence be refused."

Under this clause an order was passed prohibiting the husking of paddy after 14-12-1950. In holding that this order was 'ultra vires' Bose J. observed as follows:

"An order which arbitrarily or excessively invades the right of an individual cannot be said to contain the quality of reasonableness. Clauses 9 and 13 of the Rice Mills Control Order which no doubt empower cancellation or refusal of a licence already issued and refusal to issue a new licence without assigning any reasons. But there can be no doubt that these provisions overstep the limits of reasonableness and must be held to be invalid, in the face of the written Constitution of India.

These provisions do not give any opportunity to the licence holder to make any representation against the action taken by the authorities concerned or to protect their interest against any wrongful action of the authorities and they further provide scope for the exercise of the power conferred on the authorities in an arbitrary and capricious manner, if they so choose to do it. It is clear law that an arbitrary or capricious exercise of the power is no exercise at all. If no reasons are assigned, it is not possible to know or judge whether the order is a valid or mala fide or

arbitrary order."

Reliance is also placed on certain observations occurring in 'M. B. Namazi v. Deputy Custodian Of Evacuee Property, Madras', . Dealing with Section 20 of the Administration of the Evacuee Property Ordinance, No. XXVI of 1949 which provides that no intending evacuee shall transfer his property without the consent of the custodian, my Lord the Chief Justice referred to the absence of rules indicating on what grounds the transfer should be refused and then observed as follows:

"It may be said that the Custodian would not ordinarily refuse to approve any transfer unless for proper grounds. But surely that would be gambling on the reasonableness of the custodian. As the section stands, there is nothing to prevent the Custodian from most unreasonably refusing to approve of any transfer by an intending evacuee."

As against this the learned Advocate General relied on 'Railroad Commission Of Texas v. Rowan And Nichols Oil Co.', (1940) 310 U S 573: 84 Law Ed 1368, 'Secretary Of Agriculture v. Central Roig Refining, Co.', (1950) 338 U S 604; 94 Law Ed 331 and certain observations in 'Mc Carter v. Brodie', 80 CLR 432 (Australia). In 'Railroad Commission Of Texas v. Rowan And Nichols Oil Co.', (1940) 310 U S 573 : 84 Law Ed 1368, the question was about the validity of the proration order issued by the commission regulating production of oil "on hourly potential basis" with exceptions in cases of wells with low productive capacity called "marginal wells". Boweri and Nichols Oil Company complained that the rules framed by the commission put the owners of the marginal wells in a favoured position and that the restrictions on production crippled the non-marginal owners in the enjoyment of their rights, that those restrictions were unreasonable and amounted to depriving them of their property without due process of law. It was held that certain rales and formulas having been adopted by the commission in a matter requiring special knowledge it was not within the province of the Court to interfere with them.

"A controversy like this always calls for fresh reminder that Courts must not substitute their notions of expediency and fairness for those which have guided the

agencies to whom the formulation and execution of policy have been entrusted,"

and dealing with the contention that there was discrimination in favour of the smaller owners the Court observed:

"Plainly these are not issues for our arbitrament. The State was confronted with its general problem or proration and with the special relation to it of the small tracts in the particular configuration of the East Texas field. It has chosen to meet these problems through the day to day exertions of a body specially entrusted with the task because presumably competent to deal with it. In striking the balances that have to be struck with the complicated and subtle factors that must enter into such judgments, the commission has observed established procedure. If the history of proration is any guide the present order is but one more item in a continuous series of adjustments. It is not for the Federal Courts to supplant the commission's judgment even in the face of convincing proof that a different result would have been better."

In that case there were definite rules framed with reference to various classes of wells and there was no question of any arbitrary exercise of power. What was decided was only that the Courts were not competent to sit in Judgment on the propriety or fairness of the rules which had been duly framed under the statute. In this case no such rules have been framed.

35. In 'Secretary Of Agriculture v. Central Roig Refining Co.', (1950) 338 U S 604: 94 Law Ed 381, the validity of certain provisions in the Sugar Act was in question. For the purpose of controlling Sugar market the quota system was adopted. The Secretary of Agriculture was empowered to make allotments after taking into consideration, processing, past marketing and ability to market. The Act also fixed an annual quota of refined sugar which may be marketed from the off-shore areas but there was no such restriction on the mainland refiners. The validity of these provisions was contested on the ground that fixing 1935 to 1941 as the basic period operated harshly on the new comers and that fixing of quotas only for off-shore area refiners and not for the mainland refiners was discriminative and in violation of due process clause. In repelling this contention the Court observed:

"To fix quotas on a strict historical basis is hard on latecomers into the industry or on those in it who desire to expand. On the other hand, to the extent that new comers are allowed to enter or oldtimers to expand there must either be an increase in supply or a reduction in the quotas of others. Many other, factors must plague those charged with the formulation of policy the extent to which projected expansion is a function of efficiency or becomes a depressent of wage Standards; the wise direction of capital into investments and the economic waste incident to what may be on the short or the long pull over expansion of industrial facilities; the availability of a more suitable basis for the fixing of quotas etc. The final judgment is too apt to be a hodgepodge of considerations, including considerations that may well weigh with legislators but which this Court can hardly disentangle."

and again

"This Court is not a tribunal for relief from the crudities and inequities of complicated economic legislation."

36. This decision also is similar to the one in 'Railroad Commission Of Texas v. Rowan And Nicholas Oil, Co.'. (1940) 310 U S 573 : 84 Law Ed 1368, and is based upon the same principle.

37. The learned Advocate General, relied upon certain observations in 'Mo Carter v. Brodie', 80 C L R 432 (Australia). Under a certain transport regulation, Act passed by the State of Victoria no commercial vehicle could operate on public highways unless it had licence. There were detailed provisions prescribing qualifications and conditions under which licences could be granted. One of those conditions was the payment of licence-fee. It was contended that the imposition of a licence fee was a restriction on the right to trade "absolutely free" conferred by Section 92 of the Constitution Act. This contention was rejected and it was held that the legislature had power to regulate trade and that Section 92 was inapplicable to such regulations. In that connection Latham C. J. made the following observations on which the learned Advocate General relied:

"It has, however, been particularly objected that a power to regulate trade and commerce does not include a power to exclude any person from operations in

trade and commerce. But it is obvious that any regulation which imposes conditions upon activities of individuals must exclude from those activities persons who are not prepared, or who are not able for any reason, to satisfy those conditions. In other words all regulations involve some degree of prohibition, and, further, all regulations operate upon persons."

In that case there were elaborate rules prescribed for granting licence and the Court held that the discretion of the Board was not unlimited and arbitrary. In fact the observations quoted above were relied on by the learned Advocate General only to show that the power to regulate carries with it restriction in some form.

38. The result of the authorities may thus be summed up. The legislature can confer on a person or body of persons large powers for the purpose of administering the Act. But it must prescribe the principles on which these powers are to be exercised. If there are no rules for guiding and controlling the exercise of discretion by the person or body of persons, then the power must be held to be arbitrary and unreasonable.

39. Conformably to the above principles the learned Advocate General sought to establish that the discretion conferred on the Textile Commissioner under Clause 33(3) is not absolute and that in fact it is subject to reasonable limitations. He referred to the orders relating to Cotton Control Order made in the year 1943; then to the control Order dated 29-4-1944 made under the Defence of India Act; to Clause

18. B which corresponds to the present Clause 30, to the Control Order of 1945 and to the evolution of All India Yarn distribution scheme. He argued that under Clause 12, Sub-clauses 1 to 3 the year 1944 was taken as the basic period for fixing quotas and it is implicit in Clause 33(3) and Clause 30 that the Textile Commissioner should exercise his powers on the basis of 1944 fixation. But I am unable to read any such limitation or condition in clause 33 (3) and Clause 30. Indeed the counter affidavit takes the position that the orders of the Textile Commissioner are purely administrative and not liable to be questioned in Court. That undoubtedly would be the position in 1948 when the Control order in question was issued. The British Parliament and the Indian Legislatures acting within the

spheres allotted to them possessed plenary powers of legislation and the laws enacted by them could not be questioned In any Court on the ground that they deprived a person of his liberty or of his property. It is only with the Constitution that a change came over the situation. The principle of the American Constitution that it was necessary to safeguard the rights of the citizens against the despotism of the legislature was adopted and limitations imposed on the powers of the legislature, the most important of which are those set out in Part in. The subjects have now certain fundamental rights guaranteed to them and it is beyond the competence of the legislature to override them and if they do, the Courts can declare such legislation bad. Now the Cotton Textile Control Orders were notified under Section 3 (1) of Act 24 of 1946 long prior to the Constitution, under the Influence of a different theory and from a different standpoint and it is not, therefore, a matter for surprise that some of these provisions do not fit in with the pattern of the Constitution. Clause 33 (3) and Clause 30 are survivals of the benevolent despotism of the pre-Constitution Legislature and they are inconsistent with the fundamental rights guaranteed under the Constitution. The counter-affidavit is in my opinion a frank admission of this. I am, accordingly of opinion that Clause 33 (3) is opposed to Article 14 and void.

40. I shall now deal with Clause 12 (4). The petitioner contends that he has a fundamental right to acquire property under Article 19(1)(f) and to trade under Article 19(1)(g) and that Clause 12 (4) is an infringement of these rights and is, therefore, void. The point to be decided is whether the clause can be held to be saved by Article 19 (5) and (6) as being a reasonable restriction made in the interests of the general public. That the Control Orders have been made in the interests of general public cannot be and has not been controverted, but what is urged is that Clause 13 (4) absolutely prohibits the acquisition of property and, therefore, cannot be upheld as a restriction, much less reasonable restriction on the rights conferred under Article 19(1) Clauses (f) and (g). Reliance was placed on the decision of the 'Supreme Court in 'Chintaman Rao v. State Of Madhya Pradesh', 1950 S C J 571, where it was held that a prohibition on the manufacture of beedies during agricultural season was void as being unreasonable. It may be conceded that the restrictions contemplated by Article 19(5) are such as are incidental to regulation of the rights conferred under Article 19(1)(f) and (g) and

that the total prohibition of the rights is not within its scope. But it must be remembered that the Cotton Textiles Control Order is an emergency legislation Introduced for the purpose of regulating supply and demand under abnormal conditions following the termination of the War. It is statedly a temporary measure, its life being extended by successive resolutions of the legislature having due regard to the conditions of the market.

41. In Judging of the reasonableness of the prohibition it would be relevant to take into account that it is an emergency legislation of a temporary character. The following observations in 'N. B. Khare v. State Of Delhi, 1950 S C J 328 would seem to lend support for the view that the prohibition might be valid. In that case the question was whether an order of externment was a reasonable restriction on the right conferred under Article 19(1)(d). In answering this question in the affirmative Kania, C. J., observed as follows:

"The further extension of the externment order beyond the three months may be for an indefinite period but in that connection the fact that the whole Act is to remain in force up to 14th August 1951 cannot be overlooked."

Mukherjee, J., observes as follows:

"It is not disputed that under Clause 5 of Article 19, reasonableness of a challenged legislation has to be determined by a Court and the Court decides such matters by applying some objective standard which is said to be the standard of an average prudent man. Judged by such a standard which is sometimes described as an external yard stick the vesting authority in particular officers to take prompt action under emergency circumstances entirely on their own responsibilities or personal satisfaction is not necessarily unreasonable, One has to take into account the whole scheme Of legislation and the circumstances under which the restrictive orders could be made."

42. In view of these observations I should have had considerable difficulty in holding that Clause 12 (4) standing by itself would be void. But the matter, however, does not rest there. It is argued on be half of the petitioner that Clause 12 (4) does not stand alone that it must be read along with Clause 33 (3) that the

latter is invalid as offending Article 14 and that in consequence the former also must be held to be invalid. |

43. I agree with this contention. The prohibition on the right to acquire property enacted under Clause 12 (4) and the power to exempt or modify its operation conferred under Clause 33 (3) are inseparable parts of a single scheme of control. Is it likely that the authorities would have enacted such an absolute prohibition as is contained in Clause 12 (4) if they had not also coupled it with a wide power of exemption such as is conferred under Clause 33 (3)? I find it difficult to believe that they would have. And if an absolute prohibition can be justified under Article 19(5) only by the existence of a state of emergency, how is that to be reconciled with the grant of such an absolute power of exemption under Clause 33 (3)? If A is to be prohibited from acquiring power looms on the ground of national emergency, the prohibition, must apply equally to B and C and all the citizens. There cannot be an emergency as regards one citizen and not as regards others. Nor can an argument be founded on the setting of the two provisions under the Control Order. Clause 33 (3) confers a power to exempt not merely in respect of Clause 12 (4), but several other clauses which are all set out in Schedule C. It is as if it were enacted as part of every one of the clauses mentioned in that schedule. The proper view to take of the clauses is to regard them as licencing provisions, providing in substance that properties could be acquired under a licence and that the Textile Commissioner should have the authority to grant such a licence. The validity of Clauses 12 (4) and 33 (3) must then be Judged by the principles applicable to the power to grant licences and, as already mentioned, such a power will be valid only if it is to be exercised in accordance with rules, and where there arc no such rules it must be declared void as repugnant to Article 14. That being my conclusion, I shall have now to consider that relief should be granted to the petitioner. To prohibit the Textile Commissioner from interfering with any acquisition of power looms by the petitioner generally which is what is prayed for in the petition will be too wide a relief to grant, and will amount to a negation of the power of the State to enact control regulations in the interests of the public. At the same time, to leave the petitioner without any remedy against the refusal of the Textile Commissioner to grant exemption under Clause 33 (3) would be to withhold protection against the invasion of fundamental rights in exercise of a

naked and arbitrary power. To strike a proper balance between the demands of the State and the rights of the individuals it is desirable that an order should issue that the application of the petitioner for exemption under Clause 33 (3) should be heard and disposed of by the Textile Commissioner on principles in consonance with Article 14. It is desirable that proper rules should be framed by the administration prescribing the conditions for granting permission and if that is done there will be no ground for complaint under Article 14 and this Court will not interfere with the exercise of discretion 'by the Textile Commissioner, however wide it might be so long as it is within the rules.

43-a. The validity of Clause 30 may now be considered. This clause also confers absolute and unlimited powers on the Textile Commissioner. The learned Advocate-General relied on the words "with a view to securing proper distribution of cloth or yarn" occurring in Clause 30 as imposing a limitation on the exercise of discretion by the Textile Commissioner, but these words only define the object of the control and not the mode and manner in which such object is to be carried out. This clause is of the same character as Clause 33 (3) and must for the same reasons be held to be raid.

44. The question is: what is the relief which should be granted to the petitioner. The prayer in the petition is that the respondent should allot and supply to the petitioner 400 lbs. of yarn per loom per month. For the reasons given by me (in C.M.P. No. 6181 of 1951) I am of opinion that such a relief could not be granted. But the application of the petitioner for supply of yarn should be directed to be considered by the Textile Commissioner and disposed of on principle consonant to Article 14. I, therefore, agree that an order should issue in both the applications in forms mentioned in the judgment of my Lord the Chief Justice.

45. Subsequent to the delivery of the judgments in these applications it was brought to our notice by the learned Advocate-General that on 9th July 1951 there was a notification by the Central Government under which for Clause 30 as it stood before, the following clause was substituted, namely :

30 (1) No producer shall sell or deliver any cloth or yarn which has been produced by him except to such person or persons and subject to such conditions as the

Textile Commissioner may specify;

(2) Without prejudice to the provisions of Sub-clause (1) the Textile Commissioner may, with a view to securing a proper distribution of cloth or yam 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 persons such quantities of such description of cloth or yarn as the Textile Commissioner may specify;

(b) Not to sell or deliver any cloth or yam of a specified description except to such person or persons and subject to such conditions as the Textile Commissioner may specify.

3. The Textile Commissioner may issue such further instructions as he thinks fit in order to carry out the provisions of Sub-clause (1) or any direction under Sub-clause (2).

4. Every manufacturer or dealer, to whom a direction or instruction is issued under this clause, shall comply with any such direction or instruction."

46. We are of opinion that neither the reasoning nor the conclusion in the judgments just delivered is in any way affected by this substitution.

47. We certify that the case involves a substantial question of law as to the interpretation of the Constitution and in particular Article 14 and Article 19(1)(f) and (g) read with Article 19(5) and (6)