

(1945) 05 CAL CK 0002
In the Calcutta High Court

Khetsidas Girdharilal

APPELLANT

Vs

Pratapmull Rameswar and others

RESPONDENT

Date of Decision : 28-05-1945

Acts Referred:

Citation : (1945) 05 CAL CK 0002

Judgement

Derbyshire, C.J.—This matter was referred by Ormond J. to the Chief Justice under Chap. V, R 3 of the Original Side Rules of this Court. It is an application by Khetsidas Girdharilal who carries on business at No. 3, Pagayapatti Street, Calcutta, asking for an order under S. 45 of the Specific Relief Act directing respondent 5 to remove the seal set on the applicant's shop, gaddi and godown, an order directing the release of the goods in the said shop, gaddi and godown and for an order directing the respondents to forbear from forcing and compelling the applicant to sell or deliver his goods to respondents 1 to 4 and for other reliefs. The matter arises out of certain proceedings taken by the Government of Bengal for the purpose of ensuring a better distribution of cloth in the Province. It is common ground that for sometime previous to March 1915 there had been an uneven distribution of cloth in the form of dhotis and saris in the Province. Certain districts were without adequate supplies of clothing and it was believed that clothing sufficient to satisfy such deficiencies temporarily existed in certain other parts of the Province. The Government alleged that the mal-distribution was due to hoarding of cloth by certain persons and firms and the dealers alleged that such mal-distribution was due to Government interference with ordinary trading operations. Whatever the cause, it was notorious that there was mal-distribution of cloth in the Province. On Sunday, 25th March the police acting under an Order made by the Government of Bengal referred to as the Calcutta Cotton Cloth and Yarn Emergency Search Order, 1945, visited certain shops, warehouses, godowns and offices in Calcutta where cloth was stored. The Order is as follows :

Whereas with a view to securing compliance with the provisions of the Bengal Cotton Cloth and Yarn Control Order, 1948, it is expedient to provide for the

search of premises in Calcutta and for certain other supplementary matters :
Now, therefore, in exercise of the powers conferred by Cls. (a) and (f) of sub-r.
(2) of Rule 81 of the Defence of India Rules, the Governor is pleased to make the
following Order, namely,

ORDER.

1. (1) This order applies to Calcutta as defined in paragraph 2 of this Order.

(2) It shall come into force at once.

2. In this Order, the words "Calcutta", "cloth" and "yarn" have the same meanings as in the Bengal Cotton Cloth and Yarn Control Order, 1943.

3. During the continuance in force of this Order, any police officer not below the rank of Sub-Inspector, and any other person authorised in this behalf by order in writing of the Director General of Enforcement appointed by the Provincial Government may, at any time, enter and search any premises in which cloth or yarn is stored or in which he suspects or has reason to believe that cloth or yarn is stored.

4. Any police officer or person searching any premises under the provisions of paragraph 3 of this Order, may seal or cause to be sealed, in such manner as he may see fit, the premises so searched, or any box, bale or package in such premises, which contains or which he suspects or has reason to believe contains cloth or yarn, and he may also pack and seal in such manner as he may see fit any cloth or yarn in such premises, which may be found in an unpacked condition, or instead of so sealing any such box, bale or package, or so packing and sealing any cloth or yarn, he may, if he deems it expedient, seize any such box, bale, package, cloth or yarn, in respect of which he has reason to believe any contravention of the Bengal Cotton Cloth and Yarn Control Order, 1943, has occurred.

5. During the search of any premises under this Order, or at any time after such a search has been made, any police officer not below the rank of sub-inspector or any person authorised in writing in this behalf by the Director-General of Enforcement appointed by the Provincial Government, may enter or re-enter such premises and make an inventory of any cloth or yarn in such premises, and may for this purpose open any box, bale or package which contains, or which he suspects or has reason to believe contains, cloth or yarn and he may also for this purpose break any seal affixed to any such box, bale, package, cloth or yarn and reseal it in the same manner.

6. Subject to the provisions of paragraph 5 of this Order, no person, other than the Commissioner of Police or a Deputy Commissioner of Police or a Police Officer authorised in writing in this behalf by the Commissioner of Police, shall break or tamper with in any way any seal affixed under para. 4 or para. 5 to any box, bale or package, or to any cloth or yarn packed under the said paragraph, or remove from any premises any box, bale, package, cloth or yarn to which a seal has

been affixed under either of the said paragraphs.

7. Any police officer or person searching any premises under para. 3 may, by order in writing, direct the owner, occupier or persons in charge or control of such premises, or any employee of such owner, occupier, or person, to furnish him forthwith,

(a) with any information in regard to any other premises owned, occupied or controlled in any way by such owner, occupier or person in charge or control of the premises so being searched, and the person so directed shall comply with such a direction to the best of his knowledge and belief. (b) With a true statement of the quantities of cloth and yarn of each different type or quality in the premises so being searched at the time of commencement of such search.

8. Any Court trying any contravention of para. 6 or para. 7 of this Order may, without prejudice to any other sentence it may pass, direct that any box, bale, or package of cloth or yarn in respect of which it is satisfied that such a contravention has occurred shall be forfeited to His Majesty.

2. In some cases the police seized cloth and in other cases they sealed the premises where cloth was stored and directions were afterwards issued by or under Government authority directing the owners of the cloth concerned to hand over to one of the four firms or companies, who are respondents 1, 2, 3 and 4 and are known as Handling Agents. The purpose of the handing over was stated to be so that the cloth could be distributed to those who need it. Respondent 5 is the Additional Director of Textiles, Bengal. The applicant for fifty years past has carried on business as a cloth dealer in Calcutta at No. 3, Pagayapatti Street, where he has a shop, at No. 35 Cross Street, where he has a gaddi or office and No. 17/1, Shibtolla Street, Calcutta, where he has a godown or warehouse. The applicant had a licence to deal in cloth given under the Bengal Cotton Cloth and Yarn (Control) Order of 1943. On 25th March 1946, the Police visited the applicant's gaddi which was closed, being a Sunday, and sealed it without entering it. Two days later, on 27th March the Police visited also the shop and the godown of the applicant and sealed them. The applicant's gaddi contained not only cloth but other commodities and the applicant's books of account and some of his cash. On 2nd April 1946, respondent 5 who is the Additional Director of Textiles for Bengal issued a direction to the applicant amongst other dealers as follows:

No. 1. S. Under powers conferred upon me by para. 5 of the Conditions of the Licence in Form B of the Schedule to the Bengal Cotton Cloth and Yarn Control Order, 1943 (hereinafter referred to as the Order) I hereby issue the following directions : (i) All licensees (other than those who hold only a retail or hawker's licence) whose undertaking is carried on or whose godowns or other premises where cloth is stored lie, within Calcutta as defined in cl. 2 of the Order shall on demand make over all cloth in their possession to one of the undermentioned firms or companies for purchases by the firm or company and to none else: (1)

Messrs. Calcutta Cloth Agency, 138, Cross Street, Calcutta. (2) Messrs. Partabmull Rameswar, 46, Strand Road, Calcutta. (3) Messrs. Gangadhar Banerjee & Co. Ltd., Bakulia House, Kidderpore. (4) Messrs. S. M. Hanif, 76, Colootola Street, Calcutta. For the purposes of this, direction the firms or companies shall be known as the Handling Agents. (ii) The Licensee shall make over the goods on demand by any of the Handling Agents mentioned in (i) above or by the Handling Agent's authorised agent or representative, and shall, on completion of the making over, give the Handling Agent or his authorised agent or representative a bill with the original invoice or invoices in relation to the goods made over and payment shall subsequently be made by the Handling Agent at the following rates : (a) In regard to quota goods of quota holders of Bengal Mills 3% over the ex-mill price of the goods in question, (b) In regard to quota goods of quota holders of mills outside the Province and in the possession of the importers, 6 1/2% over the ex-mill price of the goods in question. (c) In regard to all other goods, 7% over the ex-mill price of the goods in question.

(iii) The following shall be exempted from the operation of the directions contained in paras. (i) and (ii) above: (1) Canvas Cloth. (2) Handloom Cloth. (3) Cloth which prior to these directions, has been printed, dyed or bleached by hand or embroidered. (4) Made-up garments excluding saris and dhoties. (5) All cloth belonging to any Government or to His Majesty's Armed Forces. (6) All cloth intended for any Government in regard to which the Director of Textiles as defined in cl. 2 of the Order is so satisfied and which he thereafter specifically exempts. (7) Hosiery goods. (8) All cloth imported from outside India.

2. The directions contained in the following orders of the Director of Textiles (commonly known as the quota to quota scheme orders) are cancelled:-

Provincial Textiles Controller's No. 8084 (104) CY. dated the 16th November 1944 as amended from time to time.

A. A. Shah.

Additional Director of Textiles,

3. The Handling Agents named did not immediately give directions to the applicant with regard to the cloth and the applicant made this application to Ormond J. in substantially the terms mentioned above on 9th April 1945. As the applicant contended that the Government of India had no power under the Government of India Act, 1935, to legislate in respect of the requisitioning of movable property Ormond J. has referred the matter to this Bench. When the matter came on for hearing, Mr. Chatterjee, who appeared for the applicant, said that up to date no instructions had been given for the removal of the cloth and that the premises remained sealed. He stated that his clients were suffering loss by reason of the premises remaining sealed. The Advocate-General, who appeared for the Additional Director of Textiles intimated that access could be had to the books and other property of the applicant in the premises sealed if the applicant desired it. Apparently, the Government has not taken any further steps

with regard to the applicant's property although Ormond J. stated that he did not propose to make, and did not make, any order restraining the Government from dealing with the applicant's property.

4. The question substantially dealt with before us was whether the Government had the power to issue the direction set out above having regard to the provisions of the Government of India Act. The manufacture, distribution and sale of cloth in India has been controlled in one manner or another since 17th June 1943, under the provisions of R. 81 of the Defence of India Rules made pursuant to S. 2 (2) (XX) of the Defence of India Act, when the (All India) Cotton Cloth and Yarn (Control) Order, 1943, was made. This Order provided for the control of cloth by the Central Government through a Textile Commissioner assisted by a Textile Controller and it provided for the fixing of maximum prices of cloth and the distribution of cloth. This was amended on 24th November 1943, and power conferred on the Textile Commissioner to fix maximum prices of cloth after consultation with the Textile Board. On 22nd January 1944, this order was again amended. It was further amended on 28th April 1944. Maximum prices were to be prescribed and a system of quotas introduced whereby dealers who had bought and manufactured during the past three years were allowed to buy the same proportion of the manufacturer's output as they had bought in the three previous years. On 19th October 1943, the Bengal Government, in exercise of the powers conferred by sub-rule (2) of R. 81 of the Defence of India Rules made the Bengal Cotton Cloth and Yarn (Control) Order of 1943 which extended to Bengal and came into operation on 1st February 1944. It set up a Controller appointed by the Provincial Government to perform the functions of the Provincial Textile Controller. It provided in S. 3 (1) as follows:

No person shall after the commencement of this Order engage in any undertaking which involves the purchase, sale or storage for sale of cloth or yarn or both unless he holds a licence in this behalf under the order and except in accordance with the conditions specified in such licence.

Section 7 (1) provides as follows:

The maximum prices at which cloth or yarn may be sold by a dealer holding a licence under this order shall be such as may be fixed by the Provincial Government by notification in the Official Gazette.

5. Later to this were added the words "or the Provincial Textile Controller" by a notification of the Government of Bengal in a Gazette Extraordinary under sub-rule (2) of R. 81 of the Defence of India Rules, dated 2nd April 1945. Sub-section (2) provides:

No person shall sell and no person shall purchase cloth and yarn at prices exceeding the maximum prices respectively fixed under sub-paragraph (1).

Section 8 provides:

(1) No person being the holder of a licence under this Order shall contravene any

of the conditions subject to which he holds the licence, and if any such person contravenes any of the said conditions, then without prejudice to any other action that may be taken against him, his licence may be cancelled by order of the Provincial Textile Controller.

Section 9 provides:

Any officer authorised by the Controller in this behalf may enter upon and inspect any premises in which he has reason to believe that the purchase, sale or storage for sale of any cloth or yarn is taking place contrary to the provisions of this Order.

6. In the schedule to the said Order is set out the form of licence issued to a dealer in cloth. Condition 5 of the licence which is set out in the Order provides that :

The licensee shall comply with any direction that may be given by the Provincial Textile Controller in regard to the purchase, sale or storage for sale of cloth or yarn.

7. The applicant's contentions may be summed up as follows: The direction or order requiring him to hand over the cloth to the Handling Agents is ultra vires and of no effect because (a) it is, in effect, a requisition of his property and there is no power in the Legislature given to it under Sch. VII of the Government of India Act to requisition movable property; (b) it infringes S. 299 (1) of the Government of India Act, 1935; (c) the Bengal Control Order of 25th August 1943, has not conferred any power on the Bengal Government or its officers to issue directions to sell any quantity of cloth to any specified person or persons; (d) the price named in order No. I. 8. has not been fixed under S. 7 of the Bengal Control Order; and (e) this handing over of cloth is not a sale within the meaning of the Sale of Goods Act. The Advocate-General on behalf of the Government of Bengal has contended that there is no substance in any of these objections and that the demand was in order. He contends that all that Mr. Shah has done has been to order the applicant to sell his cloth to one of the Handling Agents and that under cl. 5 of the terms of the licence the Cloth Controller can direct him to do this. If the applicant does not do this, he may lose his licence and thenceforward be unable to deal with this cloth which may then be requisitioned.

8. As regards the contention that the Legislature has no power to requisition movable property the Court has dealt with this contention in *Jashoprosash Mitter v. Dy. Commissioner of Police, Motor Vehicles Department* Reported in ("46) 33 A. I. R. 1946 Cal. 194, 1946 C/26 & 27 which was heard immediately after this case. In my opinion, as expressed there, the Government has the power to requisition movable property under the Government of India Act. However, in my view, the procedure in this case is not a requisitioning of the applicant's cloth, it is probable that if the applicant does not dispose of his cloth as directed in the Circular No. 1 (s) when requested to do so by the Additional Director of Textiles, his cloth will be requisitioned, but that stage has not been reached. The direction

is to hand over the cloth to one of the handling firms when it will be paid for in accordance with the price fixed in the direction.

9. The direction in question was given under paragraph 5 of the conditions endorsed on the applicant's licence. The Bengal Cotton Cloth and Yarn Control Order, under which the licence was given, was made by the Government of Bengal consequent upon the following provisions of law. Under Article 27 of List II of schedule VII of the Government of India Act, 1935, the Provincial Government has power to legislate for trade and commerce and under Article 29 for the supply and distribution of goods. Those powers to legislate were given to the Government of India under S. 102 of the Government of India Act consequent upon the emergency proclamation of 3rd September 1939. Section 2(2) (XX) of the Defence of India Act gave authority to the Central Government to make rules relating to the distribution and sale of essential goods. Rule 81 is such a rule. By R. 81 (2) the Central or Provincial Government, so far as it appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war or maintaining services essential to the life of the community, may by order provide:

(a) for regulating or prohibiting, the.... distribution and disposal of articles of any description.... and for requiring materials or things kept for sale to be sold either generally or to Specified persons or classes of persons or in specified circumstances; (b) for controlling the prices or rates at which articles or things of any description may be sold.

10. In my opinion, the Bengal Cotton Cloth Control Order made by the Government of Bengal on 19th October 1943 comes within the terms and powers of R. 81 (2) (a) and (b) of the Defence of India Rules.

11. Wars, particularly modern wars, invariably produce scarcity of goods essential to the life of the people and with them scarcity gives uneven distribution of those goods. Mal-distribution of such goods, especially food and clothing, may easily result in public disorder. By S. 7 (1) of the Bengal Cotton Cloth and Yarn Control Order as amended on 2nd April 1945, the Provincial Textile Controller can prescribe maximum prices for the sale of cloth. On the same date, the Government of Bengal gave the Additional Controller the same powers as the Controller. The direction No. 1 (s) of 2nd April gave the applicant instructions to hand over his cloth to one of the Handling Agents and prescribed the rates at which he was to be paid. In my opinion, that direction was clearly within the powers given in R. 81 (2) (a) and (b) and is in accordance with condition 5 of the licence which is set out in the Bengal Cloth and Yarn Control Order. If the applicant does not hand over his cloth but keeps it, he is liable to have it requisitioned and to have his licence cancelled. If he hands over the cloth, there is a sale and the price or rate specified in the direction is to be paid for the cloth so handed over as soon as the price is ascertained. The price fixed is one which the Government of Bengal through its authorised officer is entitled to fix. It is no objection to this price that at some period previously a higher price was

permissible.

12. One of the objects of controlling the price is to prevent people selling at prices higher than are deemed fair and proper by the appropriate authority. The applicant has not been deprived of his cloth otherwise than according to law and he is directed to hand it over in accordance with law. He will get the price that has been fixed as fair and proper according to law. That this may be less than the price he paid is no objection to the Control Order. In my opinion, the order of the Government of Bengal in question and the procedure of the Government of Bengal in this case are according to law and I see no reason to interfere with the order that has been made. The application is, therefore, refused and the rule nisi discharged. The applicants must pay the respondents the taxed costs of the matter.

13. Certificate under S. 205 of the Government of India Act, 1935, is granted.

Gentle, J.

14. The petitioner is a firm of cloth merchants in Calcutta, the office of the business is at No. 3, Pagyapati Street, there is a shop at No. 35, Cross Street, and a godown at No. 17/1, Shibtolla Street. In the petition it is alleged that in March 1945 quantities of cloth were at these three premises which had been purchased at 8% above ex-mill maximum price or ex-mill contract price. Respondent 5 is the Additional Director of Textiles, Bengal, and respondents 1-4 are dealers in cloth in Calcutta. On Sunday 25th March 1945, a number of police officers of the Enforcement Branch, purporting to be acting pursuant to Notification No. 3084 D. C. S., dated 24th March 1945, made by the Governor of Bengal (which is not named but has been called the Calcutta Cotton Cloth and Yarn (Emergency) Search Order, 1945, and hereinafter called "the Search Order") went to the petitioner's office; no one was at the premises and they were looked; the police sealed the entrances to prevent cloth being removed therefrom. On 27th March the police also sealed the petitioner's shop and godown. At or about the same time, similar action was taken with respect to a large number of cloth dealers in Calcutta. In para. 5 of his affidavit, respondent 5 says this was a general drive organised by the authorities concerned to check the widespread evasions of the Bengal Cotton, Cloth and Yarn Control Order, 1943, (hereinafter called "the Bengal Cloth Order") which were suspected of being practised in Calcutta and to find out all hidden and undeclared stocks of cloth which were suspected of being withheld from sale to the general public for the purposes of sale in the black market.

15. Purporting to exercise powers conferred upon him by para. 5 of the conditions of the licence in Form B of the schedule to the Bengal Cloth Order, respondent 5 issued an Order (hereinafter called "Order No. 1. S") on 2nd April 1945 by which he directed, inter alia, the petitioner and other cloth merchants to make over to one of the respondents 1 to 4 (therein called "the Handling Agents"), for purchase by them, all cloth in the possession of the merchants and

the Handling Agents should subsequently pay for such cloth at the rate of 7% over ex-mill price. The petitioner challenges the validity of the action by the police and of Order No. 1. S. and has invoked the provisions of S. 45, Specific Relief Act, 1877, praying that this Court may direct, the removal of the seals from the petitioner's premises; return of the goods; the respondents to forbear from forcing or compelling the sale of the cloth in accordance with Order No. 1. S; an injunction restraining the respondents 1 to 4 from removing or taking possession of the goods; and other consequential relief. On 9th April 1945 Ormond J., granted a rule nisi and directed the respondents to shew cause against the relief claimed. On 12th April the learned Judge refused to grant an interim injunction and, pursuant to Chap. V. R. 3 of the Original Side Rules of this Court, he referred the proceedings to the Chief Justice for constituting a Bench of two or more judges to hear the matter of the petition. Upon the direction of the Chief Justice the matter now comes before us for decision.

16. Shortly, the objection to the validity of the procedure by the police and the 5th respondent is that, there is no authority of law by which it can be justified; the Defence of India Act 1939, the Rules made thereunder and the Orders (to which reference is made hereafter) by the Central Government and the Provincial Government and the Order of respondent 5 are ultra vires the Government of India Act. Section 100 of the Government of India Act confers legislative powers. By sub-s. (1) the Federal Legislature has exclusive power to make laws with respect to matters in List I in Schedule VII of the Act; sub-s. (3) confers similar power upon a Provincial Legislature with respect to matters in List II in the same schedule; and sub-s. (2) empowers both the Federal and the Provincial Legislatures to make laws with respect to matters in List III of the schedule. Section 316 provides that powers (to make laws) conferred by the Apt on the Federal Legislature shall be exercised by the Indian (or Central) Legislature. Sub-section (1) of S. 102 enacts that if the Governor-General, in his discretion, declares by proclamation that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, the Federal Legislature shall have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List (List II).

17. Upon the outbreak of war with Germany on 3rd September 1939, the Governor-General, in pursuance of the provisions in the last mentioned sub-section, declared, by Proclamation, that a grave emergency existed. From the date of the proclamation, the Central Legislature has had power to make laws with respect to all matters in Lists I, II and III. On 29th September 1939, the Central Legislature passed the Defence of India Act 35 ([XXXV] of 1939). The relevant provisions are :

Section 2. (1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public

order or the efficient prosecution of war, or for maintaining supplies and services, essential to the life of the community. (2) Without prejudice to the generality of the powers conferred by sub-s. (1) the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:

* * * *

(xx) the control of.....trade.... for the purpose of regulating.... the supply of articles.... of any description whatsoever which can be used.....for maintaining supplies and services essential to the life of the community.

(5) A Provincial Government may by order direct that any power..... which by rule made trader sub-s. (1) to conferred or imposed on the Provincial Government.... shall in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer.....

18. The Defence of India Rules were made, by the Central Government, by virtue of S. 2 (1). Sub-rule (2) of R. 81 provides that:

The Central Government or the Provincial Government, so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, may by order provide : (a) for regulating.... the... distribution.... of articles or things of any description whatsoever..... either generally or to specified persons.... and for requiring articles or things kept for sale to be sold either generally or to specified persons..... (f) for any incidental and supplementary matters for which.... the Provincial Government thinks it expedient for the purposes of the Order to provide, including, in particular, the entering, search and inspection of premises to which the order relates with a view to securing compliance with the order.... the grant or issue of licences....."

19. Power to make law can be exercised by enacting such law in a statute or by the statute empowering the making of rules with respect to specified matters, which matters must be within the law-making power. When rules are made under authority conferred by a statute they are deemed to be part of it, and have the same force and effect as if their provisions were included in the statute. At the date when the Act was passed, the Central Legislature had law-making power with respect to all matters in Lists I, II and III. So far as the present considerations are concerned, this law making power is relevant only to the provisions in S. 2 (1), (2) (xx) and (6) of the Act and R. 81 (2) (a) and (f). It was contended by Mr. N. C. Chatterjee, on behalf of the petitioner, that these provisions do not relate to a subject in any Legislative List and, consequently, they are ultra vires the Government of India Act. Item 29 in List II includes "Production, Supply and Distribution of goods." Section 311 (2) of the Government of India Act defines "goods" as including "all materials, commodities and articles." Cloth is an article and is essential to the life of the community. Thus the Central Legislature has power to make law with respect to the

distribution of cloth. "Distribution" is defined in the Concise Oxford Dictionary as "apportionate dispersal among consumers effected by commerce; extent to which individuals or classes share or aggregate products of community." The provisions of S. 2 (1), (2) (XX), enabling rules to be made to regulate supplies of articles which can be used to maintain supplies essential to the life of the community, and the provisions of R. 81 (2) (a) and (f), enabling the making of orders regulating the distribution of articles, requiring them to be sold to specified persons and for incidental matters and entering and searching premises and the issue of licences, relate to "distribution" within the definition. Section 2 (5), by which a Provincial Government can delegate its order making powers, is unobjectionable. The provisions of S. 2 (1), (2) (XX) and of R.81 (2) (a) and so far as may be, of S. 2 (5) and of Rule 81 (2) (f) relate to the distribution of goods in Item 29 of List II and are pieces of legislation upon a subject with respect to which the Central Legislature has power to make law and being within its competence, the provisions are intra vires the Government of India Act.

20. Exercising the powers contained in sub-rule (2) of Rule 81, the Central Government, by Notification, made the Cotton Cloth and Yarn (Control) Order, 1943. This Order was amended from time to time and, in March 1943, it provided, so far as is relevant, that every sale of cloth by a dealer, except to a consumer, shall be at a maximum price of 10% above ex-factory (ex-mill) price. The petition alleges that the cloth in the office, shop and godown on 25th and 27th March 1945, when these places were sealed, were purchased at 8% above ex-mill price. Fixation of price is involved in regulating the distribution of articles, of which cloth is one. Power to make this order is conferred by R. 81 (2). In exercise of the powers conferred by sub-r. (2) of R.81, the Governor of Bengal made the Bengal Cotton Cloth and Yarn (Control) Order 1943, (herein called "the Bengal Cloth Order") which came into force on 1st February 1944. Amendments were made from time to time and in March 1943 the Order provided, inter alia that:

Paragraph 2 (g) "Director of Textiles" means the officer appointed by the Provincial Government as the Director of Textiles and includes any additional Director of Textiles. 3 (1) No person shall.... engage in any undertaking which involves the purchase, sale or storage for sale of cloth... unless he holds a licence in this behalf under the Order and except in accordance with the conditions specified in such licence.

4 (2) Licences issued under this Order shall be in Form B as set forth in the Schedule to this Order.

(3) If the Director of Textiles is satisfied that an application for a licence made under sub-paragraph (1) is in order, he shall issue the licence to the applicant.

8(1) No person being the holder of a licence under this Order shall contravene any of the Conditions subject to which he holds the licence....

SCHEDULE F.

Conditions of Licence

1. This Licence is being issued subject to the provisions of the Bengal Cotton Cloth and Yarn (Control) Order 1943.

2. The licensee shall comply with any directions that may be given by the Director of Textiles in regard to the sale.... of cloth.

Note. The licensee's attention is drawn to paragraph 8 of the Bengal Cotton Cloth and Yarn (Control) Order 1943 which reads...."

(The terms of paragraph 8 are then set out).

The petitioner firm is the holder of a licence issued pursuant to the Bengal Cloth Order. Rule 81 (2) (f) provides for the grant or issue of licences and, in this respect, the above Order conforms with the rule. Clause (a) of sub-r.(2) authorises a Provincial Government to require goods to be sold to specified persons the effect of condition 5, requiring compliance with the directions of the Director of Textiles in regard to the sale of cloth, is discussed later. In exercise of the powers conferred by cls. (a) and (f) of sub-r. (2) R. 81, on 24th March 1945, the Governor of Bengal made Order No. 3084 D. C. S. (herein called "The Search Order").The material provisions are:

Paragraph 2 : "... any police officer not below the rank of Sub-Inspector... may at any time enter and search any premises in which cloth.... is stored... 4 : Any police officer... searching any premises under the provisions of paragraph 3 of this Order, may seal... the premises so searched...

21. The Search Order is within the power conferred by R. 81 (2) (f). The petitioner's office premises were sealed on 25th March by police officers acting under the Order. Mr. Chatterjee, for the petitioner, complained that this was done without notice to the petitioner, and that the day on which it took place was Sunday when the office was locked and no one was present. The shop and godown were sealed two days later, on 27th March.

22. There is no substance in the complaint of absence of notice, the Order does not require it to be given and the action taken was authorised by the Search Order.

23. There was a further complaint that the business books and documents and some money were in the office, which the petitioner had been unable to obtain although the police authorities and the Director General of Consumer Goods had been asked, by petition, to return them. It is unfortunate that the books and documents were not handed over, or facilities afforded for examination and reference, and the money returned. The failure, however, to do this does not render unlawful the sealing of the premises. No point is made that the premises were sealed without a search being made; since no one was present and the premises were locked, it could not take place. It was not suggested, in argument, that the officer or officers who sealed the petitioner's premises were

not authorised to carry out the provisions of the Search Order. Order No. 1. S. dated 2nd April 1945, made by respondent 5, reads as follows:

Under powers conferred upon me by para. 5 of the conditions of the Licence in Form B of the Schedule to the Bengal Cotton Cloth and Yarn Control Order 1943 (which is issued to the petitioners and other cloth dealers)... I hereby issue the following directions: i. All licensees... within Calcutta... shall on demand make over all cloth in their possession to one of the undermentioned firms or companies for purchase by the firm or company and to none else: (Here follows the names of respondents 1-4) for the purposes of this direction the firms or companies shall be known as the Handling Agents.

ii. The licensees.....shall, on completion of the making over, give the Handling Agents... a bill with the original invoices in relation to the goods made over and payment shall subsequently be made by the Handling Agents at the following rates:

(c)... 7% over the ex-mill price of the goods in question.

The validity of Order No. I.S. is challenged on the following grounds: (a) Respondent 5 had no power or authority to issue it. (b) The compulsory sale of the Handling Agents will cause the petitioner a loss of 1% upon the price at which the goods were purchased, and the entire stock will be disposed of and the business closed down. (c) The petitioner will be deprived of property contrary to S. 299 (1), Government of India Act, 1935. (d) The direction, that payment will be made subsequent to handing over the goods, is contrary to the provisions of the Sale of Goods Act, 1930.

24. The Bengal Cloth Order provides for regulating the distribution of cloth, the sale of cloth and the issue of licences, and it prescribes by whom and the conditions upon which licences will be issued. This is in accordance with, and in the exercise of, the powers conferred upon the Provincial Government by R. 81. Included in these powers, there is a power to require cloth to be sold to specified persons, which power it can exercise itself or it can delegate the exercise of it to an officer. Respondent 5 is the Additional Director of Textiles, which office is included in the expression "Director of Textiles," and he is an officer to whom such delegation can be made. When a person, who has power to do an act himself or to authorise some other person to do it, gives a direction that, when the act is done by the other person, it shall be observed, the person giving the direction thereby confers authority upon that other person to do the act. The schedule to the Bengal Cloth Order contains the form of the licence which is directed to be issued and this form, with its terms or conditions, is part of the Order. Condition 5 of the licence states that the licensee shall comply with any directions given by the Director in regard to the sale of cloth and is one of the conditions subject to which para. 8 (1) provides a person holds a licence and which he is forbidden to contravene. The words "requiring" in R. 81 (2) (a) and "directions" in condition 5 bear the same meaning, namely, "order." If condition 5

had prescribed that there should be compliance with the directions of the Provincial Government this would have shewn that the power to make an order regarding the sale of cloth had not been delegated. But the provision that the holder of a licence shall comply with the directions of the Director, this being one of the conditions upon which the licence is held and which the holder is forbidden to contravene, and, therefore, which must be observed, is a direction to the Director to make an order regarding sale of cloth and is a delegation to him to exercise the power. At the date when respondent 5 made order No. 1. S, the power to make such order had been delegated to him and he was authorised, to make it. In these circumstances it is a valid order and is effective. Incidentally, I desire to observe, such order by respondent 5 is probably effective only in respect of persons who hold licences granted under the Bengal Cloth Order. This, however, is immaterial in the present proceedings since the petitioner is the holder of a licence.

25. Now as to the contention that Order No. 1. S. will deprive the petitioning firm of its property contrary to S. 299 (1), Government of India Act; this sub-section provides that: "No person shall be deprived of his property in British India save by authority of law." The contention was two-fold : Firstly, it is alleged (although not admitted by respondent 5, but is assumed) that the cloth was purchased at 8% above the ex-mill price; if it is sold at 7% above that price, as Order No. 1. S. directs, a loss of 1% will be incurred upon the transactions. Secondly, that the sale of the cloth will cause the petitioner's business to be closed down as the entire stock will be dispersed and further supplies will be unobtainable. The second contention was based upon the effect of the provisions of the Calcutta Cloth and Yarn (Movements Second Restriction) Order 1943, made on 24th March 1943 which provides in sub-para, (1) of paragraph 3 that:

During the continuance in force of this Order, no person shall more, or cause to be moved any cloth.... from any place of business or storage within Calcutta to any other place whatever outside such place of business or storage, except under and in accordance with the conditions of a permit granted in this behalf by the Director General.

By sub-para. (2) of para. 2 of the Order the expression "Director General" means the Director General of Consumer Goods appointed by the Provincial Government. It was not suggested that the Provincial Government was not empowered to make the Movement Order, but it was argued that its provisions prevent a seller giving delivery of cloth and, therefore, enforcement of order No. 1. S. will have the effect of closing down the petitioner's business as no purchases can be made to replace the stock if it is sold as directed by that order, since delivery will not be able to be obtained. Order No. 1. S. is authorised by the Defence of India Act and the Rules, respondent 5 had the power to make it, and it conforms with the provisions of the Act and Rules. Assuming that the petitioner will be deprived of property by virtue of the Order, that will be done with authority of law, and consequently, there will be no infringement of S. 229 (1).

Further, if the petitioner purchased the cloth at 8% above ex-mill price, he may have made a bad bargain and if so, he has no cause of complaint on that account; in regard to the sale of the entire stock, payment will be made for the cloth and this sale will not deprive the firm of its business; the goodwill and the name will remain; purchases can be made to replace the stock and delivery will not be impossible but will be obtained by means of a permit granted by the Director General to move the goods.

26. The remaining portion of the Order No. 1.S. to which exception is taken, is the direction that payment will be made subsequent to the goods being handed to the Handling Agents. It was contended that, under S. 32, Sale of Goods Act, the delivery of the goods and payment of the price are concurrent conditions and the petitioner, as seller, is entitled to be paid the price by the Handling agents at the time of delivery to them. Section 32 does so provide "unless it is otherwise agreed." The Order requires the petitioner to give the Handling Agents a bill with the original invoice relating to the purchase, upon completion of making over the goods to them, and is for the purpose of ascertainment of the price payable to the petitioner. The Sale of Goods Act contemplates payment at a date later than delivery, and, in commercial transactions, it is customary to give credit and payment is frequently made at some date subsequent to delivery. If, according to the terms of a contract, payment is not due upon delivery and, if no time is specified, it has to be made within a reasonable time. Respondent 5 has the power, which was delegated to him, to require the cloth to be sold, to specified persons; this must include power to prescribe the terms of the sale. He has done so by providing for payment subsequent to delivery but, since no time is specified, it will have to be made within a reasonable time. The Order does not violate the provisions of the Sale of Goods Act.

27. In my opinion the Defence of India Act and the rules made thereunder, the several Orders, issued respectively by the Central Government, the Provincial Government and respondent 5, are not ultra vires the Government of India Act but they are valid and are within the powers of the authorities by whom they are made. It follows that the petitioner is not entitled to the relief which is sought. The provisions of S. 45, Specific Relief Act, under which these proceedings have been taken, enable this High Court to make an order requiring any specific act to be done or forborne by any person holding a public office. In so far as respondent 5 is concerned, he is a public officer and the section can be invoked against him in a proper case.

28. The remaining respondents 1 to 4 are not public officers but are cloth merchants, carrying on businesses in Calcutta, who have been authorised to acquire cloth which must be sold to them by the owners. They are called "Handling Agents" in order No. 1. S., but this is merely an identification nomenclature and is not one of description. Proceedings do not lie against them under S. 45. In my view, the rule nisi granted by Ormond J. should be discharged and the application refused with costs.