Raghubar Dayal Jai Prakash

Vs

The Union of India and Others

Petitions Nos. 22 to 26 and 42 of 1959

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

12.09.1961

JUDGMENT

AYYANGAR, J. –

These six petitions filed under Article 32 of the Constitution raise for consideration three points : (1) the constitutional validity of the operative provisions of the Forward Contracts (Regulation) Act (Act LXXIV of 1952) (to be referred to hereafter as the Act), (2) the validity of a notification dated February 11, 1959, issued under section 15 of the Act by which gur was brought within the purview of the enactment with immediate effect, and (3) the validity of another notification of the Central Government issued simultaneously fixing the price at which Forward Contracts subsisting on February 11, 1959, was directed to be settled. For the purpose of understanding the points raised and the effect of the impugned notification on the rights of the petitioners it is sufficient to refer to the facts of Petition No. 23 of 1959 which is typical of the cases before us.

The petitioner - Raghubar Dayal Jai Prakash is a firm carrying on the business of purchase and sale of gur and other commodities inter alia at Meerut. Traders like the petitioner had combined together to form a company registered under the Indian Companies Act under the name 'Kaisergunj Beopar Co. (P) Ltd'., Meerut. The function of this incorporated body was, inter alia,, to regulate forward transactions in the sale and purchase of gur and other commodities entered into between the members of the Society, as also to declare the rates at which the contracts were to be settled on the dates fixed for delivery. This incorporated company has been impleaded as a second respondent to the petition. This association or company, however, was not, on the date of the impugned notification, "recognised" by the Central Government under the provisions of the Act to which we shall presently advert, in respect of dealings in gur with which alone these petitions are concerned. The petitioner had entered into forward contracts of purchase of gur at certain rates and he had also deposited as the buyer the amount as well as the special margin required to be deposited under the bye-laws of this association. Contracts entered into by him which were outstanding on February 11, 1959, were in relation to 29,600 maunds. While so, Government published a notification under section 15 of the Act on February 11, 1959, applying the provisions of that section to gur as a result of which the forward contracts entered into in gur by the petitioner became illegal and void. The further legal consequence of the notification was that the transactions entered into by the petitioner and others situated similarly like him were to be deemed to be closed out on February 11, 1959 - the date of the notification and the differences arising out of the contract were to be payable not at the rate originally stipulated by the contracting parties but at the rates specified in the notification. If the petitioner had to settle his outstanding contracts at the rate determined by the Central Government he would suffer a loss of Rs. 48,000. He therefore challenges in this petition the validity of the provisions of the Act which enabled the notifications to be issued as also the notifications

themselves on grounds to the details of which we shall advert later.

Before setting out these details, it would be convenient and tend to the proper appreciation of the problems involved, if we briefly indicate the economic implications of forward trading in commodities, the need for the regulation of such trading; as well as the history of the measures taken from time to time to exercise control on forward trading in gur prior to the issue of the impugned notifications in February 1959.

The expert committee to which the Bill which became the Act (Act 74 of 1952) was referred, explained in their report the function of forward trading in these terms :

> "Forward trading involves speculation about the future, but not all forms of forward trading could be considered as either unnecessary or undesirable for the efficient functioning of anything but the most primitive economy..... To the extent to which forward trading enables producers, manufacturers and traders to protect themselves against the uncertainties of the future, and enables all the relevant factors, whether actual or anticipated, local or international, to exercise their due influence on prices, it confers a definite boon on the community, because, to that extent, it minimises the risks of production and distribution and makes for greater stability of prices and supplies. It thus plays a useful role in modern business. At the same time, it must be admitted that this is an activity in which a great many individuals with small means and inadequate knowledge of the market often participate, in the hope of quick or easy gains and consequently, forward trading often assumes unhealthy dimensions, thereby increasing, instead of minimising, the risks of business. There are forms of forward trading for example, options, which facilitate participation by persons with small means and inadequate knowledge..... It is, therefore, necessary to eliminate certain forms of forward trading, and permit others under carefully regulated conditions, in order to ensure that, while producers, manufacturers and traders will have the facilities they need for the satisfactory conduct of their business the wider interests of the community, and particularly, the interests of consumers, will be adequately safeguarded against any abuse of such facilities by others.
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> The Essential Supplies (Temporary Powers) Act, 1946, does not empower the Central Government to regulate forward trading in any commodity other than an 'essential commodity' within the meaning of that Act. Action may be needed not only for prohibiting forward trading in commodities in which it is still taking place, but also for reopening forward trading under regulated conditions and if circumstances are favourable to such a course, in commodities in which it is now prohibited.
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> The arrangements must be such as will enable speedy and effective action to be taken in emergencies, and must at the same time provide sufficient safeguards against arbitrary or ill-informed action. "

It was with these objects and with provisions calculated to carry out these suggestions that the Act was enacted. And now a short resume of the history of the provisions relating to forward trading in gur which preceded the impugned notifications :

> After the end of the war, a ban on forward trading in gur was imposed by the Sugar

& Gur (Future Trading) Prohibition Order, 1951, issued under the Essential Supplies (Temporary Powers) Act, 1946. This ban was however removed by a notification dated January 7, 1954. The Forward Contracts (Regulation) Act, 1952, was not-applied to gur with the result that for January, 1954, all contracts in relation to gur remained free and outside the regulatory provisions of the Act. The Forward Markets Commission took up the consideration of the question regarding the advisability of imposing regulations on forward trading in this commodity. The Commission considered, first, the question whether gur was a suitable commodity for forward trading and whether there was any need of bringing forward trading, which was still then free in that commodity, within the regulatory provisions of the Act. Their conclusion was that gur was a commodity in respect of which the production was large enough for not being cornered by any group of traders; and that the forces of supply and demand in respect of the commodity were uncertain so as to require a continuous assessment of their changing relationships through the medium of a futures market. They also were of the opinion that the fluctuations in the price of gur were wide enough to attract speculators and to ensure holders of ready stocks against risks arising from the fluctuations consequent upon speculation it was necessary to bring trade in the commodity within the scope of the Act. In these circumstances by their report which was submitted to the Government in May, 1957, they recommended (1) that Government might accord recognition to certain associations after the necessary formalities had been completed, and (2) to issue simultaneously a notification under section 15 of the Act illegalising forward trading in the commodity except through the associations or through the members of such associations, as set out in section 15 of the Act. The Government however by their resolution dated January 17, 1958, recorded :

"The main recommendations of the Commission are that the regulatory provisions of the Forward Contracts (Regulation) Act, 1952, be applied to gur and that forward trading be conducted through associations to be recognized under the said Act.

The Government of India have carefully considered the recommendations made by the Commission and have come to the conclusion that there is no strong justification or special need for the time being to bring gur under the purview of the forward Contracts (Regulation) Act, 1952."

Subsequently however by a notification dated February 11, 1959, the Central Government declared that section 15 of the Act shall apply to the whole of the territories to which the Act extends. The circumstances which led to this change in the view of Government is thus expressed in sections 195 to 197 of the Annual Report of the Forward Markets Commission for the year 1959. It is there stated :

"195. The Commission in its Report on the Recognition of Associations in respect of Forward Contracts in Gur submitted in May 1957 had recommended that Gur be brought under the regulatory provisions of the Forward Contracts (Regulation) Act, 1952, and that recognised futures markets be established at Hapur, Meerut, Agra, Muzaffarnagar and Delhi for the purpose. The Government of India, however, decided not to bring gur under the purview of the Forward Contracts (Regulation) Act, 1952 for the time being, as a result, forward trading in gur, continued to be unregulated. The price situation in gur markets at the end of 1958, however, took a

> very serious turn on account of hectic speculative activity in these markets. For example, the gur prices, at Hapur, rose during the three months from the middle of November to the middle of February 1959, by 37 per cent. as compared to the rise of 0.15 per cent. in sugar - a controlled commodity - and 1.5 per cent. in khandsari, forward trading in which had been banned.
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> 196. These developments necessitated a reconsideration of the earlier decision to keep the commodity out of the purview of the Act and the Government of India, on the advice of the Commission, applied section 15 of the Forward Contracts (Regulation) Act, 1952, to gur, all over the country on the 11th February 1959.
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> 197. The application of section 15 of the Act also necessitated fixation of the rate under section 16 at which all forward contracts outstanding as on that day, could be closed out. The Government of India, after taking into account all the relevant factors closed the outstanding contracts at the average of the closing rates during the preceding three months. "

The notifications which brought this about read :

> "In exercise of the powers conferred by clause (a) of section 16 of the said Act the average of the closing rates prevailing in the respective forward markets during the period of three months immediately preceding the date of this notification, as the rate at which any forward contract for the sale or purchase of gur entered into on or before the said date and remaining to be performed after the said date shall be deemed to be closed. "

No associations had been granted recognition before the date of this notification dated February 11, 1959, but on the same date another notification was issued by the Government reading :

> "They have also decided that regulated futures markets in respect of gur should be established in due course at Hapur, Meerut, Agra, Muzzafarnagar and Delhi, and that recognition should be granted under section 6 of the said Act..... ".

In accordance with what was stated here existing associations in the places mentioned were accorded recognition after an enquiry as to whether they conformed to the requirements of the Act. Likewise other associations which were formed subsequently were also recognised after similar enquiries. The petitioners before us are members of these associations - those in Petitions 22, 23 and 25 being members respectively of the three associations named in the notification extracted above and the petitioners in Petitions 24, 26 and 42 of associations subsequently brought into existence. The formalities preceding the recognition, however, took some little time and recognition to all these associations was granted in June 1959 or thereabouts.

In order to appreciate the submissions made to us, it is necessary to set out briefly the provisions of the Act whose validity is challenged. The preamble to the Act reads that it is an Act to provide for the regulation of certain matters relation to forward contracts, the prohibition of options in goods and for other matters connected therewith. We are not now concerned with the second part of the objective, viz., the prohibition of options in goods, but only with those provisions which deal with the regulation of matters relating to forward contracts. Sections 2 which contains the statutory definitions defines "an association" as "a body of individuals, whether incorporated or not,

constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods" while sub-clause (j) defines "a recognised association" as meaning "an association which is for the time being recognised by the Central Government under section 6". Chapter II is entitled "The Forward Markets Commission" and makes provision, in the two sections which constitute the Chapter, first for the establishment and constitution of a Forward Markets Commission which is a body of independent experts (section 3), the other (section 4) detailing the functions of the Commission which include the task of "advising the Central Government in respect of the recognition of associations", and "in respect of any other matter arising out of the administration of the Act", "to keep forward markets under observation" and inform Government of developments taking place in it and finally to make recommendations with a view to improving the organisation and working of forward markets.

Chapter III which is headed "Recognised associations" contains some of the sections which validity was challenged in the petitions before us. Before an association could be recognised, section 5 requires the body to make an application to the Central Government furnishing the details and particulars specified in section 5(2). The Government might make such enquiry as might be necessary and after obtaining such further information as may be required were empowered to grant recognition to associations under section 6 and such recognition was to specify the goods or classes of goods with respect to which forward contracts may be entered into between members of such associations or through or with any such member. Section 6(2) contains conditions which ought to be complied with by associations before recognition was granted and provision was made in section 6(3) for the rules of the association not being amended except with the approval of the Central Government. Complementary to this was the provision contained in section 10 which empowers the Central Government to direct rules to be made, with power in case the recognised association fails to take action to comply with the order of the Government, to themselves make the rules in the forms specified by that order. The recognition had to be published in the Gazette of India and in the official Gazette of the State in which the principal office of the association is situated section 6(4). Sections 6 and 10 were the principal subject of attack among the fasciculus of sections relating to "recognised associations" in Ch. III, but we shall revert to the grounds of attack after setting out the other provisions of the Act whose validity was also the subject of challenge. They were sections 15 and 16 under which the notifications now impugned were made. They run in these terms :

> "15. Forward contracts in notified goods illegal or void in certain circumstances.
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> (1) The Central Government may, by notification in the Official Gazette declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract, for the sale or purchase of any goods specified in the notification which entered into the area specified therein otherwise than between members of a recognised association or through or with any such member, shall be illegal.
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> (2) Any forward contract in goods entered into pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void :-
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> (i) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law, and also

(ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall affect the right of any person other than a member of a recognised association to enforce any such contract or to recover any sum under or in respect of such contract :

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of section 11.

(4) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (1), enter into any contract in on his own account with any person other then a member of the recognised association, unless he had secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be, in his own account :

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract :

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws the outstanding contract, if the member discloses in the note, memorandum of agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, as the case may be, on his own account.

16. Consequences of notification under section 15. - Where a notification has been issued under section 15, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract -

(a) every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods".

In cases where mere regulation of the trade was not considered sufficient Government were empowered to prohibit forward trading and section 17 of the Act enacted.

"17. Power to prohibit forward contracts in certain cases. - (1) The Central Government may, by notification in the Official Gazette, declare that no person shall,

save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which the provisions of section 15 have not been made applicable, expect to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts in contravation of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 15".

There are two more sections to which reference might be made and they are section 20 - which imposes penalties for contravention of certain provisions of Ch. IV - and section 21(e) & (f) which run in these terms :

"21. Penalty for owning or keeping place used for entering into forward contracts in goods. - Any person who ..... .....

(e) not being a member of recognised association or his agent authorised as such under the rules or bye-laws of such association; canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or

(f) joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or".

It would be noticed that the two latter are intended to carry out the object and purposes of the Act and make effective the powers vested under the other provisions to which reference has been made.

We shall now proceed to consider the grounds of attack upon each of these provisions and examine the correctness of the contentions urged by learned Counsel :

Sections 5, 6 and 10 :

It was urged by Mr. Nambiar, and in this he was supported by the other learned Counsel appearing in the case, particularly by Mr. S. T. Desai, that these sections infringed the freedom guaranteed by sub-clause (c) of clause (1) of Article 19 of the Constitution. Sub-clause (c) of clause (1) of Article 19 runs in these terms :

"19. (1) All citizens shall have the rights -

#.....##

(c) to form association or unions; "

The freedom, however, is subject to the provisions of clause (4) of Article 19 reading :

"19. (4). Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause".

Briefly stated, the argument regarding these provisions infringing the freedom to "form associations" was as follows : The Constitution guarantees to every citizen the right to form an association. The only limitation which might legally be imposed on this right to form an association is that set out in clause (4) of Article 19, viz., bye-laws which place restrictions based on public order or morality. Where the object of the association is lawful, the citizen, through that association, and the association itself are entitled, by virtue of the guaranteed right, to freedom from legislative interference in the achievement of its object except on grounds germane to public order or morality. In other words, the freedom guaranteed should be read as extending not merely to the formation of the association as such, but to the effective functioning of the association so as to enable it to achieve its lawful objects. Unless sub-clause (c) of clause (1) of Article 19 were so read the freedom guaranteed would be illusory and the Court should, in construing a freedom guaranteed to the citizen, so read it, as to give him an effective right which could be used for the purpose for which the Constitution-framers intended. The further submission, which was in the nature of a corollary from the above was that the freedom guaranteed by sub-clause (c) of clause (1) of Article 19 carried with it a right in the association to determine its internal arrangements in the matter of selecting the personnel who shall manage it, the framing of the bye-laws and regulations which shall govern the relationship between the association and its members as also between it members without any interference by the State unless the law providing for such interference were grounded on morality or public order. In effect the submission was that the right guaranteed under sub-clause (c) of clause (1) of Article 19 was not merely, as its text would indicate, the right to form an association but would include the functioning of the association without any restraints not dictated by the need for preserving order or the interests of morality. On these premises it was urged that while the Constitution had guaranteed the freedom to form an association - including inter alia one for fostering or regulating forward trading, still the Central Government had taken upon themselves the right to determine the rules and bye-laws under which the association could function and had, by the provisions in Ch. III of the Act, in every way interfered in the matter of internal management and it was urged that this was violative of the right guaranteed by sub-clause (c) of clause (1) of Article 19 since the restrictions in Ch. III of the Act could not be held to have been dictated on grounds of public order or morality.

We consider this argument is without force. In the first place, the restriction imposed by section 6 of the Act is for the purpose of recognition and no association is compelled to apply to the Government for recognition under that Act. An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also. Could it be contended that there is a right in the association guaranteed by the Constitution to obtain recognition ? It was not disputed before us that forward trading might sometimes assume undesirable forms and become akin to gambling

which might have deleterious consequences on lawful trade and on the general public by causing violent fluctuations in prices. It would follow that the control of forward trading is a legitimate subject of legislative interference and regulation and we might add that this was not disputed before us. The manner in which this regulation is effected and the machinery employed for achieving it are matters of legislative policy which could be determined only by taking into account the organisation of the market, the manner of trading and other relevant factors. The impugned enactment in its Ch. III proceeds on the basis that organisations of tradesmen might be entrusted with the task of regulating these transactions, so that while legitimate trade would be furthered, the evil consequences of undesirable speculation might be avoided. It was, therefore, necessary that the instrument chosen should be subject to control so as effectively to further the policy of the scheme of regulation and that is the ratio underlying the provisions in section 6 of the Act and those which follow it in Ch. III. In this connection it is necessary to add that the restrictions which are impugned as unconstitutional are imposed only on "recognised" associations, Parliament could well have chosen to effect the regulation directly through an official agency instead of through the medium of a voluntary association. In such an event, neither the traders nor their associations could complain of any violation of the law. The mere fact therefore that Parliament chose to utilise the machinery of voluntary trades associations for the purpose of enforcing regulatory control could not invalidate the provision of laws which are designed to ensure effective control over the mechanism of forward trading.

So far we have dealt with the argument about sub-clause (c) of clause (1) of Article 19 in relation to the trades associations under the Act. As regards the wider question argued before us regarding the scope of sub-clause (c) of clause (1) of Article 19, this Court has, in All India Bank Employees' Association v. National Industrial Tribunal ([1962] 3 S. C. R. 269), examined the content of this "freedom of association" in the light of the other freedoms guaranteed by the other sub-clauses of clause (1) of Article 19, in which judgment has been rendered recently and it is therefore unnecessary to go over the ground again.

We have no hesitation in rejecting the argument that the provisions in Ch. III of the impugned Act, and in particular those which we have set out above, infringe, in any manner, the freedom guaranteed by sub-clause (c) of clause (1) of Article 19.

The next provision of the Act whose validity was challenged was section 15 but before stating the grounds upon which this challenge was made it would be convenient to dispose of a contention raised by Mr. Chatterjee -learned Counsel for the petitioners in Writ Petitions 24 and 25 turning on the construction of the section. His submission was that section 15 proceeded on the basis of there being "a recognised association" through which trading in the notified commodity could be conducted before the ban under section 15(1) could be imposed. The argument was based upon the words "otherwise than between members of a recognised association or through or with any such member" occurring towards the last portion of section 15(1). It was urged that under the scheme of the Act the Central Government had first to recognise an association of traders in the commodity, forward trading in which was to be regulated, and that it was only after the recognition of such an association under section 6 that they could under section 15(1) prohibit trading otherwise than through such an association or its members. It was pointed out that the expert committee on gur had itself indicated that such a procedure should be followed and that in the case of certain other commodities like pepper and castorseed which were notified under section 15 the recognition of associations through which forward trading was permitted to be conducted either preceded or was simultaneous with the notification.

Learned Counsel is, no doubt, right in the submission regarding the recommendation of the Forward Markets Commission in its report on gur, as also in the other instances referred to by him, but the question still for consideration is whether on a proper construction of the relevant provisions of Ch. III read in conjunction with section 15 the existence of a recognised association is a legal pre-requisite for the issue of a notification under section 15(1). It need hardly be pointed out and it was not the argument of learned Counsel that section 15(1) in express terms posits the existence of a recognised association as a condition precedent to the issue of a notification under section 15(1). But is such a condition implicit from the section or does it necessarily flow from its terms ? The implication cannot obviously be raised by reference to the hardship which might otherwise be caused but must surely rest on more secure and legally satisfactory grounds.

The Central Government has, no doubt, under section 17, the power to prohibit all forward contracts in a particular commodity, if the mere regulation of the transactions is considered not adequate to protect public interests, and learned Counsel is right in his submission that when a notification is issued under section 15(1), the Central Government are not exercising their power to lay a complete ban, and that consequently the validity of a notification intended merely to regulate cannot be upheld by reference to the power to prohibit. But the scheme of the Act in Ch. III envisages only the formation of voluntary associations and their seeking and being accorded recognition by the Government on fulfilment of the requisite conditions. In other words, the Act does not contemplate the Central Government itself setting up associations to discharge the function of "a recognised association" under the Act. There might, therefore, conceivably, be cases where the traders do not or refuse to organise themselves into an association which could apply for and obtain recognition under Ch. III. It is manifest that the provisions of the Act cannot be defeated and the exercise of the regulatory power of Government nullified by traders in a commodity not forming an association which could be recognised under Ch. III. Similarly the power conferred on Government by section 15(1) of the Act, cannot be made dependent on such voluntary associations satisfying the requirements for recognition, such that if the associations refuse to do so the power does not emerge. No doubt, when there are associations whose bye-law the recognitions of conform to the requirements of the law the recognitions of such associations either before or simultaneously with the issue of a notification under section 15 would enable the forward trading to be conducted without a break. But this is not the same thing as the submission that on a proper construction of section 15 the recognition of an association for the purpose of forward trading in a commodity is an essential pre-requisite before a notification under section 15 could be issued.

It was next contended that even if on a proper construction of section 15 of the Act, the existence of a recognised association authorised to regulate dealings in a particular commodity was not a prerequisite for the issue of a notification under the section in respect of that commodity, still the issue of the notification without an association being recognised was constitutionally invalid as an unreasonable restriction on the right of the petitioners to trade and carry on business. We are unable to uphold this argument either. The need for regulating forward trading could not be and was not disputed before us. We shall be considering later the contention that section 15 of the Act is itself invalid as violating the freedom to trade guaranteed under Article 19(1) (g). The very narrow question which is raised by the point now under discussion is this : Assuming that forward trading requires regulation and that regulation through recognised associations which are subject to control and guidance in their activities by the Government is justified by the necessities of the situation and assuming also that it was not legally incumbent on Government to recognise an association for dealing in a commodity before forward trading in such commodity could be brought within the scope of the Act, would the action taken under section 15(1) in the present case have to be held invalid as not being a reasonable restriction within clause (6) of Article 19 ? In situations like those

here the reasonableness of the restriction has necessarily to be tested by the degree of urgency which required the intervention of Government. That would be largely a question of fact, and we have already extracted paragraphs 195 to 197 of the Annual Report of the Forward Markets Commission for 1959 in which the situation which necessitated the impugned notifications is described. It is plain enough that enquiries which had to precede the recognition of associations under Ch. III do take some time, and in fact in the present case the recognitions were accorded in June 1959, and if emergent action was required to control a situation which threatened to worsen rapidly, we do not consider that the action of the Government in stepping in even before the recognition of associations could in the circumstances be characterised as unreasonable. After all, it is a question of balancing individual rights and the profits which could be reaped by individuals under an existing state of the law against the public benefit arising from the exercising of control, and if Government considered that the latter would be best served by immediate action under a valid provision of the law, and the circumstances reasonably warranted that opinion, we hold that in the absence of my proof of mala fides, and there is none here, the action of the Government cannot be held to violate the constitutional limits set by clause (6) of Article 19.

We shall now proceed to consider the challenge to the constitutional validity of section 15 itself. The attack was based on the section infringing Articles 14, 19(1) (f) and 19(1) (g) of the Constitution and in respect of the last two as not being protected by clauses (5) and (6) of Article 19.

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

We need only repeat what we have pointed out earlier that though the Forward Markets Commission in its report of May, 1957, recommended that gur might be brought within the scope of the regulatory provisions of the Act with immediate effect, the Government did not accept that recommendation and it was only when Government considered that a situation developed rendering the price-situation in the gur forward market very critical and that speculative activity in the commodity indulged in by powerful operators had raised prices to an unreasonable figure that Government intervened by the notification now impugned.

The next submission of Mr. Nambiar was that section 15 was constitutionally invalid as violating the freedoms guaranteed by sub-clauses (f) and (g) of clause (1) of Article 19. As regards sub-clause (f) of clause (1) of Article 19, it was urged that the right to the benefits arising under a contract which was lawful when entered into was in the nature of property and that section 15, by empowering a notification to be issued which rendered such a contract illegal was an unreasonable restriction on the right to the holding or enjoyment of that property. It was further urged that whether or not the right to the benefit of a contract was property within Article 19(1) (f) it was a right intimately bound up with the right to carry on a trade or business within sub-clause (g) of clause (1) of Article 19 and it was broadly contended that any retrospective invalidation of that contract would not be a reasonable restriction within clause (6) of Article 19.

In view of the nature of these submissions the challenge under both sub-clause (f) & (g) might be considered together. Before we do so, however, we might dispose of a subsidiary argument based on the words we are italicising in section 15(1) "and thereupon..... every forward contract, for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein..... etc. " It was urged that by reason of these words the Government was empowered to issue a notification which would have effect in relation to contracts which were entered into after that date, and that the impugned notification which invalidated contracts entered into earlier subsisting on the date of the notification was therefore ultra vires. We consider this submission as without force. The expression "is entered into" is at the worst ambiguous and is capable of meaning either only those entered into after the date of the notification, or as meaning "is or has been entered into" i. e., including a contract which having been entered into before is subsisting on that date. But that it is used in the latter sense is made clear by the terms of section 16(a) "every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification and remaining to be performed after the said date..... " Sections 15 and 16 have to be read together as being intimately connected, the later provision setting out the consequences of the action taken under the earlier and so read, we consider that there is no scope for the argument addressed to us.

Now to revert to the discussion of the attack on the provisions based on a violation of Article 19(1) (f) & (g), the question is whether the giving of retrospective effect to an enactment dealing with contracts so as to modify the terms of or even put an end to subsisting contract is per se unreasonable so as to amount to a violation of the guarantee under sub-clauses (f) & (g) assuming learned Counsel is right in contending that a right to the benefit of a contract is in the nature of a right to property - an assumption as regards the correctness of which we say nothing. In support of his submission learned Counsel relied on the observations in the judgment of this Court in State of West Bengal v. Subodh Gopal Bose and Ors., ([1954] S. C. R. 587, 626) where it was observed that the fact that the statute was being given retrospective operation may properly be taken into consideration in determining the reasonableness of the restriction imposed - an observation which was cited in the decision of this Court in Express Newspapers Private Ltd. v. Union of India ([1959] S. C. R. 12, 139). The decisions referred to and others to a like effect are authorities merely for the

position that the retrospective effect of a statute would be an element to be taken into account for determining the reasonableness of the restriction imposed but these observations do not carry learned Counsel to the full extent needed to sustain the proposition he seeks to establish, viz., that the retrospective invalidation of a contract is not a permissible restriction that could be imposed by clause (6) of Article 19.

Learned Counsel referred us to some decisions of the Supreme Court of the United States but to these we do not consider it necessary to advert. Article I, Section 10(1), of the American Constitution lays a ban on the enactment by the States of inter alia "any ex post-facto law or law impairing the obligation of contract, or grant any title of nobility". Our Constitution-makers while making provision against "ex post-facto laws" in Article 20(1) and "against titles" in Article 18(1), studiously refrained from including a guarantee regarding the impairment of obligations of contracts. There is therefore no scope for the argument that a law which affects or varies rights under a contract is for that reason constitutionally invalid as an unreasonable restriction on the right either to property or to carry on trade or business. It may be pointed out that even in the United States the recent decisions have made such inroads upon that doctrine that it had been stated by Prof. Corwin that "The protection afforded by this clause does not today go much, if at all, beyond that afforded by Section I of the fourteenth Amendment (against deprivation of life, liberty or property without due process of law) ". The learned another proceeding to quote from the decision in Atlantic Coast Line Co. v. Goldsboro ((1941) 232 U. S. 548; 58 L. Ed. 721) continues :

> "In the words of the Court : 'It is settled that neither the contract clause nor the due process clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community' - in short, its police power. And what is 'reasonably necessary' for these purposes is today a question ultimately for the Supreme Court; and the present disposition of the Court is to put the burden of proof upon any person who challenges State action as not 'reasonably necessary'.

adding :

> "Till after the Civil war the principal source from which cases stemmed challenging the validity of State legislation, the 'obligation of contracts' clause is today of negligible importance, and might well be stricken from the Constitution. For most practical purposes, in fact, it has been. "
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> (Vide Constitution and what it means today, 12th Edn., p. 84).

If that is the position in America where the Constitution contains a guarantee against the impairment of obligations arising from contracts, the position under our Constitution must a fortiori be so. Affecting a subsisting contract by modifying its terms cannot ipso jure be treated as outside the permissible limits laid by clause (5) or (6) of Article 19. The "reasonableness" of the provisions of a statute are not to be judged by a priori standard unrelated to the facts and circumstances of a situation which occasioned the legislation. In an oft-quoted passage Patanjali Sastri, C. J., observed in State of Madras v. V. G. Row ([1952] S. C. R. 597, 607) :

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable

> to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. "

It cannot be therefore predicated off-hand and as a matter of law that every restriction which operates with retrospective effect and affects rights obtained under the pre-existing law, is unconstitutional as obnoxious to the freedom guaranteed by sub-clauses (f) or (g) of clause (1) of Article 19. It might, in particular cases, even be necessary to completely effect a subsisting contract but in the present case that is not what was done but only to vary its terms so that it would be settled out at the prices determined by the other notification. Learned Counsel challenged the validity of the provision for price-fixation under section 16 and of the actual prices determined under the notification issued under section 16, but these well shall consider later. We hold that section 15 is constitutionally valid. It is only necessary to add that it is manifest that the restriction on trading is in the interest of the general public since the public have a vital interest in the availability of an essential commodity like gur at reasonable and relatively stable prices and the only question for determination for the application of clauses (5) or (6) of Article 19 would be the reasonableness of the measures contemplated by the law. Taking into account the machinery created in Ch. II of the Act in the way of an expert body to furnish Government with advice on such a complex problem and the functions of the committee, we are clearly of the view that the restrictions imposed by section 15 of the Act are reasonable and pass the tests for a valid law under clauses (5) and (6) of Article 19.

Learned Counsel's next submission related to the validity of section 16 which deals with the consequences of a notification. These consequences are three : (1) All forward contracts subsisting on the date of the notification under section 15 not entered into by or through a recognized association are deemed to be closed out, (2) The rates at which the contracts have to be settled are those to be fixed by the Central Government, and (3) In respect of the forward contracts so closed out the buyer is not entitled to ask for delivery of the goods and similarly the seller is not entitled to insist on delivery being taken. In considering the validity of section 15 and the arguments addressed to us in that behalf we have already considered the first consequence, viz., subsisting forward contracts being deemed to be closed on the day of the notification. Learned Counsel does not impugn the validity of the provision in clause (b) of section 16 under which the obligation to demand delivery or insist on delivery being taken is provided against. The attack on section 16 was confined to the validity of vesting a power in the Central Government to fix the rates at which the differences payable by one party to the other should be determined on the closing out of the contract by operation of the notification. It was urged that the provision entrusting the Government with power to fix the prices without specifying the basis therefore vested in them an arbitrary power of fix any price that they liked, that the statute had not given any indication of the principles underlying the fixation of the price, with the result that the relevant portion of section 16 was either a piece of excessive delegation or offended Article 14 by conferring an unguided power in Government.

Before dealing with the constitutional objection which was sought to be supported by contrasting these provisions with analogous India legislation wherein the price payable was fixed by the Act itself to which we shall advert a little latter, it might be usefull to narrate the circumstances in which the price at which the closing out was to be settled was fixed by the Central Government in the impugned notification. The circumstances are thus described in the counter-affidavit filed on behalf of the State to these petitions : On July 17, 1958, the Government of India issued a notification

under section 17 of the Act banning forward contracts of minor foodgrains and a similar notification followed on the next day banning forward contracts in Khandsari sugar. The closure of these markets increased the speculative activity in the forward market in gur. The price situation in respect of gur became critical in the last week of December 1958 when bull operators acting in concert started to rig up the prices. Contracts were entered into at these excessive prices in the belief that even if Government intervened and took drastic steps of closing out the contracts by a notification under section 15, the benefits of the high prices on the outstanding contracts would, in accordance with past practice, be available to the bull operators. On a review of the situation existing as aforesaid, the Government found that at Hapur which was a representative market, the rate for gur futures prices rose from Rs. 11.98 per maund on January 17, 1958, to Rs. 16.27 per maund on February 11, 1959, and the Government considered that these forward prices were exerting a very unhealthy influence on the sport-prices of the commodity. It was in these circumstances that in the impugned notification the price at which the forward contract should be closed out was fixed at the average of the closing rates prevailing in the forward markets during the period of three months immediately preceding the date of the notification.

The question now for consideration is whether on the scheme of the Act read in conjunction with the policy underlying it and the purposes for which it is enacted there could be found a guidance as to the principles on which the price of settling out could be fixed by the Government ? In this connection we might usefully refer to the provisions of the Essential Commodities Act, 1955, under which Government is vested with power to determine the prices which essential commodities may be bought or sold. Under section 3(2) of the Essential Commodities Act 1955, the Central Government is empowered by order made under the Act to provide for controlling the price at which any essential commodity be bought and sold. The control under that enactment, as the one now under consideration, is to be exercised for ensuring that the price fixed shall be reasonable having regard to the cost of production and the general level of prices prevailing of other like commodities which are the subject of legitimate and proper trade. In the very nature of things it is not possible for the legislature to determine beforehand the price at which a commodity may be sold or at which contracts in relation thereto might be entered into. The price must be dependent upon factors varying from time to time and cannot, therefore, be always a proper subject of legislative determination. Any fixation of prices either by naming a figure or by reference to the market price ruling on a particular date, must be productive of hardship both by reason of being mechanical and therefore out of tune with the varying factors which might obtain from time to time, as also of being liable to manipulation by unscrupulous traders as it the situation described by the Government in regard to gur futures in the passage just now extracted.

Nor is it any defect in the Act that it does not in so many terms lay down the principles for the fixation of the price. It view of what we have stated earlier, the only guidance which the Parliament could have given was to direct that the price fixed be reasonable taking into account the relevant factors we have enumerated earlier, and this we consider is implicit in the provision in section 16 of the Act as much as in section 3 of the Essential Commodities Act.

No doubt, learned Counsel pointed out the provisions contained in the West Bengal Raw Jute Act (Act XXV of 1948), the Jute Goods Act V of 1950 and the Bombay Forward Markets Contracts Act (Act LXIV of 1945), in which in respect of closing out of contracts which were illegalised on the coming into force of the enactment, the price at which the contracts could be settled was fixed as the sport-price of the closing day. In normal circumstances that might have been a fair rule to adopt, but from these precedents no rule of law can be derived that a fixation of a price on any other basis is either improper, unjust or unconstitutional. It is patent that if prices are artificially rigged up and

inflated as a result of excessive speculation and unhealthy trade practices, the spot-price prevailing on the closing day would not represent the reasonable price at which contract should be closed out. And this was precisely the case of the respondent - State as the reasons which compelled it to depart from the principle of fixation on the basis of the spot-price on the closing day. We see, therefore, no sufficient ground for holding that the power conferred on the Central Government to fix the price at which contracts could be closed out is either legislatively incompetent or constitutionally invalid. What we stated earlier should suffice to show that the actual price at which the contracts were required to be settled out fixed in the impugned notification conformed to the requirement of reasonableness in Article 19(6) and that underlying the relevant provisions of the statute.

The petitions fail and are dismissed with costs - one set of hearing-fees.

Petitions dismissed.

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