HIGH COURT OF GUJARAT *(D.B.)*

PREMCHAND JECHAND
V/S
K G SANGHRANI, ASSISTANT DIRECTOR

Date of Decision: 10 November 1967

Citation: 1967 LawSuit(Guj) 114

Hon'ble Judges: P N Bhagwati, A D Desai

Eq. Citations: 1968 GLR 777

Case Type: Special Civil Application; Special Civil Application

Case No: 434 of 1967; 442, 475, 513, 514, 526 to 530, 559, 560, 565, 570, 590, 591, 592, 601, 619, 628, 632, 637, 642, 643 to 652, 658, 659, 661, 664, 665, 666, 682, 714, 716, 722, 724 to 729, 780, 789, 818, 866, 867, 1065 and 1236 of 1967

Subject: Constitution

Head Note:

Essential Commodities Act, 1955 - Sec 3(1), 3(2)(c), 3(3)(b) - Cotton Control Order, 1955 - Clause 3, 14A, 14B, 20 - Constitution of India - Art 14, 19(1)(f), 19(1)(g) - clauses 3, 14A and 14B of Cotton Control Order, 1955 and Notification issued by Textile Commissioner in exercise of powers conferred under clauses 3, 4, 13, 14A and 17 of said Order as amended by subsequent Notification and order of compulsory sale of ginned cotton - validity of - condition precedent for fixing maximum and minimum price - held, formation of requisite opinion by Central Government is condition precedent - Central Government can by order fix maximum price and minimum price for any essential commodity - power to fix maximum and minimum price cannot be regarded as unguided, unfettered on unbridled - clause 3 was not unreasonable restriction - Textile Commissioner

would have to select any one of stock-holders - There is no discrimination - clause 14A is invalid under Art 19(1)(f) & (g) - price fixation not outside ambit of clause 3 - every grower whether member of co-op. Society or not is liable to price control - no violation of equal protection clause under Art 14 - power of Textile Commissioner which was delegated to Assistant Director under said notifications was clause in force on dates of said notifications - original clause 14A was thereafter substituted by Notification dated 12th January 1962 and delegation of power of Textile Commissioner under original clause 14A to Assistant Director under said notifications thereupon became ineffectual as original clause 14 A ceased to be in force - there as no delegation of power of Textile Commissioner under new clause 14A to Assistant Director after new clause 14A came into force and Assistant Director had, therefore, no authority to make order of compulsory sale under new clause 14A prior to 22nd May 196 - therefore, order of compulsory sale punished and set aside - petitions disposed of

Acts Referred:

Constitution Of India Art 19(1)(g), Art 19(1)(f), Art 14

Essential Commodities Act, 1955 Sec 3(3)(c), Sec 3(3)(b), Sec 3(1)

Final Decision: Rule made absolute

Advocates: C T Daru, C T Daru, M M Patel, J G Shah, S N Patel, Madhusudan C Shah, R K Shah, J M Thakore, J R Nanavati, K L Talsania, C N Dalal, G A Pandit, R N Oza, K M Shah, C C Gandhi, G N Shah,K S Nanavati, Ashok C Gandhi, L T Shah, Suresh C Shah, I M Nanavati, Suresh A Shah, G P Vyas, B G Thakore, N S Parghi, J M Patel, S K Zaveri, R H Daru

Reference Cases:

Cases Cited in (+): **1**

Cases Referred in (+): **17**

Judgement Text:-

Bhagwati C J

[1] These petitions raise important questions of law relating to the validity of clauses 3,

14A and 14B of the Cotton Control Order, 1955 and the Notification dated 6th July 1966 issued by the Textile Commissioner in exercise of the powers conferred under clauses 3, 4, 13, 14A and 17 of the said Order as amended by the subsequent Notification dated 5th December 1966, They also challenge the validity of order of compulsory sale of ginned cotton made in some cases by the Assistant Enforcement Officer and in others, by the Assistant Director under clause 14A of the said Order. The facts giving rise to these petitions are identical and so also are most of the questions arising in them and they were, therefore, beard together. The main arguments were advanced in Petition No. 434 of 1967 and the learned advocates appearing on behalf of the petitioners in the other petitions were allowed to supplement those arguments as also to advance further arguments bearing upon the questions in controversy between the parties. Before we set out these arguments, it would be convenient to refer briefly to the relevant provisions of the law and to state a few facts leading up to the filing of these petitions.

[2] The Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') was enacted by the Parliament and it came into force from 1st April 1955. The Act, as its long title shows, was enacted to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodi ties essential for the life of the community. Sec. 2 which is the definition section, by clause (a), defines "essential commodity" and sub-clause (1) includes within the definition "raw cotton, whether ginned or unginaed and cotton Secd". Sec. 3 which is the principal section provides, in so far as it is material for the purposes of the present petitions:

> "3. Powers to control production, supply, distribution etc. of essential commodities:-
>
> (1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade commerce therein.
>
> (2) Without prejudice to the generality of the powers conferred by sub-sec. (1), an order made thereunder may provide-

x x x x x x

(c) for controlling the price at which any essential commodity may be bought or sold;

x x x x x x

(f) for requiring any person holding in stock any essential commodity to sell the

whole or a specified part of the stock to such person or class of persons and in such

circumstances as may be specified in the order;

x x x x x x

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-sec. (2), there shall be paid to him the price thereof as hereinafter provided-

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause fa) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale."

Then follows sec. 4 which provides for conferment of powers and imposition of duties on the Central Government or the State Government or its officers

and authorities in the following terms: "4. Imposition of duties on State Governments, etc. -

An order made under sec. 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

The Central Government can give directions to its officers or State Government."

Sec. 5 provides for subdelegation of the power to issue a notified order under sec. 3 but that section is not material and we need not say anything more about it.

[3] Prior to the enactment of the Act, there was in force an Order called the Cotton Control Order, 1950, made under the Essential Supplies (Temporary Powers) Act, 1946, and this Order provided for fixation of maximum and minimum prices at which cotton or kapas may be sold or purchased and also for making of orders of compulsory sale of cotton by stockholders of cotton to buyers specified in the orders. On the coming into force of the Act, the Central Government, in exercise of the powers conferred upon it by sec. 3 of the Act, made an order called the Cotton Control Order, 1955, on 13th July 1955. This Order made on 13th July 1955 repealed the Cotton Control Order, 1950, but it was short lived and in its turn it was repealed by another order also called the Cotton Control Order, 1955, made by the Central Government on 13th October 1955 in exercise of the powers conferred upon it under sec. 3 of the Act. This latter order made on 13th October 1955 continued to be in force right up to the relevant period and it is this order which is impugned in the present petitions. It is, therefore, necessary to read a few relevant clauses of the said Order. Clause 2(c) defines "Cotton" to mean ginned cotton as also ginned and pressed cotton. "Kapas" is defined in clause 2(hh) to mean unginned cotton Clause 3 provides for control of price of both cotton and kapas :

"3. (1) The Textile Commissioner may fix the maximum and the minimum prices at which any cotton or kapas or cottonSecd may be sold or

purchased.

(2) Where the maximum and minimum prices have been fixed as aforesaid in respect of any cotton or kapas or cottonSecds, no person shall sell or offer to sell or purchase or offer to purchase any such cotton or kapas or cottonSecd at a price exceeding the maximum or lower than the minimum price so fixed. "

Then follow clauses 14A and 14B which were introduced for the first time by an amendment made by the Central Government on 29th March 1957. It is necessary to point out at this stage that clause 14A as originally introduced consisted of only a single provision, namely :

"14-A. The Textile Commissioner may, with a view to securing an equitable distribution of cotton or with a view to securing compliance with this Order, direct any person holding in stock cotton or any class of such persons: -

(a) to sell to such person or class of persons such quantities of such description of cotton as the Textile Commissioner may specify;

(b) not to sell or deliver cotton of a specified description except to such person or class of persons and subject to such conditions as the Textile Commissioner may specify."

But by an amendment made by the Central Government by a Notification dated 12th January 1962, clause 14A as originally introduced was substituted by a new clause 14A which consisted of two sub-clauses, the first subclause being in identical terms as the original clause 14A and the second sub-clause being:

"Every person to whom the Textile Commissioner issues directions under subclause (1) shall comply with such directions."

Clause 14B remained unchanged and it is in the following terms:

"14-B. (1) Any manufacturer desiring assistance from the Textile Commissioner for the purpose of obtaining supplies of cotton may make an application to the Textile Commissioner in such form as may be prescribed by him in this behalf.

(2) The Textile Commissioner shall prescribe the procedure to be followed in giving effect to any application made under sub-clause (1).

(3) If any cotton is directed to be sold to a manufacturer in pursuance of clause 14A of this Order, the Textile Commissioner shall, having regard to the provisions contained in sub-sec. (3) of sec. 3 of the Essential Commodities Act, 1955 (10 of 1955) determine the price of the cotton so directed to be sold.

(4) The Textile Commissioner may appoint any person or persons in any or class of cases to advise him for the purpose of fixing the price of cotton directed to be sold under clause 14A of this Order."

Clause 20 is the next material clause and it provides as follows:

"20. The Textile Commissioner, with the previous sanction of the Central Government, may, by general or special order in writing, authorise any officer to exercise on bis behalf all or any of his functions and powers under this Order." Pursuant to clause 3 the Textile Commissioner fixed the maximum and minimum prices for cotton from year to year before the commencement of each cotton season which, according to clause 2(e), means the period from 1st September of one calendar year until and inclusive of the 31st day of August of the next calendar year. We are not concerned in these petitions with the maximum and minimum prices fixed by the Textile Commissioner for the cotton seasons prior to 1st September 1966, for the controversy between the parties arises only out of the fixation of the maximum and minimum prices made by the Textile Commissioner for

the cotton season commencing 1st September 1966.

[4] Prior to the commencement of the cotton season beginning from 1st September 1966, the Textile Commissioner in exercise of the powers conferred on him by clauses 3, 4, 13, 14A and 17 of the impugned Order, issued a Notification dated 6th July 1966 fixing inter alia the maximum and minimum prices at which cotton might be sold or purchased in India from 1st September 1966 Schedule A of the said Notification set out the maximum and minimum prices fixed for cotton of different descriptions and on an off allowances were specified for the differences in grade and staple length. We are not concerned with the details of the prices given in this Schedule. It is sufficient to point out that by a subsequent Notification dated 5th December 1965 the maximum prices specified in this Schedule were increased by five per cent.

[5] The immediate cause for filing these petitions was that orders of compulsory sale were made against the petitioners under clause 14A directing the petitioners to sell and deliver certain bales of cotton to different textile mills. The orders of compulsory sale were all dated prior to 22nd May 1967: some of them were made by the Assistant Enforcement Officers and the others, by the Assistant Director. They were all in the same terms barring only difference in the names of the petitioners and the Textile Mills and in the description of the cotton directed to be sold and delivered and the provision in regard to the determination of the price made in all of them was in the following terms:

> "..... Thereby direct..... to sell and deliver to Indian cotton of the description and quantity mentioned in the Schedule below at the maximum price fixed by the Textile Commissioner in his Notification No S. O. 2094 dated 6th July 1966 as amended by Notification No. 10(1)/-66-CLB-II dated 5th December 1966 for description, class and staple of such Cotton as may be determined on survey by the Special Surveyors or Special Committees in up country Centres appointed by the East India Cotton Association Ltd., or by Ad Hoc Committee specified in Schedule B to the said Notification.
>
> I further direct that, for the purpose of such survey..... shall allow the sampling of cotton from each lot by authorised Controllers appointed by the East India Cotton Association Ltd., Bombay."

The petitioners thereupon preferred the present petitions challenging the

validity of clauses 3, 14A and 14B of the said Order, the fixation of the maximum and minimum prices of cotton made by the said Notification and the orders of compulsory sale made against the petitioners under clause 14A of the said Order.

[6] There was a declaration of emergency by the President in force since 22nd October 1962 and, therefore, by virtue of Article 353 of the Constitution, the validity of the impugned Notification could not be challenged on the ground of violation of Article 19 nor could the orders of compulsory sale be challenged as violative of that Article. The challenge under Article 19 was, therefore, confined only to questioning the validity of clauses 3, 14A and 14B of the impugned Order. But the challenge on other grounds was manifold and various grounds were urged by the learned advocates appearing on behalf of the petitioners. The main grounds may be briefly summarised as follows:

(A) It is a condition-precedent to the valid making of an order under sec. 3(1) that the Central Government should form an opinion that it is necessary or expedient to make such order for maintaining or increasing supplies of any essential commodity or for securing its equitable distribution or availabilty at fair prices. The impugned Order does not recite that any such opinion was formed by the Central Government and the condition-precedent was fulfiled. There is also nothing to show that the Central Government made the impugned Order after forming the requisite opinion and the impugned Order is, therefore, invalid.

(B) (1) Clause 3 of the impugned Order in so far as it confers power on the Textile Commissioner to fix the maximum and minimum prices at which cotton may be sold or purchased is beyond the power of the Central Government under sec. 3(2)(c): The power conferred on the Central Government under sec. 3(2)(c) is to make an order providing for fixation of only the controlled price and not maximum and minimum prices.

(2) Clause 3 vests an unguided and unfettered power in the Textile Commissioner to fix any maximum or minimum prices he likes in his absolute discretion without any principles to guide him in the exercise of such power and it is, therefore, an unreasonable restriction on the right of the petitioners to hold, acquire and dispose of property under Article 19(1)(f)

and to carry on trade or business under Article

(3) Clause 3 in any event imposes an unreasonable restriction on the right to carry on trade or business under Article 19(1)(g) inasmuch as there is no reasonable safeguard against abuse of power in fixation of maximum and minimum prices and there is also no corrective machinery by way of appeal or otherwise.

(C) Clause 14A is violative of the equal protection clause- contained in Article 14 inasmuch as it permits the Textile Commissioner to discriminate in the matter of selection of the stakeholders whose stock of cotton may be required to be compulsorily sold. There is no policy or principle to guide him in the matter of such selection. Clause 14A also makes an unjust discrimination between the stockholder and the buyer under an order of compulsory sale.

(D) The machinery provided in clause 14B(3) for determination of the price of cotton required to be compulsorily sold is unreasonable inasmuch as it leaves the determination of the price to the Textile Commissioner without obliging him to hear the stockholder in the matter of such determination. Clause 148(3) is, therefore, void as imposing an unreasonable restriction on the right to carry on trade or business under Article 19(1)(g) as also on the right to hold, acquire and dispose of property under Article 19(1)(f) and since clause 14B(3) is unseverable from clause 14A, clause 14A is also rendered invalid.

(E) Clause 20 suffers from the vice of excessive delegation of legislative power and is beyond the power of the Central Government under sec. 3 of the Act. It has also the effect of augmenting the unreason ableness of the restrictions imposed by clauses 3 and 14A and is, therefore, void as offending Articles 19(1)(f) and 19(1)(g).

(F) (1) The impugned Notification is outside the ambit of the power conferred under clause 3 because the maximum and minimum prices of cotton have

been fixed under the said Notification without taking into account two important factors, namely, (i) the cost price of kapas to the dealer of cotton, and (ii) the relative prices of other commodities, agricultural and industrial, and they are arbitrary and hence the impugned Notification does not subserve the purpose of making cotton available at fair prices.

(2) The impugned Notification is also violative of Article 14 inasmuch as it discriminates without any valid basis for differentiation between a grower who sells kapas grown by him and a grower who sells cotton after getting his kapas ginned and pressed: the former is not subject to price control while the latter is. It also discriminates unjustly between a grower who is not a member of a cooperative society and a grower who is such member.

(3) The impugned Notification is legislative in character and is, there fore, really and in substance an order under sec. 3 and since the power to make an order under sec. 3 has not been subdelegated by the Central Government to the Textile Commissioner under sec. 5 the said Notifica tion is ultra vires the power of the Textile Commissioner.

(G) (1) The orders of compulsory sale in so for as the determination of the price is concerned are not in conformity with sec. 3(3) and the determination of the price being an integral and unseverable part of the order of compulsory sale, the orders of compulsory sale cannot stand after excision of the provision for determination of the price and they must, therefore, be held to be wholly illegal and void.

(2)Clause 14B(3) prescribes that the Textile Commissioner shall determine the price of cotton directed to be sold having regard to the provisions of sec. 3(3). No, power is conferred on the Textile Commissioner to prescribe a machinery for determination of the price by any one other than himself and the machinery for determination of the price provided in the orders of compulsory sale is therefore ultra vires Clause 14B(3).

(3) Neither the Assistant Enforcement Officer nor the Assistant Director who

made the various orders of compulsory sale had authority or power to make such orders under clauses 14A and 14B.

We shall now proceed to examine these grounds in the order in which we have set them out above.

Re. Ground (A) :

[7] It is indisputable, and indeed it was not disputed by the learned Advocate General appearing on behalf of the respondents, that no order can be made under sec. 3 unless the Central Government forms an opinion that it is necessary or expedient to make such order for maintaining or increasing the supplies of any essential commodity or for securing its equitable distribution or availability at fair prices. The condition as to the formation of the requisite opinion by the Central Government is a condition-precedent and it is only if this condition is satisfied that the power to issue an order under sec. 3 can be exercised by the Central Government. It is true, as contended on behalf of the petitioners, that the impugned Order does not recite that the Central Government had formed the requisite opinion and the condition was fulfilled. But that does not preclude the respondents from proving that fact independently by means of affidavits or otherwise. It is open to the respondents to establish by means of affidavits or other evidence that the requisite opinion was formed by the Central Government before making the impugned Order and the condition-precedent was fulfilled. Vide Ishwarlal Joshi v. State of Gujarat, I. L R. 1967 Guj. 620 at page 648 (VIII G. L. R. 729 at page 745) and Hamdard Davakhana v. Union of India, A. I. R. 1965 S. C. 1167. Let us, therefore, Sec whether this fact has been established by the respondents by producing satisfactory evidence.

[8] We have on record three affidavits in Special Civil Application No. 475 of 1967 in which this contention has been raised. Two affidavits are filed by R. Doraiswami who was until 14th October 1967 the Textile Commissioner and Ex-officio Joint Secretary, Government of India, Ministry of Commerce, while the third affidavit is made by H. K. Kochar, Joint Secretary, Government of India, having independent charge in the Ministry of Commerce. Both these officers enjoying the position of Joint Secretary, Government of India, Ministry of Commerce, have stated on oath after perusing the papers and proceedings relating to this matter and the other relevant records regarding the making of the various Cotton Control Orders that before making the impugned

Order, the Central Government had formed an opinion that it was necessary to make the said order for maintaining and increasing the supply of cotton and securing equitable distribution and availability of cotton at fair prices. They have set out in their respective affidavits the entire history relating to the making of the said Order and the circumstances in which the said Order came to be made. We do not Sec any reason why we should not accept these affidavits as establishing that the Central Government had formed the requisite opinion under sec. 3 before making the impugned Order. The only argument advanced by Mr. J. G. Shah on behalf of the petitioner in Petition No. 475 of 197 against our relying on these affidavits in proof of fact that the requisite opinion was formed by the Central Government was that the records, on the basis of which the deponents of these affidavits had made the statement as to the formation of the requisite opinion by the Central Government, were not produced by the respondents and unless those records were produced and examined by the Court, the mere statement of the deponents of these affidavits based on those records should not be accepted by us. This argument is plainly unsustainable. It would certainly have had considerable force if the petitioners had been able to make out even a prima facie case suggesting that the statement of the deponents of these affidavits was not correct. The Court in that event would have been slow to accept the statement in the affidavits unless it was supported by the production of the records. But here, in the present case, far from there being anything to suggest that the statement of the deponents of these affidavits might not be true, there is no material which would even as much as cast a doubt on the veracity of their statement. We, therefore, accept their affidavits and hold that the Central Government had formed the requisite opinion under sec. 3(1) before making the impugned order and condition-precedent to the making of the impugned order was satisfied.

Re. Ground B(1) :

[9] The argument under this ground was that sec. 3(2)(c) authorised the making of an order providing "for controlling price at which any essential commodity may be bought or sold" and on the plain language of this provision, the only order which could be made was an order providing for fixation of only one controlled price and no order could be made providing for fixation of maximum and minimum prices of an essential commodity. This argument, though Secking to derive support from the language of sec. 3(2)(c) in fact runs counter to it. What sec. 3(2)(c) authorises is an order providing for controlling the price of an essential commodity. Now obviously, price can be controlled either by

fixing one single controlled price or by fixing a maximum and a minimum. The range of variation of the price may be restricted between a maximum and a minimum and when this is done, it would be clearly a measure controlling the price. There is no reason why we would read the words of sec. 3(2)(c) in a narrow and restricted manner so as to confine its ambit only to fixation of one single controlled price. The words are sufficiently wide to include even the laying down of a range control by fixing a maximum and a minimum. As a matter of fact, the policy and object of the Act, namely, securing equitable distribution and availability of the essential commodity at fair prices may itself in a given situation require that instead of one single controlled price maximum and minimum prices should, be fixed. In order to achieve fairness of price, it may be necessary for the Central Government, as in the present case, to fix maximum and minimum prices so that any price within the range set by the maximum and the minimum would be a fair price both from the point of view of the grower as also from the point of view of the consumer. Any price above the maximum price may be unfair to the consumer while any price below the minimum might be unfair from the point of view of the grower. The price control may, therefore, be achieved in given circumstances by fixing a miximum and a minimum so as to make the essential commodity available at fair prices and this is clearly permissible on a true interpretation of sec. 3(2)(c). But even if sec. 3(2)(c) were read in a narrrow and restricted manner as suggested on behalf of the petitioners, clause 3 can still be sustained as falling within the wide words of sec. 3(1). The enumeration of the various kinds of orders which may be made by the Central Government under sec. 3(2) is merely illustrative and it does not limit in any manner the width and amplitude of the power conferred under sec. 3: 1). The Central Government can by an order made under sec. 3(1) provide for regulating or prohibiting the production, supply and distribution of and trade and commerce in any essential commodity and fixation of a maximum price and a minimum price at which an essential commodity may be bought or sold would clearly fall within the ambit of this provision. It is, therefore, not possible to accede to the argument of the petitioners that clause 3 is beyond the Central Government under sec. 3. Re. Ground B(2) :

[10] The Constitutional validity of clause 3 is assailed before us on the ground that its provisions vest an unfettered and unguided discretion in the Textile Commissioner in the matter of fixation of maximum and minimum prices of cotton and this arbitrary power can be exercised not only by the Textile Commissioner but it can also be delegated to any officer the Textile Commissioner likes subject, of course, to the previous sanction of the Central Government. It is argued that this provision, imposing as it does an unreasonable restriction on the right of the petitioners to hold, acquire and dispose of

cotton and to carry on their trade or business in cotton, conflicts with their fundamental right under Article 19(1)(f) and (19)(1)(g) and is hence void.

[11] It is now well-settled that a law which confers arbitrary and un controlled power on the executive to affect the fundamental rights of the citizen in any manner it chooses without any policy or principle to guide and control the exercise of the power cannot but be held to be unreason able. Where, as pointed out by the Supreme Court in Thakur Raghuber Singh v. Court of Wards 1953 S. C. R. 1049, a law completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, such a law can, on one construction of the word "reasonable", be described as coming withing that expression. The phrase "reasonable restriction" connotes that the limitation imposed upon a person in the enjoyment of his fundamental right should not be arbitrary. The Legislature must provide a policy or principle which would act as a check on the exercise of the arbitrary power. There must be a policy or principle enunciated by the Legislature by reference to which the exercise of the power by the executive can be controlled and regulated. If there is a policy or principle to control and regulate the exercise of power by the executive, the conferment of such power would not amount to an unreasonable restriction on the fundamental right of the citizen, unless, of course, the policy or the principle itself suffers from the vice of unreasonableness. It is, therefore, necessary to examine whether clause 3 commits to the unrestrained will of the Textile Commissioner the power to fix maximum and minimum prices according as he pleases in his absolute and uncontrolled discretion or there is any policy or principle to guide and control the exercise of such power by the Textile Commissioner.

[12] So far as this enquiry is concerned, the answer must clearly be in favour of the respondents. The policy or principle to guide and control the Textile Commissioner in the exercise of the power to fix the maximum and minimum prices is to be found in the opening part of sec. 3(1). The power to fix the maximum and minimum price can be exercised by the Textile Commissioner only for carrying out the purposes mentioned in sec. 3(1). This standard or criterion provided by the Legislature controls and regulates the exercise of the power by the Textile Commissioner and it is by reference to this yardstick that the exercise of the power by the Textile Commissioner is canalised and kept within bounds. This policy or principle provides sufficient guidance to the Textile Commissioner in the exercise of his power to fix the maximum and minimum prices and the power conferred upon him under clause 3 cannot, therefore, be regarded as unguided, unfettered or unbridled so as to attract the applicability of Article 19(1)(f) or

(g).

[13] This conclusion finds ample support from the decision of the Supreme Court in Harishanker Bagla v. The State ofMadhya Pradesh, A. I. R. 1954 S. C. 465. Clause 3 of the Cotton Textile (Control of Move ment) Order, 1948 which provided that no person shall transport or cause to be transported any cloth, yarn or apparel except under and in accordance with a general or special permit issued by Textile Commissioner, was challenged as violative of Article 19(1)(f) and (g) on the ground that the Textile Commissioner was given unregulated and arbitrary discretion to refuse or to grant a permit and the enjoyment of the fundamental right under Article 19(1)(f) and (g) was thus made to depend upon the arbitrary and uncontrolled discretion of the Textile Commissioner. The Supreme Court negatived the challenge in the following words:

> "The policy underlying the Order is to regulate the transport of cotton textiles in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate the policy. The conferment of such a discretion cannot be called invalid."

> The policy or principle laid down in the opening part of sec. 3(1) was held to govern the grant or refusal to grant a permit, saving the restriction from the vice of arbitrariness.

[14] So also in Union of India v. M/s. Bhanamal Gulzarimal Ltd., A. I. R. 1960 S. C. 475, the Supreme Court upheld the validity of clause 1 IB of the Iron and Steel (Control of Production and Distribution) Order, 1941 ob the ground that the power conferred by that clause on the Controller to fix the maximum prices at which any iron or steel may be sold was guided and controlled by the clear enunciation of the legislative policy in sec. 3(1). This decision reiterates and re-affirms that the policy or principle laid down in the opening part of sec. 3(1) not only guides and controls the Central Government in the exercise of its powers under sec. 3, but also controls and regulates the exercise of any power which may be conferred on the Central Government or the State Government or any of its officers or authorities under an order made under sec. 3. It must, therefore, be concluded that clause 3 does not confer an unguided or uncanalised power on the Textile Commissioner but the power conferred on him is guided and controlled by the

policy or principle enunciated in sec. 3(1) and clause 3 does not, therefore, amount to an unreasonable restriction.

[15] It was, however, contended by Mr. C. T. Daru, learned advocate appearing for the petitioner in Petition No. 434 of 1967, that there was a difference between a pre-Constitution Act and a post-Constitution Act in so far as the approach of the Court from the point of view of consti tutional validity was concerned. Though in a pre-Constitution Act, it was argued, the Court might strain to discover a policy or principle, no such approach was permissible in a post-Constitution Act and the Court should-not, in a post-Constitution Act, be over anxious to find a policy or principle if such was not apparent from the provisions of the Act, or, in other words, the Court should not try to find a policy or principle in the crevices of the statute. This difference in approach, it was said, was supported by a recent decision of the Supreme Court in Hari Chand Sarda v. Mizo District Council, AIR- 1967 S. C 829. We have carefully gone through this decision but we do not think that it supports the distinction contended for on behalf of the petitioners. The entire super structure of the argument of the petitioners Secms to rest on an observation in paragraph 6 of the judgment that the observations of Supreme Court in Kishan Chand Arora v. Commissioner of Police, A. I. R. 1961 S. C. 705 were made in connection with a pre-Constitution enactment. But in making this observation we do not think the Supreme Court intended to lay down any distinction between a pre-Constitution Act and a post-Constitution Act on a question of validity of a statute arising under Article 19(1)(f) or (g). We do not think that on principle the suggested distinction is justified. Whether the statute be a pre Constitution statute or a post-Constitution statute, the test to be applied in judging its validity is the same, namely, whether there is any policy or principle enunciated by the Legislature which would guide and control the exercise of the power con ferred on the executive under the statute or whether the power conferred is uncanalised, unbridled and unfettered. There is no difference in the degree of intensity of search to be made for discovering the policy or principle. The question always is does the policy or principle appear clearly either expressly or by necessary implication from the provisions of the statute itself ? Vide Gopal Narain v. State of Uttar Pradesh, A. I. R. 1954 S. C. 370 paragraph 7. And if this question is asked in the present case, the answer clearly is that such policy or principle is to be found in the opening part of sec. 3(1).

[16] Mr. C. T. Daru then urged that whatever be the view taken in the earlier decisions of the Supreme Court on this question, there was a distinct departure from that view in the subsequent decisions of the Supreme Court and this departure was clearly

noticeable in the recent decision of the Supreme Court in Hari Chand Sarda's case (supra). It was no longer sufficient, he argued, that the Legislature should enunciate a policy but it was further necessary that the Legislature should provide also the principles for implementing that policy. Strongest reliance was placed in this connection on the following observations of Shelat J., speaking on behalf of Subba Rao C. J. and himself:

> "Though a legislative policy may be expressed in a statute it must provide a suitable machinery for implementing that policy in such a manner that such implementation does not result in undue or excessive hardship and arbitrariness .....Even though it may perhaps be said that the Sixth Schedule to the Constitution shows a policy to safeguard the tribals from being exploited and the Regulation was enacted in exercise of the power conferred thereunder that is not enough to save the restriction from the vice of being unreasonable. It provides no principles on which such a policy is to be implemented."

These observations, we do not think, lay down any new principle or make any departure from the old. They must be read in the context of the legislation which was impugned before the Supreme Court. The policy which was relied upon in that case as offering guidance in the making of the regulation was too vague and nebulous and did not provide any principle or criterion which would guide and control the Executive Committee in granting or refusing to grant licence or its renewal and the Supreme Court, therefore, held that in the absence of principles on which such policy is to be implemented, the power to grant or not to grant permit must be held to be unrestrained and unguided. The test applied by the Supreme Court was the same as in the earlier cases, namely, whether sufficient guidance is provided so that by reference to it, the exercise of power can be checked and controlled and arbitrary exercise of power averted. It is immaterial how you describe this guidance. Call it a policy or a principle or a standard or a criterion whatever you like. It has been variously described in the different judgments but whatever be the nomenclature we may use, it must afford a yardsticks, sufficiently defined and definite, to guide the exercise of the power so as to control and regulate it. It was this test which was applied by the Supreme Court and on the facts of the case before it, the application of the test showed that there was no sufficient guidance provided by the

Legislature and hence the regulation was struck down. This decision does not, therefore, make any departure from the settled law.

[17] It was then urged by Mr. C. T. Daru on the analogy of the decision in Hari Chand Sarda's case that the policy of equitable distribution of cotton and making it available at fair prices was not sufficiently definite and defined to guide and control the exercise of the power of the Textile Commissioner to fix the maximum and minimum prices under clause 3. Price fixation, it was argued, is a complex function in which many variables may enter into the determination and diverse considerations may be required to be taken into account and their assessment may also vary from individual and, therefore, the mere declaration of the policy of making cotton available at fair prices would not afford sufficient guidance. In the matter of fixation of price, the word "fair" would mean different things to different minds and the concept of fairness would depend very much upon the philosophy of the individual officer as to what is fair. Moreover there may be various means and methods of effectuating the policy of making cotton available at fair prices and it would be left to the absolute and uncontrolled discretion of the Textile Commissioner to adopt any means of method he chooses, resulting in the exercise of the power being unfettered and unregulated. As in Hari Chand Sardas case so also here, it was said, there must be principles laid down by the Legislature for implementing the policy of making cotton available at fair price and there being no such principles, the fixation of maximum and minimum prices under clause 3 was left to the unrestrained and unregulated discretion of the Textile Commissioner and was consequently bad. This argument stands completely negatived by the decision of the Supreme Court in Bhanamal's case. There clause 11B of the Iron & Steel (Control of Production and Distribution) Order, 1941 also empowered the Controller to fix the maximum prices of iron and steel and the argument was that there was no guidance given by the Legislature in fixing maximum prices under that clause. The Supreme Court negatived that argument in words which are wholly applicable to the present case:

> "It is obvious that by prescribing the maximum prices for the different categories of iron and steel cl. 1 IB directly carries out the legislative object prescribed in sec. 3 because the fixation of maximum prices would make stocks of iron and steel available for equitable distribution at fair prices. It is not difficult to appreciate how and why the Legislature must have thought that it would be inexpedient either to define or describe in detail all the relevant factors which have to be considered in fixing the fair price of an

essential commodity from time to time. In prescribing a schedule of maximum prices the Controller has to take into account the position in respect of production of the commodities in question, the demand for the said commodities, the availability of the said commodities from foreign sources and the anticipated increase or decrease in the said supply or demand. Foreign prices for the said commodities may also be not irrelevant. Having regard to the fact that the decision about the maximum prices in respect of iron and steel would depend on a rational evaluation from time to time of all these varied factors the Legislature may well have thought that this problem should be left to be tackled by the delegate with enough freedom, the policy of the Legislature having been clearly indicated by sec. 3 in that behalf. The object is equitable distribution of the commodity, and for achieving the object the delegate has to Sec that the said commodity is available in sufficient quantities to meet the demand from time to time at fair prices. In our opinion, therefore, if cl. 1 IB is considered as a part of the composite scheme evidenced by the whole of the Order and its validity is examined in the light of the provisions of Secs. 3 and 4 of the Act, it would be difficult to sustain the plea that it confers on the delegate uncanalised or unbridled power. We are inclined to hold that the power conferred on the Central Government by sec. 3 and on the authority specified by sec. 4 is canalised by the clear enunciation of the legislative policy in sec 3 and that cl. 11B Secks further to canalise the exercise of that power, and so it is not a case where the validity of the clause can be successfully challenged on the ground of excessive delegation Now in regard to the challenge to cl. 11B on the ground that it violates Art. 19 it is difficult to Sec how this clause by itself can be said to violate Art. 19. In so far as the argument proceeds on the assumption that the authority conferred on the Controller by cl. 11B is uncanalised or unbridled or unguided, we have already held that the clause does not suffer from any such infirmity.

It is undoubtedly true that neither clause 3 nor any other clause of the Cotton Control Order, 1956 sets out the principles or factors which must be taken into account by the Textile Commissioner in fixing the maximum and minimum prices unlike clause 5 of the Sugar (Control) Order, 1955 which fell for consideration in Messrs Diwan Sugar & General Mills (Private) Ltd. v. The Union of India, A. I. R. 1959 S. C. 626. But that does not affect the

validity of the power conferred under clause 3. Clause 11B of the Iron & Steel (Control of Production and Distribution) Order, 1941 also did not set out any principles or factors to be taken into account by the Controller in fixing the maximum prices and yet the Supreme Court upheld the validity of that clause. As pointed out by the Supreme Court in Jyott Pershad v. Administrator for the Union Territory of Delhi, A. I. R. 1961 S. C. 1602: "So long as.....the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power..... if, the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions could obviously not be a ground for invalidating the law." This ground of challenge must, therefore, be rejected. Re. Ground B(2) :

[18] The most complete answer to this contention is to be found in Messrs.

Diwan Sugar & General Mills'" case (supra), decided by the Supreme Court. One of the contentions raised before the Supreme Court in that case was that the impugned notification fixing the ex-factory price of sugar imposed an unreasonable restriction on the right to trade under Article 19(1)(g) inasmuch as there was "no reasonable safeguard against the abuse of power and no provision for a check by way of appeal or otherwise." The contention was the same as the present one and the Supreme Court rejected it in the following words:

"The last argument in this connection is that there is no reasonable safeguard against the abuse of power and no check by way of appeal or otherwise is provided against the order of the Central Government. It is enough to say that we are here dealing with the power of the Central Government to fix prices in the interests of the general public. It is in these circumstances absurd to expect that there would be some provision by way of appeal or otherwise against this power of the Central Government. So long as the Central Government exercises the power in the manner provided

by the Act and the Order-and this is what it appears to have done-it cannot be said that any further safeguard is necessary in the form of an appeal or otherwise. The safeguards are to be found in cl. 5 itself, namely, that the Central Government must give consideration to the relevant factors mentioned therein, before fixing the price, and thus these factors are a check on the power of the Central Government if it is ever minded to abuse the power."

These words are sufficient to repeal the present contention. The policy and principle enunciated by the Legislature in the opening part of sec. 3(1) are sufficient safeguards against any abuse of power and it cannot be said that any further safeguard is necessary in the form of an appeal or otherwise. The present contention, therefore, fails and must be rejected.

Re. Ground C:

[19] The argument under this ground was that there was no policy or principle to guide or control the exercise of the power to make an order of compulsory sale in so far as the selection of the Textile Commissioner to pick and choose at his own sweet will any stakeholder for making an order of compulsory sale and the power conferred under clause 14A was, therefore, discriminatory and violative of Article 14. But this argument overlooks the opening part of clause 14A which says that the Textile Commissioner may make an order of compulsory sale "with a view to securing an equitable distribution of cotton or with a view to securing compliance with this Order." These words which we have quoted provide the guiding principle and they govern the making of the order of compulsory sale. The concept of securing equitable distribution of cotton involves a consideration of not only the requirements of the consumers but also the existing stocks and it is for the purpose of effectuating the policy of securing equitable distribution of the existing stocks of cotton that an order of compulsory sale can be made. In the achievement of this policy, every stockholder is liable to be proceeded against: there is no discrimination between one stakeholder and anothers all stockholders are equally subject to the operation of clause 14A. It is undoubtedly true that when a particular order of compulsory sale is to be made to meet the requirement of a consumer, the Textile Commissioner would have to select any one of the stakeholders for making an order of compulsory sale. But that is inevitable in the working of the scheme itself. The Textile

Commissioner cannot be required to proceed against all stock holders proportionately. It would be wholly impracticable to do so. The Textile Commissioner must necessarily have the power to select any one out of the class of stockholders for making an order of compulsory sale. He would be guided in the process of selection by the policy or principlelaid down in the opening part of clause 11A as also by the exigencies of the situation. There is no discrimination involved in the conferment of this power. If, as apprehended by the petitioners, the Textile Commis sioner, in the exercise of this power, acts "with an evil eye and an unequal hand" or makes an intentional and purposeful discrimination, the arms of the Court are long enough to reach him and strike down such abuse of power with a heavy hand.

[20] The second complaint under this head was that clause 14A makes unjust discrimination between the stockholder and the buyer. Whereas the stakeholder is under an obligation on pain of penalty of imprisonment and fine to carry out an order of compulsory sale, there is no such obligation imposed on the buyer. Now it is no doubt true that differentiation is made between the stockholder and the buyer in that stakeholder is bound to carry out an order of compulsory sale and if he does not do so, he exposes himself to the penalty of imprisonment and fine, while the buyer can with impunity disregard an order of compulsory sale. But every differentiation does not necessarily amount to discrimination violative of the equal protection clause. The stockholder and the buyer are not similarly situated and the differentiation made between them in the matter of treatment under clause 14A has a rational relation to the object sought to be achieved by that clause. It is clear from sub-clauses (1) and (2) of clause 14B that ordinarily an order of compulsory sale would be made in favour of the buyer when the buyer makes an application desiring assistance from the Textile Commissioner for the purpose of obtaining supply of cotton. Where cotton is in short supply and the market is a seller's market, the buyer would invoke the assistance of the Textile Commissioner and on the application of the buyer, the Textile Commissioner would make an order of compulsory sale for meeting the requirement of the buyer. The buyer would be a needy buyer anxious to obtain supply of cotton and it would not, therefore, be necessary to provide any sanctions against the buyer for failure to take delivery but the stakeholder would be inclined to hold on to his stock of cotton in the hope of gaining a better price and a provision would, therefore, be necessary for compelling sale and meet the requirement of the needy buyer. Hence the difference in treatment as between the stockholder and the buyer in so far as the obligatory nature of an order of compulsory sale is concerned. Clause 14A cannot, therefore, be held to be violative of the equal protection clause. Re: Ground D:

[21] Clause 14A is made under sec. 3(2)(f) and, therefore, when a stakeholder sells cotton in compliance with an order of compulsory sale made under clause 14A, he is entitled to be paid the price as provided in sec. 3(3). Where the price can, consistent with the controlled price, if any, fixed under sec. 3, be agreed upon between the stakeholder and the buyer, there would be no difficulty: the stockholder would be entitled to receive the agreed price under sec. 3(3)(a). But what is to happen if the stakeholder and the buyer are unable to agree upon the price ? The price then would have to be "calculated with reference to the controlled price, if any" and if there is no controlled price, the price would have to be "calculated at the market rate prevailing in the locality at the date of the sale". Vide sec. 3(3)(b) and (c). Now if the price is to be calculated with reference to the controlled price, the variety, grade and staple length of the cotton directed to be sold would have to be determined, for then only its price can be calculated by reference to the controlled price given in Schedule A to the impugned Notification. Where price is to be calculated at the market rate, there also, the variety, grade and staple length would have to be ascertained and in addition, the market rate of cotton of such variety, grade and staple length would have to be determined. How is this determination to be made ? Obviously for such determination the machinery of the Court would be wholly inappropriate. It would defeat the object and purpose of compulsory sale which in many cases might be directed to be made to meet the emergent requirement of the consumer. It was, therefore, necessary to provide a suitable machinery for determination of the price and the Central Government accordingly made clause 14B sub-clauses (3) and (4) in exercise of its powers under Secs. 3(1) and 3(2)(j). These sub-clauses of clause 14B provide the machinery for determination of the price of cotton directed to be sold under clause 14A and are procedural provisions. But, as held by the Supreme Court in Dr. N. B. Khare v. Stale of Delhi, (1950) S. C. R. 519, where the restrictions imposed by a legislative enactment upon a fundamental right guaranteed by Article 19(1) are reasonable within the meaning of Article 13(5) or (6) would depend as much upon the procedural portion of the law as the substantive part of it. This view was reaffirmed by the Supreme Court in State of Madras v. V. G. Rao, (1952) S. C. R. 597 where it was observed that in considering the reasonableness of the law imposing restriction on the fundamental rights, both the substantive and procedural aspects of the impugned law should be examined from the point of view of reasonableness. The same view has also been taken by the Supreme Court in the recent decision in Messrs Kantilal Babulal v. H. C. Patel, Civil Appeal No. 126 of 1966 decided in September 1967. It, therefore, becomes necessary to examine whether the machinery for determination of the price provided in clause 14B sub-

clauses (3) and (4) is reasonable.

[22] Now on a plain reading of clause 14B, sub-clauses (3) and (4), it is clear that they embody a self-contained scheme for determination of the price of cotton directed to be sold under clause 14A. The Textile Commissioner, subject to any delegation which may be made by him under clause 20, is constituted the authority to determine the price and he has to determine the price having regard to the provisions contained in sec. 3(3). Clause (a) of sec. 3(3) talks of agreement between the stockholder and the buyer and, therefore, when there is agreement between them as to the price, there is nothing for the Textile Commissioner to determine. The Textile Commissioner would be required to determine the price only where there is no agreement between the stockholder and the buyer and then he would have to determine the price having regard to the provisions of clauses (b) and (c) of sec. 3(3). He would have to determine the variety, grade and staple length of the cotton and calculate the price by reference to the controlled price, if any, and if there is no controlled price, he would have to determine the market rate and calculate the price by reference to the market rate. Now the determination of variety, grade and staple length of cotton would require knowledge and experience in cotton and the determination of the market rate would depend on proper and adequate material in regard to the prevailing market prices. The Textile Commissioner is, therefore, empowered by clause 14B, subclass (4), to Seck the advice of any person or persons for the purpose of determining the price of cotton.. But there is no provision obliging the Textile Commissioner to hear the stakeholder before determining the price. Neither subclause (3) nor subclass (4) of clause 14B contemplates an enquiry to be made by the Textile Commissioner for determining the price in which the stockholder is entitled to have an opportunity to be heard in regard to the determination of the price. The Textile Commissioner can determine the price without giving any opportunity of hearing to the stakeholder. Now, as already noticed, various factors namely variety, grade and staple length of cotton enter into the process of price-determination and in determining the price these factors have to be determined by the Textile Commissioner. The determination of these factors is not a mechanical process. The very fact that the procedure envisaged in the impugned Notification contemplates an appeal to the Ad Hoc Committee from the survey made by the East India Cotton Association shows that the determination of these factors may involve debatable and controversial issues and the task of determination may well be a difficult and delicate task. And yet, according to the machinery for determination provided in clause 14B, sub-clauses (3) and (4) these factors are to be determined by the Textile Commissioner without any obligation to hear the stockholder. The determination of the market price is also to be made by the Textile

Commissioner without any opportunity to the stakeholder to be heard in regard to its determination. Such a provision can hardly be regarded as reasonable. When a stockholder is compelled to part with his property, namely cotton, by a compulsory sale order, he should have an opportunity to be heard in the assessment of the price payable to him, particularly when determination of the price depends upon a complex function, namely, determination of variety, grade and staple lengh of cotton and also in cases where there is no controlled price, determination of the market rate and a provision for determination of the price which does not associate the stakeholder in the assessment of the price can never be regarded as reasonable. Price is really in the nature of compensation for property which the stockholder is compelled to part with and it would be clearly unreasonable not to associate the stakeholder in the determination of the compensation payable to him for the compulsory sale of his property. We may emphasize the point by asking ourselves would a provision for determination compensation for acquisition of property be reasonable if it provides for such determination without giving an opportunity of hearing to the owner in the matter of assessment of compensation ? It is undoubtedly true, as pointed out on behalf of the respondents, that there is nothing to prevent the Textile Commissioner from hearing the stockholder before determining the price, but that is not sufficient to meet the requirement of reasonableness, for it leaves it to the opinion of the Textile Commissioner whether or not to hear the stakeholder. A provision in order to be reasonable, must oblige the Textile Commissioner to hear the stockholder before determining the price. It would have been possible to spell out a right of hearing in the stakeholder if the function of determining the price under clause 14B(3) were a quasi-judicial function. But it is clear from the nature of the function as also from the provision in clause 14B, subclause (4) that the function is purely an administrative function and does not involve performance of any quasi-judicial process. The learned Advocate General on behalf of the respondents also did not contend that there was any quasi-judicial duty imposed on the Textile Commissioner in determining the price.

[23] The learned Advocate General however urged that even if there was no duty on the Textile Commissioner to hear the stockholder before determining the price, he being a responsible officer would act fairly and determine the price only after giving an opportunity of hearing to the stakeholder. But this is no answer to the contention that the provision as enacted in clause 14B, sub-clauses (3) and (4), is unreasonable. Vide observations of Wanchho J., as he then was, in paragraph 6 at page 1232 in Corporation of Calcutta v. Calcutta Tramways Company Ltd., A. I. R. 1964 S. C. 1279. It was also urged by the learned Advocate General that the Textile Commissioner had in

fact acted reasonably by providing a machinery for determination of the price which was known to the trade. But this also cannot cure the mischief inherent in clause 14B, sub-clauses (3) and (4). The question whether the Textile Commissioner has in fact acted reasonably or not is beside the point. To quote the words of the Supreme Court in the recent decision in Kantilal Babulal's case (supra): "The constitutional validity of a provision has to be determined on construing it reasonably. If it passes the test of reasonableness, the possibility of powers conferred being improperly used, is no ground for pronouncing it as invalid, and conversely if the same properly interpreted and tested in the light of the requirements set out in Part III of the Constitution, does not pass the test, it cannot be pronounced valid merely because it is being administered in a manner which might not conflict with the constitutional requirements." Moreover, it may be pointed out that even the machinery provided by the Textile Commissioner for determination of the price by survey to be made by the East India Cotton Association or the Ad Hoc Committee does not afford an opportunity to the stockholder to be heard before the Ad Hoc Committee determines the variety, grade and staple length of cotton. As stated in the affidavit in reply filed by R. Doraiswami, survey made by the Ad Hoc Committee is a "blind survey" without knowing who the stakeholder is and the stockholder has, therefore, a fortiori no opportunity of putting forward his point of view before the Ad Hoc Committee. We are, therefore, of the view that the machinery for deter mination of the price in clause 14B, sub-clauses (3) and (4) is unreasonable and these sub-clauses must be held to be violative of Article 19(1)(f) and (g).

[24] That takes us to the question whether the invalidity of clause 14B, sub-clauses (3) and (4), affects the validity of clause 14A and that depends upon whether clause 14B, sub-clauses (3) and (4) are severable from clause 14A. The principles governing severability were considered by the Supreme Court in R. M. D. Chambarbaugwala v. The Union of India, A. I. R. 1957 S. C. 628. Seven principles were there laid down in that connection of which only three are material for our purpose and they are: (1) In determining whether the valid parts of the statute are separable from the invalid parts thereof, it is the intention of the Legislature that is the determining factor. The test to be applied is whether the Legislature would have enacted the valid part if it bad known that the rest of the statute was invalid. (2) If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. (3) And even when the provisions which are valid

are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Now, in view of the fact that sec. 3 (3) provides that where any stakeholder sells cotton in compliance with an order of compulsory sale, there shall be paid to him the price set out in clauses (a), (b) and (c) it is not possible to say that if clause 14B, sub-clauses (3) and (4) are exercised, clause 14A would be left without any force or efficacy. The second principle set out above would not, therefore, apply but that the question still remains whether the case falls within the third principle. If clause 14A and clause 14B, sub-clauses (3) and (4) all form part of a single scheme which is intended to be operative as a whole, then, according to the third principle, the invalidity of clause 14B, sub-clauses (3) and (4) would result in the failure of the whole and clause 14A would also be invalidated.

[25] Clause 14A and clause 14B, sub-clauses (3) and (4), form part of a single scheme for compulsory sale of cotton to manufacturers in need of cotton. Clause 14 provides for making of an order of compulsory sale and the order can be carried out without any difficulty if the parties are able to agree upon the price as contemplated in sec. 3(3) clause (a). But if the parties are unable to agree upon the price, there would have to be a machinery for determination of the price and, as pointed out above, the machinery of the Court is wholly inappropriate. The Central Government could never have contemplated that an order of compulsory sale should be made, leaving the parties to obtain the determination of the price through the machinery of the Court. The object and purpose of an order of compulsory sale would be defeated if such were the case. No stockholder would deliver cotton without payment of the price and if the price is disputed and even if the price is controlled, there may still be dispute with regard to variety, grade and staple length of cotton the machinery for determination of the price through the Court would result in delay frustrating the object and purpose of an order of compulsory sale. In practice, an order of compulsory sale would be unworkable without a speedy and practical machinery for determination of the price and that is why such a machinery was provided in clause 14B, subclauses (3) and (4). But if this machinery fails by reason of invalidity of clause 14B, sub-clauses (3) and (4), we do not think that the Central Government would have enacted clause 14A standing alone. We are, therefore, of the view that the present case is governed by the first and third principles set out above and clause 14A must also be held to be invalid under Article 19(1)(f) and (g).

Re Ground E:

[26] Clause 20 is assailed before us on the ground of excessive delegation of legislative power but we do not think there is any substance in this contention. Under clause 20, power to exercise any functions and powers of the Textile Commissioner under the impugned Order is conferred on such officers as may be authorised by the Textile Commissioner by general or special order with the previous sanction of the Central Government and that clause is clearly within the ambit of sec. 4. Now sec. 4 is admittedly not affected by the vice of excessive delegation of legislative power and clause 20 made under sec. 4 cannot, therefore, be challenged as suffering from any such infirmity. It was also urged that in any event clause 20 adds to the unreasonableness of the restrictions imposed by clauses 3, 14A and 14B inasmuch as under clause 20. the powers and functions under these clauses can be delegated by the Textile Commissioner to any officer he likes whether or not such officer has sufficient experience in cotton. No guidance is provided by the Legislature, it was said, as to the officers to whom the powers and functions of the Textile Commissioner can be delegated under clause 20 and it would be open to the Textile Commissioner to delegate his functions and powers to any officer even if such officer is not experienced in cotton and does not have the necessary equipment to carry out or implement the policy or principleenunciated by the Legislature and this renders the restrictions imposed under clauses 3, 14A and 14B unreasonable. This criticism, we are afraid, is not well-founded. In the first place, there is a check or control on the delegation which may be made under clause 20. Unlike clause 4(3) of the Coal Control Order in Dwarka Prasad's case, AIR. 1954 S. C 224, clause 20 permits delegation only in favour of an officer and such delegation again can be made only with the previous sanction of the Central Government. Moreover, though not expressly stated in so many words, guidance as to the officers to whom delegation may be made under clause 20 is to be found in the nature of the power proposed to be delegated and the policy or principle for effectuating which the power is conferred on the Textile Commissioner. The delegation would of necessity be made only to such officers who would be competent to carry out the policy and purpose of the impugned Order. No violation of any constitutional guarantee is, therefore, involved in clause 20. Re. : Ground F(1) :

[27] The Act provides for making of orders in regard to several matters for any one or more of the purposes set out in sec. 3(1). It is apparent from the different kinds of orders which may be made under sec. 3(2) that the Act envisages control at several points and in several directions. The executive authority may impose control at one point or another or in one direction or another according as the exigencies of the situation may require. How control is to be imposed and to what extent must necessarily be left to the

executive authority to decide. The executive authority would have the necessary means and would be best fitted to decide what essential commodity is required to by controlled and to what extent for carrying out the purposes mentioned in sec. 3(1) and, therefore, sec. 3 leaves it to the executive authority to form an opinion as to whether it is necessary or expedient to make any particular order for the purpose of carrying out any one or more of the purposes set out in sec. 3(1). But there must be a relation between the provisions of the order and the purpose for which the order is made. The test provided by the guiding principle set out in sec. 3(1) is an objective test and whether or not, in making the order, the guiding principle has been followed and the order subserves any of the purposes set out in sec. 3(1) is a justiciable question. Vide clause (v) of the classification of statutes made in Ram Krishna Dalmia v S. R Tendolkar, A I. R. 1958 S. C. 538 at 548 and also the observations of the Supreme Court in Jyoti Per shad's case (supra) at page 1610. If it can be shown from the intrinsic evidence in the order or from the affidavits that the order does not subserve any of the purposes set out in sec. 3(1), it would be outside the ambit of sec. 3. The same principle must also apply in determining the validity of the impugned Notification, for, as pointed out above, the exercise of the power to fix maximum and minimum prices under clause 3 is governed by the policy or principle enunciated in sec. 3(1) and the impugned Notification, to be valid, must subserve any one or more of the purposes set oat in sec. 3(1).

[28] Now the case of the respondents was that the impugned Notification subserved the purpose of making cotton available to consumers at fair prices and the argument of the petitioners was, therefore, directed towards showing that the impugned Notification did not subserve the said purpose. The petitioners urged that there were two factors which were required to be taken into account for the purpose of arriving at the fair price of cotton and they were admittedly not taken into account and the impugned Notification could not, therefore, be said to subserve the purpose of making cotton available at fair prices. The two factors referred to by the petitioners were: (1) cost price of kapas to the dealer in cotton, and (2) the relative prices of other commodities, agricultural as well as industrial. Before we proceed to consider this argument of the petitioners, it is necessary to point out that while considering the question whether the impugned Notification subserves the purpose for which it is claimed to have been made, it must be borne in mind that the Court is not to act as a Court of appeal and examine whether the view taken by the Textile Commissioner that the impugned Notification subserves the stated purpose is right or wrong. The Court cannot substitute its own opinion for that of the Textile Commissioner; as a matter of fact, the Court would not have sufficient means to form an opinion as to whether the impugned Notification subserves the stated purpose

or not. Having regard to the nature of the problem to be tackled by the Textile Commissioner, the diversity of factors liable to be taken into consideration and the possibility of divergence of views in the assessment of the relative value and effect of the varied factors, a certain amount of latitude and free play must be allowed to the Textile Commissioner and the impugned Notification made by the Textile Commissioner cannot be struck down unless it appears clearly that the impugned Notification cannot, on any reasonable view of the matter, subserve the stated purpose. Such would be the case where the provisions of the impugned Notification are totally unrelated to the stated purpose or where a factor is taken into account which is extraneous and totally irrelevant to the fixation of fair price or there is failure to take into account, a factor which must necessarily be taken into account and without which fair price can never be fixed or the price fixed is arbitrary and based on no principle. It is only on grounds like these that the Court would be entitled to say that the impugned Notification does not subserve the stated purpose and is, therefore, outside the ambit of clause3.

[29] If this test is applied, the challenge to the validity of the impugned Notification on this ground must fail. What the Textile Commissioner has done by the impugned Notification is to fix the maximum and minimum prices of cotton and in doing so, the Textile Commissioner has admittedly not taken into account the cost price of kapas to the dealer in cotton. The question is whether the price of kapas is such a factor that the price fixation without taking it into account can never yield fair price. We do not think so. Price control of an intermediate commodity like cotton may in a given situation lead to the adjustment of price of raw product like kapas. If the dealers cannot sell cotton at a price above the maximum, they would not buy it at an uneconomical price, that is at a price which does not leave them any margin of profit. The price of kapas would, therefore, adjust itself provided, of course, the growers of kapas have no holding power. If the growers of kapas are able to hold on to their stocks, the dealers of cotton might be compelled to buy it at a higher price and in their turn they might be forced to sell cotton to manufacturers at a price above the maximum and the manufacturers being in need of cotton would have to pay a higher price, thus defeating the price control imposed by the impugned Order. It was the case of the petitioners that this was exactly what was happening and the cause of it was that the price of kapas was not taken into account in determining the selling price of cotton. This allegation was sought to be supported by the petitioners by giving figures of the price which they were compelled to pay for the kapas purchased by them. But these figures were, disputed on behalf of the respondents and R. Doraiswami in his affidavit in reply denied that the price of kapas to the dealers was higher than the maximum price of cotton fixed under the impugned

Notification. The Textile Commissioner, of course, did not set out what according to him was the price of kapas during the relevant period in the open market but these are writ petitions and ordinarily this Court does not admit oral evidence for deciding disputed questions of fact in writ petitions. We must, therefore, proceed on the basis that the allegation of the petitioners is not established. But it is to our mind incontrovertible that in a given situation, where the holding power of growers of kapas is not sufficient, price control of cotton can have the effect of controlling by adjustment the price of kapas. The incidence of free market can bring about price equilibrium leaving sufficient margin of profit to the leader who purchases kapas and after ginning it, sells cotton. It is, therefore, not possible to say that the price of kapas is such a factor that it must necessarily be taken into account in determining the fair price of cotton and no price fixation can ever be fair if the price of kapas to the dealer is excluded from consideration.

[30] It is significant to point out that there is no allegation in any of the petitions that the cost of production of kapas was not taken into account by the Textile Commissioner was below the cost of production of kapas. If the maximum price fixed were below the cost of production of kapas, then obviously it would not be a fair price. But there is no doubt that both the maximum and minimum prices were above the cost of production of kapas, for, according to the statement made in the affi davit of Doraiswami, the minimum prices were so fixed that they would act as an incentive to the grower and promote maintenance of supply of cotton. The Textile Commissioner bad two methods available to him for imposing price control. Either he started at the end of the finished pro duct namely, cloth. It was for him to decide what method to adopt and in the exercise of his judgment, he decided to adopt the latter. As a matter of fact, one can well imagine the difficulty of enforcing price control of kapas on vast number of growers of kapas in the country. The Textile Commissioner, therefore, imposed price control on cotton having regard to the price control which existed on cloth manufactured by mills having weaving and spinning units for mass consumption. In fixing the maximum and minimum prices of cotton he could not reasonably take into account the market price of kapas, for if he started by taking the market price of kapas in a competitive market, it would not be possible for him to control the price of cotton in such a way as to make it available at fair prices to the manufacturer leaving sufficient margin of profit to the manufacturer on sale of cloth at controlled rates. Of course, he was bound to take into account the cost of production of kapas, for if he ignored that, the price fixation made by him would be totally arbitrary and unworkable but as pointed out above there is nothing to show that he did not take the cost of production of kapas into account. He, therefore, fixed the maximum and minimum prices of cotton on the basis that the price of kapas would

adjust itself and in doing so, we do not think be acted so unreasonably that we would say that the price fixation made by him did not subserve the purpose of making cotton available at fair prices.

[31] So far as the second factor of relative prices of other commo dities is concerned, we do not think that the Textile Commissioner's failure to take that factor into consideration vitiates the price fixation made by him. When the price of cotton is controlled having regard to the fair price which is fixed for the cloth manufactured out of cotton, the factor of relative prices of other commodities would indirectly enter into the determination of the controlled price, for it would have been taken into account in fixing the fair price of cloth. Moreover, this factor, though it may not have been taken into account as an independent factor, would necessarily be reflected in the other considerations taken into account and we do not think that on this ground the price fixation can be attacked as outside the ambit of clause 3. This ground of challenge against the validity of the impugned Notification, therefore, fails.

Re. Ground F(2):

[32] It is undoubtedly true that by virtue of the price control imposed under the impugned Notification, a grower who sells kapas grown by him can sell it in the open market without any price control, while a grower who sells cotton after getting his kapas ginned and pressed is liable to price control and so also a grower who is not a member of a co-operative society and who sells kapas on his own can sell it in the open market without any price control while a grower who is a member of a cooperative society and who gets his kapas ginned by the cooperative society and then sells cotton through the cooperative society is subject to price control. But this does not create any unjust discrimination, for in the one case the grower sells kapas while in the other he sells cotton. Kapas and cotton are two different commodities for the purpose of the Order as well as the Act. Every grower whether he is a member of a cooperative society or not is liable to price control if he sells cotton and equally, he is free from price control if he sells kapas. The impugned Notification cannot, therefore, be challenged as violative of the equal protection clause on this ground.

Re. Ground F(3):

[33] It is rather difficult to appreciate this ground. The impugned Notification is made by the Textile Commissioner in exercise of the power conferred upon him under various

clauses of the impugned Order. Either these clauses confer upon the Textile Commissioner the power to issue the impugned Notification or they do not. If they do, the impugned Notification would be valid while if they do not, the impugned Notification would be bad. But it is difficult to Sec how the question as to whether the impugned Notification is legislative in character or not is material. The only question is about the vires of the impugned Notification Whether it is authorised by the various clauses of the impugned Order and so far as that question is concerned no challenge was preferred before us, apart from that is set out in ground F(1), that the impugned Notification was outside the ambit of the impugned Order.

Re. Ground G(1) :

[34] The argument under this ground ran as follows: The Textile Commissioner is required under clause 14B(3) to determine the price of cotton having regard to the provisions contained in sec. 3(3). Sec. 3(3)(a) provides that where price can be agreed upon between the parties, the agreed price shall be paid by the buyer to the stockholder and it is only if no such agreement can be reached that the price can be determined under sec. 3(3)(b) and (c). It was urged that in the present case no attempt was made by the Textile Commissioner to bring about agreement between the parties as to the price and the direction for determination of the price by reference to sec. 3(3)(b) was given without ascertaining whether the parties were unable to reach an agreement as to the price and the orders of compulsory sale were, therefore, in violation of clause 14B(3) read with sec. 3(3). This contention is, in our view, unsustainable. While analysing the provisions of clauses 14B(3) and (4), we have already pointed out that the question of determination of the price by the Textile Commissioner can arise only if the parties are unable to agree upon the price as provided in sec. 3(3)(a). The Textile Commissioner in giving the direction as to price in the orders of compulsory sale postulated that there was no agreement between the parties as to the price. If the parties could, despite this direction, arrive at an agreement as to the price, the agreed price alone would be payable by the buyer to the stakeholder as provided in sec. 3(3)(a) and the direction of the Textile Commissioner would have no effect. But there is no obligation on the Textile Commissioner to attempt to bring about an agreement between the parties and it is not correct to say that it is only on failure on such attempt, that he can give a direction as to the determination of the price by reference to sec. 3(3)(b) or (c).

Re. Ground G(2)

[35] Under clause 14B(3) the Textile Commissioner is constituted the authority to determine the price having regard to the provisions contained in sec. 3(3). He may in determining the price take advice under clause 14B(4) but the determination of the price must be made by him, for he is the authority to whom the power to determine the price is entrusted. He cannot abdicate his function and leave it to another authority to determine the price. As pointed out by us, various factors, namely, the variety, grade and staple length of cotton enter into the process of price determination and in determining the price, these factors have to be determined. This determination, according to clause 14B(3), has to be made by the Textile Commissioner and he cannot leave it to be done by any other authority. But when we turn to the orders of compulsory sale, we find that the determination of the price of cotton directed to be sold is not made by the Textile Commissioner himself but is left by him to the Ad Hoc Committee. It was contended by the learned Advocate General that the Textile Commissioner has determined the price in the orders of compulsory sale by saying that it shall be the maximum price and the only thing he has left to the Ad Hoc Committee is to determine the variety, grade and staple length of cotton. But this contention cannot avail, for the requirement that the price shall be calculated by reference to the maximum price is set out in sec. 3(3)(b) itself and what the Textile Commissioner is required to do by clause 14B(3) is to determine the price of the cotton by calculating it with reference to the maximum price of the cotton. This process which involves the determination of the variety, grade and staple length of cotton and the calculation of the price of the cotton with reference to the maximum price has to be performed by the Textile Commissioner and it is not competent to the Textile Commissioner to leave any part of this determination to be made by the Ad Hoc Committee. He may, of course, take the assistance of the Ad Hoc Committee for the purpose of determining the price, but the determination must be his own and not that of the Ad Hoc Committee. Here we find that the Textile Commissioner has left to the Ad Hoc Committee the performance of the whole of the function which he is required to do himself under clause 14B(3). The Textile Commissioner-and when we speak of the Textile Commissioner we also refer to his delegate under sec. 20-has abdicated his function under clause 14B(3) and the direction in regard to the determination of the price contained in the orders of compulsory sale is, therefore, ultra vires clause 14B(3) and hence void. Now this direction forms an integral and inseverable part of the orders of compulsory sale. The orders of compulsory sale require the petitioners to sell cotton to the specified buyers at the price to be determined in the manner set out in the orders of compulsory sale. If, therefore, the direction as to the determination of the price is invalid, the orders of

compulsory sale must also fall. Re. Ground G(3) :

[36] The last ground challenged the authority of the officers who made the orders of compulsory sale. There are two classes of petitions before us, one class consisting of those in which the orders of compulsory sale are signed by the Assistant Enforcement Officer and the other consisting of these in which the orders of compulsory sale are signed by the Assistant Director. So far as the first class of petitions is concerned, it is divisible into two grounds. The orders of compulsory sale in the first group of petitions consisting of Petitions Nos. 475, 590, 591, 592, 593, 597, 599 and 601 of 1967 are obviously bad since the Assistant Enforcement Officer who made these orders had no authority to make them by reason of the power under clause 14A not having been delegated to him by the Textile Commissioner under clause 20. The second group of petitions consisting of Petitions Nos. 559, 560, 570, 594, 595, 596, 598. 600, 637, 642 and 619 of 1967 stands on a slightly different footing. In these petitions, the orders of compulsory sale were originally made by the Assistant Enforcement Officer but after the filing of the petitions, fresh orders of compulsory sale were made by the Director on 28th June 1967 superseding the original orders of compulsory sale. In view of the fact that the original orders of compulsory sale impugned in these petitions were cancelled by the subsequent orders of compulsory sale dated 28th June 1967, these petitions do not survive save and except petitions Nos. 570, 637 and 619 of 1967. So far petitions Nos. 570 and 637 of 1967 are concerned, the petitioners have alleged on oath in their affidavits that the new orders of compulsory sale were not served upon them and we would, therefore, have to proceed on the basis that the new orders of compulsory sale were not made and the original orders of compulsory sale continued to subsist. The original orders of compulsory sale would, consequently, have to be quashed and set aside in these two petitions, on the ground that they were made by an officer who bad no authority to make them. The petitioners in petition No. 619 of 1967 were served with a new order of compulsory sale and they, therefore, amended the petition so as to challenge the new order of compulsory sale. The new order of compulsory sale being made by the Director who had authority to make it under clause 14A cannot be successfully challenged on the present ground.

[37] The second class of petitions consists of all the remaining petitions in which the order of compulsory sale were made by the Assistant Director. The authority of the Assistant Director to make these orders was sought to be derived from the Notifications dated 30th April 1957, 6th November 1960 and 6th December 1960 issued by the Textile Commissioner under clause 20. By these Notifications the Textile Commissioner

delegated his power to make orders of compulsory sale under clause 14A inter alia to the Assistant Director of the Regional Officer of the Textile Commissioner at Bombay and other places. The petitioners did not dispute the factum or the validity of these notifications but their contention was the substitution of the original clause 14A by the new clause 14A consisting of two sub-clauses. They urged that no delegation of the power conferred under the new clause 14A was made in favour of the Assistant Director until 22nd May 1967 when, by a notification of that date, the Textile Commissioner delegated his power under the new clause 14A to all officers at the headquarters and the Regional Officers of the Textile Commissioner not below the rank of Assistant Director. The impugned orders of compulsory sale were, however, all made prior to 22nd May 1967. Their validity must, therefore, depend upon the answer to the question whether the aforesaid notifications dated 30th April 1957, 6th November 1960 and 6th December 1960 continued to be effective after the substitution of the original clause 14A so as to delegate the power under the new clause 14A to the Assistant Director.

[38] It is clear from the aforesaid notifications that the power of the Textile Commissioner which was delegated to the Assistant Director under the said notifications was the clause in force on the dates of the said notifications. The original clause 14A was thereafter substituted by the Notification dated 12th January 1962 and the delegation of the power of the Textile Commissioner under the original clause 14A to the Assistant Director under the said notifications thereupon became ineffectual as the original clause 14 A ceased to be in force. There as no delegation of the power of the Textile Commissioner under the new clause 14A to the Assistant Director after the new clause 14A came into force and the Assistant Director had, therefore, no authority to make the order of compulsory sale under the new clause 14A prior to 22nd May 1967. It may also be noted that prior to the substitution affected by the Notification dated 12th January 1962, the original clause 14A conferred power on the Textile Commissioner to issue a harmless direction which a stockholder was not under any obligation to carry out while under the new clause 14A the Textile Commissioner was given the power to issue a binding direction carrying with it an obligation to comply with it on pain of penalty. The nature of the power conferred on the Textile Commissioner was thus altered and the delegation of the power under the original clause 14A did not continue to operate so as to comprise delegation of the power under the new clause 14A. We do not agree with the learned Advocate General that the nature of the function of the Textile Commissioner remained the same and merely the- consequence of the exercise of the power was altered. The change in the consequence flowing from the exercise of the power altered the nature of the power itself and the delegation of the power under the

original clause 14A could not be read as amounting to delegation of the power under the new clause 14A. The Assistant Director had, therefore, no authority to make the order of compulsory sale in the second class of petitions.

[39] The order of compulsory sale in all the petitions would, therefore, have to be quashed and set aside. We make the rule in each petition absolute and issue a writ of mandamus in each petition quashing and setting aside the orders of compulsory sale impugned in each petition. The respondents in each petition will pay the costs of the petition to the petitioners in one set in each petition.

[40] The learned Advocate General appearing on behalf of the Union of India, the Textile Commissioner and the Assistant Enforcement Officer or the Assistant Director and the learned advocates appearing on behalf of the manufactures apply for leave to appeal to the Supreme Court against the order in each petition. Leave to appeal to the Supreme Court is accordingly granted under Article 133(1)(c) of the Constitution to the Union of India, the Textile Commissioner, the Assistant Enforcement Officer or the Assistant Director and the manufacturers in each petition.

Rule made absolute