

(1953) 10 MAD CK 0019

In the Madras High Court

Case No : Writ App. No's. 27, 28 and 46 of 1953

Globe Theatres Ltd. and Others

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 23-10-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 13, 3(2), 7

Citation : AIR 1954 Mad 690 : (1954) ILR (Mad) 616 : (1954) 67 LW 64

Hon'ble Judges : Rajamannar, C.J.; Panchapakesa Aiyar, J

Bench : Division Bench

Advocate : K.S. Ramamurthy, for King and Patridge, K.V. Venkatasubramania Iyer, for E.A. Viswanathan and G.T. Ramanujachariar, for the Appellant; A.G., V.V. Raghavan, for Govt. Pleader, M.K. Nambiar, T.T. Srinivasan, A.N. Rangaswami, K. Bhashyam, C. Srinivasachari and K. Krishnamachari, for the Respondent

Judgement

Rajamannar, C.J.—These three appeals involve a common question of law and arise out of applications under Article 226 of the Constitution for the issue of writs of certiorari or for appropriate writs to quash the orders made by the Government u/s 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, exempting certain buildings from the provisions of the said Act on the ground that the said section is inconsistent with Article 14 and therefore void under Article 13 of the Constitution.

2. Section 13 of the Madras Buildings (Lease and Rent Control) Act, which will hereinafter be referred to as the Act, runs thus:

"Notwithstanding anything contained in this Act, the State Government may, by notification in the Port St. George Gazette, exempt any building or class of buildings from all or any of the provisions of this Act."

This Act is the latest of the series of Acts and Orders successively passed for the regulation of the lease of buildings and for control of rent in the State of Madras. The legislation dates back to the period of the Second World War when a state of

emergency prevailed and there was an acute shortage of accommodation.

The preamble to the present Act, which is the same as the preamble to the previous Acts and Orders, is as follows:

"Whereas it is expedient to regulate the letting of residential and non-residential buildings and to control the rents of such buildings and to prevent unreasonable eviction of tenants therefrom in the State :"

The Act deals broadly with two subjects mentioned in the preamble, namely, regulation of letting and control of rents.

Section 4 prescribes the procedure for having the fair rent fixed by the Controller, and Section 6 enacts that the landlord shall not claim or receive payment of any sum in addition to the fair rent fixed. Section 5-A, Section 6-A and Section 6-B relates to this subject or rent.

Section 7 is the main section relating to eviction. It provides that a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of that section. The only circumstances entitling a landlord to evict his tenants are set out in Sub-sections (2) and (3) of that section. Section 8 deals with the amenities enjoyed by the tenant. Sections 9 and 12 are procedural, the former Section concerning execution and the latter appeals. The other provisions are not material for the disposal of the question before us.

3. Section 13 of the Act is impugned on the ground that the power of exemption conferred on Government by that section is contrary to the principles of equality before law and equal protection of the law laid down in Article 14 of the Constitution. Before dealing with this ground, which was elaborately developed by Mr. K. V. Venkatasubramania Aiyar in his able and learned argument, I will briefly refer to a decision of a Division Bench of which I was a party in which the constitutional validity of the impugned section came up for consideration, namely, the decision in -- "W. P. No. 132 of 1951 (Mad) (A).

Though both Articles 19 and 14 of the Constitution were mentioned, the contention based on either of these Articles was not fully presented as now and I briefly dealt with the two Articles. I said :

"We are unable to see what fundamental right of the petitioner has been violated. Admittedly, the petitioner has no fundamental right to remain in possession of the building for all time. Whatever rights he now urges in his support are rights conferred by the very Act, and the Government has purported to pass the order only under one of the sections of the same Act. Article 14 of the Constitution cannot be invoked in support of the petitioner. There is no violation of the principle of equality before the law. Logically the contention of the petitioner must lead to the position that either every building must be exempted, or no building should be exempted, -- an absurd conclusion. Apparently, the building belonged to a charitable institution, and on that ground

the Government chose to exempt it from the provisions of the Act. It is not suggested in the affidavit filed in support of this application that there has been any "mala fide" exercise by the Government of the power which undoubtedly is vested in them by Section 13 of the Act."

4. I still adhere to the opinion which I expressed so far as Article 19 is concerned. This point was considered at some length by Subba Rao J. in -- Dr. K.C. Nambiar Vs. State of Madras and Others, and he held that Section 13 of the Act does not infringe Article 19(1)(f) of the Constitution. He said at p. 355 :

"While the main object of the Act was to prevent the arbitrary eviction of the tenants, it took good care to see that interests of the landlords were protected within reasonable limits. A statutory tenant, the creation of the Act, with certain rights and restrictions- cannot accept the rights and complain of the restrictions. No question of unreasonable restriction on his part would arise as the statute itself created that right "subject to restrictions". He acquired the right not to be evicted except under certain circumstances and one of those circumstances is when the Government exempts a particular building from all or particular provisions of the Act. His right to the user of the properties therefore is not an absolute one, but is circumscribed by the provisions of the Act itself."

I am In entire agreement with this view.

5. I am, however, convinced that Article 14 did not receive the consideration which it merited. I shall, therefore, proceed to deal with the argument of Mr. K. V. Venkatasubramania Aiyar on this Article, untrammelled by the opinion which I expressed in my prior decision.

6. Mr. Venkatasubramania Aiyar did not contend, nor could he contend successfully, that the Legislature cannot exempt a class of persons or any specified subject-matter from the operation of an Act passed by it, which would but for the exemption have applied to such persons or subject-matter, if such an exemption can be Justified on some principle which is germane to the purpose of the Act, that is, the object with which the particular enactment was passed.

The well known example is the provision for exemptions in a taxing statute. As Stone J. observed in -- "Carmichale v. Southern Coal and Coke Co.", (1936) 81 Law Ed 1245 (C) :

"It is inherent in the exercise of the power to tax that a State be free to select the subjects of taxation and to grant exemptions.....Inequalities which result from a singline out of one particular class for taxation or exemption infringe no constitutional limitation.....Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to Judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it."

7. These last observations succinctly bring out the two important features about exemption provisions contained in any act of the Legislature. The propriety of the exemption from the standpoint of the basis underlying such exemption is open to judicial review. There may be exemptions which would be struck down by the court as unconstitutional because they are not based on any reasonable ground intimately connected with the objects of the legislation.

"The Legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose. The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made." Vide -- "Asbury Hospital v. Cass County", (1945) 90 Law Ed 6(D).

It was held in that case that equal protection of the laws is not denied in excepting from the , operation of a statute requiring corporations own-Ing farm lands to dispose thereof within ten years from the time of its enactment, lands owned by corporations whose business is dealing in farm lands, and lands belonging to co-operative corporations 75 per cent of whose members are fanners residing on farms or depending principally on fanning for their livelihood.

In -- "Gossert v. Deary", (1948) 93 Law Ed 163 (E), a Michigan statute forbidding women being licensed as bartenders and at the same time making an exception in favour of the wives and daughters of the owners of liquor establishments was held by a majority of the court not to violate the equal protection clause of the Fourteenth Amendment.

Likewise, a city regulation which prohibited advertising vehicles in city streets, but permitted the putting of business notices upon business delivery vehicles, so long as they were used merely or mainly for advertising was held not to violate the due process and equal protection clause of the Fourteenth Amendment, in -- "Railway Express Agency v. New York", (1948) 93 Law Ed 533 (P). The exception was upheld because the classification had relation to the purpose for which it was made, and Douglass J. remarked that it was by practical considerations based on experience rather than by theoretical exigencies that the question of equal protection should be answered.

On the other hand, the Supreme Court of the United States had struck down several exemption provisions because the classification was arbitrary or illusory and did not rest on any ground having a fair and substantial relation to the object of the legislation. Vide -- "Royester Guano Co. v. Virginia", (1919) 64 Law Ed 989 (G); -- "Frost v. Corporation Commission", (1928) 73 Law Ed 483 (H); -- "Hartford steam Boiler Inspection and Insurance Co. v. Harrison", (1936) 81 Law Ed 1223 (I) and -- "Wheeling steel Corporation v. Glander", (1948) 93 Law Ed 1544 (J).

8. The meaning and scope of Article 14 has been fully discussed by the supreme Court in recent decisions and the principles relating thereto were summarised by Fazl Ali J. in -- "State of Bombay v. P. N. Balsara", AIR 1951 SC 318 (K) in seven

propositions. It is sufficient to cite the following four of them:

"3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

4. The principle does not take away from the State the power of classifying persons for legitimate purposes.

6. If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

9. In view of this body of authority, Mr. Venkatasubramania Aiyar conceded that the Legislature itself could in enacting a law exempt a class of persons from its operation, provided the ground on which the exemption is made bears a reasonable and just relation to the object sought to be attained by the Act. Such a provision would be Justiciable, and the court would strike down any such provision if the classification involved in such exemption is arbitrary and without any substantial basis. But, he contended, so far as Section 13 of the Madras Buildings (Lease and Rent Control) Act was concerned, there was no attempt at any classification by the Legislature.

On the other hand, that section vested naked arbitrary power in the Government to make "ad hoc" classifications without prescribing any conditions to be fulfilled and without denning the basis of classification. He relied on well known decisions of the Supreme Court of the United States like -- "Yick Wo v. Hopkins", (1885) 30 Law Ed 220 (L); -- "Gulf Golorado and Santa Fe Railway Co. v. Ellis", (1896) 41 Law Ed 666 (M); -- "Connolly v. Union Sear Pipe Co.", (1901) 46 Law Ed 679 (N) and other cases.

He drew our attention to passages like the following :

"The ordinance drawn in question in the present case is of a very different character. It does not prescribe a rule and conditions, for the regulation of the use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone; but, as to wooden buildings, constituting nearly all those in previous use, it divides the owners or occupiers into two classes, not having respect to their personal character and qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from

whom that consent is withheld, at their mere will and pleasure..... When we consider the nature and the theory of our institutions of Government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power." "(1885) 30 Law Ed 220 (L)".

"Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our Constitutional law upon the action of the Governments, both state and national are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the Government"

-- "Hurtado v. People of California", (1883) 29 Law Ed 332 (O).

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the 14th Amendment forbids this."

(1896) 41 Law Ed 666 (M)".

"The act in question does undoubtedly discriminate in favour of a certain class of refiners, but this discrimination, if founded upon a reasonable distinction in principle, is valid, of course, if such discrimination were purely arbitrary, oppressive, or capricious, and made to depend upon differences of colour, race, nativity, religious opinions, political affiliations, or other considerations having no possible connection with the duties of citizens as tax-payers such exemption would be pure favouritism, and a denial of the equal protection of the laws to the less favoured classes." "American Sugar Refining Co. v. Louisiana", (1900) 45 Law Ed 102 (P).

10. Mr. Venkatasubramania Aiyar also relied strongly on the decision of the Supreme Court in -- "The State of West Bengal Vs. Anwar Ali Sarkar, , in which the validity of the West Bengal Special Courts Act was impugned. The object of the Act as declared in the preamble was "to provide for the speedier trial of certain offences", Section 3 of the Act empowered the State Government by notification in the official gazette to constitute special courts, and Section 5 provided that

"A special court shall try such offences or classes of offences or cases or classes of cases, as the State Government may by general or special order in writing, direct."

A procedure different in several respects from that laid down by the Criminal P. C. for trial was laid down by the Act. It was contended that Section 5 was

unconstitutional inasmuch as it contravened Article 14 of the Constitution. It was held by a majority of the court, the learned Chief Justice dissenting, that Section 5 was void as it contravened Article 14.

The "ratio decidendi" of the decision was that that section did not classify or lay down any basis for classification of the cases which may be directed to be tried by the Special Court, but left it to the uncontrolled discretion of the State Government to direct any cases which It liked to be tried by the Special Court.

The following observations were pressed upon us :

"In my opinion, it will be dangerous to introduce a subjective test when the Article itself lays down a clear and objective test.....

The Act is really modelled upon a pre-Constitution pattern and will have to be suitably redrafted in order to conform to the requirements of the Constitution" (per Fazl Ali J.).

The present statute suggests no reasonable basis or classification, either in respect of offences or in respect of cases. It has laid down no yardstick or measure for the grouping either of persons or of cases or of offences by which measure these groups could be distinguished from those who are outside the purview of the Special Act. The Act has left this matter entirely to the unregulated discretion of the provincial Government.....Even if it be said that the statute on the face of it is not discretionary, it is so in its effect and operation inasmuch as it vests in the executive Government unregulated official discretion and therefore has to be adjudged unconstitutional" (per Mahajan J.).

"The position, therefore, is that when the statute is not itself discriminatory and the charge of violation of equal protection is only against the official, who is entrusted with the duty of carrying it into operation, the equal protection clause could be availed of in such cases; but the officer would have a good defence if he could prove "bona fides". But when the statute itself makes a discrimination without any proper or reasonable basis, the statute would be invalidated for being in conflict with the equal protection clause, and the question as to how it is actually worked out may not necessarily be a material fact for consideration. As I have said already, in the present case the discrimination arises on the terms of the Act itself. The fact that it gives unrestrained power to the State Government to select in any way it likes the particular cases or offences which should go to a Special Tribunal and withdraw in such cases the protection which the accused normally enjoy under the criminal law of the country, is on the face of it discriminatory" (Per Mukherjea J.).

11. Learned counsel argued that substantially the power vested in the Government u/s 5 of the West Bengal Special Courts Act is similar in nature to the power vested in the Government u/s 13 of the Madras Buildings (Lease and Rent Control) Act. In neither provision is there any indication of a proper basis for classification, and in either case the selection is left to the uncontrolled

discretion of the Government. Any action taken by the Government under such sections cannot be justiciable. He contended that in such cases the power itself would be unconstitutional and cited Chandrasekhara Aiyar J. in the above case at p. 100.

The learned Judge said :

"If an uncontrolled or unguided power is conferred without any reasonable and proper standards or limits being laid down in the enactment, the statute itself may be challenged and not merely the particular administrative act."

The learned Advocate-General who appeared for the State and supported the constitutional validity of the impugned provision first drew our attention to certain general features of the legislation, namely, that it was a temporary measure and it was not of universal application but applies only to such, areas in the State as may be notified by the state Government (vide Sub-section (2) of Section I) and that the Act was really a piece of emergency Legislation.

He contended that the power of exemption conferred on the Government by Section 13 of the Act was not unconstitutional, it was a very beneficial power intended to mitigate the evil effects of a rigorous application of the provisions of the Act. He pleaded that it would be impossible for the legislature to enumerate, pretending to any degree of exhaustiveness, the several grounds on which exemption should be made. He conceded, however, that any particular order of the Government purporting to be u/s 13 was open to judicial review, and each case should be examined on its special facts to find out if there has been any discrimination which was not justified.

He cited to us two decisions of the American Supreme Court which may be said to be apposite. In -- "Fischer v. St. Louis", (1903) 48 Law Ed 1018 (R), a municipal ordinance adopted under legislative authority forbidding the establishment or maintenance "of a dairy or cow stable within the city limits without having received permission so to do from the municipal assembly was impugned as contravening the rule of equal protection of the laws. But the Supreme Court upheld the ordinance.

Brown J. who delivered the opinion of the Court observed :

"We do not regard the fact that permission to keep cattle may be granted by the municipal assembly as impairing, in any degree, the validity of the ordinance, or as denying to the disfavoured dairy keepers the equal protection of the laws.....The question in each case is whether the establishing of a dairy and cow stable is likely, in the hands of the applicant, to be nuisance or not to the neighbourhood, and to imperil or conduce to the health of its customers. As the dispensing power must be vested in some one, it is not easy to see why it may not properly be delegated to the municipal assembly which exacted the ordinance. Of course, cases may be imagined where the power to Issue permits may be abused, and the permission accorded to social or political favourites and

denied to others, who, for reasons totally disconnected with the merits of the case, are distasteful to the licensing power. No such complaint, however, is made to the practical application of the law in this case, and we are led to infer that none such exists.....The only alternative to the allowance of such exceptions would be to make the application of the ordinance universal. This would operate with great hardship upon persons who desire to establish dairies and cow stables in the outskirts of the city, as well as inconvenience to the inhabitants, who, to that extent, would be limited in their supply of milk, It would be exceedingly difficult to make exceptions in the ordinance itself without doing injustice in individual cases; and we see no difficulty in vesting in some body of men, presumed to be acquainted with the business and its conditions, the power to grant permits in special cases" (page 1024). "Gorieb v. Fox", (1926) 71 Law Ed 1228 (S) was concerned with, an ordinance which related to the establishment of a building line on public streets. There was a reservation in that ordinance of a power in the city council to make exceptions and permit the erection of buildings closer to the street. The question was whether this reservation rendered the ordinance invalid as denying the equal protection of the laws. The question was answered in the negative by the Supreme Court. Sutherland J. speaking for the court, said as follows:

"The proviso under which the Council acted also is attacked as violating the equal protection clause on the ground that such proviso enables the council unfairly to discriminate between lot-owners by fixing unequal distances from the street for the erection of buildings of the same character under like circumstances.....The proviso evidently proceeds upon the consideration that an inflexible application of the ordinance may under some circumstances result in unnecessary hardship. In laying down a general rule, such as the one with which we are here concerned, the practical impossibility of anticipating in advance and providing in specific terms for every exceptional case which may arise, is apparent. And yet the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need, exceptions may be made without subverting the general purposes of the ordinance. We think it entirely plain that the reservation of authority in the present ordinance to deal in a special manner with such exceptional cases is unassailable on constitutional grounds."

(1883) 30 Law Ed 220 (L)", was distinguished thus :

"The ordinance there involved vested uncontrolled discretion in the board of supervisors, and this discretion was actually exercised for the express purpose of depriving the petitioner in that case of a privilege that was extended to others" (p. 1231).

12. If Mr. Venkatasubramania Aiyar relied strongly on the ruling of the Supreme Court in the -- The State of West Bengal Vs. Anwar Ali Sarkar, ", the learned Advocate- General equally strongly relied upon the later ruling of the Supreme

Court in -- Kedar Nath Bajoria Vs. The State of West Bengal, . The impugned Act in that case was the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. The Act was described as "an Act to provide for the more speedy trial and more effective punishment of certain offences" and the preamble declared that it was expedient to provide for the more speedy trial and more effective punishment of certain offences set out in the schedule annexed to the Act.

Section 4 of the Act provided that the Provincial Government may, from time to time by notification in the Official Gazette, allot cases for trial to a Special Judge, and may also from time to time by like notification transfer any case from one Special Judge to another and withdraw any case from the jurisdiction of a Special Judge or make such modifications in the description of a case as may be considered necessary. The contention was that Section 4 offended against Article 14 of the Constitution in that it enabled the Government to single out a particular case for reference to the Special Court for trial by the special procedure which denied to persons tried under it certain material advantages enjoyed by those tried under the ordinary procedure. Strong reliance was placed on a majority decision of the Court in -- The State of West Bengal Vs. Anwar Ali Sarkar, ". The contention was overruled and the prior ruling of the Court in -- The State of West Bengal Vs. Anwar Ali Sarkar, " was distinguished, and it was held that Section 4 was not unconstitutional (Bose J. dissenting).

13. The learned Advocate-General made reference to the decision of the Supreme Court in -- "AIR 1951 SC 318 (K)" in which the Constitutional validity of the provisions of the Bombay Prohibition Act was examined. One of such provisions was Section 139(c) under which power was given to Government to exempt any person or institution or any class of persons or institutions from the observance of all or any of the provisions of the Act or any rule or regulation or order made thereunder.

This provision was impugned solely on the ground that it constituted delegation of legislative power. The High "Court of Bombay upheld the objection on this ground thus: "The policy of legislation has been clearly laid down by the legislature in the Act itself. As pointed out by us before, the legislature intended to grant permits ordinarily only on grounds of health and certain exceptions were made in the case of certain classes. It is always open to the legislature to leave it to the Government to work out the policy in details. It would be impossible for the legislature to provide for all circumstances and all eventualities that may arise in the actual working of the Act. But it is not open to the legislature to permit Government to alter the policy itself. In our opinion, in leaving it to Government to issue permits in cases other than those provided for by the Act, in permitting Government to vary or substitute conditions of the licence, and in permitting Government to exempt persons or classes from the provisions of the Act, the legislature was clearly delegating to Government its own power of legislation. This it can clearly not do." Section 52 was a similar provision conferring power on the Government to grant licences in cases other than those

specifically provided under any of the provisions of the Act. This section also was held by the Bombay High Court to be void for the same reason. The Supreme Court took a different view. Fazl Ali J. who delivered the judgment of the Court disposed of the point shortly as follows :

"This Court had to consider quite recently the question as to how far "delegated legislation" is permissible, and a reference to its final conclusion will show that delegation of the character which these sections involve cannot on any view be held to be invalid. (See Special Reference No. 1 of 1951; In re the Delhi Laws Act, 1912 etc.). A legislature while legislating cannot foresee and provide for all future contingencies, and Section 52 does no more than enable the duly authorised officer to meet contingencies and deal with various situations as they arise. The same considerations will apply to Sections 53 and 139(c)."

14. It is clear that no argument was addressed to the Supreme Court that these Sections violated the principle underlying Article 14 of the Constitution. I doubt if this decision could be used to any purpose in deciding the case before us.

15. The learned Advocate-General contended that an exemption which is in consonance with the policy of the Act and in furtherance of its objects and proceeds on a classification made on a proper basis will be valid and each case of exemption can be reviewed by the Court to ascertain whether it offends Article 14 of the Constitution.

16. Mr. K. Bhahsyam who followed the learned Advocate-General took up a like attitude, namely, that the action of the Government u/s 13 may be valid in some cases and not in others. He gave instances where it may be said that the enforcement of the provisions of the Act would be unreasonable. The most striking instance he gave was that of the case where the landlord, bona fide wanted to pull down a house which was in a bad state of repair and rebuilt it. If the house was occupied by a tenant and the provisions of Section 7 were to be applied, the landlord would not be able to evict the tenant unless one or other of the conditions laid down in that section was satisfied. Otherwise, he would be powerless to get possession of the house which would be necessary before he could pull down and rebuilt it.

Mr. Bashyani Aiyangar, sought to distinguish the cases of the American Supreme Court in which the exemption provisions had been struck down as unconstitutional as relating to cases in which there was a legal right in persons which was sought to be interfered with by legislation and therefore it was held that such legislation could not be constitutional. But he said there was no right on the part of the tenant to continue to remain in possession but for the special statutory provision of the Madras Buildings (Lease and Rent Control) Act. So it could not be maintained that any person was being deprived of a right by an exemption made by the Government u/s 13.

17. Mr. M. K. Nambiar appearing for some of the respondents supported the learned Advocate-General in the main. He also conceded that individual cases of

exemption were open to judicial review. He also stressed on the aspect already adverted to that & power of exemption was necessary to mitigate the rigour of the Act.

18. I am free to confess that the case has given me considerable difficulty in deciding the main question. Apart from the legal position which I shall presently deal with, there is the practical aspect of the matter. On the one hand, it is obvious that there should exist a power of exemption to, be exercised in proper cases. On the other hand, it would be dangerous to vest in the executive unfettered discretion in granting exemptions, a discretion which cannot be challenged in a Court. On the one hand, it is not easy or feasible to enumerate the grounds on which exemption should be made. On the other hand, it would be wrong to allow the Government to exercise the power of exemption on irrelevant or mala fide considerations.

We were faced with a similar situation when dealing with the provisions of the Cotton Textiles (Control) Order, 1948, Clauses. 30 and 33, in -- R. Balakrishnan Vs. State of Madras, . Those clauses conferred unrestricted power on the Textile Commissioner to make exemptions. While we held that these provisions offended Article 14 of the Constitution if they were construed so as to deprive the Court of the power of examining the propriety of the exercise of the discretion, we did not declare them void. I said :

"In the absence of any statutory rules to indicate the manner in which the discretion of the Textile Commissioner should be exercised, it is impossible to say whether his discretion in a particular case is just or is not justified. If the yardstick is only the personal opinion of the officer concerned, it is plainly a case of a naked and arbitrary power. It is therefore not only desirable but also necessary that proper rules should be framed and general principles laid down to govern the discretion vested in the Textile Commissioner under Clause 33. If that is done and individual cases are dealt with accordingly without making any discrimination, there could be no valid complaint."

19. In that connection, I quoted a passage from Willis" Constitutional Law in which the learned author expressed his opinion that the best view to take was that due process and equality were not violated by the mere conference of unguided power but only by its arbitrary exercise by those upon whom conferred.

The following further statement of the learned author appealed to me then and appeals to me now :

"If a statute declares a definite policy, there is a sufficiently definite standard for the rule against the delegation of legislative power, and also for equality, if the standard is reasonable. If no standard is set up to avoid the violation of equality, those exercising the power must act as though they were administering a valid standard. For this reason there is need for a. judicial review to see whether or not the power delegated has been exercised arbitrarily."

My learned brother, Venkatarama Aiyar J. also took a similar view. In a later case relating to the working of the same order, we held that a particular classification made by the Textile Commissioner in exercising the power conferred on him by Clause 30 of the Order was neither discriminatory nor in contravention of the principles underlying Article 14 of the Constitution Vide -- *The Lotus Industrials, Kallai, Malabar by sole Proprietor Mr. Velayudha Menon and Others Vs. The State of Madras and Others*, .

20. I am much impressed by the considerations set out in -- "(1903) 48 Law Ed 1018 (R)" and in -- "(1926) 71 Law Ed 1228 (S)" in examining the validity of a power of exemption like that contained in Section 13 of the Madras Buildings (Lease and Rent Control) Act. There are bound to be cases in which an inflexible application of the provisions of the Act may result in unnecessary hardship not contemplated by the Legislature. I would even go further and say that the enforcement of the provisions of the Act may amount to an unreasonable restriction on the exercise of the right conferred by Article 19 of the Constitution. It is eminently desirable that there should be some authority vested with the power to make exceptions to the general application of the Act and its provisions in proper cases. If so, there could be no better body than the State Government, on whom such power could be conferred.

21. The Special Courts decisions of the Supreme Court have one feature which should not be overlooked. All these decisions proceed on the conclusion that the special procedure prescribed for the trial of offences by the Special courts deprived the accused persons of certain valuable privileges and advantages to which they were entitled under the general criminal procedural law. The question was whether the Government could deprive an accused of such privileges and advantages in an arbitrary manner. There is nothing like that in the Madras Buildings (Lease and Rent Control) Act. It is rather the other way about. The landlords were entitled to certain rights under the general law. The Madras Buildings (Lease and Rent Control) Act deprived them of some of these rights. The result of an exemption in any particular case was that the landlord was allowed to enjoy his rights without the restrictions imposed by the Madras Buildings (Lease and Rent Control) Act.

22. Moreover, the decision in -- *The State of West Bengal Vs. Anwar Ali Sarkar*, " must be taken along with the two later decisions of the Supreme Court, in -- *Kathi Raning Rawat Vs. The State of Saurashtra*, and in -- *Kedar Nath Bajoria Vs. The State of West Bengal*, ". In -- *Kathi Raning Rawat Vs. The State of Saurashtra*, " the impugned Sections 9, 10 and 11 of the Saurashtra State Public Safety (Third Amendment) Ordinance, 1949, empowered the State Government by notification in the official gazette to constitute Special Courts of Criminal jurisdiction for such area as may be specified in the notification, to appoint Special Judges to preside over such Courts and to invest them with jurisdiction to try such offences or classes of offences or such cases or classes of cases as the Government may, by general or special order in writing, direct.

The majority of the learned Judges, namely, Patanjali sastri C. J. and Fazl Ali J., Mukherjea and Das JJ. held that these sections did not contravene the provisions of Article 14. Mahajan, Chan-Drasekhara Aiyar and Bose JJ. dissented.

The way in which the majority Judges approached the question and the "ratio decidendi" of that decision are very instructive. Patanjali sastri C. J. who, it may be remembered, dissented from the decision of the majority in -- *The State of West Bengal Vs. Anwar Ali Sarkar*, " reiterated what he had said before, observing that many of the considerations which weighed with him in upholding the constitutionality of Section 5(1) of the West Bengal Special Courts Act applied "a fortiori" to the case before him. The only difference was that in -- "*The State of West Bengal Vs. Anwar Ali Sarkar*, " the State Government had referred certain individual cases to the Special Court, whereas in -- "*The Kathi Raning Rawat Vs. The State of Saurashtra*, ", the State Government referred not individual cases but offences of certain kinds committed in certain areas. Fazl Ali J. who was one of the majority Judges in -- *The State of West Bengal Vs. Anwar Ali Sarkar*, " distinguished the decision in the prior case on the ground that in the West Bengal Act there was no principle to be found to control the application of the discriminatory provisions or to correlate those provisions to some tangible and rational objective. The mere mention of speedier trial as the object of the Act was not sufficient. But in the Saurashtra Ordinance, his Lordship was able to discover a guiding principle within its four corners which sufficed to repel the charge of discrimination. This principle was contained in the preamble to the original Ordinance, the object of which was "to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State".

His Lordship said :

"The clear recital of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance."

23. The following observations of his Lordship Mukherjea J. are very much in point, so far as the present case is concerned :

"It is a doctrine of the American Courts which seems to me to be well-founded on principle that the equal protection clause can be invoked not merely where discrimination appears on the express terms of the statute itself, but also when it is the result of improper or prejudiced execution of the law. But a statute will not necessarily be condemned as discriminatory, because it does not make the classification itself but, as an effective way of carrying out its policy, vests the authority to do it in certain officers or administrative bodies.....

In my opinion, if the legislative policy is clear and definite and as an effective method of carry-ing out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a

piece of discriminatory legislation.....The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that object that the propriety of the classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the Legislature, its action can certainly be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied." (24) According to his Lordship, the preamble to the Ordinance, taken along with the surrounding circumstances, disclosed a definite legislative policy. Das J. in -- *The State of West Bengal Vs. Anwar Ali Sarkar*, " though he agreed with the majority, took a slightly different, view as to the validity of one part of Section 5(1) of the West Bengal Act. In his opinion, that part which provided for the trial by a special Court of offences or classes of offences and classes of cases was perfectly valid, as it did not confer an uncontrolled and unguided power on the State Government. If the State Government classified offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, the Court could strike down such abuse of the power.

His Lordship reiterated his view and referred to the surrounding circumstances and the special features mentioned in the affidavit filed on behalf of the State as furnishing a very cogent and reasonable basis of classification. In -- *Kedar Nath Bajoria Vs. The State of West Bengal*, " , we have already seen that Section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, conferred power on the Provincial Government to allot specific cases for trial to a Special Judge, and the majority of their Lordships held that that provision was valid. It was specifically urged before them relying upon -- *The State of West Bengal Vs. Anwar Ali Sarkar*, " that the said section permitted the Government to make a discriminatory choice among persons charged with the same offence for trial by a Special Court, & such absolute and unguided power of selection offended Article 14 of the Constitution.

His Lordship, Patanjali Sastri C. J. who delivered the judgment of the majority overruled the contention thus :

"The argument overlooks the distinction between those cases where the legislature itself makes a complete classification of persons or things and applies to them the law which it enacts & others where the legislature merely lays down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within, the defined group, while laying down the stand- ards or at least indicating in clear terms the

underlying policy and purpose, in accordance with, and in fulfilment of, which the administrative authority is expected to select the persons or things to be brought under the operation of the law."

25. His Lordship sums up the result of the -- Kathi Raning Rawat Vs. The State of Saurashtra, , in the following words :

"However that may be, the majority decision in the -- Kathi Raning Rawat Vs. The State of Saurashtra, , would seem to lay down the principle that if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification, of the person or things to which it is to be applied, but leaves the selective application of the law to be made be the executive authority in accordance with the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Article 14. In the case of such a statute it could make no difference in principle whether the direction which is entrusted to the executive Government is to make a selection of individual cases or of offences, classes of offences or classes of cases. For, in either case, the discretion to make the selection is a guided and controlled discretion and not an absolute or unfettered one and is equally liable to be abused, but as has been pointed out, if it be shown in any given case that the discretion has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation, such exercise could be challenged and annulled under Article 14 which includes within its purview both executive and legislative acts".

26. I may mention that the declared policy and the object of the legislation which was the subject matter of the case can only be found in the preamble to the Act and in one of the sections, namely, Section 9, which provided for a special compensatory line equal in value to the amount procured by the offender by means of the offence.

27. The net result of these, three decisions of the Supreme Court appears to me to be, this. If the policy and object of the Act can be discovered within the four corners of that Act including the pre-amble, and discretion is vested in the Government to make a selection in furtherance of that policy and object for the application of the Act, then the provision conferring such power is not void as offending Article 14 of the Constitution. If such power is improperly exercised in any particular case, that is, not in furtherance of the policy and object of the Act, but arbitrarily, then the court can strike down the exercise of such power on every such occasion.

28. Can we discover any such policy and object within the four corners of this Act? The Act is described as "an Act to regulate the leasing of buildings and for control of rent in the State of Madras." The preamble runs thus: "Whereas it is expedient to regulate the letting of residential and non-residential buildings and to control the rents of such buildings and to prevent unreasonable eviction of

tenants therefrom in the State."

The two main objects are (1) the control of rents, and (2) the regulation of letting with a view to prevent unreasonable eviction of tenants. The Act is a temporary measure and declared to remain in force only up to a particular date. It does not apply to the entire State. Some of the provisions apply to the City of Madras and to other Municipalities in the State, but the State may by notification apply all or any of the provisions of the Act except Section 3(2) to any other area in the State. Section 7 gives expression to the intention of the Legislature as to what in its opinion is reasonable eviction.

In my opinion, the policy and object of the enactment have been sufficiently indicated so as to enable the Government to exercise the power conferred by Section 13 of the Act in specific cases not inconsistent with and in furtherance of such policy and object. The discretion given to the Government is not, therefore, an unguided and arbitrary discretion. It is a guided and controlled discretion. Evidently, it is a discretion liable to be abused, and Mr. Venkatasubramania Aiyar was able to give a few instances in which it looked as if it had been abused. But if it be shown in any given case that the discretion has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation or arbitrarily or mala fide, then such exercise can be challenged and declared void under Article 14.

Having provided for certain emergency regulation of the rights of landlords and tenants, the Legislature leaves it to the discretion of the Government to select cases which do not call for the application of the emergency provisions. It would have been impossible for the Legislature to give an exhaustive list of cases in which it would be just and equitable to prevent the Act from applying. There may be cases, as were mentioned earlier on in this judgment, in which the application of the provisions of the Madras Buildings (Lease and Rent Control) Act, might amount to unreasonable restriction on the exercise of the right of enjoyment of property conferred by Article 19(1)(f) of the Constitution.

29. In this view, we cannot strike down Section 13 of the Act as inconsistent with the Constitution and, void, but we shall have to examine each case on its merits.

Panchapakesa Aiyar, J.

30. I have had the benefit of going through the judgment of my Lord the Chief Justice. I agree with it with great respect. In view of the importance of the points involved, I wish to add a few words.

Any law enacted for meeting the needs of a complex modern State, like Madras State, or the Indian Union, and especially an emergency law like the Madras Buildings (Lease and Rent Control) Act, must obviously provide for exemptions in hard cases, and cannot be expected to name them always in the Act itself. Often, and especially in an emergency law, it may not be even desirable to name all the exempted classes and individuals in the Act itself, as, in the hurry, some

deserving ones may be excluded and some undeserving ones included by mistake, accident or misfortune.

Where, therefore, the apparently unfettered discretion to exempt left to the Government, as in Section 13 of this Act, is, on close scrutiny, found to be really guided and controlled by the policy and object of the Act, as expressed in its Preamble, and is not naked and arbitrary, and it is also admitted that every case of exemption is subject to judicial review, when challenged, I am of Opinion that it does not contravene the provisions of Article 14 of the Constitution of India and become void, and that the only remedy open to persons feeling aggrieved by an order of Government u/s 13 is to canvass the merits of the particular cases in courts, if so advised.

31. Article 14 can be invoked and relied on even in such cases of particular orders. That the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India is, of course, guaranteed by that Article, and this is a fundamental right. Indeed, I may add that even in ancient India this was the view of the Hindu jurists who laid down : "The King (that is, the State) should look after all his subjects equally, and should be like the fire which cooks the grains in a pot equally". They also allowed the Government to exempt from the operation of the law certain persons or classes by using "yukti" (intelligence, or sense and commonsense as applied to law or equity), just as, under our law, the Government decides which land is to be acquired for a public purpose, which case of acquittal is to be appealed against, which man condemned to death is to be reprieved, etc. which matters will not contravene Article 14 unless the facts of each case prove such infringement.

As laid down in various decisions cited before us, it is immaterial whether the exemptions allowed to be made by the Government are of individuals or of classes, for Article 14 may be contravened, and injustice done, in either case. A person bent on injustice will not be deterred by the exemptions being confined to classes alone, for even these classes consist, in the ultimate resort, of individuals. As the Hindu law-givers remarked, the best of laws will be of no avail in the hands of a person blind to justice just as the best of mirrors will be of no avail in the hands of a physically blind man.

32. So, I too agree that S. 13 cannot be struck down as inconsistent with the Constitution and void, and that we shall have to examine the facts in each case and decide.