

(1973) 06 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No's. 2 of 1968 and 537, 1080 to 1083, 1617 of 1969, 127 of 1970 and Civil Application No's. 1802 of 1969 in Spl. C.A. No. 1080 of 1969, C.A. No. 1803 of 1969 in Spl. C.A. No. 1081 of 1969, C.A. No. 1804 of 1969 in Spl. C.A. No

Firm Shah Kaushik Kumar Ratilal

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 19-06-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 19(5), 226
Forward Contracts (Regulation) Act, 1952 — Section 18(3), 2

Citation : AIR 1974 Guj 188 : (1973) 1 GLR 960

Hon'ble Judges : P.D. Desai, J;B.J. Diwan, J

Bench : Division Bench

Advocate : C.T. Daru, J.V. Desai and R.M. Vin, for the Appellant; G.N. Desai, Govt. Pleader, for the Respondent

Judgement

Divan, J.—In all these Special Civil Applications the common questions are the challenge to the provisions of certain sections of the Forward Contracts (Regulation) Act, 1952, (Act No. 74 of 1952) (hereinafter referred to as the Act) and the two notifications. (1) dated 24th December 1964 and (2) dated 16th March 1967 issued under the provisions of Section 18, sub-section (3) of the said Act. All the petitioners, except the petitioner in Special Civil Application No.1080 of 1969, are dealers in cotton seeds. The petitioner in Special Civil Application No.1080 of 1969 is the Association called the Palej Cotton-seed Buyers and Sellers Association. The narration of facts in Special Civil Application No. 2 of 1968 will be sufficient to bring out the controversy between the petitioners in each of these Special Civil Applications and the respondents. The Forward Market Commission is respondent No.2 in these Special Civil Applications and the Union of India is respondent No. 1 in each of these Special Civil Applications. In Special Civil Application No.2 of 1968, the petitioner is a partnership firm dealing in cotton seeds in the area of Baroda district and this partnership firm carries on its

business at Dabhoi in Baroda District. It is the contention of the petitioner that the firm buys cotton seeds from the ginner and enters into contracts with buyers to supply them. It is the contention of the petitioner that most of the contracts made by that firm with the buyers provide for the supply of a specified quantity of cotton seeds to be delivered to the buyer at his destination. The payment of price is made when goods are delivered. i.e. when railway receipts are tendered to the buyers.

The partnership firm contends that the firm also enters into contracts which are locally and colloquially known as Palej Rate-Dabhoi Rate Contracts. Under these contracts the petitioner purchases or sells a specified quantity of cotton seeds at specified rates from the seller or to the buyers, as the case may be, through an agent who sends a purchase transaction note or a sale transaction note, as the case may be, to both the buyer and the seller. The buyer under these contracts undertakes an obligation to pay the amount of the price at the specified rate till he takes delivery. This type of contract is prevalent in several areas for a very long time and they are genuine business transactions for giving delivery of the cotton seeds of the specified quantity at the specified rates. It is the contention of the petitioner that normally it takes about one month to two months to get railway wagons for transporting the cotton seeds to the destination. After the goods are booked for transportation, a period of one month to two months normally elapses before the railway delivers the goods to the buyer at the destination station. Annexure "A" to the petition in Special Civil Application No. 2 of 1968 is the certificate issued by the Station Master of Sadhli, Western Railway, showing the date of placing an indent for a wagon and the date of supply of a wagon and this certificate is dated October 26, 1967. Annexure "A" to the petition is relied upon by the petitioner for the purpose of showing that, under no circumstances, is it possible to obtain a wagon within 11 days of the date of placing the indent. It is the contention of the petitioner that the contracts known as Palej Rate-Dabhoi Rate contracts are the genuine transactions of purchase and sale with the firm's intention to give and take delivery of the goods contracted to be sold and in the business sense, they are ready delivery contracts but within the said expression "ready delivery contracts" under the provisions of the Forward Contracts (Regulation) Act, 1952, these contracts are not ready delivery contracts. The petitioner contends that under the said definitions of "forward contract" and "non-transferable specific delivery contract", as set out in Section 2 of the Act, the contract which it enters into with the buyer and seller of cotton seeds as Palej rate-Dabhoi rate contract, would be a forward contract and would also be covered by the definition of non-transferable specific delivery contract. In the exercise of the powers conferred upon it by Section 15 of the Act, the central Government issued notifications, from time to time, applying the provisions of the said section to different commodities including cotton seeds. So far as cotton seeds are concerned the provisions of Section 15 of the Act prohibiting forward contracts in cotton seeds have been applied to the entire country, that is throughout India. By the impugned notification of December 24, 1964, issued in exercise of

the powers conferred by sub-section (3) of section 18 of the Act, the Central Government declared that the provisions of Sections 5 to 14 (both inclusive) and Sections 15 and 16 of the Act shall apply to non-transferable specific delivery contracts in respect of cotton seeds, linseed and castor-seed. These provisions of different sections of the Act have been made applicable in the whole of India, except within the limits of Greater Bombay. Thereafter, by another notification dated March 26, 1967, the Government exempted from the operation of Section 15 all non-transferable specific delivery contracts entered into by ginneries for the sale of cotton seed obtained by the ginneries by ginning the kapas in their ginning factories or by a dealer in kapas for the sale of cotton seed obtained by him by getting his kapas ginned or by cotton seed crusher or by his authorized agent for the purchase of cotton seed for crushing the cotton seed in his own mill. The petitioner in Special Civil Application No. 2 of 1968 contends that there is no recognized association or a registered association in respect of cotton seeds in Dabhoi or in any nearby place. The petitioner's case is that Dabhoi is a big center of trade in cotton seeds and most of the trade in the surrounding areas in cotton seeds is done through normal trade channels in Dabhoi. The petitioner's case is that genuine specific delivery contracts are treated as forward contracts on account of the provisions of the Act. The Forward Market Commission ordered searches to be made in the petitioner's office by the police authorities and it is likely that the Commission would treat such contracts as forward contracts and even order prosecution of the petitioner for contravention of the Act. Moreover, it is likely that the parties, with whom the petitioner has entered into contracts are void as being in contravention of the provisions challenged the vires of Section 18(3) of the Act on the ground (a) that it violates Article 19(1)(g) of the Constitution, as it does not fall within the constitution, as it does not fall within the category of reasonable restrictions on trade and (b) on the ground that the impugned Section 18(3) confers an uncontrolled and uncanalised power to apply the provisions of Section 15 or not to apply the provisions of Section 15 to non-transferable specific delivery contracts in a particular commodity. The petitioner also challenges the notification dated December 24, 1964 and the subsequent notification dated March 16, 1967 on the ground that they discriminate between the parties specified therein and the traders like the petitioner and secondly, on the ground that the notifications are contrary to the provisions of Section 18(3) of the Act.

2. At the hearing of these petitions, the arguments on behalf of the different petitioners were advanced by Mr. C. T. Daru. Though the case of different petitioners may vary slightly, by and large, they are all affected by the notification dated December 24, 1964 inasmuch as the provisions of Section 15 of the Act have been made applicable to non-transferable specific delivery contracts in cotton seeds. The Union of India and the Forward Market Commission have both filed affidavits in reply contending that the provisions of Section 18(3) are valid and intra vires the Constitution and they have also contended that the notification dated December 24, 1964 and the subsequent

notification dated March 16, 1967 are valid and are within the power of the Central Government, being the power conferred upon it by the provisions of the Act. They also contend that there has been no such discrimination between different dealers in cotton seeds as would invite the applicability of Article 14 of the constitution. The contention on behalf of the respondents is that there is a rational basis of classification of those who are exempted from the operation of the provisions of Section 15 of the Act in connection with non-transferable specific delivery contracts entered into by them and the rest of the dealers and that this basis has a rational nexus with the object of the Act.

3. We may point out that, in order to explain the circumstances under which the notification dated December 24, 1964 came to be issued, the Government have put on record two letters. One of September 11, 1964 from the Chairman of the Forward Markets Commission to the Regional Director, Ministry of Commerce, Government of India, New Delhi and the other being a letter dated December 14, 1964 also from the Chairman of the Forward Markets Commission to Shri D. N. Banerjee, Joint Secretary to the Government of India, Ministry of Commerce, New Delhi. Both these letters have been addressed by the Chairman of the Forward Markets Commission to the respective officers in order to urge upon the Government the desirability of applying the provisions of Section 15 of the Act to non-transferable specific delivery contracts in cotton seed and other oil seeds. Copies of these two letters have been, by consent of the parties, taken on the record in Special Civil Application No. 2 of 1968 and it was agreed by all the parties before us that these two letters should be considered while deciding this group of matters.

4. In order to appreciate the contention regarding the challenge to Section 18(3) of the Act and also the challenge to the notifications, it is necessary to refer to some of the provisions of the Act. As the preamble of the Act points out, this is an Act to provide for the regulation of certain matters relation to forward contracts, the prohibition of options in goods and for matters connected therewith. In Section 2, clause (1), the Act provides the definition of "ready delivery contract" and, according to the definition, a ready delivery contract means a contract which provides for the delivery of goods and the payment of a price therefore, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the extension by the mutual consent of the parties thereto or otherwise. Subsequent to the filing of these petitions, the definition of ready delivery contract has been amended by the addition of proviso and Explanation but the amended provisions do not apply to the group of matters before us. Forward contract u/s 2(c) of the Act means a contract for the delivery of goods at future date and which is not a ready delivery contract. Hence, every contract which provides for the delivery of goods at a future date and which provides for the payment of the price beyond the period of eleven days after the date of the

contract would be a forward contract.

Again, it may be pointed out that if the period under the contract is capable of extension by mutual consent of the parties thereto except in accordance with the conditions which the Central Government may, by notification, specify, it would also be a forward contract. u/s 2(m) specific delivery contract has been defined to mean a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned. Section 2(m) defines transferable specific delivery contract to mean a specific delivery contract which is not a non-transferable specific delivery contract and which is subject to such conditions relating to its transferability as the Central Government may, by notification in the Official Gazette, specify in this behalf. Section 2(f) defines a non-transferable specific delivery contract to mean a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable. In the instant case, we are concerned with non-transferable specific delivery contracts. Chapter II of the Act which covers Section 3, 4 and 4A deals with the Forward Markets Commission; how it is established and constituted and the functions and powers of the Commission. Chapter III of the Act, which runs from Sections 5 to 14, deals with recognized associations and Chapter III-A, consisting of Sections 14A, 14B and 14C, deals with registered associations, u/s 15, sub-section (1), the Central Government may, by notification in the Official Gazette, declare Section 15 to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in Section 18, every forward contract for the sale or purchase of any goods specified in the notification. Which is entered into in the area specified therein otherwise than between members of a recognized association or through or with any such member shall be illegal.

For the purpose of this judgment, we are not concerned with the rest of the provisions of Section 15. Section 16 provides for consequences of notification u/s 15 and Section 17 deals with power to prohibit forward contracts in certain areas. It may be remembered that, under the definition set out in the Act in Section 2, every specific delivery contract is a forward contract of a particular kind and, hence, a non-transferable specific delivery contract is also a forward contract. Section 18 is in these terms:-

"18 (1) Nothing contained in Chapter III or Chapter IV shall apply to non-transferable specific delivery contracts for the sale or purchase of any goods;

Provided that no person shall organize or assist in organizing or be a member of any association in any area to which the provisions of Section 15 have been made applicable (other than a recognized association) which provides facilities for the performance of any non-transferable specific delivery contract by any party to thereto without having to make or to receive actual delivery to or from

the other party named in the contract.

(2) Where in respect of any area the provisions of Section 15 have been made applicable in relation to forward contracts for the sale or purchase of any goods or class of goods, the Central Government may, by a like notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of Chapter III or Chapter IV shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.

(3) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply".

Thus, non-transferable specific delivery contracts for the sale or purchase of goods are taken out of the provisions of Section 15 by sub-section (1) of Section 18, notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply. Section 19 contains a prohibition of options in goods. Chapter V, which covers Sections 20 to 24, deals with penalties and procedure in connection with contracts which are declared to be illegal or which are prohibited by any notification of the Central Government. Thus, in the interest of the trade or in the public interest, the Central Government having formed an opinion in that behalf, non-transferable specific delivery contracts, which are otherwise not within the operation of Section 15(1), though they are forward contracts by the very definition set out in Section 2 of the Act, can be brought once again by virtue of the appropriate notification issued under. Section 18 (3), within the purview of Sections 15,16 and 17 of the Act.

5. The learned Government Pleader on behalf of the respondents raised a preliminary objection to the maintainability of these petitions. He contended that all these petitions in this group deserve to be dismissed in limine on the ground that the petitioners have come too late to the Court and simply on the ground of delay, these petitions should be dismissed. He contended, in this connection. that, though the impugned notification making some of the provisions of

Chapters III and IV of the Act applicable to non-transferable specific delivery contracts in cotton seeds was issued on December 24, 1964, the petitioners approached the High Court in 1967 or 1968 at the earliest and most of them in 1969 or even thereafter. In support of this preliminary contention. The learned Government Pleader relied upon two decisions of the Supreme Court, the first is the decision in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, and the other is the decision in Durga Prasad Vs. Chief Controller of Imports and Exports, . In Tilokchand Motichand's case there was a difference of opinion between Bachawat and Mitter, JJ. And the majority of the learned Judges constituting the Bench held that "utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there no guaranteed remedy and the matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extraordinary jurisdiction". The Supreme Court also pointed out that, the question was one of discretion for the Court to follow from case to case. The Court need not necessarily give the total time to the litigant to move the Supreme Court under Article 32, even though he might be within statutory limitation. Similarly, in a suitable case the Court might entertain a petition even after limitation. It would all depend on what the breach of the fundamental right and the remedy claimed were and how the delay arose. Thus Tilokchand Motichand's case merely lays down that on the ground of delay the matter can be dismissed in limine.

6. In Durga Prasad's case, the applicant for an import licence in 1959 received the licence only for a fraction of the amount which he had asked for and did not challenge the validity of the licence immediately but he chose to wait and came to the Court in 1964 requesting for a writ of mandamus. The Supreme Court held that, even if his fundamental rights were involved, the matter was still in the discretion of the High Court, and the High Court in its discretion could refuse the issue of a writ because of the laches of the applicant when the exchange position and the Government policy with regard to International Trade varied from year to year, it would be odd for the Court to issue a writ in 1968 for alleged defaults of the Government in the years 1959 or 1962. In such matters, it was essential that the person aggrieved should approach the High Court after exhausting his other legal remedies with utmost expedition.

7. In each of these two cases, relied upon by the learned Government Pleader, in support of the preliminary objection, it was the question of an exercise of powers once and for all by the authorities concerned. There was no question of any one's rights being affected at a future date, by reason of the exercise of power, which was alleged to be an illegal exercise of power. The case before us is not of any one's rights being affected by the exercise of powers by the Central Government once and for all. The notification issued on December 24, 1964

would continue to affect the rights of parties and it would continue to expose the parties to penalties under Chapter V of the Act until it is revoked or cancelled. It is only when the rights of a party are sought to be affected or he is exposed to certain penalties because of the operation of the notification issued on December 24, 1964 that he can approach the Court and challenge the validity of the Act, It is after the raids are carried out by the police authorities in 1967 or thereabout, at the instance of the Forward Markets Commission that different petitioners in this group of matters approached this Court challenging the validity of certain provisions and also challenging the validity of the notifications can be said to have arisen, for the first time, when it was alleged by the authorities concerned that the particular contracts which he entered into were either forward contracts or non-transferable specific delivery contracts in cotton seeds covered by the notification of December 24, 1964. None of the petitioners can be said to be guilty of delay after his right to challenge these notifications of December 24, 1964 and March 16, 1967 arose, after the raids carried out by the police authorities. Hence in our opinion, the preliminary objection based on the ground of delay and laches cannot be accepted and must be rejected.

8. We will now take up the question of the challenge to the validity of Section 18(3) of the Act. We have already pointed out that the challenge is on two grounds, (i) that it violates Article 19 (1)(g) of the Constitution and (ii) that it confers uncontrolled and uncanalised power on the Central Government to make Section 15 of the Act applicable to non-transferable specific delivery contracts in any particular commodity. In order to consider this challenge, it is necessary to set out the historical background against which the Central Legislature enacted the Forward Contracts (Regulation) Act. In paragraph 12 of the affidavit-in-reply of P. Sitaraman. Deputy Secretary, Ministry of Industrial Development, Internal Trade and Company Affairs (Department of Internal Trade) Government of India, New Delhi, being his affidavit dated April 8, 1970 in Special Civil Application No 2 of 1968 he has set out the historical background of this enactment. He has pointed out that forward trading has been carried on in this country for over hundred years, except for some restrictions or prohibitions during the last World War and the early post-war period, when shortages of various commodities tended to bring about an undue rise in their prices. On those occasions, the Central Government issued orders under the Defence of India Rules prohibiting forward trading in foodgrains, oils, oilseeds, oilcakes, raw cotton (except in the East India Cotton Association Ltd., Bombay) spices, etc. After the Defence of India Act expired, some of these orders in respect of some commodities were kept alive under the Essential Supplies (Temporary Powers) Act, 1946. Similar orders about cottonseed and sugar were also issued under the Essential Supplies (Temporary Powers) Act. As there was no regulatory provision for forward trading in any commodity other than the Essential Commodities Act, some States came out with legislative amongst which was the Bombay State which enacted legislation for regulation of forward trading, known as the Bombay Forward Contracts Control Act, 1947, empowering the State Government to regulate

forward trading in commodities and securities. The State of West Bengal also enacted a legislation with regard to the prohibition of future trading in raw jute and jute manufactures. With the enactment of Constitution, stock exchanges and futures markets were included in the Union List of subjects in the Seventh Schedule to the Constitution and hence regulation of forward markets became the responsibility of the Central Government and hence it was possible to take action on a co-ordinated all-India basis not only for prohibiting forward trading which was taking place in certain commodities, but also for re-opening forward trading under regulated conditions. And, hence, the Legislature enacted the Forward Contracts (Regulation) Act, 1952, as a regulatory measure, as it was recognized that there was a fairly wide spread demand from the trading community for forward trading in commodities and moreover it was also recognized that without some kind of regulation, forward trading might degenerate into speculation, pure and simple. The Act was thus designed to provide a machinery by which Government could regulate the trading in future on all-India basis.

9. The affidavit of P. Sitaraman further points out that on or about July 27, 1950, an Expert Committee was appointed on the Future Markets (Regulation) Bill, 1950 by the Government and this Committee was composed to trade representative, businessmen and officials of the Government

of India. The Committee was of the view that the various bans prescribed by the different State Governments were in the nature of temporary measures and it suggested that action may be needed not only for prohibiting forward trading in certain commodities which was still taking place but also for re-opening forward trading in certain commodities which was also of the opinion that, by reason of the inclusion of the item under the Union List, action on a co-ordinated basis was permissible. The Expert Committee was impressed with the desirability of prohibiting forward contracts in respect of a number of commodities in which forward trading cannot be justified. On grounds applicable to commodities like cotton or oilseeds which are the subject-matter of extensive bona fide trade. The Expert Committee accepted the suppression of such activities as a highly desirable social objective and the Committee was also of the opinion that the options could be prohibited by the Act itself.

10. After full consideration of the entire matter and after having an overall picture thereof, it was decided to regulate certain matters relating to forward contracts, etc. and it was in these circumstances that the Forward Contracts (Regulation) -Act, 1952, was passed.

11. In *Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others*, , Ayyangar, J., delivering the judgment of the Supreme Court has pointed out in paragraph 4 of the judgment at p. 265 that

"the expert committee to which the Bill which became the Act (Central Act 74 of 1952) was referred, explained in their report the function of forward trading in

these terms:

Forward trading involves speculation about the future, but not all forms of forward trading could be considered as either unnecessary or undesirable for the efficient functioning of anything but the most primitive economy To the extent to which forward trading enables producers, manufacturers and traders to protect themselves against the uncertainties of the future, and enables all the relevant factors, whether actual or anticipated, local or international, to exercise their due influence on prices, it confers a definite boon on the community, because, to that extent, it minimises the risks of production and distribution and makes for greater stability of prices and supplies. It thus plays a useful role in modern business. At the same time, it must be admitted that this is an activity in which a great many individuals with small means and inadequate knowledge of the market often participate, in the hope of quick or easy gains. and consequently, forward trading often assumes unhealthy dimensions, thereby increasing, instead of minimising the risks of business. There are forms of forward trading, for example, options, which facilitate participation by persons with small means and inadequate knowledge It is, therefore, necessary to eliminate certain forms of forward trading, and permit others under carefully regulated conditions, in order to ensure that, while producers, manufacturers and traders will have the facilities they need for the satisfactory conduct of their business, the wider interests of the community, and particularly, the interests of consumers, will be adequately safeguarded against any abuse of such facilities by others.

The Essential Supplies (Temporary Powers) Act, 1946, does not empower the Central Government to regulate forward trading in any commodity other than an essential commodity within the meaning of that Act. Action may be needed not only for prohibiting forward trading in commodities in which it is still taking place, but also for reopening forward trading under regulated conditions and if circumstances are favourable to such a course, in commodities in which it is now prohibited.

The arrangements must be such as will enable speedy and effective action to be taken in emergencies, and must at the same time provide sufficient safeguards against arbitrary or ill-informed action."

12. It was with these objects and with provisions calculated to carry out these suggestions that the Act was enacted according to the Supreme Court.

13. In *Raghubar Dayal's* case, the Supreme Court was considering the challenge to Section 15 of the Act. one of the grounds on which the constitutional validity of Section 15 of the Act was challenged in that case was that it conferred an unguided and arbitrary power upon the Central Government to choose any commodity it liked and bring the Act into operation in respect of the commodity chosen, at any time it pleased by notification, the effect of the notification being vitally to affect the interests of traders by rendering illegal a contract which was

perfectly legal when it was entered into. The Supreme Court observed "we consider that there is no substance in this submission. We have already extracted relevant portions from the report of the expert committee on the bill which became the Act dealing with the economic implications of forward trading and for the necessity for regulating such contracts in particular goods. It is not forward trading in every commodity that requires regulation under the Act. The stability of a commodity for forward trading depends on factors which are far from static and similarly, the need for bringing forward trading within the regulatory provisions of the Act depends on factors which are subject to variation over period of time. Besides, the nature of the commodity, the size of its production, the scale of the demand for it in relation to the supply and the demand itself being not quantitatively fixed but changing so as to require a continuous assessment through the medium of futures markets are all elements that necessitate regulation, and these are variable. We have not attempted to be exhaustive in naming the several factors but these are some of the characteristics which call for and make possible effective regulation. It would, therefore, follow that the commodities which would satisfy these tests or requirements can only be ascertained from time to time after enquiry and investigation. They cannot obviously be specified in a statute, It is because of these considerations and the need for expert opinion and guidance on the matter that the Act has, by its Chapter II, provided for the constitution of a Forward Markets Commission on whom has been laid the duty of advising Government on the situation as it exists from time to time and to make recommendations in that regard. In our opinion, the selection of the commodity for the regulation of forward trading in it or of prohibition of such trading can only be left to the Government and the purposes for which the power is to be used and the machinery created for the investigation furnish sufficient guidance as to preclude any challenge on the ground of a violation of Article 14. What we have just now said as regards the selection of the commodity would suffice to answer the argument regarding the selection of the time at which the notification u/s 15(1) might take place".

14. We may point out that Section 18(3) of the Act is on the same lines as Section 15(1) of the Act. u/s 15(1) the Central Government has been empowered to declare, by notification, that the provisions of Section 15 of the Act would apply to such goods or class of goods and in such area as may be specified in the notification, and thereupon, subject to the provisions contained in Section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal. u/s 18(1) read with the provisions of Section 15(1) ordinarily non-transferable specific delivery contracts are outside the purview of Sections 5 to 14 and 15 to 19 of the Act but, by virtue of Section 18(3), power has been conferred upon the Central Government, notwithstanding anything contained in sub-section (1) of Section 18, to declare that all or any of the

provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification, and the Central Government may also specify the manner in which and the extent to which all or any of the said provisions shall so apply. Therefore, what has been said about proper guidance being available to the Central Government, before the notification u/s 15(1) was issued, would apply with equal force to the notification contemplated by Section 18(3) of the Act. What Section 18(3) seeks to do is the same thing which S. 15(1) does in connection with the larger category of forward contracts i.e., non-transferable specific delivery contracts, which though forming part of the category of forward contracts, are ordinarily exempted from the operation of any notification issued u/s 15(1). But, even in respect of these non-transferable specific delivery contracts, it would be open to the Central Government to take away the exemption if the circumstances so required. u/s 4, clauses (b) and (c), of the Act, the functions of the Commission include keeping forward markets under observation and taking such action in relation to them as the Commission may consider necessary, in exercise of the powers assigned to it by or under the Act, and collecting and whenever the Commission thinks it necessary, publishing information regarding the trade conditions in respect of goods to which any of the provisions of the Act is made applicable, including information regarding supply demand and prices and submitting to the Central Government periodical reports on the operation of the Act and on the working of forward markets relating to such goods. Hence, it is obvious that the power of the Central Government u/s 18(3) will be guided by the reports of the Commission and the selection of the commodities in respect of which a notification is to be issued and the conditions subject to which non-transferable specific delivery contracts are -permitted would all be affected by the recommendations or reports of the Commission and it must be said that the purposes for which the power is to be used and the machinery created for investigation furnish sufficient guidance to the Central Government at the time of issuing the notification u/s 18(3). In our opinion, therefore, the challenge to the provisions of Section 18(3) on the ground of uncanalised and uncontrolled power for the applicability of the provisions of Chapters III and IV to non-transferable specific delivery contracts in any particular category of goods, must fail. It must be pointed out that the power conferred upon the Central Government u/s 18(3) is to carry along further the process which was set in motion by issuing the notification u/s 15(1). If from experience, after the issue of a notification u/s 15 (1), it is found that, though trading in forward contracts in a particular commodity, with the exception of non-transferable specific delivery contracts in that commodity, has been prohibited, looking to the condition of the market in that particular commodity and the rise in price, in the interest of public, it is necessary to do so the Government may, by notification, regulate and control non-transferable specific delivery contracts in that particular commodity. Besides the machinery created for investigation, Section 18(3) itself lays down the guidelines for the Central Government in the shape of the provision that it must

form the opinion that regulating and controlling non-transferable specific delivery contracts in connection with any particular category of goods is either in the interest of the trade or in the public interest.

15. The Supreme Court further held in Raghubar Dayal's case that the restriction on trade in futures is in the interest of the general public since the public have a vital interest in the availability of an essential commodity at reasonable and relatively stable prices and the only question for determination for the application of clauses (5) or (6) of Article 19 would be the reasonableness of the measures contemplated by law. Taking into account the machinery created in Chapter II of the Act in the way of an expert body to furnish Government with advice on such a complex problem and the functions of the committee, the Supreme Court is clearly of the view that the restrictions imposed by Section 15 of the Act are reasonable and pass the test for a valid law under clauses (5) and (6) of Article 19. In our view, the same reasoning would also apply to the challenge to Section 18(3) on the ground of alleged violation of Article 19(1)(9). A fact which is in the public interest, and ensuring stability of prices and curbing the factor of speculation is predominantly in public interest, must be held to be reasonable and, in these circumstances, the entire challenge to the constitutional validity of Section 18(3), either on the ground of violation of Article 19(1)(9) or on the ground of uncanalised and unrolled powers, must fail.

16. In order to appreciate the challenge to the notification dated December 24, 1964 and the other notification dated March 16, 1967. it would be better to set out the relevant notifications. The notification dated December 24, 1964 is in these terms:-

"Whereas the Central Government is of the opinion that in the interest of the trade and in the public interest it is expedient to regulate and control nontransferable specific delivery contracts in respect of cottonseed, linseed and castorseed.

Now, therefore in exercise of the powers conferred by sub-section (3) of Section 18 of Forward Contracts (Regulation) Act, 1952 (74 of 1952), the Central Government hereby declares that the provisions of Sections 5 to 14 (both inclusive) and Sections 15 and 16 of the said Act shall apply to non-transferable specific delivery contracts in respect of the aforesaid goods in the whole of India except within the limits of Greater Bombay as defined in the Bombay General Clauses Act, 1904 (Bombay Act I of 1904)".

17. The notification dated March 16, 1967 is in these terms:-

"In exercise of the powers conferred by the Forward Contracts (Regulation) Act, 1952, the Central Government hereby exempts from the operation of Section 15 of the said Act all non-transferable specific delivery contracts entered into by a ginner for the sale of cotton seed obtained by him by ginning kapas in his ginning factory or by a dealer in kapas for the sale of cottonseed obtained by him by getting his kapas ginned or by cottonseed crusher or by his authorised agent

for the purchase of cottonseed for crushing in his own mill."

18. Before processing to deal with the challenge to the validity of the notification, it would be better to refer to the scheme of the Act. We can do no better than refer to the decision of the Supreme Court in *Modi and Co. Vs. Union of India (UOI)*, Ramaswami J. has summarised the scheme of the Act in paragraph 6 of the judgment as follows:-

"According to the scheme of the Act, therefore contracts of sale of goods are divided into two categories, "ready delivery contracts" and "forward contracts". Forward contracts are classified into those which are "specific delivery contracts" and those which are not. Then again, "specific delivery contracts" are divided into "transferable specific delivery contracts" and "non-transferable specific delivery contracts". Section 18(1) exempts from the operation of the Act non-transferable specific delivery contracts. The net result of these statutory provisions is that all forward contracts except those which are non-transferable specific delivery contracts can be declared illegal by a notification issued under the Act."

19. In *Sunderlal and Son Vs. Bharat Handicrafts (P.) Ltd.*, , *Shah, J.* (as he then was). delivering the judgment of the Supreme Court, has again summarised the provisions of the Act as follows:-

"The Act was enacted to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith. By Chapter II the Central Government is given authority to establish and constitute a Forward Markets Commission with certain functions and powers. By Chapter III Provision is made for granting recognition to associations. withdrawal of recognition and other incidental matters. By Section 11, sub-section (1) any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts. By sub-section (2), it is provided that such bye-laws may provide inter alia for the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and the conditions relating thereto, and the forms of contracts in writing."

20. In *State of Gujarat Vs. Manilal Joitaram and Co.*, , the Supreme Court dealt with the provisions of the Act and it has observed that Section 18 (1) makes it clear that the provisions of Chapters III and IV would not have applied to a particular category if their transactions were true non-transferable specific delivery contracts. They would have been so if the nature of the transaction, not on paper, but in actuality was such as the Act contemplates. This is why the proviso to Section 18 has been added to prohibit certain things. The proviso enacts that no person shall organise or assist in organising or be a member of an association (except a recognised association) which provides facilities for the performance of any specific delivery contract without having to make or to receive actual delivery. The Legislature contemplates that the first sub-section of

Section 18 might be complied with in the documents evidencing the contract but in actuality the contract might be differently performed and has, therefore, provided for the identical situation which arises.

21. Both the affidavits filed in this case (1) of G. D. Madiman, Senior Research Assistant, Forward Markets Commission, Government of India, Bombay, and (2) the affidavit-in-reply of P. Sitaraman, Deputy Secretary, Ministry of Industrial Development, Internal Trade ,and Company Affairs (Department of Internal Trade), Government of India, New Delhi, mention the circumstances under which the notification dated December 24, 1964 came to be issued. In paragraph 13 of the affidavit-in-reply of Mr. G. D. Madiman, it is pointed out that, the provisions of Section 15 were applied to nontransferable specific delivery contracts in cottonseed because experience showed that they were being utilised on a large scale by the trading community for speculative purpose. At the same time, however, exception was made in the case of genuine dealers like a ginner, who accumulated the cottonseed as a result of ginning and a dealer in kapas who accumulated such stocks as a result of getting his kapas ginned for the purpose of disposing their stocks only. Similarly a genuine buyer like crusher of cottonseed was also permitted to make purchase contracts to the extent of his requirements of crushing. The restriction is meant precisely for the type of middlemen such as the present petitioners who are interested in the speculative gains through sale and purchase of the commodity, It has been -pointed out in this affidavit that cottonseed is an essential commodity. Oil extracted from cottonseed is an important item in the diet of the consuming public. The Government has, therefore, to ensure that the commodity is made available to the general public at reasonable price. Futures trading in cottonseed was therefore brought under regulation by the Government in order to ensure that the excessive speculation in it did not result in an undue rise in the price of the commodity. Non-transferable specific delivery contracts in cottonseed were left free from regulation to begin with, mainly because these were supposed to be genuine merchandising transactions entered into by dealers in actual commodity. Experience of the Commission, however, was that the freedom given in respect of the non-transferable specific delivery contracts was misused by the traders who converted these contracts into futures contracts by various devices. The misuse of the non-transferable specific delivery contracts for speculative purposes by the trade assumed such dimensions that it resulted in undue rise in the price of this commodity. The control exercised by the Commission over the futures trading in recognised markets in cottonseed was also rendered ineffective in view of large scale speculative trading taking place outside recognised market in the guise of nontransferable specific delivery contracts. After a detailed enquiry, the Commission, therefore, made a report to the Government recommending the application of provisions of Section 15 to non-transferable specific delivery contracts in cottonseed in exercise of powers u/s 18(3). The Government after a careful consideration accepted the recommendation of the Commission and issued a notification applying Section 15 to non-transferable specific delivery

contracts in cottonseed. The restriction on trading implied u/s 18(3) was, therefore, in the interest of general public, since the public have a vital stake in the availability of an essential commodity like cottonseed at a reasonable price. These affidavits-in-reply of P. Sitaraman in Special Civil Application No. 2 of 1968 and especially of G. D. Madiman in Special Civil Application No. 1081 of 1969 has pointed out, in paragraph 13, that the provisions, of Section 15 were applied to non-transferable specific delivery contracts in cottonseed also, because the experience showed that they were being utilised on a large scale by the trading community for speculative purpose. At the same time, however, exception was made in the case of genuine dealers like ginner, who accumulated the cottonseed, as a result of ginning and dealer in kapas, who accumulated such stocks, as a result of getting his kapas ginned, for the purpose of disposing their stocks only. Similarly, a genuine buyer like crusher of cottonseed was also permitted to make purchase contracts to the extent of his requirements of crushing. The restriction was meant precisely for the type of middlemen, such as the present petitioners, who were interested in the speculative gains through sale and Purchase of the commodity. Then, the affidavit of G. D. Madiman proceeds "cottonseed is an essential commodity. Oil extracted from cottonseed is an important item in the diet of the consuming public. The Government has, therefore, to ensure that the commodity is made available to the general public at reasonable Price. Futures trading in cottonseed was, therefore, brought under regulation by the Government in order to ensure that the excessive speculation in it did not result in undue rise in the price of the commodity. Non-transferable specific delivery contracts in cottonseed were left free from regulation to, begin with, mainly because these were supposed to be genuine merchandising transactions entered into by dealers in actual commodity. Experience of the Commission, however, was that the freedom given in respect of the non-transferable specific delivery contracts was misused by the traders, who converted these contracts into futures contracts by various devices. The misuse of the non-transferable specific delivery contracts for speculative purposes by the trade assumed such dimensions that it resulted in undue rise in the price of this commodity. The control exercised by the Commission over the futures trading in recognised markets in cottonseed was also rendered ineffective in view of large scale speculative trading taking place outside recognised market in the guise of non-transferable specific delivery contracts. After a detailed enquiry, the Commission therefore, made a report to the Government recommending the application of provisions of Section 15 to non-transferable specific delivery contracts in cottonseed in exercise of powers u/s 18(3). The Government. after a careful consideration, accepted the recommendation of the Commission and issued a notification applying Section 15 to non-transferable specific delivery contracts in cottonseed". The two letters, (1) dated September 11, 1964 from A. S. Naik, Chairman, F. M. Commission, addressed to G. J. Malik, Regional Director, Ministry of Commerce, New Delhi, and (2) the other letter dated December 14, 1964 also from A. S. Naik, Chairman of the Commission, addressed to D. N. Banerjee, Joint Secretary to the Government of India, Ministry of Commerce,

New Delhi, set out the circumstances under which the Commission came to recommend to the Government that non-transferable specific delivery contracts in cottonseed alongwith some other commodities should be regulated and the appropriate notification u/s 13(3) of the Act should be issued. In paragraph 7 of the letter, dated September 11, 1964, the Commission recommended to the Central Government that non-transferable specific delivery contracts in all varieties of mustardseed within the State of Punjab should be prohibited by issuing a, notification u/s 18(3) of the Forward Contracts (Regulation) Act, applying Section 17 of the Act to non-transferable specific delivery contracts in mustardseed and thus forward trading in mustardseed would come to an end. The Commission also recommended that non-transferable specific delivery contracts in groundnut and groundnut oil may be prohibited in the State of Gujarat. This letter is important for the purpose of pointing out how different associations of traders were misusing the non-transferable specific delivery contracts for speculative purposes and how and why the Commission recommended to the Central Government to issue such a notification u/s 18(3) of the Act in respect of non-transferable specific delivery contracts in mustardseed and groundnut and groundnut oil. By the letter, dated December 14, 1964, the Commission recommended to the Central Government in these terms:- "The Commission has carefully considered the position from various angles and feels that immediate steps are called for to remedy the situation as speculative trading in non-transferable specific delivery contracts in cottonseed would have adverse repercussions on the prices of other oilseeds which have already reached prohibitive levels." Paragraph 7 of the letter dated December 14, 1964 states "the Commission accordingly recommends that, for the time being, Government may apply Sections 5 to 14 and Sections 15 and 16 of the Act to non-transferable specific delivery contracts in cottonseed, castorseed and linseed throughout the country, except the limits of Greater Bombay, so that nontransferable specific delivery contracts in these commodities would become prohibited, except through recognised associations. The reason for excluding the limits of Greater Bombay from the purview of the notification is to enable the members of the Bombay Rice Grain & Oilseeds Association for oilseeds including castorseed, linseed and cottonseed, to conduct trading in these commodities, which are by and large used for bona fide trading purposes." Thus, it is obvious that the notification of December 24, 1964 came to be issued, under the Powers conferred upon the Central Government by Section 18(3) of the Act, because of the specific recommendation of the Forward Markets Commission in that behalf. The two letters, which have been kept on records clearly indicate and also the two affidavits-in-reply clearly go to show that. in order to prevent misuse of nontransferable specific delivery contracts and in order to see that prices of oilseeds and; particularly the cottonseed, remain, within reasonable level, speculative transactions in the shape of non-transferable specific delivery contracts in cottonseed were required to be regulated. Therefore, it was in public interest, as well as in the interest of the trade as a whole. that these restrictions have been imposed on non-transferable specific delivery contracts in cottonseed.

The Government did form the opinion, according to the affidavit-in-reply of P. Sitararnan., and particularly in view of the recommendation of the Commission, that it was in the interest of the general public, as Well as in the interest of trade, that non-transferable specific delivery contracts in cottonseed should be regulated, as recommended by the Commission, and thus the notification dated December 24, 1964 came to be issued.

22. As the two affidavits-in-reply one by G. D. Madiman and the other by P. Sitaraman, point out, by the subsequent notification dated March A, 1967, exception was made in respect of certain genuine dealers and persons, who were dealing in cottonseed, namely, a ginner who has accumulated the stock of cottonseed, as a result of ginning the kapas in his ginning factory or a dealer in kapas, who has obtained cottonseed by getting his kapas ginned and they are permitted to sell their cottonseed by non-transferable specific delivery contracts and, similarly, a genuine buyer like cottonseed crusher or his authorised agent is empowered to purchase cottonseed for crushing in his own mill by entering into the non-transferable specific delivery contracts in cottonseed. It is well recognised that it is permissible to have a classification. and the classification does not violate Article 14 of the Constitution if the classification has a reasonable basis and the basis of the classification has a rational nexus with the object sought to be achieved. in the instant case, the persons, who are exempted from the operation of the Act, so far as non-transferable specific delivery contracts in cottonseed are concerned, are genuine dealers in kapas, who happen to accumulate stocks of cottonseed from their own operations and similarly, a genuine buyer like cottonseed crusher, who -requires cottonseed for crushing in his own mill is also exempted It is obvious that the transactions of on-transferable specific delivery contracts in cottonseed by these three categories of persons mentioned in the notification of March 16, 1967 would not result any kind of speculation, as the object of the Legislature is to control speculative dealing hi various commodities and that object is achieved by the notification of March 16, 1967 and the exemption and the classification of these three categories has clearly a rational nexus with the object sought to be achieved. Under these circumstances, this challenge to the two notifications, one of December 24, 1964 and the other of March 16, 1967, fails, because there is no discrimination which offends against Article 14 of the Constitution and, secondly, because the two notifications cannot be said to be in excess of the powers conferred upon the Central Government by Section 18(3) of the Act nor are they contrary to the provisions of See. 18 (3).

23. In these circumstances, the challenges to the validity of Section 18(3) and the challenge to the validity of die two notifications of December 24, 1964 and March 16, 1J67 fall. These are the only contentions which were urged before us and both the challenges to the validity of Section. 18(3) as well as to the validity of the notification fail.

24. The result, therefore. is that all these Special Civil Applications are

dismissed. Rule is discharged in each of the matters. There will be no order as to costs in any of the Special Civil Applications. In Civil Applications Nos, 1802/69, 1803/69, 1804/69 and 1805/69 there will be no order nor any order as to costs in any of these Civil Applications.

25. Applications dismissed.