(1974) 08 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ petition No. 257 of 1973

Birla Cotton Spinning and Weaving Mills and others APPELLANT

Vs

Textile Commissioner and others RESPONDENT

Date of Decision : 26-08-1974

Acts Referred:

Essential Commodities Act, 1955 — Section 2(a)

Citation : (1974) JKLR 649 : (1975) KashLJ 289

Hon'ble Judges : S.M.F.Ali, C.J and Mian Jalal-Ud-Din, J

Bench : Division Bench

Advocate : S.P.Gupta, O.N.Tikku, Hardeyal Hardy , Advocates appearing for the Parties

Judgement

(1) This is a petition under section 103 of the constitution of Jammu and Kashmir read with Art. 226 of the constitution of India as applied to the

State of Jammu and Kashmir for issuance of a writ of certiorari and mandamus declaring the staple fibre distribution order of 1972 (hereinafter

referred as the Control Order of 1972) and the notification issued there under and also the allocations made by respondents No. 1 and 2 in

respect of staple fibre pursuant to the said order as ultra vires of Articles 14 and 19 (i) (f) and (g) of the constitution of India. The constitutional

validity of the Control Order of 1972 is called in question on the following grounds:

(a) That the staple fibre has not been declared as an essential commodity under sec. 2 of Essential Commodities Act of 1951.

(b) That the said order suffers from the vice of excessive delegation and subdelegation.

(c) The order does not lay down any guide lines for the officers appointed for issuing permits and if at all any guide lines have been laid down, they

are unreasonable and vague.

(2) The petitioners also geek to direct by command respondents 1 and 2 to withdraw or cancel the directions regarding the adjustment of the

quantity of 76000 Kgs of staple fibre due to them from respondent No 4 and also to allocate/reallocate the staple fibre on the same basis as relate

to the period from January to March 1973 in case the validity of the Control Order is upheld.

(3) To put briefly, the case of the petitioners is that the petitioner No. 1 is carrying on the business, inter alia of a Textile Mill, at Kathua in the Stare

of Jammu and Kashmir which is known as 'Chenab Textile Mills' (hereinafter called the said Mill). Petitioner No 2 is a share holder of a petitioner

No. 1 and is vitally interested in petitioner No. 1. Under the provisions of the Industries (Development and Regulation) Act, 1951, no industry for

spinning yarn can be set up save and except in accordance with a licence granted under the provisions of the said Act. An industrial licence for

125000 spindles was originally granted by the Government of India in the name of the said Mill in 1962. This licence was subsequently amend and

100 spindles more were added hereto. The Joint Textile Commissioner in the year 1964 notified that all the textile mills including that of the

petitioner 1 could use staple fibre without any restriction within their licenced capacity subject to the condition that the requirements of Staple fibre

would be met from domestic production, and that it would not be necessary to obtain a separate licence for this purpose The said mill of the

petitioner went into production in January 1965 and for the first few months the said Mill used cotton in order to avoid sustaining loss by use of

costlier fibres. It took some time for the machines to come up and for the workmen to become more adept when the said Mill started

manufacturing staple fibre yard. The said Mill, thereafter has been continuously manufacturing staple fibre yarn and other man made fibre blended

yarn. Because of the local conditions and because of InduPak conflict of 1965 and 1971 progress in the said mill could not stabilise till January

1972. Respondent No. 4 which is the principal manufacturer of staple fibre in India and main source of procurement used to supply staple fibre to

the petitioners for the said mill. The requirements of the petitioners ''Mill of normal variety of Staple fibre'1 is approximately 7. 5. Lakhs Kgs per

quarter but the said Mill was only able to procure and purchase about 6 59 Lakhs Kgs per quarter during the year 1972 The only business of the

mill is spinning of staple fibres As a result of 'the Art Silk Textiles (Production and Distribution) Control Order of 1962' and the order dated 14th

August 1964 all the producers of yard including the said mill of the petitioners became entitled to produce yarn from staple fibres. However on

December 6, 1972 the Central Government in exercise of powers under Sec. 3 of ""the Essential Commodities Act of 1955 (hereinafter 'the Act')

made the Control order of 1972 which sought to impose restriction on the acquisition and sale of staple fibre. By an amendment dated 3rd

February 1973, the term 'staple fibre was to be read as Viscose staple fibre The salient features of the Central Order of 1972 are :

Sub Clause (c) of clause (2) of the order defines Textile Commissioner to the Government of India and includes an officer authorised by him to

exercise all ; or any of the powers of the Textile Commissioner under the order of 1972.

Clause (3) provides for furnishing of informations by the producers to the Textile Commissioner.

According to clause (4) no person is to acquire staple fibre from the producer or any other person holding in stock any staple fibre except under a

permit from and in accordance with any conditions specified in any special or general writ' ten order of the Textile Commissioner.

Clause (5) envisages the factothers to be taken into consideration the Textile Commissioner while issuing permits.

The factothers required to be considered are

a) The requirements of the Industrial undertakings registered or licensed under the Act exclusively for spinning staple fibre ,

b) The requirements of other undertakings registered which have spun staple fibre yarn during the past periods.

3) Any other factor which the Textile Commissioner may see relevant under the circumstances.

(4) Clause (6) provides that when permits have been issued under clause (4) then Lyn with standing any contracts to the contrary it shall be

obligatory upon every producer to sell subject to such conditions as may be specified in any special or general or general written order of the

Textile Commissioner, staple fibre produced or held in stock by him to persons holding such permits and to no one else.

(5) The petitioners have submitted that be fore coming into force of the Control order of 1972 the staple fibre required by the spinning Mills could

be obtained freely by entering into contract with the producers and they did obtain diverse quality of staple fibre during 1966 to 1971 and 1972

mainly from respondent No. 4. There was no statutory control or restriction on distribution of staple fibre. The normal requirement of the

petitioners for the said Mill would be about 7, 53 lakhs Kgs of staple fibre per quarter. The Textile Commissioner in exercise of powers under the

Control order of 1972 issued directions to respondent No. 4 for supply of staple fibre to the Mill of the petitioner No 1 a quantity of viscose staple

fibre to the extent of the quantity acquired by the said mill during any quarter of 1972 On the basis of these orders dated 26273 and 3131973 the

said mill received 6. 77, Lakh Kgs normal quality 1. 14 Kgs of special quality (vide annexure C 2 and C 3) Respondent No. 1 used to purchase

from respondent No. 4 staple fibre by entering into advance contracts. As such on the first January 1973 there was an outstanding quantity of

about 76000 Kgs to be supplied to the petitioner in respect of the earlier contracts entered into with respondent No. 4 prior to the coming into

force of the Control Order of 1972. The said quantity of 76000 Kgs, was purported to be adjusted against the said quantity of 6. 77 Lakhs Kgs

and regular quality for which permits were issued by the Textile Commissioner (vide annexure 'D'). The Contention of the petitioner is that the said

quantity of 76000 Kgs outstanding in respect of the earlier contracts could not been any way interfered with by respondents No. 1 and 2 as the

respondent No. 4 was bound under the contract to supply the said quantity to the said Mill. Therefore the directions of respondents 1 and 2 to

respondent No. 4 to adjust 76000 Kgs against allocation has the effect of depriving the petitioners of their rights under the said contract. They

could not be deprived without being compensated thereof in accordance with the provisions of the Constitution. No public purpose for depriving

the petitioners of their rights in this respect has been disclosed. The order of adjustment was unreasonable and arbitrary and was also violativde of article 19 of the Constitution. It also violated the principles of natural justice.

(6) As regards the impugned allocations, it is averred that respondent No. 1 had decided that permits would be issued on the basis of the first

quarterly off take against regular purchases during the year 1972. On the basis of this the quantity to be allocated to the mill of the petitioner No. 1

worked out to be 6. 77 Lakhs Kgs of normal quality and 1. 14 Lakhs Kgs of Special quality (vide letters collectively , marked as Annexure 'E').

The quantify supplied by the respondent No. 4 for the quarter January to March 1973 was 6,67000 Kgs of regular quality and 52000 Kgs of

special quality, However, on March 28, 1973 respondent No. 2 made a further allocation for the quarter April to June 73 and issued permit in

favour of the said mill for a total quantity of 4, 60, 3 6 kgs of normal quality of staple fibre. By another order dated June 29 1973 respondent No.

2 amended the quantity stated earlier to 4, 60, 573 Kgs normal quality aged 51639 Kgs of special quality. By another supplementary order dated

June 22. 1973 respondent No 2 permitted petitioner No. 1 to acquire an additional quantity of 56776 Kgs of staple fibre of special quality during

the quarter ending June 1973 from respondent No. 4 (vide 'annexures 'F', 'G' and 'H' respectively) By another order dated June 30, 1973 and by

a further order dated Sept. 27, 1973 and by a further order dated Sept. 27,1973 the quota was further reduced. The new allocation of quantity of

Staple fibre fell far below the normal requirement of the said Mill. These allocations, it is contended, were wholly arbitrary, inadequate and

unreasonable. The factothers required to be taken into consideration were not considered. The allocation would meet only 502 of the requirements

of the said Mill. Allotment of normal quality was considerably reduced. The yarn manufactured from Special quality having only a limited market as

compared to the yarn from normal quality the result is that it becomes dearer in market on account of higher cost of production.

(7) Again, the quota issued for the quarter ending December, 1973 was also unreasonable and arbitrary as it was for a total quality of 3, 87, 274

Kgs of normal quality staple fibre and 51639 of special quality fibre (vide annexure ""O. 2""). Grievance is made of the fact that as a result of the

successive cuts in allocations the petitioner No. 1 had to stop operating six to 8 machines more than a month and there has been progressive deterioration in the working of the Mill although the said mill was granted an expansion licence to expand its capacity from 126000 spindles to

25000 spindles A further consequence that has followed these cuts in allocation has been that there has spread unrest amongst labourers and the

weavers. Several representations were made to the respondents 1 to 3 to restate the original position, but all this proved abortive. It is submitted

that allotments for quarters April to June 1973, July to September 1973 and the period subsequent thereto made by respondent No. 2 made on

the basis of formula adopted are arbitrary and discriminatory. Categorisation made pursuant to CI 5 of the Control Order is open to serious

objections as being highly arbitrary and unreasonable. It is pointed out by figures that off take in 1972 of the said Mill was highest. It had improved

its production, capacity. But while making the impugned allocations for the aforesaid quarters, 1972 year was completely wiped out. The petitioner

should have been shown in category II whereas they have, arbitrarily been shown in category III. Therefore the categorisation is open to serious

challenge on the ground of being discriminatory and irrational.

(8) The vires of the Control Order' of 1972 is assailed on the following grounds :

1. Staple fibre has not been declared as an essential commodity within the meaning of clause 2 (a) of the Act, The Control Order of 1972 could

not therefore be made by the Central Government and is wholly without jurisdiction.

2. Assuming that staple fibre was declared so, nevertheless the order under Sec. 2. (a) (xi) of the Act by the Central Government notifying staple

fibre as an essential commodity is illegal and void as these provisions of the Act are ultra vires and void. These purport to delegate essential

legislative functions to the Central Government and are contrary to tire provisions of the Constitution, therefore also order of 1972 could not be

made by the Central Government.

3. Respondent No. 2 has no authority to pass an order under the Control Order of 1972 as respondent No. 1 could not subdelegate his powers

and functions to respondent No 2 The Central Government did not say in the control order that 1 the powers conferred on a particular authority

could be delegated by that authority to another person. No guide lines have been indicated in the said order of 1972 about the manner and circumstances and persons to whom the powers could be delegated by respondent No. 1.

4. Clause (5) (c) of the order of 1972 gives wide uncontrolled and uncanalised powers to the Textile Commissioner to issue permits, therefore this

clause is ultra vires.

5. There is no provision under the Act for registration of licensing of any undertaking for exclusively spinning staple fibre. Sub clause (a) of clause

(5) of the order of 1972 is redundant and is of no effect. The requirements of Sub Clause (a) of clause (5) cannot be taken into consideration in

making the allocation of staple fibre.

(6) The order of 1972 is violative of the fundamental rights guaranteed under Art. 19 (f) (g) of the Constitution of India as it imposes unreasonable

restrictions on the petitioner's right to carry on trade and business.

(9) The writ petition has been contested by the respondents Nos. 1, 2, and 3. In the reply affidavit filed on their behalf they have stated that the

petitioner No. 1 is a Cotton Yarn manufacturing unit licensed for 12600 spindles for cotton spinning. This is a Birla concern. There are Â£4 purely

staple fibres spinning mills in the country which are to be fed for the raw material. Respondent No. 4, it is stated, is also a Birla concern which was

manufacturing 95% of the total production of staple fibre up to December 1972. There was no control on the distribution of Staple fibre in the

country and any one of these 24 mills mentioned above could purchase freely from the market its row material. The cotton spinning mills are also

equipped for spinning staple fibre yarn. In 1964 the staple fibre available could not he fully utilised. Therefore the cotton spinning units were also

permitted to spin staple fibre for their units. In the year 1967 and from that year on wards there was perceptible shortage of cotton. Accordingly,

petitioner No. 1 which went into production in January 1965 started spinning of staple fibre which was procured by it from its 'sister Birla concern'

respondent No. 4 However, in 1972 conditions had come into existence which necessitated the imposition of control over the distribution of Staple

fibre It was therefore that Control Order of 1972 was issued. Clause (4) of the Control order prohibits the acquisition of staple fibre except under

the permit issued by the Textile Commissioner. Clause (5) lays down the factothers to be taken into consideration for issuing the permits.

Consequent upon the issuing of the Control order respondent No. 1 issued orders directing the spinners to acquire in any quarter beginning from

1st Jan. 1973 the quantity of viscose staple fibre equivalent to three months average staple fibre acquired by the petitioner during the year 1972

from the respondent No. 4 who was mainly to ensure that there was no disruption in the working of the units When the respondent No. 1 was in a

position to collect the necessary data allocations were made on the basis of the guide lines as laid down in clause (5) of the Control Order, During

the quarters April, June and July September the quantities of staple fibre were distributed to petitioner No. 1 in accordance with the guide lines of

the Control Order. Modified instructions so as to prescribe a quota of 5 years average (the average o' years being from 1963 to 1972) was made

by the respondent No, 1 following a petition before the Calcutta High Court. On these facts respondents Nos 1 to 3 have exercised the bonafide

and statutory powers to ensure equitable distribution of staple fibre amongst genuine consumers on reasonable basis. This, exercise of power in the

said manner could not be challenged.

(10) As regards the averment made by the petitioner that from 1965 to 1971 conditions were not as favourable for the growth of the production in

the mill as they were in the year 1972, it is stated in the reply affidavit that it is not a fact .that effects of 1965 year were so farreaching as to affect

the Industrial production of 1972. Kathua was never the battle field of any war between India and Pakistan. It is denied that from January 1972

production in the petitioners Mill got stabilized As a matter of fact petitioner No. 1 purchased staple fibre 18. 96 Lakhs Kgs in 1968, 17. 98

Lakhs Kgs in 1970, 19.08 Lakhs Kgs in 1971. The question of regulating the distribution of staple fibre was before the Government in April 1972

and the petitioner No. 1 sensing it made excessive purchases of 25.72 lakhs Kgs of staple fibre in the year 1972 from the respondent No, 4 its

sister concern. A question is posed in the reply affidavit that: if according to the petitioner production in the Mill could not be stabilized till the year

1972 because of the war of 1965 and other conditions how was it that the petitioner should not have felt the impact of 1971 war, and should have

purchased within a year of this very year i. e. 197172 nearly 40% more than what was utilised in 1971. The petitioners mill. It is sifted is actually licenced for spinning' of cotton and they have acquired licence for spinning of staple fibre yarn, It is only under the notification that petitioners hold

permission for spinning staple fibre. There was no control or check exercised by the Central Government of the distribution of the staple fibre and

the genuine bona fide requirements and the use made of staple fibre would be reflected in the amount of staple fibre procured by the petitioner

from its sister concern respondent No. 4 till the year L971. Excessive purchases were made in 1972 as the petitioners felt that the Government

might impose control on the distribution of staple fibre. The Government of India in order to assess the genuine needs of spinners has got examined

the staple fibre industry from experts and the requirements of spinning units of staple fibre and according to the opinion of the experts based on

examining the facts and other circumstances reported to the Government about the said requirements. According to the requirements worked out

staple fibre by a unit working in three shifts in all the seven days a week is about 11.5 Kgs per spindle per month and for working 3 shifts for six

days in a week is about 10 Kgs per spindle per month. Keeping in view the licensed spindlage of the petitioner's unit at Kathua the requirements

cannot exceed 4.35 lakhs Kgs per quarter and the figure of 7.50 lakhs per quarter claimed by the petitioners, it is averred is highly exaggerated.

The purchase of 27.87 Lakhs Kgs by the petitioner from the respondent No. 4 in the year 1972 could not possibly be utilised by the petitioner's

firm on its licensed spindlage. These figures it is stated have been given merely to create an impression and are irrelevant.

(11) As regards the allocation made from January to March 1973 it is stated that the order of respondent No. I dated 26273 and 31372 provided

only provisional assessment for a quantity equivalent to the average quantity of viscose staple fibre acquired during the year 1972 and not to the

extent of quantity acquired by the said mill during any quarter of 1972. Outstanding quantity of 76000 kgs from respondent No. 4 it is submitted

was not within the knowledge of the respondents. Even if it were so the immediate effect of Control Order 1972 would be that this quantity of

76000 Kgs would fall within the purview of the control order and the petitioner could not claim this as a reserve beyond the scope of the control

order. The nature of the transaction between the petitioner and the respondent No. 4 if at all correct was that of an executory contract and was subject to law relating to the distribution order. This did not in any way violate the fundamental rights of the petitioners. Right under an executory

contract are not property within the meaning of Articles 19 and 31 of the Constitution and even if they were, the Control Order would not stand

infringed on this account as it could always impose a reasonable restriction within the terms of Art. 19 (2). It is denied that there has been any

discrimination in the matter of issuing of permits. The issuance of permits was in pursuance of uniform criteria adopted by the Control Order.

Allocations were made on the reasonable basis. On definite criteria relevant to the object of ensuring fair distribution of staple fibre to all

consumers. It is, however, admitted that the letters containing representation and protests regarding the allocation of staple fibre quota from April

1973 onwards were sent by the petitioner to the respondent. There is no objective basis to sustain the view that allocations made by respondents

to the said mill would meet only 50% of the requirements of the said mill. The petitioners could not fall back upon the purchases made in 1972 for

getting benefit in their allotments. No rights of the petitioner can be claimed to have been violated on that crore. It is further averred that the

petitioners requirements according to expert advice would not exceed 1.45, lakhs kgs per quarter against which the allotment for the quarter April

to June made by the respondent No. 1 was 1.53 lakhs. The allotment of 1,45 lakhs would be sufficient for spindlage of petitioner's firm to run a

three shift day seven days week. Thus there could be no short fall in the production or for operation in the said mill. The petitioners mill, it is

pointed out, is essentially licensed for spinning cotton and if there is genuine short fall in the spinning of staple fibre the petitioner can turn his

machines to spin cotton and of polyester which is available in plenty in open market. The expansion licence granted to the petitioner relates to

cotton spinning and not to the staple fibre spinning. Therefore the petitioner cannot ask for proportionate increase in viscose staple fibre. It is

denied that the allocation for the quarters AprilJune 1973 July to September 1973 and the period subsequent thereto were made arbitrary or was

discriminatory. Various mills using staple fibre, it is seated, have been classified on rational basis with the object to achieve fair distribution of staple

fibre to them. The different groups fall within different categories and constitute a permissible classification under law. Respondent No. 1 took the guide line laid down in clause (5) of the Control Order for the purpose of allocating the available viscose staple fibre equitably amongst the units

which had utilised the viscose staple fibre in the past. Respondent No. 1 therefore considered the question with this objective in view and decided

to allocate the available quota of viscose staple fibre in the quarter ending June 1973 to September 1973 on the following basis :

Category I : Unit licensed exclusively to spin viscose staple fibre yarn under item 22 (5) of the 1st Schedule to the Industries (Development and

Regulation) Act of 1951.

Category II: Unit licensed to spin cotton yarn under order 25 (1) of the schedule to Industries (Development and Regulation) Act of 1951 and also

licensed to spin viscose staple fibre yarn under Order 23 (5) of the 1st Schedule of Industries (Development and Regulation) Act of 1951.

Category III : Unit which had obtained viscose staple fibre in 1972 for a quantity in excess of the offtake during the year 1968 to 1971.

Category IV : Units licensed for spinning cotton yarn under item 23 (1) to the first schedule of the Industries (Development and Regulation Act

1951 but permitted to spin viscose staple fibre yarn in terms of permission No. 2 (1) GyControl dated 1481964.

The allotments of Viscose staple fibre to units falling under category I were regulated at the rate of 10 Kgs per month per spindlage three shifts six

days, and three shifts 7 days, the quantity was fixed at the rate of 11.5 Kg per spindle per month.

(12) In arriving at the quantum of 10 Kgs 11.5 Kg per spindle the respondent No. 1 was guided by the views of the Industry. In the case of units

falling under category II the allotment was based on the offtake by the units during the year 1972 and an additional quantity of 5.808 Kgs per

spindle per quarter was allotted in respect of spindles licensed for spinning staple fibre yarn under item 23 (5) of the First Schedule of industries

(Development and Regulation) Act of 1951. Allocations to units falling under category III were regulated with reference to the average off take

during the year 1971. It is, however, submitted in this connection that in arriving at this decision the respondent No. 1 has taken into consideration

the fact that these units in 1972 had obtained viscose staple fibre from respondent No. 4 for a quantity much in excess of the average offtake during the years 19681971.

(13) For purposes of eligibility for allocations of viscose staple fibre in respect of the units falling under category IV the units were further classified

as follows :

a) Units which have obtained viscose staple fibre from respondent No. 4 and other indigenous suppliers during all the 5 years from 1968 to 1972.

b) Units which had obtained viscose staple fibre from respondent No. 4 and other suppliers during the 4 years from 1968 to 1972 including the

year 1972.

c) Units which had obtained viscose staple fibre during the period of 3 year between 1968 and 1972.

In respect of these categories the allocation was fixed at the rate of equivalent to the quarterly off take of viscosestaple fibre during the year 1972.

It was decided that no allocation was necessary in respect of units falling under the following categories :

a) Units which were supplied viscose staple fibre only in the year 1972.

b) Units which were supplied viscose staple fibre during any two years period between 1968 and 1972 out of which one year was 1972.

c) Units which did not obtain viscose staple fibre either from the respondent No. 4 or other suppliers during the year 1971 and 19721.

(14) The additional quantity of 5.808 Kgs per spindle allowed for units following under i category II represents the surplus viscose staple fibre

available after meeting the requirements of the units falling under the four categories mentioned above. The petitioner No, 1 is eligible for allocation

of viscose staple fibre in terms of the provisions of the decision contained under category III. Even after categorising the units the petitioner do not

suffer at all because they have got staple fibre on the basis of 7 days three shifts week according to spindlage and none of the units in any of the

category has got more than that, therefore the question of discrimination does not arise. The respondents had contended that it would be

unreasonable and arbitrary in the circumstances of the case to take into account only the year 1972 as relevant period or preceding the period of

notification of the control order. The respondents approach cannot be subjective and while effecting distribution the respondents had to keep in

view the over all picture of the other consuming units as well. A number of mills had to be accommodated by giving quotas to them. It is denied

that the petitioner's right to hold property or to carry on trade has in any way been infringed by the Control Order of 1972. It is affirmed that staple

fibre has been included as an essential commodity under the Essential Commodities Act of 1995, but it is denied that the Central Government had

no authority to include staple fibre in the 1st of Essential Commodities. It is also affirmed that in clause 5 (a) of the Control order the term 'Act' is

referred to the Industries (Development and Regulation) Act of 1951 and not to the Essential Commodities Act The grounds urged by the

petitioner in regard to the voidness of the Control order and some of its provisions on the ground of excessive delegation, Sub delegation and want

of guide lines have been denied with out explaining their legal implications,

(15) Respondent No. 4 has not joined issues with the petitioners on all the questions raised in the writ petition. According to the reply affidavit of

this respondent the controversy is mainly between the petitioners and respondents 1 to 3 in which the said respondent has no say. It is, however,

emphatically denied that respondent 4 is a sister concern of the petitioner No. 1 It is affirmed that respondent 4 and the petitioner are companies

constituted by different share holders and it is therefore a misnomer to call respondent 4 a sister Birla concern. The share holders of the two

companies and the body of management it is stated are quite different. The said respondent has not joined with the petitioners in calling in question

the vires of the Control order of 1972. Its stand is that it is bound by the Control Order and has to supply staple fibre to the petitioner in

accordance with the permit issued, by respondent No. 1. In this circumstance the respondent has denied that it is responsible to deliver 76000 kgs.

staple fibre in terms of the contract to petitioner No. 1 unless it was permitted to do so by the respondent Nos 1 and 2. The position taken is that

with the enforcement of the Control Order the respondent cannot deliver any fibre to any party other than those in possession of valid permits.

(16) Rejoinder affidavit has also been filed by the petitioner in order to elucidate and explain certain points raised by the respondents in their reply

affidavit. It is unnecessary for me to touch upon these points raised in rejoinder affidavit as these will appear in the summary of arguments of the

learned counsel for the petitioners.

(17) Appearing for the petitioners Shri Hardayal Hardy has almost reiterated the points that have been raised in the petition as stated above. He

has, however, convassed the following propositions of fact and law before us :

1. (a) That the Control Order of 1972 could be made by the Central Government under Section 3 of the Essential Commodities Act only if staple

fibre had been declared as an essential commodity under clause 2 (a) of the Act. Staple fibre has not been declared as an essential commodity.

(b) Even it be assumed that it was so declared under Section 2 (a) (xi) of the Act by the Central Govt. the order under that part of the Section was

nevertheless illegal and void as these provisions purport to delegate essential legislative function to the Central Government. Parliament could not

abdicate its function in this respect. The argument is that if this power was conceded to the Central Govt. then each and every commodity the

Central Govt. liked could be brought within the purview of Sec. 2 (a) (xi) which was not permissible. No guiding principles have been laid in the

said section for the Central Government.

(c) It is urged that the Parliament has not retained any control over the exercise of the delegation of the power to be exercised by the Central

Government under section 2 (a) (xi).

2. Under clause 2 (c) of the Control Order power to be exercised by the Textile Commissioner has been delegated to any officer. In the parent

Act no power has been given for further Sub delegation and therefore respondent No. 2 was not authorised to pass the impugned orders of

allocation. The Central Government could not make any order whereby powers conferred on a particular authority under the Act could be

subdelegated by it to any other person. No guide lines have been laid down for this purpose. Therefore, clause 2 (c) of the Control Order was

ultra vires of Section 6 of the Parent Act.

3. (a) clause 5 (a) of the Control Order provides that the requirements of the Industrial undertaking registered or licensed under the Act exclusively

for the spinning staple fibre should be taken into consideration while issuing permits. There is no provision in the Essential Commodities Act for

licensing of the Industrial undertakings. Therefore Sub clause (a) was vague redundant and meaningless and did not provide any guide lines.

(b) Clause 5 (c) of the Control Order gives wide and uncanalised power to the

Textile Commissioner or the officer vested with these powers to

issue permits. This clause is therefore, ultra vires.

(c) None of the factors specified in clause (5) of the Control Order have been taken into consideration by respondent No. 2 in making the

impugned allocations. The requirements of the industrial undertaking for spinning staple fibre have not at all been considered. The year 1972 has

completely been ignored while determining the quantity of staple fibre required for the said mill.

4. The Textile Commissioner and his Assistant have acted in a high handed and an arbitrary manner in allocating the quotas to the said mill of the

petitioner. Categorisation and the formula evolved are arbitrary, discriminatory and unreasonable and not based on any objective test. Therefore

this is violative of Art, 14 of the Constitution.

Various mills spinning staple fibres have been grouped in different classes without any reasonable basis whatsoever and have been differently

treated in the matter of allocation of staple fibre. The units which have been licensed for staple fibre only have been grouped in one class and the

units which have been licensed in cotton but have been using staple fibre by virtue of permission dated 29564 and 14864 have been treated on

different basis. Excessive allocations were made to some mills on the basis of offtake of the year 1972. In the case of the said mill 1972 was

ignored and allocations were purportedly based on the basis of quantity received in the years 1968 to 1971. There was no rationale for grouping

the different mills spinning staple fibre in the various categories for the purpose of allocation of the staple fibre.

5. 76000 Kgs staple fibre outstanding from respondent No. 4 under the contract have been wrongly adjusted against the impugned allocation. This

offends Article 19 (1) of the Constitution and is also violative of the principles of natural justice. The impugned Control order cannot have

retrospective operation when the parent Act does not say so. The contract between the petitioners and the respondent No. 4 was not executory

so as to be affected by the operation of the Control Order ; it was an executed contract and could not therefore fall within the mischief of the

Control order It is emphatically denied that the respondent 4 is the sister concern of the petitioner and that there was any secret deal between the two.

6. The Control order was not placed before the Parliament as required by section 3 (6) of the parent Act. This provided a check and a sort of

control by the Parliament over the working of the Subordinate legislative functions of the Central Government and its Officers Noncompliance with

this provision rendered the Control Order invalid.

(18) Shri O. N. Tikhu the learned Advocate General appearing for the respondents 1 to 3 has, on the other hand, submitted that there is no merit

in the contention of the petitioners that the staple fibre has not been declared as an essential commodity. That it has been declared so, is evident

from Notification No. S. O. 492E dated 10th July 1972 Ministry of Industrial Development Department of Internal trade published in the

Government Gazette which he produced in the court. According to this notification man made salolic and nonsalolic fibre has been declared to be

an essential commodity under sub clause (xi) of clause (a) of Sec. 2 of the Act,

(19) As regards the contention raised that the Parliament has abdicated its essential legislative functions in this regard and that Parliament alone

could declare a commodity as an essential commodity and that this power could not be delegated to the Central Government, and further that no

guiding principles have been laid down in the Act for the purpose and therefore Section 2 (a) (xi) of the Act was ultra vires of the powers of

legislature, it is submitted that the description of articles to be declared as essential commodities is already there in the Act. According to Sub

clause (xi) of Sec. 2 (a) the Central Government can declare any other class of commodity to be an essential commodity being a commodity in

respect of which the Parliament can make laws by virtue of entry 33 in list Third to Seventh Schedule of the Constitution. Parliament has already

taken care to specify the commodities by making precise reference to the entry No. 33 in list. Third in the Seventh Schedule. Therefore no

discretion has been left to the Central Government in this respect. The area of legislation has already been defined. The Central Government being

a very high authority, it is expected that it will discharge its functions in the proper manner consistent with the object of the Act. As regards the

argument that clause 2 (c) of the Control Order of 1972 is ultravires, it is submitted, that the Central Government can by notification direct that the power to make orders under section 3 shall be exercisable by such officer or authority subordinate to it as may be specified in the direction. The

power to be exercised as in relation to matters which are specified is indicated in the section. The authority itself has been specified in the parent

Act. Neither Section 3 of the Act nor the impugned clause of the order suffers from the vice of excessive delegation or of Subdelegation. It is

provided in cl. 2 (c) that the Textile Commissioner can authorise an officer to exercise the functions of the Textile Commissioner and this officer is

already specified in the parent Act. These officers/authorities have only to execute the orders of the Central Government. They are not to legislate.

Clause (5) of the Control Order provides sufficient guide lines to the Textile Commissioner and the officer authorised by him for carrying out the

object and policy of the Act. It is also urged that it is incorrect to say that Sub Cl. 5 (a) is meaningless and illegal as no unit has been licensed under

the Essential Commodities Act but under the Industries (Development and Regulation) Act of 1951. The mistake occurring in this Subclause has

been rectified by a Government notification. Sub Clause (c) of Cl. 5 does not give wide and uncanalised power to the authority in relation to the

grant of permits, the authority has to keep in view all the relevant circumstances He cannot keep before himself irrelevant circumstances for

consideration and if he does so the same it is submitted will be open to judicial review. Sub clause (c) is to be read Ejusdem generise with sub

clause (a) and (b) The argument that the Control order of 1972 violates Article 19 (a) of the Constitution is met by stating that it imposes a

reasonable restriction on the acquisition, sale and distribution of the staple fibre which had run short and great difficulty was experienced by

spinning Mills in its procurement, with a view to meet the situation the Government decided to impose control on the sale and distribution of this

commodity being an essential commodity. This was within the legislative competence of the respondent.

(20) It is also submitted that 76000 Kgs of staple fibre alleged to be outstanding from respondent No. 4 is not immune from the operation of the

Control order. The respondent has a right of Control over production and distribution of staple fibre in order to meet the pressing demand of all

over the country for this raw material. The nature of the contract being executory between the petitioner No. 1 and respondent No. 4 the Control order would necessarily affect its operation. The petitioner could not urge that the adjustment be not made in the allocations.

(21) As regards the impugned allocations of staple fibre and also the various categories and classifications of units made, it is submitted, that these

are based on certain assumptions of facts and figures. There are 124 mills which are to be fed. Categorisation has been made with a view to

achieve the objective laid in the Act itself. A scheme of distribution has been evolved. The court cannot approve or disapprove the scheme, that is

not the function of the Court. The court could not substitute its own method for the methods adopted by the respondent nor could the court opine

upon the sufficiency of the test applied and the results obtained. The only relevancy and reasonableness of the test could be judged in order to find

whether the test applied had any nexus with the object sought to be achieved. The mere fact that allocation, according to the petitioner, reduced

the requirements of the petitioners' mill by 50% would not make the categorisation and the classification unreasonable, when in the case of other

mills the quota bad also been reduced. The year 1972 was not taken into consideration in the case of the petitioner because he had already made

huge purchases while sensing the impending control.

(22) As regards the last point that the Control order was not placed before the Parliament as required by the parent Act it is submitted that this

provision of law has been complied with. The Control Order was placed before the House.

(23) The learned Advocate General also invited our attention to an unreported decision given by Ismail J. of Madras High Court in Essoropa Mill

(P) Ltd. Kuyan Bulta and other Vs. The Textile Commissioner in which the question of categorisation of mills and the allocation of staple fibre

consequent upon the enforcement of the Control Order came up for consideration.

(24) The Notification declaring the staple fibre to be an essential commodity has been available by respondents. Therefore point I (a) has' lost its

importance and this has indeed been withdrawn by the learned counsel for the petitioners.

(25) As regards the argument relating to the points I (b) and (c) that the Parliament could not abdicate its function in the matter of declaring a

commodity as an essential commodity under the Act and that the Central

Government had been f given wide and unguided discretion in the matter

under section 2 (a) (xi) the same is found devoid of merit inasmuch as the Central Government has not been given uncanalised powers in this

behalf. The preamble of the Act defines its object and scope. The Act is intended to control the production supply and distribution of and

commerce in certain commodities. The classes of commodities declared as essential commodities have been described in Section 2 (a) from (i) to

(x). However in (ix) of Section 2 (a) the Central Government has been given the power to declare as essential commodity any other class of

commodity with respect to which Parliament has power to make laws by virtue of entry 33 in list III Seventh Schedule to the Constitution. This

amply demonstrates that Parliament has already legislated on the subject and sufficient guidance has been made available in (xi) of (2) (a) to the

Central Government in this behalf. The area of legislation has been precisely defined. It cannot thererfore be said that Parliament has delegated its

essential legislative function when the legislative standard has been prescribed legislative policy laid down and the filled of legislation indicated in the

Sub clause. Nor is it, therefore correct to say that Parliament has retained no control over the Central Government in the matter of such

declaration. The Central Government is a very high authority and indeed the most appropriate authority charged with the implementation of the

provisions of sub clause (xi) of Sec. 2 (a) of the Act, To support my conclusions I may fortified by the observations made by their lordships of the

Supreme Court in A. I. R 1970 Supreme Court 1589 It is, therefore, difficult to accede to the contention of the learned counsel for the petitioners

that this subclause of the Act is ultra vires. The same is hereby overruled.

(26) Coming to the next contention that the Control order of 1972 suffers from excessive delegation and Subdelegation, this argument assumes

two aspects ; (1) that the entire order suffers from excessive delegation as the authority prescribed has been given unfettered powers and there are

no guide lines laid for executing the legislative policy and for achieving the objective for which the control order was made pursuant of Section 3 of

the Act; (2) that clause 2 (c) of the Control Order gives wide power to any officer authorised by the Textile Commissioner to make orders under

the Control Order i972. The Subdelegation by the Textile Commissioner is not permissible.

(27) The first argument of the petitioners does not hold water. It is not a case of excessive delegation of functions which have not been indicated in

the Control Order and which fall outside its purview. Section 5 of the Parent Act provides delegation by the Central Government to an officer or

authority under it for making orders under Sec. 3 of the Act. Neither Section 3 nor section 5 of the Act has been impugned. The Central

Government in Section 5 has to give directions in relation to the exercise of these matters and has also to specify the conditions. In the instant case

the Textile Commissioner is the authority specified in the Control Order. He has been given necessary directions and guide lines have been

provided. These functions are to be performed by the Textile Commissioner: indeed a very high ranking officer. It cannot be assumed that he will

misuse or abuse his powers. In a vast country like ours with the proliferation of the functions of the State and of the legislature which have to

address themselves to a variety of socioeconomic problems and have to legislate on infinite human problems the Central Government or the State

is compelled as of necessity to confer powers on its administrative organs for the execution of its policies as laid down by the legislative standards.

These organs therefore have to be conferred with powers for the ' implementation of the legislative scheme. But these officers have to be provided

with guide lines for the execution of these duties. There is distinction between the execution of an order validly made in which there are specified

directions given and the making of an order by the authority itself with directions. The authority appointed has not to legislate but to execute. Here

in the instant case: the Central Government is a very high authority. It has given guide lines for the execution of the order to the authority

subordinate to it. The Control is retained by the Central Government. The very Control Order takes due notice of the preamble of the Act. The

Textile Commissioner has to perform his job in accordance with clause 5 of the Control order while granting permits. It is expected that the Textile

Commissioner will exercise his powers with discretion after taking into account the circumstances relevant to the situation, Case law is not wanting

on the subject. These questions did come up for consideration before their lordships of the Supreme Court in a number of cases viz A. I. R. 1951

S. C 332 A, I. R. 1964 S. C. 465, A. I. R. 1957 S. C. 896 and A. I. R. 1960 S. C 475. The ratio of these authorities on these matters is that the

legislature cannot delegate the function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The

legislature must declare the policy of the law and the legal principles and must provide a standard to guide the officers or the body in power to

execute the law. The act of delegation of powers to the officers in these was upheld as such delegation did not amount to delegation of legislative

power outside the permissible limits. In A.I.R. 1954 S. C. 465 delegation of power by the State to the Textile Commr. under the Cotton Textile

(Control of Movement Order of 1948) was held as not to suffer from excessive delegation. In the same way Iron and steel (Control of Production

and Distribution) Order of 1948 was declared not unconstitutional on ground of excessive delegation. In fact Mr. Hardy the learned counsel for the

petitioner conceded that in view of the authoritative pronouncements of their lordships of the Supreme Court his contention on this score did not

survive.

(28) Yet another formidable objection raised by the learned counsel relates to that part of Cl. 2 (c) of the Control Order of 1972 which authorises

the Textile Commissioner to further authorise an officer appointed by him carrying out the orders under the Control Order.

(29) In order to appreciate the merit of the contention it would be proper to reproduce subclause (c) of Sec. 2 of the Control Order of 1972

which is as under :

Textile Commissioner"" means the Textile Commissioner to the Government of India and includes any officer authorised by him to exercise all or

any of the powers of Textile Commissioner under this order.

(30) Section 5 of the Parent Act authorises the Central Government to direct that the power to make order under this Sec. shall, in relation to such

matters and subject to such conditions as may be specified in the direction be exercisable also by such officer or authority subordinate to the

Central Government as may be specified in the direction. Under this Section the Central Government can delegate its power under Sec. 3 to an

officer or authority subordinate to it as may be specified in the direction. This delegation of power by the Central Govt. to an officer or authority dose not warrant a subdelegation by that officer or authority to any other person. Sec. 3 gives this power only to Central, Govt. what subclause (c)

of Cl 2 of the Control Order of 1972 envisages is that besides the Textile Commissioner authorised and specified by the Central Govt. to exercise

the power under Section 3 of the Act, any officer can be authorised by the Textile Commissioner to exercise all or any of his powers under the

impugned order. In my opinion this subdelegation is not permissible and warranted. It cannot be assumed that Sec. 5 of the Act confers power on

the Central Govt. to confer a further power of subdelegation on an officer/ authority appointed by it under the Section. In other words, this section

does not authorise the Central Govt. to clothe the authority appointed by it with the power of subdelegation his functions to any other officer of his

choice. That this is so is quite patent from the language of the Section. In the case before us the impugned allocations have been made not by the

Textile Commissioner himself but by the Assistant Director/Deputy Director who have not been authorised by the Central Government but by the

Textile Commissioner to exercise the powers under the Control Order. The Textile Commissioner has subdelegated his functions to them.

Subclause (c) therefore gives unfettered and uncanalised power to the Textile Commissioner to authorise any or every officer of his choice to

exercise the power under the Control order which is not and cannot be the intention of Section 5 of the Act. According to this Section the authority

or the officer must be subordinate to the Central Government and the authority officer must be specified and authorised by the Central Government

itself In A. I. R. 1951 V. IP page 47 Krishnan C J. expressed the same view while opining on the delegation of powers by the Textile

Commissioner to another officer tinder V. P. Cotton Textile Control order His lordship observed that delegation of power by the Textile

Commissioner to another officer was a second delegation which was not permissible under the Act itself. In my judgment therefore this part of the

provision beginning from the words ""and includes any officer authorised by him to exercise all or any of the powers of the Textile Commissioner

under this order"" must be struck down. In A. I. R. 1954 S. C. 224 in the case of Diwarka parsad Vs. State of Uttar Pradesh their lordships of the

Supreme Court upheld the contention of the petitioner against clause 4 (3) of U. P. Coal Control order of 1953 that it was ultra vires of the

Constitution as the Coal Controller the Licensing authority who was granted the power under the order to grant, revoke or suspend the licence

could also be exercised by any person to whom the Coal Controller could chose to delegate the same' The choice could not be made in favour of

any of every person. The relevant clause of the Control Order which was impugned is as follows :

The licensing authority (Coal Control) may grant refuse to grant, renew or refuse to renew...... for reasons to be recorded provided that every

power which s under this order exercisable by the licensing authority shall also be exercisable by the State Coal Controller or any person

authorised by him in this behalf.

(31) Proceeding on the consideration of the vires of this clause their Lordships observe :

The more formidable objection has been taken on behalf of the petitioner against clause 4 (3) of the Control Order which relates to the granting

and refusing of licensing authority has been given absolute power to grant or refuse to grant x x x x. Not only so, the power could be exercised by

any person to whom the State Coal Controller chose to delegate the same and choice could be made in favour of any or every person. It seems to

us that such provision cannot be held to be reasonable.

(32) Observations made in Diwarka Prasads case (A. I. R. 1954 S. C. Supra) were quoted with approval in A. I. R. 1971 S. C. 474 and A, I.

R. 1960 S. C. 475, though the authority distinguished in its application to the facts of these cases on the ground of absence of any such

unauthorised delegation as in Diwarka Parsad's case. Their lordships proceeded to observe in A. I. R. 1971 S. C. that in Diwarka Parsad's case

the delegation could be made to any one by the Coal Controller which was certainly a relevant factor for judging the reasonableness of the

impugned provision.

(33) Again, it is pertinent to reproduce the observations made in A. I. R. 1957 S. C. 896.

Dass C. J. observed :

In the first place, the discretion is given in the first instance to the State Government itself and not to a very subordinate officer like the licensing

officer as was done in Dwarka Prasad's case .... It is true that the State

Government may delegate the power to an officer or person but the

fact that the power of delegation is to be exercised by the State Government itself was some safeguard against an abuse of this power of

delegation.

(34) In this case before us it is not the Central Government that has nominated respondent No. 3 as its delegate and has authorised him, but it is

the Textile Commissioner a subdelegate himself wbo has further subdelegated his functions to respondent No. 3. As will be evidention a further

discussion of the point relating to the impugned allocation, respondent No. 3 has not at all exercised his powers in the matter of allotment of quota

to the said MUl of the petitioners consistent with the requirements of clause 5 of the Control Order. He has made allocations in an arbitrary manner

which also suffer from the vice of discrimination Such arbitrary exercise of discretion has been the result of this kind of excessive subdelegation to

respondent No. 3. In a recent case decided by their lordships of the Supreme Court (vide A. I. R. 1974 S. C. 543) Hon'ble Justice Khanna

speaking for the court observed :

Discretion which is absolute, uncontrolled and without any guide lines in the exercise of the powers can easily degenerate into arbitrariness. When

individuals act according to their sweet will there is bound to be an element of 'pick and choose' according to the notion of the, individuals. If a

legislature bestows such untrammelled discretion on the authorities acting under an enactment, it abdicates its essential function for such discretion

is bound to result in discrimination which is the negation and antithesis of the ideal of equality before law as enshrined in Article 14 of the

Constitution. It is the absence of any principle policy for the guidance of the authority concerned in the exercise of discretion which vitiates an

enactment and makes it vulnerable to the attack on the ground of violation of article 14. It is no answer to the above that the executive officers are

presumed to be reasonable men who do not stand to gain in the abuse of their power and can be trusted to use ""discretion"" with discretion.

x x x x

(35) Again his lordship proceeded to observe :

12. ''It would be wrong to assume that there is an element of judicial arrogance in the courts in striking down an enactment. The Constitution has

assigned to the court the function of determining as whether the laws made by legislature are in conformity with the provisions of the Constitution.

In adjudicating the constitutional validity of statutes, the court discharge an obligation which has been imposed upon them by the Constitution. The

courts would be shirking their responsibility if they hesitate to declare the provisions of a Statute to be unconstitutional, even though those

provisions are found to be violative of the Articles of the Constitution Articles 32 and 226 are an integral part of the Constitution and provide

remedies for enforcement of fundamental right and other rights conferred by the constitution. Hesitation or refusal on the part of the court to

declare the provisions of an enactment to be unconstitutional, even though they are found to infringe the Constitution because of any notion of

judicial humility would in a large number of cases have the effect of taking away or in any case eroding the remedy provided to the aggrieved

parties by the Constitution. Abnegation in matter affecting once's own interest may sometimes be commen dabble but abnegation in a matter where

power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It

is as much the duty of the courts to declare a provision of an enactment to be unconstitutional if it contravenes and Articles of the Constitution as it

is theirs to uphold its validity in case it is found to suffer from no such infirmity.''

(36) In view of what has been stated above, I am threfore positively of the view that the relevant provisions of clause 2 (c) of the Control Order of

1972 as indicated above being ultra vires of Section 3 of the Parent Act and of the Constitution and the orders of allocation having been passed by

the Dy Director/Assistant Director Respondent No. 3., on their own behalf as Textile Commissioners are liable to be set aside on this ground.

Consequently the impugned allocations for the quarters April to June 1973, July to Sep. 1973 and for the period subsequently thereto (as per

orders forming annexures to the petition) are liable a to be set aside. These are also liable to be set aside on the additional ground that these have

not been made in conformity with the requirement of clause (5) of the Control Order of 1972, Detailed discussion on this aspect of matter will

follow presently.

(37) However, before dealing with the question of allocations, it will be

convenient to refer to the point relating to the adjustment of 76000 kgs of

staple fibre alleged to be outstanding from respondent No. 4 and the effect of noncompliance with the provision of Section 3 (6) of the Act and

also roe vires of sub clause (c) of Cl. (5) of the Control Order of 1972.

(38) In my judgment there can be no force in the contention of the petitioner that 76000 Kgs of staple fibre outstanding from respondent No. 4 on

the basis of an advance contract between the petitioner and respondent No, 4 should be adjusted against the allocation by the respondent No. 1, 2

and 3. Without going into the controversy whether the transaction between the petitioner 1 and respondent No. 4 partakes of the nature of an

executory or executed agreement, it seems reasonable to assume that the purported outstanding quantity of 76000 Kgs is hit by the Control Order

1972 and therefore petitioner cannot claim this as a reserve stock unaffected by the Control order. After all the Government has imposed control

on the acquisition, sale and distribution of staple fibre with a view to meet a sordid situation arising out of the shortage of the said commodity. It

does not stand to reason that the control order would not affect the private contracts between the parties so as not to bring them within its four

corners. It is therefore that clause (6) engrafted in the order expressly provides that when permits have been issued under clause (4) then

notwithstanding any contract to the contrary it shall be obligatory on every producer to sell subject to such conditions as may be specified by the

Textile Commissioner Staple Fibre to persons holding such permits. The word ''Notwithstanding any contract to the contrary'' are significant and

these words have the effect of wiping out all contracts between the parties entered into before the enforcement of order. This being a statutory

provision will override all contracts and consequently the contract relating to the stock of 76000 Kgs of staple fibre as well. I do not agree with the

view enunciated by the learned counsel for the petitioner that the Control Order cannot have any retrospective effect so as not to operate on the

precontrol contracts. All such contracts must give way to the statutory order of Control of the Central Government Nor can the restriction imposed

upon this aspect of the mater be said to offend Art. 19 (1) (g) of the Constitution because the imposition has got nexus with the object sought to be

achieved by the Act itself. This would be termed as a reasonable restriction within the meaning of Article 19 (2) of the Constitution of India.

(39) As regards the point urged by the learned counsel for the petitioners that respondent Nos 1 to 3 have not complied with Section 3 (6) of the

Act in not placing the impugned order before Parliament, it is found that this has been done. Reference may be made to letter dated 14th August.

1973 to the address of Parliament.

(40) As regards the argument that Subcl. (c) of clause 5 of the Control Order is violative of Article 14 of the Constitution of India. I am of the view

that there is no constitutional infirmity in it. It is not reasonable to assume that this subclause gives uncanalistd power to the authority officer to issue

permits. This sub clause requires the authority/officer to take into consideration relevant circumstances while granting permits. Relevant means

relevant to the situation. The Control Order is intended to regulate sale and distribution of the staple fibre and its object is to secure equitable

distribution on rational standards. Relevant circumstance has been used in the subclause to enable the Textile Commissioner to use his discretion on

taking into consideration all relevant circumstances for equitable distribution and to explore reasonable method for achieving the objective. The

mere fact that such a discretion has been exercised arbitrarily or that the discretion may nor be exercised with discretion will not render the

subclause vulnerable to the attack on the ground that it offends Article 14. The fault may lie on the wrong or illegal exercise of the power but not in

the .principle relating to the execution of the scheme provided by the Subclause. I am therefore of the view that this Subclause does not clothe the

Textile Commissioner with any uncanalised powers. The rationale of the requirement as envisaged in the subclause has got nexus with the objective

sought to be achieved. The subclause in my judgment is independent of sub clauses (a) and (b) and does not therefore convey the meaning that the

requirements to be considered are the same as are in subclause (a) & (b) and this subclause is to be taken as ejusdem generis with the preceding

sub clause.

(41) Last but not the least is the question relating to the impugned allocations. In this connection it is to be considered whether clause 5 of the

Control Order of 1972 and the requirements mentioned therein have been taken into consideration by respondent Nos 1 and 2 Our attention has been invited to certain categories 1 to 4 evolved by respondents 1 to 3 in accordance with which classification of units has been made. According

to this classification the said Mill of the petitioners has been brought within category III. The most important objection of the petitioner is that this

classification is unreasonable and while making allocations the quota for the quarters from April to June, June to Sep. 1972 and the period

subsequent thereto the objective test as to what was the productive capacity of the Mill and its off take especially in 1972 has been completely

ignored. It is pointed out that the productive capacity of the said mill and its capacity also to consume the raw material rose steadily from 1968

onwards. The position was stabilised in the year, 1972, which is a record year of the performance of the said Mill. The allocation made for the first

quarter of 1973 was indeed based on the off take of the year 1972. Therefore respondent No. 3 was not justified in making a progressive

reduction in the subsequent allocation for the quarters; April to June, July to September and the period subsequent thereto. There was no rationale

behind it. Respondents on the other hand say that they were justified in reducing the quota and keep the petitioner in category III on the following

grounds:

(1) Petitioner No. 1 purchased staple fibre from respondent 4 in the year 1972 in far excess of its requirements Expert opinion sought indicated

that the normal requirement of the petitioner to run the mill could not exceed 1. 45 lakhs kgs to run 3 shifts a day for seven days in the week. The

quota was accordingly fixed, The allotment for the first quarter of J972 was only provisional and tentative only to enable all mills to run. The said

mill is not exclusively licensed for spinning staple fibre. (2) That the petitioners purchases for the year 1972 were inflated as they sensed the

impending control and made huge purchases from its sister concern.

(3) That the capacity to consume was less. Additional demands were made only to seek expansion of the industry

(42) In my opinion the contentions raised by the respondents are mot wellfounded. In the first instance, as would appear from the facts and figures,

it is not correct to say that that productive capacity of the said mill and also its capacity to consume is less The test as indicated in (c) of clause (5)

of the Control Order has not been applied with objectively. The relevant circumstance have not been taken into consideration. It is true that the

court cannot and will not substitute its own method and formula for the one adopted and laid down by the respondents. But the tests applied and

the formula evolved and the classification made must be rational, intelligible and relevant. The requirements of the units will depend upon the

efficiency of the machines and the count of yarn. As the productivity in spinning mill varies from unit there cannot be a universal standard and

uniform requirements for all industries It has not been shown as to how it is being said that the normal requirement of the said mill cannot exceed

4.35 lakhs Kgs per quarter when according to the schedule (annexure I to the Rejoinder affidavit) it is found that in the year 1969, 1970, 1971

the purchases of the mill were 1762000, 1816000 and 20,48051 lakhs of Kgs respectively and the off take was 16,88000, 192000 and

20,32,390'5 lahks Kgs respectively. Also in the year 1972 it was the highest : 28,42,366,5 lakhs kgs were purchases and 27,88,189. 4 (lakhs

Kgs) was the production. Facts and figures made available by the petitioners which have not been disputed clearly demonstrate that during all the

quarters of the year 1972 the purchases and the off take was the highest. It is not therefore possible to lay down that purchases in the year 1972

were made by the petitioner 1 in far excess of its requirements or with ulterior motives. There is also no proof available that the respondent is a

sister concern of the petitioner 1 and it was because of sensing of the impending Control and also the influence exerted by the latter that any

'exaggerated' purchases were made. The question of regulating the distribution of staple fibre according to the respondent come before the

Government in April 1972 but the purchases for the said quarter of 1972 (January to April) were made much earlier as will appear from annexure

I (page 2). It is clear that these purchases could not have been influenced by the proposed regulation of distribution. This explodes the argument

of the respondents that quotas had been inflated so as to create an impression. How can the petitioner be imputed with the knowledge of

anticipated control in the first quarter of 1972. The petitioner could not have made purchases for running his mill from any source other than

respondent No. 4, the main supplier of raw material.

(43) Again, no expert advice advising the respondent to regulate the distribution

in a particular way has been made available. The court has not

been taken into confidence in this connection so as to judge the reasonabless of the suggestions made and the advice tendered to respondent No.

I. It is true that the impelling reason to effect outs in the quantities of industries is the shortage of the raw material and the respondent's anxiety to

feed all the units spinning staple fibre yarn. But even in their anxiety invidious discrimination has been made against the said mill of the petitioner in

placing if in Category III whereas it should have been placed in category IV (a) Even assuming for the sake of argument that the said mill is

licensed to spin cotton yarn as well as staple fibre yarn (though this position is not admitted by the petitioners as according to them this distinction

has been obliterated by the operation of the order, dated 29th May 1964 and 14rh August 1964 (vide Annexure A) and the petitioners' said mill

has been geared to the spinning of about 962 staple fibre yarn) it could not receive a different treatment from those mills put in category II or IV

(a), (b), (c) as in all these cases 1952 is the basis. Chart (Annexure A) produced by the petitioner shows the quantity of staple fibre supplied to 56

units for the year 197172. A comparative study of this chart will enable us to understand the requirements of the said Mill of the petitioner. In my

judgment there has been an arbitrary exercise of power by the respondent No. 1 in placing the petitioner Mill in category III and in not

appreciating the genuine requirements of it consistent with its productive capacity. Discriminate treatment has been meeted out to this units with less

productive capacity have been allocated requirements far in excess to their requirements. In certain cases the categorisation, made is not intelligible.

For instance one of the categories i. e, category IV consists of units which according to the respondent No. I had obtained viscose staple fibre in

1972 far in excess of their requirements because of the influence which they wielded with the suppliers But if it is found on the "" date available that

this requirement of theirs for 1972 was justified on the basis of production figures then to treat this kind of unit differently was discriminatory.

(44) Again the method of categorisation as indicated in category II discloses that an additional quantity of 5808 was allotted to units forming

category II. Why this preferential treatment was given to the units falling under this category has not been satisfactorily explained. This also smacks of discrimination.

(45) It is pertinent to refer here that categorisation made by respondents has also been critically commented upon by Ismail J. of Madras High

Court before whom the allocation in respect of certain quarter of the year 1972 was impugned in the judgment referred above. He has observed

that industrial units have been treated differently and with discrimination and further that unequals have been treated equally. Classification of units

based on categories III and IV was unintelligible. This was a distinction without difference.

(46) For the foregoing reasons I am, therefore of the view that the impugned allocations made by the respondents are arbitrary and are based OH

invidious discrimination. In certain cases pointed out above there is no rational behind them. For these reasons the allocations are liable to be

quashed.

(47) The result is that the writ is partially allowed. The words beginning from ''and includes any officer authorised by him to exercise all or ' any of

the powers of the Textile Commissioner under this order"" occurring in clause (2)(c) of the Control Order of 1972 being severable from the rest of

the clause are hereby struck down as ultra vires. Consequently the impugned allocations made in the exercise of this sub clause by the Assistant

Director/Deputy Director are set aside as also being violative of Article 14 of the Constitution for the reasons given above The respondent No. 1 is

directed to refix the allocations for the petitioners' mill consistent with the reasonable requirements of the said mill, of course subject to the

availability of the raw material and in the light of the observations made above. The petitioners will be entitled to costs which are assessed at Rs.

500/

(48) Before parting I should like to observe that there has been an initial mistake in the drafting of Cl, 5 (a) of the Control Order of 1972

inasmuchas the word 'Act' used in subclause has not been appropriately used. In the preamble of the said order 'Act' has been defined as the

Essential Commodities Act of 1955. Whereas the industries for spinning cotton and staple fibre yarn have been licensed and registered under the

Industries (Development and Regulation) of 1951 and not under the Essential Commodities Act the impression which sub clause (a) wants to convey. Some of the allocations as required by this Subclause have already been made. After about a year's time the mistake was detected by the

authorities and necessary amendment was thereafter effected (vide Notification of Government of India dated 24th January 1974)'

Sd/ Mian Jalaluddin J.

Ali C. J.

(1) I have perused the most elaborate and 1 elegant judgment prepared by my learned brother, JalaludDin J. and I entirely agree with the same but

would like to add a few lines of my own.

(2) The facts of the case, the arguments advanced before us and the issues involved have been clearly analyzed by my learned brother in his

judgment and it is not necessary to repeat the same here. The present petition succeeds mainly on two points :

1) that the reduction of the quota of raw meterial nemely, staple fibre to the petitioner's firm was unreasonable and discriminatory and

2) that the authority which passed the impugned orders of allocation had no power to pass these orders, as the Central Government exceeded the

limits of its delegating power in empowering respondent 2 to pass the impugned order.

(3) Coming to the first point, the admitted facts clearly pleaded in the petition of the petitioner which are not controverted by the other side clearly

show that the petitioner firm was originally manufacturing simple cotton fibre, Subsequently, however, when it was granted permission by order of

the respondents to manufacture staple fibre yarn, it switched over to this special type of manufacture and devoted all its energies to maximize the

production of the staple yarn. In the course of eight years starting from 1964, the petitioner firm appears to have made long strides to achieve the

target of maximum production. The details discussed by my learned brother would reveal that the offtake of the firm was fully justified by the

supply of raw material to it.

(4) Before dealing with the impugned order, it may be necessary to state that in a socialistic pattern of society which is the fundamental structure of

our Constitution the main goal is the establishment of a welfare State and the adoption of a national policy to increase and encourage large scale

production on all fronts in order to eradicate mass poverty and combat inflationary tendencies. In these circumstances the primary interest of the

State should be to direct its constructive effort towards the achievement of economic salvation and economic selfsufficiency. For promoting this

end, the objective should be to give a fillip to the industries and pay greater attention to industrial units to enable them to maximise their productive

capacity, so that industries by showing an out put of maximum production could cater to the varied requirements of the people and the expanding

needs of the nation. Industrial units which possess the potentialities of high production should be encouraged to achieve their higher targets of

production by being given a better share in the raw materials (of course consistent with the availability of the stock). In other words where the

State chooses to regulate the quota of raw material, the distribution of the same should be made in such a manner so as to attain the target of

maximum production.

(5). In the instant case she respondents allowed raw material to the petitioner, to being with, quite liberally, and when the petitioner showed the

take off of maximum production and more than justified the supply of raw material, instead of encouraging the petitioner firm, there was a sudden

change in policy which by reducing the quota of the petitioner practically led to the closure of the firm, arrested the process of maximization of

production and threw a number of trained workers out of employment, posing a serious economic problem for the State of Jammu & Kashmir.

Such a system of distribution cannot be in consonance with the Directive Principles of the Constitution nor with the economic policy which is

pursued by the Union Government. What has happened in this case is that in the garb of a more equitable distribution other firms have been sought

to be benefited at the cost of the petitioner and the petitioner has been selected for , hostile discrimination against other firms manufacturing the

same staple fibre on the ground that the petitioner firm in the beginning was manufacturing only cotton fibre. This process of reasoning adopted by

the respondent is not at all intelligible to us because once the petitioner was allowed permission to manufacture viscose staple fibre, it completely

switched on the full scale production of this kind of fibre by installing new machinery and employing additional skilled labour and became a

manufacturer engaged in exclusive production of staple fibre, and thus shed its original status of being a producer of simple fibre and practically

gave up its original sphere of activity. Thus it became equated in all respects with those firms who had been given license exclusively for

manufacturing viscose staple fibre and if there was any distinction, the same disappeared when the firm switched on to the exclusive manufacture of

viscose staple yarn. Thus if the petitioner firm and other firms which were not equally treated and the latter firm was given higher benefit by the

State, this amounted to a discrimination amongst equals and was hit by Art. 14 of the Constitution. I, therefore, fully agree with my learned brother

that the impugned order of reduction of the quota was unreasonable and discriminatory and was not based on a rational and objective basis and

must, therefore, be quashed.

(6) Coming now to the second point, regarding the question of sublegislation, it seems to me that the position in law is absolutely clear. S. 5 of the

Essential Commodities Act which is the parent Act in this case runs as follows :

The Central Government may, by notified order, direct that the power to make orders under S. 3 shall, in relation to such matters and subject to

such conditions, if any as may be specified in the directions, if any, be ^exercisable also by

(a) such officer or authority subordinate to the Central Government, or

(b) Such State Government or such officer or authority as may be specified in the direction.

(7) This provision delegates certain powers to the Central Government, but the delegation is not an unconditional one, and is hedged in by the

circumstances mentioned in the section. The statute under this provision seeks to empower the Central Government to direct by notified order that

the power to mike orders under S. 3 are exercisable, apart from the Central Government, by the following authorities :

1) Such officer or authority subordinate to the Central Government.

2) Such State Government or such officer or authority subordinate to the State Government.

(8) Thus this section merely empowers the Central Government to appoint an officer of the description given in clauses (a) and (b) but does not

empower the Government to give such officer the right to further delegate his powers to some other authorized by the officer. What the Central

Government has done in the present case is to appoint the Textile Commr. as the officer contemplated by S. 5 of the parent Act. This was certainly

within the powers of the Central Government, but it has gone a step further and authorized the Textile Commr. to appoint any officer authorized by

him. To this extent, therefore, the order of the Central Government falls beyond the ambit of the authority or the delegation given to it by the parent

Act. In other words the position is that the Central Government which was acting as a delegate itself has assumed the role of the parent authority

and has redelegated its powers to the 1 Textile Commr. in order to enable him to select an authority of his choice. In these circumstances,

therefore, there can be no manner of doubt that respondent 2 who was appointed by the Textile Com in r. was not a constitutionally or legally

authorised body to pass the impugned orders and to that extent the provisions of S 2 (c) of the Control Order of 1972 quoted by my learned

brother at page 29 of his judgment must be held to be invalid.

I, therefore, agree that the writ petition be partially allowed with costs of Rs 500/ to be paid to the petitioner by respondent.