

(1984) 09 MAD CK 0002

In the Madras High Court

Case No : Writ Petn No's. 5396 and 5397 of 1979 etc.

Sri. Rani Lakshmi Ginning, Spinning and Weaving Mills Pvt.
Ltd. and Others

APPELLANT

Vs

Textile Commissioner, Bombay and Others

RESPONDENT

Date of Decision : 05-09-1984

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 19(1), 369
Essential Commodities Act, 1955 — Section 16, 16(2), 3
Essential Commodities Ordinance, 1955 — Section 16
Essential Supplies (Temporary Powers) Act, 1946 — Section 3

Citation : AIR 1986 Mad 66 : (1894) ILR (Mad) 285

Hon'ble Judges : M.N. Chandurkar, C.J.; Sathiadev, J

Bench : Division Bench

Advocate : V.P. Raman, for K.V. Sridharan, P. Chidambaran, for M.N. Krishnamani, G. Ramaswami, for K.V. Sridharan, K. Govindarajan, for P. Seshadri, C. Nagarajan and K. Swami, G.M. Krishnakumar, P. Jayaraman, P. Jothimani, T. Vadivel, S. Rajaram, V. Rangarajan and C. Ramanathan, for the Appellant; O.R. Abdul Kalam, Central Govt. Standing Counsel, for the Respondent

Judgement

M.N. Chandurkar, C.J.—In this batch of writ petitions, the constitutional validity of Cl. 21(5) of Cotton Textiles (Control) Order, 1948,

and a notification issued by the Textile Commissioner in exercise of his powers under Cl. 20 and sub-clause (5) of Cl. 21 of the said Order issued

on 29th of June, 1979, has been challenged.

2. We shall deal with the facts of the case in W.Ps. 5396, and 5397 of 1979, and W.P. 1958 of 1980 and W.Ps. Nos. 3041 and 3042 of 1980.

The petitioner in W.P. 5396 of 1979 is a company known as Sri Rani Lakshmi Ginning. Spinning and Weaving Mills Pvt. Ltd., which has been

manufacturing yarn since the inception of the mill in 1961 only in cones and the

yarn packed in cones is used for manufacture of cloth by power

looms. The petitioner herein at no point of time had any reeling machine which is required for packing the yarn in hank form.

3. The petitioner in W.P. 1958 of 1980 is M/s. Nagammai Cotton Mills which is a partnership concern. In these mills also right from the lime the

mills went into production in 1960, the entire production is only in cones and the yarn packed in cones is used for manufacture of cloth by power

looms. The mills do not have reeling machines required for packing the yarn in the hank form and the mills are catering to the needs of the power

loom industry and the hosiery units.

4. W.P. 3041 of 1980 and 3042 of 1980 are filed by a private limited company known as M/s. Veeraraghava Textiles (P) Ltd., who are also

manufacturing fine counts of yarn having about 17500 spindles and the said textiles have been recently started in the year 1977 with new

machinery. The production has always been of fine counts of yarn in the form of cones and they have never marketed yarn in the form of hanks.

5. Some of the textile mills have only a spinning activity and they are known as spinning mills; some of them are weaving mills and some are

composite mills which are carrying on the activity of both spinning and weaving. The cotton yarns are of different varieties and their accepted

classification is that the varieties of counts 1 to 40 are called coarse, counts 40 to 60 are called medium yarns, between 60 and 100 counts are

called fine yarn and anything above 100 counts is described as very fine yarn. There are two methods of packing this yarn; One is the cone form

which is made available to power looms and hosiery industry, and the other is packing in the hank form which is exclusively "made available for the

handloom industry.

6. There does not seem to be much dispute that packing of yarn into the cone form or the hank form involves different processes. After the raw

cotton goes through different processes such as the flow room, carding, drawing, simplex and reaches spinning frames, if the yarn is to be packed

in the cone form, then the ring frame cops are fed into winding machines while if it is to be packed in the hank form, the ring frame cops are fed to

reeling machines.

7. At this stage, it is necessary to briefly outline the history of the relevant

provisions relating to the issue of the Cotton Textiles (Control) Order, 1948, hereinafter referred to as the Control Order. The Control Order was issued by the Ministry of Commerce and Industry of the Government of India on 2nd of August 1948 in exercise of the powers conferred by S. 3 of the Essential Supplies (Temporary Powers) Act, 1946. The Essential Supplies (Temporary Powers) Act, 1946, was itself enacted prior to independence on 19-11-46. When the Constitution of India was brought into force with effect from 26th January 1950 in Part 21, some, temporary transitional and special provisions were made. Art. 369 of the Constitution is one such provision. We are concerned with Art. 369(a) of the Constitution which reads as follows :-

Notwithstanding anything in this Constitution, Parliament shall, during its period of five years from the commencement of this Constitution, have

power to make laws with respect to the following matters as if they were enumerated in the concurrent list, namely-

(a) trade and commerce within a State and, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), cattle fodder (including oil cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica;.....

(b) ... but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof.

The Essential Supplies (Temporary Powers) Act, was itself of a temporary character, Sub-sec. (3) of S. 1 specifically provides that this Act shall

cease to have effect on the twenty sixth day of January, 1955, except as respects things done or omitted to be done before that date and S. 6 of

the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had then been repealed by a Central Act. Having regard to this

provision limiting the duration of time during which the Essential Supplies (Temporary Powers) Act, 1946 was to be enforced, the Act worked

itself out on 26th January, 1955.

8. On 26th January 1955, the Ordinance (Ordinance 1 of 1955) came into force. The Ordinance was known as Essential Commodities

Ordinance, 1955 which was promulgated on 21-1-1955. This Ordinance was replaced by the Essential Commodities Act, 1955, which came into

force on 1-4-1955. We have given a resume of these dates because they would become relevant when we deal with the contention of Mr. V. P.

Raman, that the Cotton Textile Order 1948 is wholly inoperative. It is also necessary to refer to Entry 33, as it was at the commencement of the

Constitution of List III, of Schedule VII. This entry was amended by the Constitution. Third Amendment Act with effect from 22nd February

1955. The entry before and after 22-2-1955 is re-produced below :

(see Table at bottom)

9. We must now set out some of the relevant provisions of the Control Order. In this Control Order, there are several provisions dealing with

production and distribution of yarn and cloth and as shall be referring only to such of those provisions as are relevant for the purpose of this case.

Sub-clause (aa) of S. 3 of the Order defines "yarn" as meaning any type of yarn manufactured either wholly from cotton or partly from cotton and

partly from any other material. "Producer" is defined in sub-clause (h) as meaning a person engaged in the production of cloth or yarn or by power

as defined in S. 2(g) of Factories Act, 1948, and the expression "produce" and its grammatical variants shall be construed accordingly.

10. Under Cl. 12 of the said Order every producer not being a producer having a spinning plant shall within hundred days from the commencement

of the Cotton Textiles (Control) Amendment Order, 1973, apply to the Textile Commissioner in Form "A" appended to this Order for the grant of

a registration certificate in respect of each powerloom in his possession.

11. Clause 20 of the Order empowers the Textile Commissioner to issue from time to time directions in writing to any manufacturer or class of

manufacturers or manufacturers generally regarding the classes or specifications of cloth or yarn which each manufacturer or class of

manufacturers, or manufacturers generally shall or shall not manufacture, and he is also empowered to make an order with regard to the maximum

or minimum quantities thereof which such manufacturer or class of manufacturers or manufacturers generally shall manufacture. Cl. 20 with its sub-

clauses (1) to (4) reads as follows : -

20(l). The Textile Commissioner may from time to time, issue directions in writing to any manufacturer or class of manufacturers, or manufacturers

generally regarding-

(a) the classes or specifications of cloth or yarn which each manufacturer or class of manufacturers, or manufacturers generally shall or shall not

manufacture, or

(b) the maximum or minimum quantities thereof which such manufacturer, or class of manufacturers or manufacturers generally shall manufacture

during such period as may be specified in the order:

Before 22-2-1955

33. Trade and commerce in, and the production supply and distribution, of the products of industries where the control of such industries by the

Union is declared by Parliament by law to be expedient in the public interest.

After 22-2-1955

33. Trade and commerce in, and the production, supply and distribution of,

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public

interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oil seeds and oils;

(c) cattle fodder, including oilcakes; and other concentrates;

(d) raw cotton, whether, ginned or unginned, and cotton seed; and

(e) raw jute".

Provided that in issuing the direction under this sub-clause the Textile Commissioner shall have regard to :

(i) the demand for cloth or yarn; and

(ii) the needs of the general public;

(iii) the special requirements of the industry for such cloth or yarn;

(iv) the capacity of the manufacturer or class of manufacturers; or manufacturers generally, to manufacture different descriptions or specifications of cloth or yarn and

(v) the necessity to make available to the general public cloth of mass

consumption;

(2) while issuing any direction under such Cl. (1) the Textile Commissioner may also provide that such direction shall be with reference to the

quantity of cloth or yarn packed by the manufacturer, or class of manufacturers; or manufacturers generally during the period referred to in that

sub-clause.

(3) every manufacturer, or class of manufacturers or manufacturers generally, to whom a direction has been issued shall comply with the direction;

(4) where, on an application made by any manufacturer or class of manufacturers or otherwise, the Textile Commissioner is satisfied that any

direction issued by him under this clause cause undue hardship or difficulty to any such manufacturer or class of manufacturers he may, by order

and for reasons to be recorded in writing, direct that the directions shall not apply, or shall apply subject to such modifications as may be specified

in the order, to such manufacturers or class of manufacturers"".

It will be seen that under sub-clause (4), there is a power given to the Textile Commissioner to exempt a manufacturer or class of manufacturers

from complying with the directions issued under Cl. 20 in case the Textile Commissioner finds that there is any hardship or difficulty on account of

which it is not possible for the manufacturer or the class of manufacturers to comply with the directions. While Cl. 20 deals with the power to

control production. Cl. 21 of the Control Order controls the disposal of cloth and it provides that no manufacturer of cloth shall sell or otherwise

dispose of cloth except in packed condition in the manner indicated in that clause. The material part of Cl. 21 (1) reads as follows :-

21(1) No manufacturer of cloth shall sell or otherwise dispose of cloth except in packed condition in the manner indicated below, namely :

(i) full bales containing not less than 1400 metres or not more than 1600 metres of cloth;

(ii) three-quarter bales containing not less than 1050 metres or not more than 1200 metres of cloth; or

(iii) half bales containing not less than 700 metres or not more than 800 metres of cloth; or

(iv) (a) one-third bales containing not less than 450 metres or not more than 550 metres of, cloth; or

(b) quarter bales containing not less than 350 metres or not more than 4(X) metres of cloth; or

(c) one-eighth bales containing not less than 175 metres or not more than 2(X) metres of cloth; or

(vi) One-sixteenth bales containing not less than 88 metres or not more than 100 metres of cloth"".

These clauses regulate the manner in which the bales of cloth have to be packed. The provisos to sub-clause (1) of Cl. 21 are not material for our

purpose. Sub-clause (2) of Cl. 21 controls the disposal of yarn and regulates how the bales of yarn and their weight is to be determined. We are

not for the purpose of this case concerned with sub-clause (2): Sub-clauses (4) and (5) are material which read as follows :

21(4). The Textile Commissioner may, subject to sub-clauses (1) and (2) by a general or special order, prescribe the manner in which any

manufacturer shall pack cloth or yarn in bales or packages.

(5) The Textile Commissioner may, by General or special Order, direct any manufacturer or class of manufacturers to pack yarn in hanks, cones

or in any other form and in such proportion as he may consider necessary or expedient; and thereupon such manufacturers or class of

manufacturers shall be bound to comply with such directions"".

It is common ground that sub-clause (5), which has been the subject of a serious debate at the Bar, was introduced for the first time on 26th

March 1963 by amending Cf. 21 by what is called the Cotton Textiles (Control) (Third Amendment) Order, 1963.

12. We now come to the impugned notification issued by the Textile Commissioner. This notification deals with the Control of distribution of yarn

and it reads as follows :

In exercise of the powers conferred on me by Cl. 20 and sub-clause (5) of C1. 21 of the Cotton Textiles (Control) Order, 1948 and in

supersession of the directions contained in the Textile Commissioner's notification No. CER/17/74 dated 14th January, 1974, I hereby issue the

following directions-

(i) These directions shall come into force immediately and shall continue to be in force till 31st March, 1982.

(ii) These directions shall be complied with by all producers of yarn.

(iii) If a producer of yarn is not able to comply with the provisions of this notification for valid reasons he shall apply forthwith to the Textile

Commissioner giving full justification for his inability to comply with the notification and obtain his specific orders in that behalf.

(2) Every producer of yarn shall pack yarn for civil consumption in hank form in each quarter commencing from the July- September, 1979,

quarter and in every subsequent quarter in proportion of not less than fifty per cent of total yarn packed by him during each quarter for civil

consumption.

Provided that not less than eighty five per cent of the yarn required to be packed in hank form shall be of counts 40s and below.

Provided further that the obligation to pack hank yarn pertaining to a particular quarter can be fulfilled before the end of the month succeeding the

quarter to which the obligation pertains".

Rest of the notification is not necessary for our purpose. This notification was originally to continue to be in force till 31st of March 1982. But by

another notification issued on 11th March 1982, the Textile Commissioner has extended the operation of this notification for a further period of

three years, that is, from 1-4-1982 to 31-3-1985. For completing the resume of the relevant orders, the last thing now required to be referred to is

a press note issued by the Textile Commissioner on 19th July 1979 by which a facility was made available that the obligations which were imposed

by the impugned notifications for packing of yarn in hank form could be fulfilled either through packing in the unit to which the obligation pertains or

by transferring and getting it packed through other units, that is to say, if a particular spinning mill had to comply with the requirements of the

impugned notification, it had two options before it; either to manufacture the yarn and have it packed in hank form as contemplated by the

impugned notifications or to have this done through some other unit.

13. We may also refer to an earlier notification of 14th January 1974 issued by the Textile Commissioner in exercise of the powers conferred by

Cf. 21(5) of the Control Order by which he directed that every yarn producer shall pack yarn for civil consumption in hank form not less than 110

per cent of the monthly average of yarn packed by him during the year 1972. When some of the Mills approached the Textile Commissioner that

they have not been producing hank yarn, and they should therefore be exempted from this notification, the Textile Commissioner issued a letter

dated 20th January, 1975 that if the mills had not packed any cotton yarn in hank form in the year 1972, there was no obligation to fulfill on the

part of the mills under the notification dated 14-1-74. (See letter dt. 20th January 1975 - page 41 of the typed set in W. P. Nos. and 3042 of 1980).

14. The main contention in these three sets of petitions as well as in other identical petitions is that Cl. 21(5) of the Control Order suffers from the

vice of arbitrariness and uncontrolled power vested in the Textile Commissioner and is, therefore, violative of Article 14 of the Constitution of

India, inasmuch as there are no guidelines anywhere in the control order to which the Textile Commissioner can have regard when making the

Order contemplated by Cl. 21(5). The impugned notification of 1979 is also challenged on the ground of violation of Art. 14 of the Constitution

as well as on the ground of violation of fundamental right under Art. 19(1)(g) of the Constitution. As according, to the petitioners, the Order places

an unreasonable restriction on the right of the petitioners to carry on their trade and business. Before we deal with these arguments, we shall deal

with the constitutional point which was raised by Mr. V. P. Raman, which, according to him, creates a serious infirmity in the validity of the Textile

Control Order, inasmuch as according to the learned counsel, the said order cannot be treated as effective in law and cannot be sustained on the

ground that it is saved by the saving clauses in Ordinance I of 1955 or in the Essential Commodities Act, 1955. The argument is that the Essential

Supplies (Temporary Powers) Act, 1946, expired on 26th January, 1955; the power to enact legislation like the Essential, Commodities Act,

1955, could be exercised by the Parliament only after 22-2-1955 when Entry 33 in List III of Schedule VII came to be amended and the Essential

Commodities Act, came into force on 1-4-1955. The learned counsel, therefore, contends that if the Essential Supplies (Temporary Powers) Act

expired on 26th January 1955 and the period of five years provided by Art. 369 of the Constitution also expired on, 26th January 1955 and the

legislation in the form of Essential Commodities Act having come into force on 1st of April, 1955, there was clearly a hiatus between 26-1-1955

and 22-2-1955 or 1-4-1955 and there is no valid law with reference to which the Control Order could be sustained, and therefore, according to

the learned counsel the Control Order must be deemed to have lapsed on 26th January 1955. The result, according to the learned counsel,

therefore, is that no Control Order having been issued after the Essential Commodities Act came into force, neither the Textile Commissioner nor

the Central Government could fall back upon the Control Order of 1948, and therefore, the impugned notification must be deemed to have been

issued under an invalid provision like Cl. 20(1) and Cl. 21(5) of the Control Order. Therefore, according to the learned counsel the notification

impugned in these petitions must be declared to be invalid and unenforceable.

15. The learned counsel has fairly brought to our notice two decisions of the Supreme Court in which the Control Order has been held to be legally

valid. But the argument is that the hiatus between 26-1-1955 and 22-2-1955 does not seem to have been brought to the notice of the Supreme

Court. The learned counsel, therefore, stated that even though the Supreme Court has held the Control Order to be valid, it is open to him to argue

that in spite of the Supreme Court's decision the Control Order should be treated as invalid. The submission though apparently plausible, cannot

bear a close scrutiny. We have referred earlier to the fact that the Essential Supplies Temporary Powers) Act, expired on 26-1-1955. The power

vested in the Parliament by Article 369 of the Constitution to legislate, inter alia, in respect of production, supply and distribution of cotton and

woollen textiles ceased under that Article with effect from 26th January, 1955. In other words, no law dealing with the subjects mentioned in

clauses (a) and (b) of Article 369 of the Constitution could have been enacted by the Parliament validly after 26th of January 1955, unless the

power to enact such legislation could be expressly traced to any one of the entries in List I of Schedule VII or List III of Schedule VII. It is to be

remembered that the Essential Commodities Act, 1955 was preceded by the Essential Commodities Ordinance, 1955, which came into force on

26th January 1955. It is not in dispute that substantially the Essential Commodities Ordinance, 1955, covers the same field as the Essential

Supplies (Temporary Powers) Act, 1946. If the Essential Commodities Ordinance, 1955 has validly been issued, then there is no hiatus between

the expiry of the Essential Supplies (Temporary Powers) Act, 1946 and the period prescribed under Art. 369 of the Constitution, because the

date on which the Essential Supplies (Temporary Powers) Act expired, there was brought into force the Ordinance, namely the Essential

Commodities Ordinance, 1955. The question really is, whether the Essential Commodities Ordinance, 1955, owes its promulgation to the

legislative power vested under Art. 369 of the Constitution or to any other entries which can validly be the subject of legislation either in List I or in

List III of schedule VII. It is here that Entry 33 in List III becomes relevant.

16. Undoubtedly, entry 33 before and after 22-2-1955 differs in certain matters. But if a comparison is made of the two entries, then it is obvious

that what originally was entry 33 is now clause (a) of Entry 13 and by the amendment of the Constitution by the (Third Amendment) Act, all that

has been done in Entry 33 is to introduce additional clauses (b), (c), (d) and (e) as well as addition of the words imported goods of the same kind

as such products". Now whether you take the original Entry 33 before 22-2-1955 or you take clause (a) of Entry 33 after 22-2-1955, it is clear

that there has always been a power in the Parliament to legislate upon the subject of trade and commerce in and the production Supply and

distribution of the products of industries where the control of such industries of the Union is declared by Parliament by law to be expedient in the

public interest. In other words even before 22-5-1955, there has been power in the Parliament to legislate on control of products of certain

industries, but that power could be exercised only if the Parliament has by law declared that the control of such industries is expedient in the public

interest, In other words, a power to legislate under Entry 33 could be validly exercised only if there was a law made by Parliament specifying the

industries the control of which was expedient in the public interest. If we are able to find a law dealing with this subject specifying the industries the

control of which is by the Union declared by Parliament by law to be expedient in the public interest and if one such industry is the textile industry,

then there was power in the Parliament to legislate in respect of the textile industry. If there is a legislative power in the Parliament to legislate in

respect of the textile industry, there would be power in the President to issue the Ordinance in respect of the same subject.

17. The Parliament has already enacted in 1951, the Industries (Development and Regulation) Act, 1951, Section 2 of this Act specifically makes a

declaration contemplated by Entry 33. Section 2 reads as follows :

2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First

Schedule".

There is no doubt that item 23 in the First schedule specifically relates to "textiles" including those dyed, printed and otherwise processed. A textile

industry is therefore an industry in respect of which the Parliament has by law enacted that it is expedient in the public interest that that industry

should be taken under the control of the Union of India. The effect of this enactment, therefore, is that any legislation in respect of the textile

industries after 31st October 1951, when the Industries (Development and Regulation) Act, 1951, came into force, would be not in the limited

exercise of the legislative power under Article 369, but it would be in the exercise of the Parliament's power of legislation under Entry 33 of List

III of Schedule VII. The Essential Commodities Act was admittedly a valid piece of legislation and the Ordinance is also a valid one and having

regard to the saving provision in Clause 16 of the Ordinance and the corresponding saving provision in section 16 of the Essential Commodities

Act it is clear to us that the Control Order of 1948 continued to be effective even after 26th January, 1955. Up to 26th of January 1955, the

Control Order was effective by virtue of it having been issued in exercise of the powers under the Essential Supplies (Temporary Powers) Act,

1946. With effect from 26th January 1955, it continued to be in force till 1-4-1955 by virtue of the saving clause in the Essential Commodities

Ordinance which expressly provides inter alia that any order made under the Essential Supplies (Temporary Powers) Act, 1946, and in force

immediately before the commencement of the Ordinance shall in so far as such Order may be issued under this Ordinance, be deemed to be made

under this Ordinance and continue in force. There is no doubt that an order like the one in question could validly be made under clause 3 of

Ordinance 1 of 1955 which is similar, indeed, identical to section 3 of the Essential Commodities Act, 1955. On or after 1-4-1955 the Control

Order got its sustenance from the power u/s 3 of the Essential Commodities Act

read with section 16 of the said Act. Section 16 of the Act

repeals the Ordinance and section 16(2) expressly provides that any order made or deemed to be made (under the Essential Supplies (Temporary

Powers) Act, 1946) by any authority under law repealed by the Act and in force immediately before the commencement of the Ordinance shall in

so far as such order may be made under the Ordinance be deemed to be made under this Ordinance and continue in force. We have, therefore, no

doubt that the Control Order is a valid order and does not suffer from any constitutional infirmity by virtue of what has been described to us as the

hiatus.

18. The two decisions referred to us by Mr. V. P. Raman are *The State of Bihar Vs. Hiralal Kejriwal and Another*, and *Shree Meenakshi Mills*

Ltd. Vs. Union of India (UOI), . In *The State of Bihar Vs. Hiralal Kejriwal and Another*, the Supreme Court has in terms held that the Cotton

Textiles (Control of Movement) Order, 1948 which was the order in question before the Supreme Court, continued in legal force even after the

expiry of the Essential Supplies (Temporary Powers) Act, 1946 under which it was made, by virtue of the saving provisions of section 16 of the

Essential Commodities Ordinance, 1955 read with section 16(2) of the Essential Commodities Act, 1955. Dealing with the Ordinance the

Supreme Court pointed out that u/s 16 of the 1955 Ordinance, the Order made under the Act of 1946 continues to be in force till another Order is

made under the Ordinance and that it covers two periods, namely, (i) the period up to the date of the commencement of the Ordinance; and (ii) the

period thereafter. The Supreme Court has pointed out that the first part gives life to that Order, and therefore, the acts authorised under that Order

can be done subsequent to the coming into force of the Ordinance. This decision has been followed in *Shree Meenakshi Mills Ltd. Vs. Union of*

India (UOI), where the Supreme Court has taken a similar view. However, since on merits we have found that Mr. Raman's contention cannot be

accepted, it is not necessary for us to go into the question as to whether because the hiatus has not been pointed out to the Supreme Court, the

contention that the Control Order is bad can be entertained notwithstanding the decision of the Supreme Court.

19. This brings us to the second contention relating to the validity of clause

21(5) of the Control Order in the context of the requirement of Article 14 of the Constitution of India. Different aspects of this point have been argued before us by Mr. Raman, who appeared in W. Ps. 5396 and 5397 of 1980, by Mr. P. Chidambaram in WP 1958 of 1980 and Mr. G. Ramaswamy who appeared in WPs XAI and 3042 of 1979 and other connected petitions. Substantially the argument is that clause 21(5) treats all mills which carry on the activity of spinning yarn, similarly irrespective of their capacity, whether they are equipped to produce yarn of lesser count and irrespective of whether they are equipped to pack yarn in hanks instead of cones. An argument is also made that there are no guidelines regulating the exercise of the power to issue the order contemplated by clause 21(5) and therefore, the Order made thereunder is itself ultra vires. Reference is made to the fact that there is no power of exemption from the operation of the direction made under clause 21(5) and a comparison is made of the provision in clause 20(I) and clause 21(5). Identical affidavits have been filed on behalf of the Union of India. The point taken therein is that the whole object of issuing the impugned order under clause 21(5) is to ensure that basic raw material is made available to the decentralised handloom sector and it was not desirable that the spinning Mills which pack yarn for civil consumption should only concentrate on feeding the handloom sector. The contention therefore appears to be that the needs of the handloom sector have been gone into by the Commissioner and with a view to meet the needs of the handloom sector these directions have been issued under clause 21(5). Mr. O. R. Abdul Kalam, the learned counsel appearing on behalf of the contesting respondents contended that the Control Order itself provides for a remedy in the form of an appeal under clause 36 and therefore, the petitioners were not entitled to straightway approach this Court under Art. 226 of the Constitution. In so far as the guidelines are concerned, the learned counsel has contended that it is not proper to read clause 21(5) in isolation and that clause 21(5) has to be read along with clause 20 as well as section 3 of the Essential Commodities Act and if clause 21(5) is so read, the guidelines according to the learned counsel, are to be found in section 3 of the Essential Commodities Act can be exercised to maintain or increase the supply of essential commodity or to secure the equitable distribution and

availability at fair prices of certain commodities. The learned counsel has therefore contended that the notification has been issued in order to

control production, distribution and supply of yarn to the handloom industry as a measure of protection to the handloom industry as it is necessary

to achieve the object of the enactment, namely, the Essential Commodities Act, 1955. It is strenuously pressed upon us that installation of a reeling

machine does not involve any excessive expenditure and that there were mills which have put reeling machines in small sheds. As a matter of fact,

the arguments which were made by the learned counsel for Union of India overlapped to a certain extent in the context of both Article 14 and

Article 19 of the Constitution of India, which are relevant for the purpose of deciding the challenge under Article 14 of the Constitution.

20. It now becomes necessary to analyse the scope of the two material clauses, namely, clause 20 and clause 21 (5)) of the Control Order. As

already pointed out, there is no manner of doubt that while clause 20 deals with regulation of cloth or yarn, the subject matter of clause 21 is

primarily packing of cloth as far as clauses (i) to (iv) are concerned. The important circumstance, which, however, has to be referred to is that the

substantive part of clause 20(1) empowers the Textile Commissioner to make an order either in respect of an individual manufacturer or class of

manufacturers or manufacturers generally regarding what kind of cloth or yarn each manufacturer or class of manufacturers or manufacturers

generally shall or shall not manufacture or with regard to maximum and minimum quantity of such manufacture and there are inbuilt guidelines in

clause 20(I) itself which are put in that clause in the form of a proviso. The proviso to clause 20(I) makes it obligatory for the Textile Commissioner

to take into consideration five factors which are enumerated therein. The words of the proviso appear to be mandatory in character because the

words are ""provided that in issuing the direction under this sub-clause the Textile Commissioner shall have regard to"". The Central Government

therefore, did not want to give any uncontrolled power to the Textile Commissioner, when they were authorising the Textile Commissioner to

regulate the manufacture of cloth or yarn. The factors which are enumerated in the proviso are very material factors, each of which turns on the

determination as to the, cloth, yarn or the classification of cloth or yarn and the quantities of cloth or yarn in respect of which the regulatory power

under clause 20(I) can be exercised. Under sub-clause (i) of the proviso, the Textile Commissioner has to consider the demand for cloth or yarn.

Under sub-clause (ii) he has to consider the needs of the general public. Under sub-clause (iii) he has to consider the special requirements of the

industry for such cloth or yarn. Under clause (iv) the Central Government requires the Textile Commissioner to consider the capacity of the

manufacturer or class of manufacturers, or manufacturers generally, to manufacture cloth or yarn of different descriptions or specifications. This

clause provides a very important safeguard against arbitrary exercise of power while determining what class of cloth or specifications of cloth can

be directed to be manufactured. The quantity of cloth and the character of the cloth also has to be determined on the basis of the necessity to make

available the cloth to the general public. The proviso highlights as a fact that very relevant circumstances have to be taken into account by, the

Textile Commissioner before he makes an order requiring either a manufacturer or a class of manufacturers or manufacturers generally to produce

only certain kind of cloth or yarn. These guidelines are useful for deciding whether power Under clause 20(I) has been properly exercised or not.

The power under clause 20(I) is thus clearly a controlled power. It is regulated by certain determinative factors which have to be objectively

ascertained by the Textile Commissioner. In addition to this requirement of complying with the proviso, there is an additional safeguard, which the

Central Government has provided in clause (4) which enables the Textile Commissioner to exempt any particular manufacturer or class of

manufacturers from the purview of the directions given under clause 20(I). When we contrast the provisions of clause 21(5) with clause 20(4), we

find that there is no safeguard at all anywhere provided, nor is there any guideline for the Textile Commissioner on the basis of which he can

determine as to which manufacturer or class of manufacturers should be directed to pack yarn in hanks, cones or in any other form and in what

proportion such yarn is to be packed. The words used are "'as he may consider necessary or expedient'". Clause 21(5) makes it obligatory on the

manufacturers to comply with his directions once they are issued. The capacity of the manufacturer and the question as to whether manufacturers

are equipped to pack yarn in hanks, cones or in other forms is not required to be considered by him at all. A bare reading of the provision of

clause 21(5) would therefore, show that the proviso under that clause gives completely uncontrolled and uncanalized power which can only be

described as an arbitrary power depending upon what he considers is necessary or expedient. The effect of the direction which is issued under

clause 21(5) can be that a manufacturer who has no equipment or machinery to pack yarn in hanks will have to install new machinery consequent

upon the direction made under clause 21(5) and if he has been packing yarn in hanks and the direction is to pack in cones, he has to install

machinery for packing in cones because he is bound to comply with the Order. Clause 21(5) enables also the Textile Commissioner to fix a

proportion of the packing to be done in hanks and packing to be done in cones, On what basis he has to determine this proportion is not indicated

anywhere and yet if he does make an order prescribing different percentages for packing in cones and packing in hanks, the manufacturers or class

of manufacturers are bound to comply with this requirement, irrespective of whether they are equipped to undertake such work or not.

21. Our attention has been invited to the earlier direction of 14-1-1974 in which the Textile Commissioner had taken the stand that if the mill

concerned had not packed any cotton yarn in hank form in the year 1972, there was no obligation on their part to comply with the direction issued

under the said notification.

In other words, a proper and consistent stand which is taken in the year 1974 has been abandoned when a notification is now issued in exercise of

the power under clause 21(5). It may not be difficult to follow such a direction by which the Textile Commissioner has fixed up the quantity of yarn

to be packed in hank form only in a case where the mill was already packing yarn in the hank form. No change of machinery was necessary in

such a case. However, when an order is now made without having regard to the capacity of the manufacture to pack yarn either in hanks or in

cones, it is obvious that such a power would clearly be an arbitrary power which would be invalid for want of any guidelines and it would be

violative of Art. 14 of the Constitution, When we see the impugned notification of 29th June 1979, it undoubtedly, conforms to clause 21(5) but it

is not a notification which is exclusively covered by clause 21(5). The first part of the notification is one which falls within clause 21 (5), but the

proviso which we have already extracted is expressly under clause 20. Clause 2 of the impugned notification is a blank order applicable to all

manufacturers and producers of yarn irrespective of their capacity, irrespective of their inability to do the packing in hanks. It says that every

producer of yarn shall pack yarn for civil consumption in hank form in each quarter commencing from the July-September quarter and in every

subsequent quarter in proportion if not less than fifty per cent of total yarn packed by him during each quarter for civil consumption. The effect is

that of the quantity of yarn packed in each quarter for civil consumption. 50 per cent has to be necessarily packed in hank form. We may point out

that this matter has been argued before us on behalf of the Union of India for a fairly long time but there is nothing which has been pointed out in

the affidavit as to on what basis this 50 per cent figure has been fixed. Undoubtedly some figures with regard to the proposed production in the

handloom sector have been shown to us. But there is nothing in the affidavit which links up these figures with the figure of 50 per cent specified in

the impugned notification. While this part of the notification squarely falls under clause 21(5), the proviso has really nothing to do with packing but

it is substantively a direction with regard to the kind of cloth and specification of the cloth which is required to be produced. The proviso says that

not less than 85 per cent of the yarn required to be packed in hank form shall be of counts 40s and below. The second proviso is not very

material. The effect of the proviso is that out of that 50 per cent of the total production of yarn packed in a quarter, 85 per cent of the yarn has to

be necessarily of count 40s and below. The proviso really takes in two aspects, firstly, it specifies the quantum of 85 per cent of 50 per cent and

secondly ii prescribes quality of the yarn or there is a specification with regard to the yarn, namely, that it should be of counts 40s and below.

22. Now what is the effect of this proviso (?) The effect of the proviso is that mills which are producing only fine or extra fine yarn have to switch

over their production to yarn of counts 40s and below and to the extent of 85 per cent of the 50 per cent of the yarn produced and packed in a

quarter. Apart from all other challenges, we find that there is clearly an infirmity in this part of the direction, if it is tested on the touchstone of the

proviso to clause 20(1) of the control Order. When the Textile Commissioner wants to exercise the power of determining what specification of yarn

each manufacturer or class of manufacturers or manufacturers generally shall manufacture, he is duty bound to consider all the five relevant factors specified by the Central Government in the proviso. There is nothing stated in the affidavit in return which can even be read as indicating that while making the direction contained in the proviso in clause 2 in the impugned notification, any of the circumstances specified in the proviso have been considered. As we have already pointed out the circumstances referred to in the proviso to clause 20(I) have to be objectively considered and where an exercise of power is challenged, then this objective consideration has to be subjected to the scrutiny of the court. In the absence of any justification or a statement or details of how the factors stated in the proviso were considered by the Textile Commissioner, we fail to see how it is even remotely possible for the respondents to support the exercise of the power under clause 20(I) manifested in the proviso in the impugned notification. Making provision for the handloom industry is undoubtedly a laudable object. But when one makes a provision for the handloom industry, that provision has to be made in accordance with the laws and the orders in force. The, Control Order is the law in force which has to be complied with before any manufacturer is directed to produce any particular kind of yarn. It can never be disputed that the handloom industry should not be allowed to suffer and that the powerloom industry should alone be allowed to prosper. But if certain rules and regulations have been made by the Central Government itself, the Textile Commissioner is bound to follow these rules and regulations, more so, when the Central Government has taken care to regulate and control the production of the factories including the factories which have the capacity of manufacturing and producing a particular kind of yarn, before the Textile Commissioner calls upon the manufacturers individually or collectively to manufacture yarn of counts of 40s and below. He has to take into consideration the capacity and the question whether a particular manufacturer is in a position to be called upon to manufacture yarn of counts different from what the machinery is intended for is a factor to be taken into consideration also for the purpose of the power of exemption under sub-clause (4) of clause 20 of the Control Order.

23. The Notification, therefore, suffers from a double vice. It suffers from a vice of arbitrary determination of the percentage of total yarn to

be packed in hank form. It also suffers from the vice of having been made in exercise of a provision in clause 21(5) which itself suffers from the

vice of arbitrariness and therefore, hit by Article 14 of the Constitution. So far as the proviso to clause 2 in the impugned notification is concerned.

it also suffers from a double vice. The first part is unseverable from the latter part of clause 2 itself because 85 per cent prescribed therein cannot

stand apart from 50 per cent prescribed in the main part of clause 2 of the impugned notification. The second vice is that it suffers from the infirmity

that it has been issued without having regard to the mandatory provision of the proviso to clause 20(I) of the Control Order. Clause 2 of the

impugned notification must, in our view, therefore, be held to be wholly invalid in law.

24. The opening, part of the impugned notification merely prescribes a period of its operation and an obligation on the part of the producers of

yarn, to comply with the directions. Clause (iii) of the notification undoubtedly requires a producer of yarn to apply to the Textile Commissioner for

an exemption giving full justification for his inability to comply with the notification and he has to state valid reasons. The power to exempt is

however, not found specifically in clause 21(5) itself. But we also fail to see how where there are no guidelines which would control the exercise of

power under clause 21(5), the Textile Commissioner can really bring to bear his mind upon the circumstances which he shall take into account

when determining whether a particular producer of yarn should be exempted from the operation of the impugned notification or not. Even the

power of exemption has to be exercised with reference to some objective considerations and only if the producer of yarn knows or has knowledge

of the circumstance on the basis of which the proportion of 85 per cent of 50 per cent with regard to the quality of yarn is determined that he may

be able to make out a case for exemption. Otherwise the only ground on which a person could claim any exemption except would be that he is not

in a position to comply with the direction of packing yarn in the hank form because of want of adequate equipment and machinery. A grievance has

been made before us that as a matter of policy all the applications for exemption have been rejected. It is true that these orders of rejection for

exemption do not disclose as to what were the matters which were considered for rejecting the claim for exemption, but that however now is not of

much importance because on merits we have found that not only the impugned notification is invalid but also clause 21(5) of the Control Order is invalid.

25. It is not necessary to catalogue all the decisions which laid down that unchannelled and arbitrary discretion is patently violative of the requirements of reasonableness in Art. 19 and of equality under Article 14, of the Constitution. We will however refer to some latest decisions.

The first one is *R N. Kaushal v. Union of India*, AIR 1918 SC 1457. In paragraph 62 of the judgment after referring to *State of Madras Vs. V.G.*

Row, *M.R. Seshadri's case in R.M. Seshadri Vs. The District Magistrate, Tanjore and Another*, and *LaLa Hari Chand Sarda Vs. Mizo District*

Council and Another, in which it was observed that a provision which leaves an unbridled power to an authority cannot in any sense be

characterised as reasonable, the Supreme Court observed as follows :-

Other decisions in the same strain were cited, indeed an annual shower of decisions on this point issues from this Court. But the essential point

made in all these cases is that unchannelled and arbitrary discretion is patently violative of the requirements of reasonableness in Article 19 and of

equality under Article 14, a proposition with which no one can now quarrel. Reasonableness and arbitrariness are not abstractions and must be

tested on the touchstone of principled pragmatism and living realism.

26. Mr. P. Chidambaram, learned counsel appearing for one of the petitioners has referred to the decisions of the Supreme Court in *R.M.*

Seshadri Vs. The District Magistrate, Tanjore and Another, .

In that case one of the conditions of the licence issued under the Cinematograph Act was that the licensee shall exhibit at each performance one or

more approved films of Such length and for such length of time, as the Provincial Government or the Central Government, may, by general or

special order, direct. This was challenged before the Supreme Court and the Supreme Court took the view that neither the length of the film nor

the period of time for which it may be shown is specified in the condition and the government is vested with an unregulated discretion to compel a

licensee to exhibit a film of any length at its discretion which may consume the whole or the greater part of the time for which performance is given.

The Supreme Court then observed as follows :-

Now if there is nothing to guide the discretion of the government It is open to it to require the licensee to show approved films of such great length

as may exhaust the whole of the time or the major portion of it intended for each performance the condition stands, there can be no doubt that

there is no principle to guide the licensing authority and a condition such as the above may lead to the loss or total extinction of the business itself.

A condition couched in such wide language is bound to operate harshly upon the cinema business and cannot be regarded as a reasonable

restriction. It savours more of the nature of an imposition than a restriction".

Undoubtedly, the condition was held to be violative of the fundamental right under Art. 19(1)(g) of the Constitution of India, but what is important

is that it was found that there was no principle to guide the licensing authority and therefore, the condition was bad. In other words, it is one of

those cases where the power was held to be arbitrary. Then reference was made by him to another decision in *Dwarka Prasad Laxmi Narain Vs.*

The State of Uttar Pradesh and Others, . There also the clause under the U. P. Coal Control Order, 1953, was challenged on the ground of

violation of Art. 19(1)(g) of the Constitution. The clause related to the grant and refusal of licence and the Supreme Court found that the licensing

authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under

that order and the only thing he has to do is to record reasons for the action he takes. That power could be exercised by any person to whom the

State Coal Controller may choose to delegate the same and the choice can be made in favour of any and every person. The Supreme Court found

that no rules had been framed and no directions given on these matters to regulate or guide the discretion of the Licensing Officer. The Supreme

Court observed as follows : -

"Practically the Order commits to the unrestrained will of a single individual the power to grant, withhold or cancel licences in any way he chooses

and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from

improper execution of the same".

When an agreement was advanced that the requirement of recording reasons was sufficient safeguard, that argument was rejected because it was

found that there was no higher authority prescribed in the Order who Could examine the propriety of these reasons and revise or review the decision of the subordinate officers.

27. No doubt, it was contended by Mr. O. R. Abdul Kalam, learned counsel appearing for the respondents that any order made by the Textile

Commissioner could be the subject-matter of an appeal under clause 36 of the Control Order. We fail to see how an appeal against an order

which is made in the exercise of powers of discretion would stand on a higher footing than the order itself. If there are no guidelines which control

the exercise of the power under clause 21(5) of the Control Order, then there was nothing on the basis, of which the appellate authority could also

decide whether the power has been properly exercised or not. There are no guidelines with reference to which the appellate authority could test

the order in terms of clause 21(5) of the Control Order. The mere fact that there is an appeal provided for does not therefore take away the

infirmity which is inherent in clause 21(5) of the Control Order.

28. An argument was advanced before us that the impugned notification was bad because it fails to classify mills and that all mills wherever situated

are treated alike in respect of the said notification without taking into account the capacity of the mills. Reliance was placed on the decision of the

Supreme Court in *Kunnathath Thathunni Moopil Nair Vs. The State of Kerala and Another*, . It is the well-known case where the constitutionality

of the Travancore Cochin Land Tax Act, 1955 was questioned. In that case tax was levied on property without taking into account the nature of

the property. As found by the Supreme Court the tax had no reference to income either actual or potential from the property sought to be taxed

and that the Act obliged every person who holds land to pay the tax at the flat rate prescribed whether or not he makes any income out of the

property or whether or not the property is capable of yielding any income. That was a case where different classes of land of the same area were

treated equally and this was only another facet of the concept of discrimination where the same treatment of unequals is not permissible because it

amounts to violation of Art. 14 of the Constitution of India. The Supreme Court in that case found that inequality was writ large on the Act because

there was no attempt at classification in the provisions of the Act and therefore,

according to the Supreme Court, no more need be said as to what could have been the basis for a valid classification. The ratio of this case, in our view, would be attracted to the case before us. The Order which is, issued under clause 2I(5) of the Control Order, is a direction applicable to all mills whether they have the capacity or they do not have the capacity, whether they are producing yarn of one kind or another, and whether they have the necessary equipment and machinery to pack yarn in hanks or not. This is, therefore, clearly a case where unequals were treated equally and consequently, this will be one more ground on which the notification will become invalid under Art. 14 of the Constitution of India.

29. We shall now deal with the challenge on the ground of violation of Article 19(1)(g) of the Constitution of India. The argument is that the

notification not only prevents the business to be carried on in the manner in which the mills or the owners thereof desire to carry on but that if the

instructions are carried out and obeyed and the yarn in the hank form produced is not lifted by the persons who work in the handlooms, then there

is no guarantee by the Textile Commissioner that the yarn shall stand disposed of or that some provision will be made to dispose of the yarn which

is packed in the hank form as required by the Textile Commissioner. The argument of Mr. Abdul Kalam is that the government is not bound to

provide a market for yarn which may not be disposed of. According to him no illustration has been given to show that any manufacturer has any

yarn left undisposed of. As a matter of fact, the learned counsel went to the extent of arguing that the impugned notification cannot be construed as

any restriction on the right of the petitioners under Art. 19(1)(g) of the Constitution of India. The argument appears to be that mills are granted

registration under the Textile Control Order and, therefore; they are bound to obey the directions given in the "Textile Control Order. The

petitioners have not been asked to close down their business and since they have not been asked to close down the business, according to the

terms of the Control Order, the impugned direction does not amount to any restriction. By parity of reasoning it was contended before us by Mr.

Kalam that requiring 85 per cent of yarn to be of count 40s and below, does not also amount to restriction. Alternatively, it was contended that the

restriction was intended to meet the need of the consuming public of the country

and that public interest lies in safeguarding the handloom industry and if the total production was intended to be increased in the handloom sector, that was the need of the public. We fail to see how the impugned notification cannot be construed as a restriction, Admittedly the directions issued under the Control Order are regulatory in character. Any direction which is regulatory in character is bound to be restrictive in character, inasmuch as the activity which a person desires to carry on cannot be carried on, as desired by him, but it is regulated and controlled by the Textile Commissioner. In "every regulatory provision a measure of restriction is implicit and the only question which has to be decided is whether the restriction can be said to be reasonable or not. The guidelines to determine whether a restriction is reasonable or not are now well settled. It is also settled that where a restriction is challenged on the ground of violation of Art. 19 of the Constitution or any clause thereof, then the burden is on the government to justify the restriction and show that the restriction is reasonable. Mr. Kalam has referred us to a decision- of the Supreme Court in *Pathumma and Others Vs. State of Kerala and Others*, in which the Supreme Court has laid down guidelines to determine the question of reasonableness of restriction. It is pointed out in that case that though Art. 19 of the Constitution guarantees all the seven freedoms to the citizen of the country including the right to hold, acquire and dispose of the property, it must be remembered that Article 19 confers an absolute and the unconditional right which is subject only to reasonable restrictions to be placed by Parliament or the legislature in public interest. The Supreme Court has culled out seven principles for judging the reasonableness of restriction. One of the principles laid down is that there must be a direct and proximate nexus on a reasonable connection between the restriction imposed and the object which is sought to be achieved, or in other words the court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is really fulfilled or frustrated. It is also laid down therein that in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case.

30. It is, therefore, clear that when the Court is to consider whether a particular

restriction placed by an impugned action either of the executive or by any law is reasonable or not, that will have to be determined with reference to the facts in each case. If we adopt the test laid down by the Supreme Court, the question which immediately faces us is what was that object with which the restriction has been placed. We must not forget that we are primarily dealing with a subordinate legislation which further delegates the power to a public authority to issue an order under clause 21(5) of the Control Order. Since we have already found that since clause 21(5) is unreasonable or arbitrary power and there are no guidelines and there is nothing else in the Control Order on which we can determine the purpose for which the power under clause 21(5) can be exercised, the only conclusion possible is that there is no object possible to be ascertained with reference to which the reasonableness of the direction in the impugned notification can be ascertained. Consequently, there is no alternative but to hold, apart from the facts of the case, that the whole notification is an unreasonable restriction. We have already pointed out that it does not take into account the capacity of the manufacturer or the requirement of installation of additional machinery and the expenditure to be incurred by the mills where they have never been packing yarn in hanks.

31. The Order also does not refer to any provision for disposal of any production made by the manufacturers in accordance with the notification. It is urged that the absence of such a provision resulting in unreasonable restriction is a vice on the strength of the decision in *Shree Meenakshi Mills Ltd. Vs. Union of India (UOI)*, .

In that case certain orders with regard to yarn restriction were challenged on the ground of violation of Article 19(1)(g) of the Constitution. In paragraph 97, this contention was noticed. The contention was that though the order obliges the producers of yarn to sell to persons named, there is no obligation on those persons to buy and, therefore, it is an unreasonable restriction. Instances were given where persons or bodies to whom yarn had been allotted had failed to lift the stock of yarn and it was stated that the producers therefore suffered losses. There were cases where the allottees did not lift the goods when the scheme was in operation. However, in that case it was found that the allotment orders showed that if any

portion of the yarn was not paid and lifted within the stipulated time, the State Government may intimate the same to the cotton corporations and the mills concerned and the Cotton Corporation of India will effect payment and take charge of the yarn. The Textile Commissioner on receipt of such intimation had to issue re-allotment orders and in respect of such re-allotted yarns, the State Government were to make necessary payments to the Cotton Corporation of India. The conditions of allotment ensure lifting of yarn by the nominees of the State Government within a reasonable time. It was found that earlier at the initial stages of the voluntary control scheme, the State Government nominees were not adequately financially equipped and that is why there were cases of non-lifting of yarn. The Supreme Court found that this could not happen now and, therefore, the distribution control scheme does not impose unreasonable restriction on the producers' right to carry on their business. Undoubtedly, it can be argued that paragraph 97 of the judgment of the Supreme Court, if properly construed, would indicate that in such a case, if there is no alternative clause provided for disposal of the goods produced, then the provision might amount to unreasonable restriction. However, having regard to the fact that we have already held that clause 21(5) is violative of Art. 14 of the Constitution of India and the impugned notification is also invalid, we do not think it necessary to decide this question in this case.

32. For the same reason we need not also decide a similar contention raised by Mr. G. Ramasamy relying on the decision of Punjab and Haryana High Court in Partap Singh Kadian Vs. The State of Punjab and Others, . It appears that in the case, clause 3 of Punjab Wheat (Restriction on Stock by Producers) Order 1974, issued u/s 3 of the Essential Commodities Act fixed a limit to the maximum quantity of wheat which can be possessed (or) by the producer himself and compelled him on pain of criminal prosecution and confiscation u/s 7 of the Essential Commodities Act, to sell within a fortnight all surplus stocks without casting any obligation on any person to take over the stocks at a remunerative price. This was challenged and the Division Bench of the Punjab and Haryana High Court held that far from merely imposing reasonable restriction in the guaranteed rights of the farmer that clause virtually negated them by arbitrary, irrational and oppressive provisions and, therefore, the Punjab

Order is void. We do not consider that this case is of much assistance to us so far as the controversy in these petitions is concerned. As already

pointed out, if the arbitrariness of the impugned notification by itself is sufficient to give it the character of unreasonableness, we need not go further

into this question as the impugned notification is already held violative of the fundamental right given under Art. 19(1)(g) of the Constitution of India.

Having regard to the view which we have taken, it is not necessary for us to go into the challenge that the exemption applications were arbitrarily

rejected, though we have earlier observed that there were no guidelines with reference to which the question of exemption could really be

determined.

33. We were also told that when the appeals were heard by another Bench of this Court, the Court required the petitioners to once again apply for

exemption which exemptions have been rejected again. The fact that the claims for exemptions were rejected once again does not affect the merits

of the question which we have decided. Having regard to what we have said earlier, we do not think it necessary to refer to the other decisions

which have been cited before us by Mr. Chidambaram and Mr. G. Ramaswamy. In the view which we have taken we must hold that clause 21(5)

of the Cotton Textiles (I Control) Order, 1948, is violative of Articles 14 and 19(1)(g) of the Constitution of India. We further hold that the

impugned notification dated 29th June 1979 also suffers from violation of Articles 14 and 19(1)(g) of the Constitution of India and that the

restriction imposed by that notification cannot be said to be reasonable as "contended on behalf of the Central Government.

34. All these writ petitions are allowed. The counsel, who have appeared before us are entitled to costs of Rs. 500/- each.

35. Mr. O. R. Abdul Kalam, learned Gandhi. counsel appearing for the respondents, after the pronouncement of the judgment in the above cases,

has made an oral application for leave to appeal to the Supreme Court. We are of opinion, that the questions raised before us are not capable of

much debate having regard to the constitutional position of the scope of the provisions of Arts. 14 and 19(1)(g) of the Constitution. We do not think

that this is a fit case where a certificate for leave to appeal to the Supreme Court should be issued. Hence, the request for leave to appeal to the

Supreme Court is rejected.

36. Petitions allowed.