

(1970) 09 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No"s. 589 and 638 of 1969

D.S. Patel and Co.

APPELLANT

Vs

Gujarat State Textile Corporation Ltd. and Others

RESPONDENT

Date of Decision : 30-09-1970

Acts Referred:

Bombay Relief Undertakings (Special Provisions) Act, 1958 — Section 3, 4
Constitution of India, 1950 — Article 14, 19(1), 245, 246
Industries (Development and Regulation) Act, 1951 — Section 18A, 18E, 20

Citation : (1971) 41 CompCas 1098 : (1972) 13 GLR 33

Hon'ble Judges : T.U. Mehta, J;B.J. Divan, J

Bench : Division Bench

Advocate : R.K. Patel, for the Appellant; C.T. Daru and R.M. Gandhi, for the Respondent

Judgement

Mehta, J.—The petitioners in both these petitions challenge the validity of sections 3 and 4 of the Bombay Relief Undertakings (Special Provisions) Act, 1958 (which is hereinafter referred to as the "State Act"), and the notifications issued by the State Government under these sections. In Spl. C.A. 638/69 the petitioners has further challenged the validity of section 18A and 18E(1)(c) of the Industries (Development and Regulation) Act of 1951 (which is hereinafter referred to as the "Central Act") as well as the notifications issued u/s 18A thereof.

2. So far as Spl. C.A. 589/69 is concerned, the facts are that the petitioner is a partnership firm and the third respondent, the New Manekchowk Spinning and Weaving Co. Ltd., is a company registered under the Indian Companies Act, 1913. The said company owns a factory, namely, a textile mill, which has 628 looms including 100 automatic looms and is running about 28,000 spindles. This company is found to be employing about 1,700 workers at its factory. The petitioner firm is having business with the third respondent and as such it had some dealings with it. It is found that on 23rd August, 1968, respondent No. 3 - the company - purchased 100 bales of cotton from the petitioner firm on

condition of 80% of cash payment. In fulfilment of this agreement a cheque for the amount of Rs. 62,500 was given by the third respondent to the petitioner-firm. This cheque was dishonoured and subsequent cheques which were issued were also dishonoured. The petitioner-firm claims that its total dues under the above referred transactions amount to Rs. 78,308.65.

3. It is an admitted position that on 11th November, 1968, the textile mill run by the third respondent ultimately closed down.

4. So far as Spl. C.A. No. 638/69 is concerned, there also the petitioner is a partnerships firm. Its claim is that it has been supplying cotton bales to the above referred New Manekchowk Spinning and Weaving Co. Ltd. and in respect of the sale of these bales, an amount of Rs. 6,34,236.26 has become due to it as on 31st January, 1969. The said new Manekchowk Spinning and Weaving Co. Ltd. failed to make payment of this amount and, therefore, this amount remains due to the petitioner-firm even at present.

5. It is admitted fact that the Central Government had ordered investigation u/s 15 of the Central Act and since ultimately it was found that the above referred New Manekchowk Spinning and Weaving Co. Ltd. mill was managing its affairs in a manner highly detrimental to public interest, a notification u/s 18A of the Central Act was issued by the Central government on 14th February, 1969. Section 18A of the Central Act in the following terms :

"18A. (1) If the Central Government is of opinion that -

(a) an industrial undertaking to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or

(b) an industrial undertaking in respect of which an investigation has been made u/s 15 (whether or not any directions have been issued to the undertaking in pursuance of section 16) is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) Any notified order issued under sub-section (1) shall have effect for such period not exceeding five years as may be specified in the order :

Provided that if the Central Government is of opinion that it is expedient in the public interest that any such notified order should continue to have effect after the expiry of the period of five years aforesaid, it may from time to time issue directions for such continuance for such period, not exceeding two years at a time, as may be specified in the direction, so however that the total period of such continuance (after the expiry of the said period of five years) does not exceed ten years and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before both Houses of Parliament.

Explanation. - The power to authorise a body of persons under this section to take over the management of an industrial undertaking which is a company includes also a power to appoint any individual, firm or company to be the managing agent of the industrial undertaking on such terms and conditions as the Central Government may think fit."

6. By the notification which is issued by the Central Government under this section on 14th February, 1969, the Gujarat State Textile Corporation Ltd. is appointed as the authorised controller to take over the management of the whole undertaking of the New Manekchowk Spinning and Weaving Co. Ltd. This notification is in the following terms :

"Ministry of Industrial Development and Company Affairs (Department of Industrial Development).

ORDER

New Delhi, the 14th February, 1969.

S. No. 620/18/A/IDRA/69. - Whereas the Central Government is of the opinion that the New Manekchowk Spinning and Weaving Co., Ltd., Ahmedabad, an industrial undertaking in respect of which an investigation has been made u/s 15 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), is being managed in a manner highly detrimental to public interest :

Now, therefore, in exercise of the powers conferred by section 18A of the said Act, the Central Government hereby authorises the Gujarat State Textile Corporation Ltd., Ahmedabad (hereinafter referred to as "authorised controller) to take over the management of the whole of the said undertaking, namely, the New Manekchowk Spinning and Weaving Company Ltd., Ahmedabad, subject to the following terms and conditions, namely :-

(i) the authorised controller shall comply with all directions issued from time to time by the Central Government;

(ii) the authorised controller shall hold office for one year from the date of publication in the official gazette of this order. The Central Government may terminate the appointment of the authorised controller earlier if it considers necessary to do so.

This order shall have effect for a period of one year commencing on the date of its publication in the official gazette."

7. There is also another Act, namely, Bombay Relief Undertaking (Special Provisions) Act, 1958, which is referred to in this judgment as the State Act and with which we are concerned in both these petitions. This Act has come into force on 27th December, 1958.

8. It is an admitted position that it has received the President's assent in due course. It is amended by Bombay Act 1 of 1960. The long title of this Act is as

under :

"An Act to make temporary provisions for industrial relations and other matters to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief."

9. The preamble of this Act is also in the same terms. The petitioners have, in these petitions, challenged the vires of sections 3 and 4 of this Act. It may be noted here that the Act consists only of four sections and one schedule. Section 1 provides for the title and the extent of the Act and section 2 provides for definitions. Sub-section (1) of section 2 defines the word "industry" as under :

"(1) "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or vocation of workman, and the word "industrial" shall be construed accordingly."

10. Sections 3 and 4 of this Act are in the following terms :

"3. (1) If at any time it appears to the State Government necessary to do so, the State Government, may by notification in the official gazette, declare that an industrial undertaking specified in the notification, whether started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by itself or under its authority, or to which any loan, guarantee or other financial assistance has been provided by the State Government shall, with effect from the date specified for the purpose in the notification, be conducted to serve as a measure of preventing unemployment or of unemployment relief and the undertaking shall accordingly be deemed to be a relief undertaking for the purposes of this Act.

(2) A notification under sub-section (1) shall have effect for such period not exceeding twelve months as may be specified in the notification; but it shall be renewable by like notifications from time to time for further periods not exceeding twelve months at a time, so however that all the periods in the aggregate do not exceed five years."

"4. (1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provisions whatsoever, the State Government may by notification in the official gazette, direct that -

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of section 3 -

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply and such relief undertaking shall be exempt therefrom, or shall, if so directed by the State Government, be applied with such modifications which do not however affect the policy of the said laws as may be specified in the

notification;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other financial assistance was provided to it, by, or with the approval of, the State Government, for being run as a relief undertaking, shall be suspended in operation, or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification;

(iii) rights, privileges, obligations or liabilities shall be determined and be enforceable in accordance with clauses (i) and (ii) of the notification;

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed;

(b) the right, privilege, obligation or liability referred to in clause (a) (iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued :

Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended under clause (a) (iv) shall be excluded notwithstanding anything contained in any law for the time being in force.

(2) A notification under sub-section (1) shall have effect from such date, not being earlier than the date referred to in sub-section (1) of section 3, as may be specified therein, and the provisions of section 21 of the Bombay General Clauses Act, 1904, shall apply to the power to issue such notification."

11. The Schedule which is referred to in section 4(1)(a)(i) mentions two Central Acts, namely, "The Industrial Employment (Standing Orders) Act, 1946 (XX of 1946) "and" The Industrial Disputes Act, 1947 (XIV of 1947)", the Bombay Acts, namely, "The Bombay Industrial Relations Act, 1946 (XI of 1947)" and "The Bombay Shops and Establishments Act, 1948 (LXXIV of 1948)" and one Saurashtra Act, one Hyderabad Act and two Madhya Pradesh Act with which we are not concerned in this petition. Under the provisions of section 3 and 4 of the State Act, which are quoted above, the State Government has issued two notification on 21st February, 1969. The notification issued u/s 3 of the State Act says that with effect from 21st February, 1969, the New Manekchowk Spinning and Weaving Co. Ltd. to which a guarantee for the advance of a loan of rupees twenty lakhs by the State Bank of India has been provided by the Government of Gujarat, shall, with effect from 21st February, 1969, be conducted to serve as a measure of unemployment relief and shall accordingly be deemed to be a relief undertaking for the purpose of the said Act. This notification, when it was issued,

was to have effect for a period of 12 months. It is found at annexure "B" to the petition in Special Civil Application No. 589/69. As stated above, on the same date, the State Government issued another notification u/s 4 of the State Act, issuing directions that in relation to the New Manekchowk Spinning and Weaving Co. Ltd., Ahmedabad, which is declared to be a relief undertaking u/s 3 of the State Act, "all rights, privileges, obligations and liabilities accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended with effect from 21st February, 1969."

12. It is obvious that, as a result of the above notification u/s 4 of the State Act, the debts due to the petitioners have been suspended during the period, the notifications issued u/s 3 remains in force.

13. Therefore, the case of the petitioners is that by these notifications issued under sections 3 and 4 of the State Act, their due are suspended and they are deprived of their right to recover these dues for the period during which the notifications in question remain in force. The petitioners have, therefore challenged in these petitions the validity of sections 3 and 4 of the State Act as well as the notifications issued under them.

14. As stated above, the petitioners in Spl. C.A. No. 638/69 have also challenged the validity of sections 18A and 18E(1)(c) of the Central Act and the notification issued u/s 18A. But this challenge does not survive in view of entry 19 of the 9th Schedule attached to the Constitution read with article 31B thereof. The learned advocate of the petitioners concerned has conceded this position. We shall, therefore, confine our attention only to the challenge by the petitioners to the vires of sections 3 and 4 of the State Act and the validity of the notifications issued under these two sections.

15. Shortly stated, the following are the main points which are raised on behalf of the petitioners by their learned advocate in these petitions :

(1) According to them sections 3 and 4 of the State Act are ultra vires articles 245 and 246 of the Constitution of India inasmuch as they encroach upon the legislative powers of Parliament. In other words, the competency of the State Legislature to enact these sections is challenged by them.

(2) They have further contended that the impugned sections 3 and 4 of the State Act are ultra vires the Constitution inasmuch as they delegate in favour of the State Government wide and excessive powers without fixing any guidelines and they thus enable the State Government to discriminate between persons falling within the same classification, thereby infringing the fundamental rights of equal protection contemplated by article 14 of the Constitution.

(3) Further, according to the petitioners, these two impugned sections of the State Act also infringe the fundamental rights to hold property contemplated by article 19(1)(f) of the Constitution; and

(4) It was alternatively contended on behalf of the petitioners that even if it is

believed that the impugned sections 3 and 4 of the State Act are intra vires the Constitutions, the notifications issued under these two sections are vitiated because the notification u/s 3 is beyond the scope of that section, and the notification issued u/s 4 is issued by the Government without applying its mind.

16. These are the only four points which are raised on behalf of the petitioners. We propose to consider these points in the order in which they are set out.

17. So far as the first point is concerned, it relates to the competency of the State Legislature to enact the State Acts. The argument is that if reference is made to entry 52 of the List I of the 7th Schedule of the Constitution, it would be found that it refers to the "industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". It was argued on behalf of the petitioners that the establishment known as "The New Manekchowk Spinning Weaving Co. Ltd." is a cotton textile industry, the control of which by the Union is taken over by the Central Government u/s 18A of the Central Act. It is said that, under these circumstances, it was not competent for the State Legislature to make an enactment with regard to this industry. In this connection our attention was also drawn to entry 24 of the List II (State list) of the 7th Schedule, which describes the subject in the following words :

"Industries subject to the provisions of entries 7 and 52 of List I."

18. Entry 7 of the List I is with regard to the industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. So far as these petitions are concerned, this entry is not relevant. But the relevant entry 52 to which we have already made a reference above. Therefore, what entry 24 of the State List provides is that the State Legislature can make an enactment with regard to those industries which are not covered by entry 52 of the List I. The argument advanced on behalf of the petitioners was that since the industry in question is clearly covered by entry 52 of the List I, it was not competent to the State Legislature to make any enactment with regard to this industry under entry 24 of the List II of the 7th Schedule. In support of this argument, our attention was also drawn to section 20 of the Central Act, which is in the following terms :

"20. After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorises any such Government or local authority so to do."

19. Pointing to the provisions of this section, the learned advocate of the petitioners contended that it was not open either to the State Legislature or to the State Government to take over the management and control of the industry conducted by New Manekchowk Spinning and Weaving Co. Ltd. and, therefore, also the State Act should be struck down as ultra vires and void.

20. In reply to these contentions, the learned advocates of the respondents

contended that the State Act really falls within entries 22, 23 and 24 of the List III (Concurrent List) of 7th Schedule and neither under entry 52 of the List I nor entry 24 of the List II. In order to appreciate the contentions of the respondents, it would be proper to know what these three entries of the Concurrent List provide. These entries are in the following terms :

"22. Trade unions; industrial and labour disputes.

23. Social security and social insurance; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

21. On behalf of the respondents it was pointed out that with a view to decide whether a particular enactment is within or beyond the legislative competency of the particular legislature, it is the pith and substance of the enactment which should be taken into consideration, and if this is done, it is quite evident from the long title, preamble and the provisions contained in section 3 and 4 of the State Act that the main object, which the State legislature had in view, was to make temporary provisions for industrial relations to prevent unemployment or to provide unemployment relief. According to the respondents, it would be the above quoted entries 22, 23 and 24 of the Concurrent List which would cover the subject-matter of the impugned legislation and, therefore, there is no scope for contending that the State Act falls beyond the competency of the State Legislature.

22. The simple question which arises from those contentions is under which List and entry the impugned State Act falls.

23. Now if a reference is again made to the State Act, it is found that sub-section (1) of section 2 defines "industry" and then in sections 3 and 4 it makes certain provisions which provide for the manner in which the industrial undertaking in question should be managed. Section 4 in terms makes specific provisions for suspending, either in whole or in part, the operation of the enactments which clearly refer to the subject of "industry". It, therefore, cannot be gainsaid that some of the provisions of the State Act do touch the subject of "industry". However, a bare reference to the long title, preamble, as well as the provisions contained in section 3 of the Act, shows that main object of the State Act is to make temporary provisions for industrial relations, to conduct or to provide loan, guarantee or financial assistance for the conduct of certain industrial undertakings, and thereby to prevent unemployment or to provide for unemployment relief. Section 3 of the Act provides very specifically that the notification which the State Government is expected to make should declare that the industrial undertaking in question shall, with effect from the specified date, be conducted to serve "as a measure of preventing unemployment". It is thus evident that the main burden of the different provisions of the State Act including its long title and preamble points out clearly that it is enacted with a view to

relieve or to prevent unemployment. Thus, on the one hand, it is found that the statute is enacted with a view to prevent unemployment or to relieve the same, and on the other had some of the provisions of the statute do provide for the subject of "industry". It cannot be disputed that the industry conducted by the New Manekchowk Spinning and Weaving Co. Ltd. is industry covered by entry 52 of the List I. Thus, there is undoubtedly some overlapping on the subject of "industry" contemplated by entry 52 of the List I. But overlapping of this type is inevitable in a federal constitution. In this connection, we may refer to the following observations of Sir Maurice Gwyer C.J. in the *United Provinces v. Mst. Atiq Begum* :

"The subjects dealt with in the three legislative lists are not always set out with scientific definition. It would be practically impossible for example to define each item in the provincial list in such a way as to make it exclusive of every other item in that list and Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. In the case of some of these categories, such as "local government", "education", "water", "agriculture" and "land", the general word is amplified and explained by a number of examples or illustrations, some of which would probably on any construction have been held to fall under the more general word, while the inclusion of others might not be so obvious. Thus, "courts of wards" and "treasure-trove" might not ordinarily have been regarded as included under "land", if they had not been specifically mentioned in item No. 21. I think however that none of the items in the lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matter which can fairly and reasonably be said to be comprehended in it."

24. Therefore, it is evident that the mere circumstance that some of the provisions of an enactment trench upon a subject falling under a different list, is not conclusive of the competency or otherwise of the legislature to make that enactment.

25. Since in a federal constitution such encroachments on legislative lists are, to an extent unavoidable, the jurists have evolved the test of "pith and substance" or "true nature and character" of the legislation in question to ascertain whether it falls within the legislative competence of the legislature concerned. As early as 1940, Sir Maurice Gwyer C.J. has observed in *A. L. S. P. P. L. Subrahmanyam Chettiar v. Mutthuswami Goundan*, at page 52 :

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to

ascertain its pith and substance, or its true nature and character, for the purpose of determining whether it is legislation with respect to matters in this list or in that."

26. In *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna*, a contention was raised that, though the doctrine of pith and substance may apply to Canada and Australia it is not application in India as in our country difficulty in dividing the legislative powers has been foreseen and that is why three lists instead of two lists have been prepared with a view to cover the whole field of legislation with clear-cut demarcations. Their Lordships of the Privy Council have rejected this contention by making the following observations :

"No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But the overlapping of subject matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactments of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with."

27. This principle is subsequently accepted in a series of cases including the case of *A. S. Krishna v. State of Madras*. We, therefore, need not elaborate this point any further. It is, therefore, clear that it is the pith and substance of a statute which should decide under which of the lists of the 7th Schedule it is enacted. Hence the real question is what is the pith and substance or the true nature and character of the impugned statute and how it should be determined. For this, we find some guidance in *A. S. Krishna v. State of Madras*, wherein it is held that to ascertain the true character of legislation which is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. It is further observed in this decisions that it would be quite an erroneous approach to the question to view such a statute not as an organic whole but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are intra vires, and what are not. In *re Kerala Education Bill, 1957*, their Lordship of the Supreme Court have observed that the policy and purpose of a statute could be deduced from its long title and the preamble, and this has been recognised in many a decision of the Supreme Court. From these observations it is clear that with a view to decide what is the true nature and character of a statute we can look to the long title, preamble and other provisions of the Act and it would not be a proper approach

to consider the provisions of the statute piecemeal and to find out which of these provisions so considered falls under which of the lists. Therefore, applying these tests, if we approach the provisions of the State Act, we find it quite evident from its long title and preamble that the Act is enacted for three main purposes, namely :

- (i) to make temporary provisions for industrial relations,
- (ii) to enable the State Government to provide loan, guarantee or financial assistance for the conduct of the industrial undertakings in question, and
- (iii) to do the above, as a measure of preventing unemployment or of unemployment relief.

28. We have already pointed out how section 3 provides for the conduct of the undertaking in such a manner as to serve the prevention of unemployment. As will be evident from the discussion which follows, we are of the opinion that even the provisions of section 4 of the Act are made to subserve the main purpose of the Act, namely, prevention of unemployment. It after having issued the notification contemplated by section 3, the Government finds that it is not feasible to run that undertaking economically without putting curbs contemplated by section 4, the Government would put these curbs by issuing a notification contemplated by section 4. Therefore, it is clear to us that even the provisions of section 4 are subservient to the main object of the statute as embodied in the long title and preamble. We have, therefore, no doubt that in "pith and substance", the State Act is enacted by the State Legislature with the dominant object of preventing unemployment and of providing relief against unemployment.

29. In this connection, the learned advocate for the petitioners contended that the reference in the preamble to prevention of unemployment is merely incidental, and at the most, supplies evidence of "motive" but not of the "main object" behind the enactment. In support of this contention it was pointed out that the purpose of preventing unemployment is not effectively carried out by section 3 of the Act. According to them, the only purpose for which section 3 is enacted is for issuing a notification u/s 4 putting curbs on the rights of labour or the rights of other persons including creditors. A criticism was levelled against the provisions of section 3 of the Act to show that these provisions are not potent enough to enforce the object of preventing unemployment because the State Government would be powerless if the authorised controller, who is appointed u/s 18A of the Central Act, does not carry out the State's directions to conduct the undertaking so as to serve it as a measure of preventing unemployment. We do not find any substance in this contention because it is evident that once a notification u/s 3 is issued, it becomes law and it becomes legally incumbent on the authorised controller concerned to conduct the undertaking so as to serve it as a measure of preventing unemployment, or of unemployment relief. It may be noted here that the notification u/s 3 can be issued by the State government

only if the conditions mentioned in that section are satisfied. One of the conditions mentioned in that section is for providing a loan, guarantee or other financial assistance by the State Government. Therefore, If the undertaking is not conducted to serve the purpose mentioned in section 3(1), the State Government would be at liberty to stop further financial assistance. Again, the State Government would also be entitled not to renew the notification from time to time as contemplated by sub-section (2) of section 3. From the perusal of the provisions contained in section 4 of the State Act it is obvious that these provisions are enacted with a view to give a sort of moratorium to the undertaking which is declared a "relief undertaking" u/s 3. This moratorium would be available to the undertaking only if the State Government issues a notification u/s 4. If, therefore, the authorised controller fails to conduct the undertaking so as to serve the purpose mentioned in section 3(1), the State Government would be at liberty to review the situation at the end of every twelve months.

30. We thus find that there are ample safeguards in the Act to see that the authorised controller carries out the object of preventing unemployment. We, therefore, see no substance in the contention that the idea of preventing unemployment is merely incidental. In our opinion, it is the main object which determines the true nature and character of this legislation. If this be so, that State Act clearly falls within entry 23 of the Concurrent List of the 7th Schedule.

31. Further argument which was advanced on behalf of the petitioners in this connection was that if a reference is made to sections 15, 16 and 18 of the Central Act, it would be found that the management of an "industrial undertaking" would be taken over by the Central Government u/s 18A of the Central Act only if the economy of that undertaking is found to have been adversely affected. It was contended, therefore, that by the application of the State Act, the object for which the Central Government is expected to take over the undertaking u/s 18A of the said Act, would be frustrated because by compelling the authorised controller to conduct this undertaking as a measure of preventing unemployment, the economic burden of the undertaking increases. We are not impressed even with this argument because we find that, far from being contradictory, the provisions of the State Act are very much complementary to the provisions of the Central Act. Section 3 and 4 of the State Act serve the purpose of stabilising the economy of the undertaking in question. It may be recalled that notification u/s 3 can be issued by the State Government only if any of the preconditions mentioned in it are satisfied. One of the preconditions is the rendering of financial assistance by the State to the undertaking. Hence, before the State Government imposes on the authorised controller the burden of conducting the undertaking to serve the purpose of preventing unemployment, the State should be found to have provided loan, guarantee or other financial assistance to a private undertaking as in this case would be a positive step to stimulate its financial affairs. But this is not all. Section 4 provides for further steps for putting the economy of the undertaking on sounder footing. A bare

perusal of the provisions of section 4 shows that the State Government, acting under that section can exercise wide powers to give temporary relief to the undertaking not only from the pressing claims of creditors but also from the exacting demands of labour under different labour laws, agreements and awards. Thus, while asking the authorised controller or prevent unemployment of labour, the statute also protects the undertaking from certain demands of labour which may prove to be very strenuous if the umbrella of the State Act is not extended. This analysis of sections 3 and 4, therefore, shows that the State Act is in no way detrimental to the object for which the Central Government has to act under the provisions of the Central Act. On the contrary, the provisions of the State Act are complementary to the provisions of the Central Act inasmuch as unemployment cannot be prevented unless the undertaking is helped to be on sound financial basis by exercising some of the powers under the State Act.

32. It was then contended that, if a reference is made to sub-clause (iv) of section 4(1)(a) of the State Act, it will be found that it provides for the suspension of all rights, privileges, obligations and liabilities, accrued or incurred before the undertaking was declared a relief undertaking as well as the remedy for the enforcement thereof. The contention of the learned advocate for the petitioners was that by making this provision, even the rights, liabilities and obligations which have arisen under different statutes which may fall under the List I of the 7th Schedule are liable to be suspended and if that is so, the said suspension would amount to a legislation with respect to the subjects mentioned in the List I of the 7th Schedule. This argument is fallacious because provisions for suspending rights, liabilities and obligations are not tantamount to legislation on a topic which is covered by the subject-matters enumerated in the List I of the 7th Schedule.

33. As already observed above, sections 3 and 4, no doubt, make some provisions what touch the subject of industry and, therefore, it can be said that, to that extent, they encroach upon the legislative subject of the Union List. But, in our opinion, this encroachment is merely incidental to the main object of the enactment which is to relieve unemployment. Here it should be noted that one of the consequences of the doctrine of pith and substance is that once the true nature and character of an enactment takes the enactment under consideration within a particular legislative entry then an incidental encroachment on an entry contained in another list does not affect its validity. This principle is followed in a large number of cases including the above referred case of *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd.*, House of Lords case of *Gallagher v. Lynn* and the Supreme Court cases of *State of Bombay v. Narothamdas* and *State of Bombay v. F. N. Balsare*. It is obvious that, in order to achieve effectively the main object for which the State Act is enacted, the legislature has necessarily to make some incidental provisions with regard to the subject of industry. For instance, we find, by a reference to the provisions contained in section 3 of the State Act, that the State Government is expected to render financial assistance to the industry in question. Now, merely providing for financial assistance may

not be sufficient for carrying out the main object, namely, the prevention of unemployment. It is very likely that, in spite of the financial assistance by the State, the industry cannot go ahead either on account of the heavy wage bill of the labourers, or on account of the disproportionate amount of debts incurred by the previous management. Under the circumstances, it would be necessary to make some temporary provisions for suspending these liabilities so that the financial assistance provided by the State with a view to prevent unemployment may not be wasted. It is for this reason that the legislature was made u/s 4 certain provisions which touch industrial relations between the employees of the industry and the management. This would necessarily touch subject of industry. But these provisions touching the subject of industry are merely incidental because their main object is to make the industry run so that the unemployment would not be a necessary consequence of the stoppage of the industry. We thus find that all the provisions which the Act makes with respect to the subject of industry are merely incidental and, if that is so, they cannot touch the intrinsic nature and character of the enactment.

34. Before leaving this point we would consider one more contention of the petitioners, viz., that section 3 and 4 of the State Act are in conflict with the above quoted provisions of section 20 of the Central Act. If a reference is made to section 20 it will be found that what it prohibits is "taking over of the management or control" of the industrial undertaking contemplated by that section. The question is whether section 3 provides for "taking over of the management or control" of the industry in question. We have already referred to the provisions of section 3 above. These provisions nowhere provide for taking over of the management and control of the industry in question. What it provides for is merely a declaration that the industry in question shall "be conducted to serve as a measure of preventing employment or of unemployment relief". This requirement of conducting the industry to serve as a measure to prevent unemployment is merely an indication of the manner in which the industry should be conducted. It is not tantamount to a taking over or to a control of the management of the industry. We, therefore, see no conflict between the provisions contained in section 20 of the Central Act and the provisions contained in section 3 of the State Act.

35. Thus, so far as the point of legislative competency is concerned, we find that the petitioners have got no case.

36. Proceeding now to the next point, the question which is raised on behalf of the petitioners is that sections 3 and 4 of the State Act delegate excessive and wide powers in favour of the State Government without fixing any guidelines, and, therefore, both these provisions are vitiated on the ground of excessive delegation as well as on the ground of breach of equality clause contained in article 14 of the Constitution of India. In this connection Shri Vakil, who appeared on behalf of one of the petitioners, drew out attention to the fact that u/s 3 of the State Act, the State Government has got wide powers to choose a

particular industry for the purpose of making a declaration that it is a relief undertaking. At the time of making this choice the Government would be getting no guidance either from the provisions of section 3 or from any other provisions of the State Act. In this connection, It was strenuously contended that if the object of the Act is to provide for relief against unemployment or to prevent unemployment, all those concerns which are likely to stop their business for want of finance would be entitled to the relief contemplated by the Act, but at the time of making its choice for the purpose of issuing a declaration the State Government is not empowered to give relief to those undertaking which are not covered by the several categories contemplated by section 3. It was pointed out that for the purpose of making a declaration u/s 3, the undertaking in question should have been either started or acquired or undertaken by the Government or should be one to whom either loan,; guarantee or financial : assistance is provided by the Government. In other words, an undertaking selected for making the declaration u/s 3 should : be one which is either run by the State Government itself, or one to whom the State Government has provided assistance. The argument was that, even though the undertakings, which are neither run nor assisted by the Government, are in need of some protection, the legislature does not intend to cover them by the protection which is contemplated by the Act. According to the learned advocate of the petitioners, therefore, the election for the purpose of making the declaration contemplated by section 3 leaves out other similarly situated undertakings for the only reason that these undertakings have not preferred to avail of State assistance. Thus, according to the petitioners, the classification contemplated by section 3 is discriminatory and irrational and has not got a proper nexus with the object of providing employment or relief against unemployment.

37. So far as section 4 is concerned, the argument was that this section gives very wide and blanket powers to the Government for making discrimination. It was pointed out that section 4 is enacted with a view to suspend certain rights, liabilities and obligations which have arisen before the undertaking is declared a "relief undertaking". It was further pointed out that it also seeks to suspend certain very substantive and valuable rights of labour inasmuch as some of very important labour legislations and the benefits arising therefore can be suspended by the Government while acting under the section. It was further pointed out that neither section 4 nor any of the provisions of the State Act provide for any guidelines to the State Government at the time of making selection of the rights which are required to be suspended. It was also contended that, in the absence of any such guidelines provided by the legislature it would be open to the State government to pick and choose and to act in an arbitrary manner. As an instance, it was pointed out that, if there is an undertaking which is either started, acquired or taken over by the State government itself, then for such undertaking the State Government would suspend those rights and obligations u/s 4 which would put the State Government at an undue advantage over the citizen. In this connection, it was also pointed out that, at the time of taking

action u/s 4 of the State Act, the State Government would, in certain circumstance, be required to resort to some classification for making a choice as regards the suspension of the rights in question. Since the legislature itself has not provided for any classification or guidelines prescribing the principles on which the classification should be made, it would be open to the State Government to make classification in an arbitrary manner and, therefore, also the provisions of section 4 would be vitiated.

38. Therefore, it was contended on behalf of the petitioners that, so long as it is not found that the legislature has itself provided some curbs and checks on the action contemplated to be taken by the State Government under sections 3 and 4 of the Act, it should be held that these sections are vitiated not only on account of excessive delegation in favour of the Government but also on account of the situation which enables the State Government to resort to arbitrary discrimination at the time of acting under these sections and thus to infringe the equality clause found in article 14 of the Constitution.

39. It is apparent from the above that the petitioners contention about the vires of section 4 rests on the premises that this sections violates provisions of article 14 of the Constitution because it delegates excessive powers in favour of the State Government for the purpose of classifying the rights and liabilities to be suspended under that section. This contention is, therefore, a part of their general contention that both the sections 3 and 4 of the State Act should be struck down on the ground of excessive delegation. We shall, therefore, first consider the position of law on the question of excessive delegation of legislative power.

40. It is found that in the pre-Constitution days the decision given by the Privy Council in *R. v. Burah* held the field. In that case wide powers of delegation were upheld on the principle that the legislature, when it exercises its will unequivocally and clearly, should be presumed to have exercised its judgment "as to place, person, laws and powers", and that the result of that judgment is to legislate conditionally as to all things which have been delegated. After the Constitution of India came into force, there was a reference to the Supreme Court in *In re Delhi Laws Act, 1912*, where the authorisation of the executive authority over a wide range of subjects was upheld by the Supreme Court for different reasons given by different judges. This decision has been explained and its ratio has been crystallised in *Rajnarin Singh v. Chairman, Patna Administration Committee, Patna*. Broadly speaking, both these cases lay down the following principles :

- (1) Essential feature of the legislative power is to lay down a policy. This feature cannot to delegated by the legislature to any other authority.
- (2) Delegated authority cannot be authorised to do anything which involves a change in the essential policy or the standard laid down by the legislature; and
- (3) There can be no delegation of power to repeal a law because this power is

legislative in character.

41. These three principles have resulted in a search for "legislative policy" and "guidelines" for the purpose of deciding whether the delegation in question is excessive or not. We find that many cases have been decided by the Supreme Court on the premises that delegation by the legislative policy is clearly indicated and the guidelines are prescribed in the statute itself. The cases of Pandit Banarsi Das Bhanot v. State of Madhya Pradesh and Corporation of Calcutta v. Liberty Cinema are instances on the point. However, this principle is succinctly stated by Gajendragadkar J. (as he then was) in Vasanlal Maganbhai Sanjanwala v. State of Bombay as under :

"It is now well established by the decisions of this court that the power of delegation is as constituent element of the legislative power as a whole, and that in modern time when the legislature enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well settled. The legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. As has been observed by Mahajan C.J. in Harishanker Bagla v. State of Madhya Pradesh :

"The legislature cannot delegate its 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 which are to control any given cases, and must provide a standard to guide the officials or the body in power to execute the law".

42. These observations may of course, be read with a note of caution recorded by Subba Rao J. (as then he was) in this dissenting judgment against an attempt "to discover a dormant or latent legislative policy to sustain an arbitrary power". These observations of Subba Rao J. held the field a few years later in Devi Das Gopal Krishnan v. State of Punjab, wherein the delegation found in section 5 of the Punjab General Sales Tax Act, 1948 (46 of 1948), as it originally stood, was under challenge and was found excessive for want of proper guidance. But there also it was conceded that the expression of clear legislative policy and guidelines would save the delegation. This is clear from the following observations found at page 1901 :

"The minimum we expect of the legislature is to lay down in the Act conferring such a power of fixation of rates clear legislative policy or guidelines in that regard. As the Act did not prescribe any such policy, it must be held that section 5 of the said Act, as it stood before the amendment, was void."

43. However, it is found that in Delhi Municipality v. Birla Cotton Spinning and Weaving Mills, Delhi, the emphasis has changed and two of the judges of the

Supreme Court, who have recorded the majority judgment, appear to be of the view that consideration of safeguards is not the only approach to test the permissible limits of delegation. Their Lordships have been of the opinion that the proper test to apply is not the existence of safeguards but whether the legislative will to impose the tax is adequately expressed so as to bind those who have to pay the tax. In their Lordships' opinion once it is established that the legislature itself has willed that a particular thing be done and has merely left the execution of it to chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. These observations clearly indicate a swing towards the ratio of the original decision given by the Privy Council in pre-Constitution days in *R. v. Burah*. Be that as it may, one position which clearly emerges out of the review of all these decisions of the Supreme Court is that no delegation of legislative power can be considered excessive if it is found that the statute itself contains a clear-cut policy statement and also provides necessary guidelines for the exercise of the powers.

44. As will be clear from the discussion which follows on the question whether section 4 of the State Act delegates excessive and arbitrary powers of classification and legislation on the State Government, we are of the opinion that the statute itself contains sufficient guidance and a clear statement of legislative policy for the exercise of the delegated power and, therefore, we hold that the provisions of the State Act are not vitiated on account of excessive delegation of legislative powers. This question is more elaborately discussed while dealing with the impact of article 14 on the State Act. We shall, therefore, now proceed to the contentions raised on behalf of the petitioners relating to article 14 of the Constitution.

45. We have already stated above the contentions raised on behalf of the petitioners even with regard to the alleged infringement of the equality clause enshrined in article 14 of the Constitution. Now, speaking of this equality clause as contained in article 14 it is evident that it does not forbid classification. However, the equality clause suggests that the classification must be reasonable and intelligible. The classification thus formed must not leave out any person or thing falling within the class thus formed. Leading case on this subject is *Ram Krishna Dalmia v. Justice Tendolkar*, wherein some important propositions are formulated by Das C.J. The following are the relevant propositions for the purpose of these petitions :

(1) The classification should satisfy two conditions, namely :

(i) It must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and,

(ii) The differentia must have a rational relation to the object sought to be achieved by the statute in question.

As stated in *Northern India Caterers Ltd v. State of Punjab*, when an enactment is challenged on the ground of discrimination the court must first ascertain the

objects sought to be achieved by the legislature and then apply the above stated two tests. It is held in that case that if these two tests are satisfied then the classification cannot be held to be violative of article 14.

(2) It must be presumed that the legislature understands and correctly appreciates the needs of its people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

(3) While goods faith and knowledge of existing conditions on the part of the legislature can be presumed this presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain classes to hostile discrimination.

46. The facts of the case under our consideration should, therefore, be tested by these proposition, in order to know whether equality clauses contained in article 14 is infringed or not. In this connection, we would like to refer to the three questions on the lines suggested in *Vajravelu's* case. On the facts of the petitions before us these questions would be as under :

(1) What is the object of the Act.

(2) What are the differences between in the industries which are covered by section 3 of the Act and those not covered by it; and

(3) Whether these difference have any reasonable relation to the object of the Act.

47. Having these three questions in mind, we now to proceed to consider the actual provisions of the Act.

48. A bare perusal of section 3 shows that it contemplates that class of industry which is either State controlled or State aided. Now, the contention of the petitioners is that this classification is discriminatory because if once it is believed that the object of the Act is to prevent unemployment, the umbrella of protection which is sought to be extended by sections 3 and 4 should cover all industrial which are in danger of being closed down and which are very likely to result in unemployment. However, it was contended that section 3 of the Act gives protection only to State controlled or State financed industries leaving other such industries to their fate. It was, therefore, argued that this classification which makes distinction between State Controlled or State financed industries and the industries which are not State controlled or State financed, is discriminatory in its nature. We find that this contention is not acceptable because, for weighty reasons, the State is considered a "class" by itself. This is done in several matters and the reason for doing so is that there is an important distinguishing feature between a State undertaking and a private undertaking. It is obvious that in State undertakings, what is involved is public interest and public finance. But that is not so in case of a private undertaking. Wherever public finance is involved, it is many a time found necessary to give it a special treatment for the

protection of public interest which is therein involved. This principle is found recognised in various Acts including Revenue Recovery Acts, Rent Acts and various other socio-economy enactments. The principle is so well established that it is not found necessary to refer to case law on this point in detail. We may, however, refer to *Baburao Shantaram More v. Bombay Housing Board* and *Lachhman Dass v. State of Punjab*. Having thus once found that the industrial undertakings wherein a State's interest is involved either directly or indirectly can form a "class" by itself the next question to be considered is whether this classification has any nexus with the object of the Act. While discussing the question as regards the pith and substance of the Act, we have already pointed out that the main object of the State Act is the prevention of unemployment by making temporary provisions for industrial relations and to enable the State Government to conduct, or to provide loan, guarantee or financial assistance to certain industrial undertakings. Therefore the question is whether when the State Government issues a declaration contemplated by section 3 of the Act covering that class of industrial undertaking which is either State controlled or State aided, the classification adopted for the purpose serves the above referred main object of the Act or not. In our opinion, the answer is too obvious to be elaborated. It is evident that State aid in the form of the financial assistance would be given to those undertakings which are in financial trouble for a variety of reasons. If these undertakings are left to their fate, the industry would eventually be lost to the nation and even the public finance which is invested in the undertaking with a view to assist it would be put to a serious jeopardy. It is for this reason that the State Government is expected to make a declaration u/s 3 declaring the undertaking a "relief undertaking". The moment such a declaration is made, it becomes obligatory on those who manage the undertaking to conduct the same to serve as a measure of preventing unemployment. But a mere declaration of this type would not be sufficient because the undertaking would be in such financial stress that it would require some assistance from the State Government with a view to lessen its liability for a temporary period. It is at this stage that the State Government would make a further declaration u/s 4 and suspend certain rights and liabilities for a temporary period. Thus while, on the one hand, section 3 contemplates a positive assistance in the form of loans, guarantee or finance, on the other hand, section 4 provides for a temporary relief so that the undertaking in question would be free from the worries of certain liabilities. All these are temporary provisions but during this temporary period, the concern in question would be enabled to stand on its legs. If this happens, it would necessarily result in the prevention of unemployment. We have, therefore, no doubt in our mind that the classification, which is contemplated by section 3 of the Act, has a direct nexus with the object with which the State Act was enacted. In our opinion, therefore, the tests of a reasonable, intelligible and valid classification which are given in *Dalmia's* case are clearly satisfied, and even the three questions which we have referred to above, are satisfactorily answered. In our opinion, therefore, which section 3 of the Act cannot be successfully attacked on the ground that it contemplates unreasonable classification having no nexus

with the object of the Act.

49. This takes us to the provisions contained in section 4 of the State Act. So far as this section is concerned, we have already referred to its provisions and the impact of these provisions on various rights and liabilities. If again a reference is made to this section, it would be found that clause (a) of sub-section (1) thereof contemplates four sub-clauses, which are relevant for the purpose of deciding this point. Out of these four sub-clauses, the first three sub-clauses relate to the rights and liabilities arising out of the industrial relations of the undertaking with its workers. Sub-clause (i) contemplates the suspension or modifications of the industrial Acts referred to in the Schedule. Sub-clause (ii) contemplates the suspension of all or any of the agreements, settlements, awards or standing orders made under any of the laws mentioned in the schedule. Sub-clause (iii) contemplates that rights, privileges, obligations and liabilities of the workers of the undertaking shall be determined and enforceable only in accordance with the action taken under sub-clauses (i) and (ii) for the temporary period in question. Now all these sub-clauses given protection to the industrial concern which is covered by the declaration contemplated by section 3 thereof, from its existing liabilities towards its workers. If this relief is accorded by the notification issued u/s 4, then the relief undertaking would be relieved from the existing pressure of its wage bill and some of its other liabilities to the labour during the period for which the notification u/s 3 remains in force. Thus sub-clauses (i), (ii) and (iii) contemplate relief from current liabilities. Sub-clause (iv) contemplates relief from the past liabilities incurred by the past management because it contemplates the suspension of the rights, privileges, obligations or liabilities, accrued or incurred before the undertaking was declared a relief undertaking. The wording of sub-clause (iv) is so wide that they include the rights, privileges and liabilities of everybody including the labour and undertaking itself.

50. Now it is quite evident from the provisions of section 4 that it leaves the choice of selection to the sole discretion of the Government. There would be cases wherein the Government may apply only the provisions contained in sub-clause (i). There would be cases in which the Government may apply the provisions contained in sub-clause (ii), but there would also be cases in which the Government may not take any action under any of the sub-clauses (i), (ii) and (iii) and may take action only under clause (iv) as is done in this case. Even so far as sub-clause (iv) is concerned, the Government is not bound to suspend all rights, privileges, obligations and liabilities accrued or incurred before the undertaking was declared a "relief" undertaking. Government may choose to suspend only certain rights, liabilities and privileges under sub-clause (iv). There is, therefore, no doubt that the powers conferred by section 4 on the Government are very wide. It is also clear that the classification which the Government is likely to adopt at the time of taking action u/s 4 is entirely at the discretion of the Government. Therefore, the question is how far such wide and blanket powers of classification and selection found in section 4 would offend the

equality principle embodied in article 14 of the Constitution and would also suggest an excessive delegation of power.

51. There is ample authority for the proposition that the mere fact that no classification is made by the statute, or that the discretion is left to the Government for making classification at a future date, would not lead to the law being struck down. In all such cases, the court is expected to proceed to inquire whether the statute contains any principle or policy for guiding the discretion to be exercised by the State Government in the matter of selection or classification. If no such guiding principles are found, then the statute becomes liable to be struck down on the ground that it confers arbitrary and uncontrolled powers on the Government to discriminate between persons and things similarly situated. In such case, the discrimination is inherent in the statute itself. But, if the guiding principles and the policy of the statute are eloquent from the provisions of the statutes itself, then the power which is delegated to the State Government is expected to be exercised in accordance with those principles and policy. In complex society, it is not always possible for the legislature to foresee every situation at the time of enacting a general law or to envisage every contingency and to provide for each such contingency in the statute. It is therefore, many a time found necessary to state the general principle of policy in the statute and to leave the details of its execution to the authority to whom the power is delegated. In this connection, we may quote the following observations found in a Division Bench judgment of this court given in Spl. C.A. No. 760 of 1966 :

"The Government cannot, while making a rule dealing with broad categories, be expected to provide for all exceptional cases. Or else the rule may become so overloaded with qualification and exceptions that it any tumble down of its own weight. It must also be remembered that no classification can be logically of plumb line precision. No two things are exactly similar; of no two human beings can it be said that their physical characteristics, intellectual endowments mental disposition and conduct are uniform. Life is not capable of being divided into water-tight divisions or categories and it is not possible to force the teeming multiplicity and variety of human activity into a Procrustean bed of symmetrical rules. Absolute precision and complete symmetry are unattainable and it is as well that it should be so for otherwise life would be mechanical and lose its many sided variety."

52. In the same judgment it is further observed as under :

"When the impugned legislative or executive action indicates a policy and brings within its operation those who are similarly situated and it appears that the policy is a result of specific difficulties and the end to which it is directed is not objectionable on the ground that there is arbitrary or hostile discrimination, the court would not overthrow it simply because it is not couched in all-embracing terms or because it comprises exceptional cases where some inequality of treatment may arise."

53. There would, however, be cases wherein the exercise of the power which is delegated, would result in hostile discrimination. If such hostile discrimination is found to be inconsistent with the policy of the enactment then the action taken by the delegate can be struck down as invalid. But that is altogether a different question. A question of this type has been considered in the United States in connection with the equality clause. We find that in his book in "Constitutional Law", Professor Willis has made the following observations at page 586, which are very much pertinent to the point under our consideration :

"Perhaps the best view on the subject is that "due process" and "equality" are not violated by the mere conferment of unguided power, but only by its arbitrary exercise by those upon whom conferred. If this is the correct position, the only question that would then arise would be the delegation of legislative power. If a statute declared 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."

54. In *In re Kerala Education Bill, 1957*, the Supreme Court has observed that no statute can be discriminatory unless its provisions discriminate (at page 1042 of the report).

55. It is, therefore, necessary to find out whether the State Act provides any guidelines to the Government for taking action u/s 4. The question is how and where to find the guidelines from the statute. Answer to this question is provided by the Supreme Court in *Harishanker Bagla v. State of Madhya Pradesh*. In this case the Supreme Court had upheld clause (3) of the Cotton Textile (Control of Movement), Order, 1948, observing that the discretion there conferred on the delegate had to be exercised in the light of the policy underlying the Order. Referring to this case in *Govindji Vithaldas and Co. v. Municipal Corporation, Ahmedabad*, Chagla C.J. has observed that if the court can discover a policy underlying the law and if a discretion is conferred under that law, then the court must hold that the discretion is to be exercised not in an arbitrary manner not in a capricious manner, not in an uncontrolled manner, but in a manner so as to effectuate the policy of the law. For the purpose of this case, we do not find it difficult to discover the policy which is underlying this Act. It is obviously to prevent unemployment and to give unemployment relief. This is evident from the preamble and other provisions of the Act. That the preamble and the provisions of the Act can be taken into account at the time of finding out the policy underlying the statute, cannot be disputed because that principle had been firmly established and recognised in various decisions of the Supreme Court. We, therefore, do not propose to refer to all those decisions. But we state that it has been recognised in *Vasanlal Maganbhai Sanjanwala v. State of Bombay* and *In re Kerala Education Bill, 1957*. We find that on the whole the position on the point of excessive delegation, as well as on the question whether the equality clause

would be offended in cases where classification is left to the discretion of the delegate is summarised by the Supreme Court in *Jyoti Pershad v. Administrator for the Union Territories of Delhi* wherein the following propositions are found to have been made :

"(1) If the statute itself or the rule made under it applies unequally to persons or things similarly situated, it would be an instance of a direct violation of the constitutional guarantee and the provisions of the statute or the rule in question would have to be struck down.

(2) The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the legislature vests a discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary power enabling it to discriminate.

In such circumstances the very provisions of the law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded by article 14.

(3) The above rule would not apply to cases where the legislature lays down the policy and indicated the rule or the line of action which should serve as a guidance to the authority. Where such guidance is expressed in the statutory provisions conferring the power no question of violation of article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to person or things similarly situated. Even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of a violation of article 14, but as really being beyond its power.

(4) It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provisions itself.

Such guidance may thus be obtained in from or afforded by the preamble read in the light of the surrounding circumstances which necessitated the legislation, taking in conjunction with well-known facts of which the court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits.

In the circumstances indicated under the fourth head just as in the third, the law enacted would be valid being neither a case of excessive delegation or abdication of legislative authority viewed from one aspect, nor open to objection on the ground of violation of article 14 as authorising or permitting discriminatory

treatment of persons similarly situated. The particular executive or quasi-judicial act would, however, be open to challenge on the ground not so much that it is in violation of the equal protection of the laws guaranteed by article 14 because ex concessis that was not permitted by the statute but on the ground of the same being ultra vires as not being sanctioned or authorised by the enactment itself. The situation in such cases would be parallel to the tests to be applied for determining the validity of rules made under statutes which enable the rule making authority to enact subsidiary legislation "to carry out the purposes of the Act" The criteria to be applied to determine the validity of such rules could be appropriately applied to determine the validity of the action under the provisions like the one dealt with under the last two heads."

56. It is in the light of these principles that we now turn to the statute. We find that at many places it provides for sufficient guidances and checks on the exercise of the power by the State Government while acting u/s 4. To summarise briefly, this would be found as under :

(1) Long title and preamble suggests a general policy for the prevention of unemployment. It shows that the real object of this enactment is to render financial assistance to sick industries with a view to relieve unemployment.

(2) The declaration contemplated by section 3, which forms the basis of the declaration u/s 4, is required to be issued only if the following conditions are satisfied;

(i) Government should find it "necessary" to make such a declaration.

(ii) Government cannot make that declaration with regard to any industry because, before making the declaration, the industry concerned should be either State controlled or State aided. This puts an obligation of a very onerous nature on the State Government before the action u/s 3 is taken.

(iii) The industry is required to be conducted to serve the purpose of preventing unemployment.

(iv) The declaration would be only for a limited period contemplated by sub-section (2) of section 3.

(3) Acting u/s 4 cannot be taken if it is not found to serve the main purpose of the Act, namely, prevention of unemployment. At the time of making the classification for the selection of the Act to be taken under either of the four sub-clauses of section 4(1)(a), the Government cannot act arbitrarily because the considerations which would guide the Government's action would be to prevent unemployment or to relieve unemployment as far as possible.

57. Therefore, if in a particular case the Government finds that the industry cannot stand on its legs without getting some temporary relief in the payment of its huge wage bill then the Government would issue notifications under any of the first three sub-clauses of section 4(1)(a). But if the Government finds that

the payment of the wage bill is not much of a financial problem for the industry and that it is the protection from its creditors which the industry requires then instead of taking action under sub-clauses (i), (ii) and (iii), the Government may well take action under sub-clause (iv) and suspend all or any of the rights, liabilities and obligations under that clause. Whatever action the Government proposes to take u/s 4 would obviously be guided by one supreme consideration, namely, that of putting the industry on a sounder footing so that the apprehended unemployment resulting from the closure of the industry can be avoided. It is thus obvious that, though in fact it is found that section 4 vests very wide powers in the Government, not only for the purpose of taking action, but also for the purpose of making selection, it is quite evident that that power is controlled not only by the express policy enunciated in the long title and preamble but also by the guidelines which are provided by section 3. In this connection we cannot ignore the fact that the discretion, which section 4 leaves, is the discretion left to the Government and not to any lesser officer. The fact that the discretion is left to a higher authority in one of the considerations which should weigh with the court as held by the Supreme Court in *Virendra v. State of Punjab*. Thus we find that even section 4 cannot be considered either as vesting excessive power of delegation in favour of the Government or as infringing the equality clause contained in article 14 of the Constitution.

58. We now proceed to the third ground of attack on these provisions. It is on the basis that sections 3 and 4 of the State Act are restrictive of the fundamental rights of the petitioners to hold property as contemplated by article 19(1)(f) of the Constitution. Like other fundamental rights contemplated by article 19 even this right as regards the property is subject to reasonable restrictions in public interest as provided by sub-article (5). Therefore, the question is whether the restrictions contemplated by section 4 are reasonable and whether they are in public interest. It is apparent from the provisions of the Act that the restrictions are contemplated only by section 4 thereof and that the notification contemplated by section 3 of the state Act is only a precursor of the notification to be issued u/s 4. It is, therefore, first necessary to consider the nature of the restrictions contemplated by section 4. A bare reference to section 4 shows that the only restriction which it contemplates is that of temporary suspension of the rights and liabilities relating to the relief undertaking in question. The petitioners being the creditors of the undertaking, their rights to recover their dues is suspended under sub-clause (iv). Shri Vakil contended before us that since under the said sub-clause (iv) even the substantive right itself is suspended, the petitioners will not be entitled to claim any interest on their outstanding dues for the period during which notification u/s 3 remains in force. It is undoubtedly true that sub-clause (iv) is so worded that on a plain reading it gives an impression that what is suspended is not only the remedy for the enforcement of the right to hold but also the right itself. But we find that on a true construction of this sub-clause the right itself is not suspended but only the remedy for the enforcement of the right is suspended. In our opinion, this appears to be the true construction

of sub-clause (iv) because, if this sub-clause is interpreted as suspending the very existence of the rights covered by the notification issued u/s 4, the very object of the statute would be frustrated. This will be evident from the discussion which follows.

59. It is evident from the wording of this sub-clause that it contemplates the suspension of "any" right, privilege, obligation or liability accrued or incurred in the past. The sub-clause, therefore, covers within its wide compass even the rights accrued in favour of the relief undertaking itself. Now if this sub-clause is construed as putting a temporary halt to the very existence of the rights covered by the notification issued u/s 4, the result would be that even the rights of the undertaking accrued in the past would have no existence for the temporary period in question. If this happens, it would be totally impossible for the undertaking to function at all because it cannot use its machinery or premises for running its industry. This would obviously destroy the very object for achieving the statute as enacted.

60. To take another illustration we may consider a case of hypothecation of its goods in favour of a bank or any other creditor made before the undertaking is declared a relief undertaking. If sub-clause (iv) is construed as putting temporary stop to the very existence of the rights in question, the result would be that for the period during which the undertaking remains a relief undertaking hypothecation would not be in legal existence and the undertaking would be at liberty to sell away the hypothecated goods, thus permanently annihilating the rights of the creditors in whose favour the goods are hypothecated. We find that such instances can be multiplied.

61. It is thus obvious that the legislature could not have intended to invite such absurd results. We find that the legislature has advisedly used the word "suspended" and "stayed" in sub-clause (iv) with reference to rights, remedies and proceedings. "Suspension" is not tantamount to "destruction" or "annihilation". Therefore, when the sub-clause speaks about "suspension" of a right it only means suspension of its execution or enforcement. The incidents of a right, except its executability, are, therefore, not suspended by the sub-clause.

62. It was then contended that operation of sub-clause (iv) would result in great hardship as in some cases it may result in financial ruin of a creditor. As instances of such hard cases our attention was drawn to a compensation claim by a widow of a workman or the dues of a petty merchant who is financially hard pressed in his business. It was pointed out that if such dues are suspended for a period of five years during which the notification u/s 3 can remain in force, the restriction would operate very unreasonably as the creditors concerned would be totally ruined.

63. We must say that after considering the scheme of the Act we are not impressed even by these contentions. It must again be noted that the State Government has a discretion to make a selection of the rights to be suspended

under this sub-clause. This selection is to be made having the object of preventing unemployment in mind. Moreover, under sub-section (2) of section 3 the notification declaring relief can have effect at a time only for twelve months. It can, of course, be renewed for other such period subject to the maximum total period of five years. Thus at the end of every twelve months the Government can review the position and would suspend only those rights and remedies whose suspension is found necessary for preventing unemployment. Thus there is ample scope in the statute for relieving the hardship of the cases pointed out by Shri Vakil.

64. Having thus examined the nature and scope of the restriction we shall now proceed to consider how far these restrictions are in public interest.

65. It cannot be seriously disputed that these restrictions are in public interest. This would be evident if we take into consideration the consequences which would ensue if an undertaking covered by section 3 is not given protection for a temporary period u/s 4. So far as we can visualize, the following consequences are likely to ensue if the protection contemplated by section 4 is not given to the concerned industry :

(1) The industry would run the risk of being closed down and many also be taken up in liquidation or winding up proceedings. This would result in total loss of that industry to the nation which is otherwise struggling to industrialise its economy.

(2) The closure would result in unemployment of hundreds of persons with all its chain of consequences such as discontent and frustration, and, in certain cases, this may result even in law and order problems.

(3) Unsecured creditors of the undertaking would have very bleak chances of future recovery if such a sick undertaking is left to lurch and is allowed to face the consequences of winding up or liquidation, and

(4) The public money invested by the State in financing the undertaking would be put to serious jeopardy.

66. It is with a view to avoid all these possible consequences that the restrictions contemplated by section 4 are envisaged by the Statute. We have, therefore, no doubt in our mind that these restrictions are in public interest.

67. Then the question which arises to be considered with regard to the fundamental rights contemplated by article 19(1)(f) of the Constitution is whether these restrictions are "reasonable". While considering this question of reasonableness of restrictions, it is difficult to avoid the temptation of referring to the following memorable observations of Ayyangar J. in the case of *Jyoti Pershad v. Administrator for the Union Territory of Delhi*.

"The criteria for determining the degree of restriction on the right to hold property which would be considered reasonable, are by no means fixed or static, but must obviously vary from age to age and be related to the adjustments

necessary to solve the problems which communities face from time to time. The tests, therefore, evolved by communities living in sheltered or placid times, or laid down in decisions applicable to them can hardly serve as a guide for the solution of the problems of post-partition India with its stresses and strains arising out of the movements of populations which have had few parallels in history. If law failed to take account of unusual situations of pressing urgency arising in the country, and of the social urges generated by the pattern of thought-evolution and of social consciousness which we witness in the second half of this century, it would have to be written down as having failed in the very purpose of its existence. Where the legislature fulfills its purpose and enacts laws, which in its wisdom are considered necessary for the solution of what after all is a very human problem, the tests of "reasonableness" have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole."

68. On similar lines is the following passage from the judgment of Sastri C.J. in *State of Madras, v. V. G. Row*, which has been repeatedly cited with approval in many of the subsequent Supreme Court decisions :

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstance of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decisions should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representative of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

69. Thus five tests are supplied by these observations, namely :

- (1) Nature of the right infringed.
- (2) Underlying purpose of the restriction.

- (3) Extent and urgency of the evil sought to be remedied.
- (4) Disproportion of the imposition, and
- (5) Prevailing condition of time.

70. We may add the sixth test as provided in *Dr. N. B. Khare v. State of Delhi*, namely, "whether the law is temporary or permanent." Applying these tests to the facts of this case we have no doubt in our mind that all of them are fully satisfied. We have already considered the nature of the right infringed and the underlying purpose of the restrictions contemplated by the Act. The extent and urgency of the evil which these restrictions seek to remedy are too obvious to be emphasised. A nation which is struggling against acute socio-economic problems cannot afford to relax its efforts towards industrialisation and prevention of unemployment. If it does so, it would be only at its own peril. The State Act is only a modest effort of the society towards that direction. What it seeks to do is only to suspend for a temporary period the enforcement of several rights in the larger interests of the society as a whole. It is, therefore, not open to a citizen, who is a part of this society, to adopt a fanatic approach to his fundamental rights which are not absolute in their character. Directive principles of the State enumerated in Part IV of our Constitution represent the aspirations of this nation. The Central and State legislatures of the country have constantly to bear them in mind, and though it is true that these principles do not override the justiciable fundamental rights embodied in Part III of the Constitution, they none-the-less provide sufficient guidance and direction as regards the goal which our nation aspires to achieve. As observed by Subba Rao C.J. in *Golak Nath v. State of Punjab*, these directive principles "can reasonably be enforced within the self-regulatory machinery provided by Part III" of our Constitution as to use his own words "indeed both Parts III and IV of the Constitution form an integrated scheme and is elastic enough to respond to the changing needs of the society". Wherever a fundamental right is infringed, there is bound to be some hardship to the concerned citizen, however small the infringement may be. But so long as the infringement is not unreasonable, individual hardship must yield to the social necessities because in a modern polity the individual has to live in the society of which he is a part and is directly or indirectly benefited by the progress of that society. In this case the restrictions in question are referable to article 41 of the Constitution and since we find that these restrictions are reasonable the vires of sections 3 and 4 of the State Act cannot be successfully challenged.

71. Yet the question is whether in their application these restrictions can be considered as reasonable or not. This aspect of the matter is already considered by us in the above discussion where we have pointed out that the action which the state is required to take u/s 4 is completely guided by the policy which is so apparent from the preamble as well as section 3 of the Act. Therefore, if at any time the State is found to be making any hostile discrimination in applying these restrictions, it can be struck down as going outside the ambit of the guidelines provided by the statute.

72. Shri Vakil, the learned advocate for the petitioners drew our attention to the Supreme Court decisions given in *State of Madhya Pradesh v. Ranojirao Shinde*, *Kartar Singh v. Chief Engineer, Irrigation, Punjab* and the unreported decision of the Supreme Court in Civil Application No. 685 of 1968. We find that these decisions have no bearing on the facts of the present case because they proceed on the principle that it is not reasonable to acquire the property of a private individual for the purpose of fattening the State exchequer. So far as this case is concerned the restriction in question is not intended for the purpose of fattening the State exchequer but only for the purpose of seeing to it that a sick industry is put on proper lines and is enabled to run on sound economic conditions. For achieving this object and for preventing unemployment, what the State is expected to do is to give positive financial assistance and temporary protection from other claimants. If the State is ultimately successful in achieving these objectives, even the creditors whose dues are not secured, stand to gain. We are, therefore, of the opinion that the decisions relied upon by Shri Vakil would not help the petitioners in showing that section 3 and 4 of the State Act are putting unreasonable restrictions on the petitioners' fundamental rights hold property.

73. What remains now to be considered is only the last point which is about the validity of the notifications which are issued under sections 3 and 4. The contention is that these notifications are vitiated as the notification issued u/s 3 is beyond the scope of that section and the one issued u/s 4 is issued without the Government applying its mind.

74. So far as the notification which is issued u/s 3 is concerned, the argument was that it does not comply with the conditions precedent for the exercise of the powers u/s 3 inasmuch as the loan-guarantee by the State was advanced to the company in the year 1965 while the action of issuing the declaration is taken four years thereafter, i.e., in the year 1969. We do not find any substance in this contention because if a reference is made to the provisions of section 3, it would be found that it contemplated the issuance of the declaration even in cases where loan-guarantee or other financial assistance "has been provided" in the past. Moreover, we find in the record of the case, a copy of the directors report of New Manekchowk Spinning and Weaving Co. Ltd. for the year ending 31st December, 1963, and other relevant documents going to show under that circumstances a loan of Rs. 20 lakhs was taken by that company from the Government. These documents show that the said company was not able to make enough profit on account of the fact that its machinery was worn out. The company therefore took a loan of Rs. 20 lakhs in the year 1965 from the Government with a view to replace its worn out machinery. It is found that even thereafter the company could not work properly and ultimately the Central Government had to take action u/s 18A of the Central Act as it was found that the industry was run by the company in a manner which was detrimental to public interest. It is obvious, therefore, that the loan of 20 lakhs rupees was advanced by the State Government in the year 1965 to enable the company to

stand on its legs and thereby to prevent unemployment. So even if it is believed that the loan in question should have been provided as a "measure of preventing unemployment". We find that that condition is satisfied. Under the circumstances, it is not possible to believe that the notification issued u/s 3 is ultra vires the provisions of section 3.

75. So far as the notification issued u/s 4 is concerned, there is absolutely nothing in the petition to show that the Government has issued that notification without applying its mind. The Government has, of course, suspended all rights, privileges, obligations and liabilities under sub-clause (iv) of section 4(1)(a) but that would be with reference to the facts relating to the financial affairs of the New Manekchowk Spinning and Weaving Co. Ltd. It was for the appellant to rely upon the facts going to show how the Government have not applied their mind at the time of suspending all rights, privileges, obligations and liabilities under sub-clause (iv) of section 4(1)(a). The petitioners have not done this. Therefore, it is not possible even to attack the validity of the notification issued u/s 4. In this connection, we may refer to the Supreme Court decision given in *Ishwarlal Girdharlal Joshi v. State of Gujarat*. Reference to page 875 of the reported decisions shows in the observations of the Supreme Court that in such cases in which the petitioner has failed to make out the case for non-application of mind, it would be better for the Government to leave the petitioner to their burden in view of the legal presumption and the provisions contained in article 166(2) of the Constitution.

76. In this view of the matter, we hold that both these petitions should fail. Both of them are, therefore, dismissed with costs.

77. The learned advocate for the petitioner in Spl. C.A. 638/69 applies for leave to appeal to the Supreme Court. Said leave is granted under article 133(1)(b) and (c).