

Shree Meenakshi Mills Ltd.

Vs

Union of India

Bihar Cotton Mills Ltd.

Vs

Union of India

Writ Petitions Nos. 734 and 1132 of 1973

(CJI A. N. Ray, D. G. Palekar, Y. V. Chandrachud, P. N. Bhagwati, V. R. Krishna Iyer JJ)

26.11.1973

JUDGMENT

RAY, C.J. –

1. The petitioners challenged Notifications No. CER/3/73 dated March 13, 1973 and CER/16/73 dated March 13, 1973 described as the first and the second impugned Notifications.
2. There was unprecedented and phenomenal rise in cotton prices in the closing months of 1970 and in January, 1971. There was a very low cotton crop in 1970-71 season. There was a perceptible drop in yarn production. Yarn is produced in hanks for handlooms and cones, beams and pirns for powerlooms and cones for hosiery industry. There was rise in prices. This strengthened the hands of the weavers in their agitation. The Yarn Pool Scheme was devised in February, 1971. This was a voluntary effort on the part of the cotton mill industry to afford some relief to small weavers in the handloom and powerloom sector. The Scheme covered cotton yarn in counts of 20s, 30s and 40s both in hanks and hosiery cones and in counts of 20s, 24s, 30s, 34s, and 40s in weaving cones. Under this Scheme the mills participating in it had to supply yarn at prices equivalent to the average of prices ruling in the last quarter of 1970. As a compensation, the participating mills were allotted foreign cotton at a concessional rate of premium and were permitted to sell such cotton in the market. The yarn thus made available was allocated to the various States by the Textile Commissioner. The quantity of yarn covered by the Pool Scheme depended upon the quantum of foreign cotton made available for the purpose.
3. In the second quarter of 1972 prices of superfine counts, namely, 60s and above began to rise. The causes were first, shortfall in production caused by prolonged labour strike in Coimbatore and other textile centres in Tamil Nadu; second, an increase in the spindle cost of foreign cotton; third, revival of export demand for cotton yarn, and, fourth, large scale unauthorised despatch to foreign countries. In order to arrest this trend, the industry reached an understanding with the Textile Commissioner in July, 1972. Under this agreement the mills were to supply 50 per cent of the yarn 60s and above meant for sale in the market at agreed prices. The agreed prices were the average of the highest contract price in January, 1972 and the highest contract price on June 1, 1972 or near about the date. This price was known as the "regulated price". The arrangement came into force

from August 1, 1972.

4. This Scheme suffered a setback in the last quarter of 1972. This was because of severe power cuts in Tamil Nadu, Uttar Pradesh, Gujarat, Maharashtra, Punjab, Haryana, Mysore and Andhra Pradesh. The downward trend in production which had begun to manifest in the last quarter of 1972 gathered further momentum in the first quarter of 1973. As compared with the third quarter of 1972 when the production was the highest the fall in yarn and cotton production in the first quarter of 1973 was 15 per cent and 12 per cent respectively. The decline was 6 per cent in yarn and 7 per cent in cloth production compared with the same period of 1972. There was of course a prolonged labour strike in February and March, 1972 in Coimbatore and for a short period elsewhere in Tamil Nadu. There was a marked fall in production in that State. It may be stated here that Tamil Nadu has 23 per cent of India's total spindleage and 4.4 per cent of loomage. The bumper crop in 1971-72 season had impact on yarn and cloth production in the second quarter of 1972.

5. Early in 1973 the upward trend of yarn prices rose in fine and superfine counts. The Southern India Mill-owners' Association offered to the Government the entire free yarn production of all counts of its member mills at prices to be mutually agreed to between the industry and the Textile Commissioner. The Southern Association wanted the Indian Cotton Mills Federation to take the initiative for arriving at an understanding with the Government at an all-India level. The mills in North India were of the view that prices of coarse and medium counts had not gone up appreciably as compared with the pool prices and were either steady or even lower in some cases than those at the commencement of 1972 and therefore there was no case whatever for subjecting them to control. The Indian Cotton Mills Federation strove hard for an understanding with the Government for some form of voluntary control on production, distribution and prices which would be beneficial for all the interest concerned and ensure price stability, and smooth and orderly movement of yarn to the lakhs of weavers in the decentralised sector.

6. The Government decided to bring all yarn under control in all respects, viz. prices, production and distribution. The stocks of yarn with mills which had stood at 94,400 bales (of 180 kgs. each) in September, 1972 dropped by December, 1972 to 79,000 bales and still further to 42,200 bales by the end of February, 1973, the lowest on record for the last ten years. By the end of March, 1973 they had gone up to as much as 108,600 bales, and by the end of April to 1,78,000 bales. The Government wanted to rectify the imbalance between production and deliveries of yarn in hanks, cones, pirns, and beams. It was felt that the situation appeared to be man made. In 1972 India exported 21.9 million kgs. of yarn out of the total production of 975 million kgs. The export of handloom goods needed special attention. In this context the suggestions were, first, deliveries of yarn in hanks, and, second, requirements of hosiery sector should be met; third, the recent rise in price was unjustified and they should revert to normal levels; fourth, the responsibility for distribution should be assumed by the concerned Governments; fifth, yarn export should continue; and sixth, the handloom sector should be specially fed with the requisite raw materials.

7. The Government felt that the producers of cotton yarn would be prohibited from selling yarn except in small quantities in the form of beams meant for powerlooms to the trade or to any one else except to the nominees of the Textile Commissioner. Second, the manufacturers of yarn shall sell only to nominees of the Textile Commissioner. Third, the manufacturers for civil consumption shall have to pack not less than 60 per cent of such yarn in the form of cones for powerlooms. Fourth, mills producing and supplying hosiery yarns shall have to continue to do so under a statutory order. Fifth, prices shall be notified up to counts 40s and below in one group adopting the market prices of December, 1972 as mentioned in the first impugned Notification and in regard to counts 60s and

above the regulated yarn prices as mentioned in the second impugned Notification.

8. The first impugned Notification is issued by the Textile Commissioner under Clause 22 of the Cotton Textiles (Control) Order, 1948 hereinafter referred to as the 1948 Order. The notification determines the ex-factory price of count of yarn of 59s and below and count of yarn of 60s and above. In the case of count of yarn of 59s and below the price is the highest ex-mill price or the highest contracted price for deliveries effected in December, 1972. In the case of producers of yarn situated in the States of Tamil Nadu and Pondicherry where the electricity cut exceeds 70 per cent, the relevant price as applicable may be increased by 6 per cent.

9. In the case of counts of yarn of 60s and above the determined price is the regulated yarn price adopted for individual producers of yarn from the first day of August, 1972, increased by 6 per cent where there is no electricity power cut, increased by 8 per cent where there is electricity cut not exceeding 20 per cent, increased by 12 per cent where the electricity power cut exceeds 20 per but does not exceed 50 per cent and increased by 18 per cent in the case of producers of yarn in the States of Tamil Nadu and Pondicherry where the electricity power cut exceeds 70 per cent.

10. The term "regulated price" under the Notification shall mean the price calculated by taking the difference between the highest contract price as on June 1, 1972 or the nearest date in case no sale was effected of June, 1, 1972 and the highest price for the relevant count and form of packing during January, 1972 and allowing one-half of the difference to be reduced from June 1, 1972 price.

11. The first impugned Notification was not applicable to yarn sold to hosiery industry and to yarn on beams delivered under specified circumstances. There is no fixation of maximum retail price at the point of sale to the consumer. By a Notification dated March 31, 1973 the Textile Commissioner authorised the Deputy Commissioners and the District Collectors to specify the maximum price of yarn to be sold by dealers. The maximum price is to be fixed after taking into consideration (a) invoice price of yarn, (b) incidental charges, (c) such reasonable margin of profit not exceeding two per of the invoice price as the Deputy Commissioner or the District Collector may determine in each case, and (d) any other relevant factor.

12. The second impugned Notification is made by the Textile Commissioner in exercise of powers conferred under Clause 30(1) (b) of the 1948 Order. The Notification directed that no producer of yarn for civil consumption shall sell or deliver any such yarn produced by him except to such person or persons and subject to such conditions as the Textile Commissioner might specify. The same Notification contained another direction under powers conferred by Clause 30(1) (a) of the 1948 Order that every producer of yarn for civil consumption shall sell or deliver such yarn only to 5 channels of distribution mentioned therein on the basis of the directions that might be issued from time to time by the Textile Commissioner; Those 5 channels are : (a) the nominees of the State Government; (b) the Handloom Export Promotion Council, Madras; (c) the Cotton Textile Export Promotion Council, Bombay, and (d) any other person as may be nominated by the Textile Commissioner in this behalf.

13. The order of distribution through channels was not applicable under Notification dated June 21, 1973 to yarn counts of 17s and below, later under Notification dated July 18, 1973 to counts of 35s and below, later under Notification dated July 18, 1973 to counts of 35s and below and finally by Notification dated August 4, 1973 to counts of 40s and below. The control is at the point of sale by a dealer of yarn to consumer by another Notification dated March 31, 1973. This Notification provided that every dealer shall sell or deliver yarn only to persons specified there in such quantities

as may be determined by the Deputy Commissioner or the District Collector. The persons specified are first, the nominees of the State Government, and, second, any other person as may be nominated by the Textile Commissioner. This control at the dealers' level is in operation in respect of yarn of counts of 40s and below.

14. The first contention of the petitioners is that the 1948 Order in so far as it purports to make provisions in respect of control and distribution of cotton yarn by fixation of prices etc., more particularly by Clauses 22 and 30 thereof is ultra vires the powers conferred on the Central Government by Section 3 of the Essential Supplies (Temporary Powers) Act, 1946 hereinafter referred to as the 1946 Act, inasmuch as cotton yarn is not covered by the item "Cotton and woollen textiles" and cannot be brought within any other item.

15. The first question turns on the consideration whether cotton yarn is covered in cotton textile. The Cotton textile Order, 1948 is the relevant statute. The petitioners contend that cotton yarn is not cotton textile for these reasons. The dictionary meaning of "cotton textile" is that textile is a woven fabric and any kind of cloth. Cotton textile is a finished product. Cotton textile is an end product. Cotton textile, therefore, cannot be yarn. In the Report of Cotton, Yarn and Cloth published in the year 1962 cloth and yarn are treated separately, and, therefore, yarn is not within cotton textile.

16. Counsel for the petitioners relied on the decisions in *K. R. Subbaier v. The Regional Provident Fund Commissioner, Madras*, *Kanpur Textile Finishing Mills v. Regional Provident Fund Commissioner* and *The Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Madurai Printing Tape Factory* in support of the proposition that the word 'cotton textiles' should be so construed as not to include cotton yarn. In *Subbaier case (supra)* the expression 'textiles' was defined to include the products of carding, spinning, weaving, finishing and dyeing yarns and fabrics, printing, knitting and embroidering. The question arose as to whether a factory manufacturing tapes, wicks, braided cords and sewing thread reels was an industry engaged in the manufacture of textiles. Tapes and lamp wicks were held to be the products of weaving, if not knitting. The word 'textile' according to the Oxford dictionary means 'of weaving'. In *Kanpur Textile Mills case (supra)* the expression 'textiles' which had the same definition as in *Subbaier case (supra)* was held to include anything from yarn to woven material. In *Madurai Printing Tape Factory case (supra)* the question was whether tape was textile. It was held that the ingredient of textile is necessarily weaving and tapes made as a result of weaving would be within the meaning of the entry 'textile'. These decisions show that textiles ordinarily means cloth and yarn.

17. In Cotton Textiles Order, 1948 the word 'yarn; means any type of yarn manufactured either wholly from cotton or partly from cotton and partly from any other material. Clause 20 of the Order confers powers on the Textile Commissioner to issue directions to manufacturer regarding the classes or specifications of cloth or yarn which manufacturer shall or shall not manufacture. Clause 22 confers power on the Textile Commissioner to specify the maximum prices at which any class or specification of cloth or yarn may be sold. Clause 30 (2) confers power on the Textile Commissioner with a view to securing a proper distribution of cloth or yarn to issue directions to any manufacturer or dealer to sell or deliver specified quantities of cloth or yarn to specified persons. The Cotton Textiles Order also shows that cloth and yarn are both embraced within the word 'textiles' in the various clauses of the Order.

18. The dictionary meanings of cotton textile are any material that is woven, a material, as a fibre or yarn, used in or suitable for weaving, woven or capable of being woven. The meaning of "textile" as a noun is a fabric which is or may be woven, a fabric made by weaving, a woven fabric, or a

material suitable for weaving, textile material. The dictionary meanings show that cotton yarn is included in cotton textile.

19. The setting in which the words "cotton textile" are used has a legislative and executive understanding of the words consistently over a period of time. There are also decisions of Courts which accepted yarn to be within textile. The Cotton Cloth and Yarn Control Order, 1943 was made in exercise of powers conferred by Rule 81 of the Defence of India Rules. Cloth and yarn in that Order mean and include respectively cloth and yarn manufactured either wholly or partly from cotton. The Cotton Cloth and Yarn Control Order, 1945 repealed the Cotton Cloth and Yarn Control Order, 1943. The meaning of cloth and yarn was the same as in the Control Order of 1943.

20. There is cognate legislation which treated yarn as cotton textile. The Tariff Act, 1934 in Section 11 speaks of textile materials and textile goods and yarn is included there. Trade Marks Act, 1940 in Section 62 read with Trade Marks Rules 96 and 97 treats cotton yarn as textile goods. The Cotton Textiles Cess Act, 1948 provided for levy of cess on cloth and/or yarn. The expressions 'cloth' and 'yarn' are defined to mean cloth and yarn of which prices fixed by any order made under Section 3 or continued by Section 17 of the Essential Supplies (Temporary Powers) Act, 1946 were in force immediately before the commencement of that Act. The Cotton Textile Companies (Management of Under-takings and Liquidation or Reconstruction) Act 29 of 1967 defines cotton textile to mean yarn or fabrics made either wholly or partially of cotton.

21. The legislative practice shows that cotton textiles is a generic term which includes cotton fabric and yarn. One of the methods of construction of statutes is to ascertain the setting and circumstance in which the words are used. The entire product is cotton textile. Yarn is the material or component with which cotton textile is manufactured or woven.

22. The second contention on behalf of the petitioners is that in any event the provisions of the 1948 Order relating to cotton yarn cannot be said to have been continued in force either under Section 16 of the Essential Commodities Ordinance 1955 or under Section 16(2) of the Essential Commodities Act, 1955, hereinafter referred to as the 1955 Act, as cotton yarn is not covered by the item "Cotton and woollen textiles" under Section 2(a) (iv) of the 1955 Act and no notification had been issued declaring cotton yarn as an essential commodity in exercise of powers conferred under Section 2(a) (xi) of the 1955 Act. It is also said that as a matter of fact such notification was issued only on March 31, 1973.

23. As the Defence of India Act would come to an end on September 30, 1946 the Government of India Act, 1935 was amended by the British Parliament by the Indian Central Government and Legislature Act, 1946. Section 2 of 1946 Act provided "notwithstanding anything contained in the Government of India Act, 1935 the Indian Legislature shall have power to make laws with respect to trade and commerce (whether or not within a province) in and production, supply and distribution of cotton and woollen textile, paper products, petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica". The Centre could not legislate on production, supply and distribution of goods and trade and commerce therein after the emergency came to an end. Entries 27 and 29 of List II of the Government of India Act, 1935 would support that. The proclamation of emergency was revoked from April 1, 1946 and laws made by the Dominion Legislature in the field of the Provincial Legislative List were to cease to have effect after September 30, 1946.

24. The Essential Supplies (Temporary Powers) Act, 1946 received assent of the Governor General

on November 19, 1946 and came into force. Various orders issued under the Defence of India Rules including Cotton Cloth and Yarn Control Order⁹⁴⁵, Cotton Textiles Control of Movement Order 1946, Cotton Cloth and Yarn Forward Contracts Prohibition Order, 1945 and the Cotton Textiles Raw Materials and Stores Order, 1946 continued. The Notification fixing maximum price of cotton yarn and cloth under the Cotton Cloth and Yarn Control Order, 1945 also continued until January 28, 1948. On February 19, 1948 the Cotton Textile Control Order was issued under Section 3 of the Essential Supplies (Temporary Powers) Act, 1946. The Cotton Cloth and Yarn Control Order, 1945 was repealed. There was no power to control price of yarn and cloth. There was only power to control quantities and specification of cloth and yarn. The cotton Textile Control Order, 1948 was issued in the month of August, 1948 repealing the earlier Order. In the new Cotton Textile Control Order of 1948 provision was made for controlling the price of cloth and yarn. From 1948 to 1953 there was control of distribution and price of cloth and yarn by various notifications issued under Cotton Textiles Control Order, 1948.

25. The Yarn Distribution Scheme was framed under Clause 30 of the Cotton Textile Control Order, 1948. This was held to be valid by the Madras High Court in the decision in *The Lotus Industrials, Kallai, Malabar v. The State of Madras Development Department, Madras*. In 1948 Cotton Textiles Control of Movements Order was promulgated under Section 3 of the Essential Supplies (Temporary Powers) Act. This order controlled the movement of cloth and yarn in India. The Cotton Textiles Control of Movement Order, 1948 was held to have continued in force after the expiry of Essential Supplies (Temporary Powers) Act, 1946 by reason of the saving clause (Section 16) of the Essential Commodities Act, 1955. (See *State of Bihar v. Hira Lal Kejriwal*.)

26. In 1949 the Cotton Textiles (Export Control) Order, 1949 was made to provide for control of export of cloth and yarn. The notifications under this Order were issued regarding yarn. In 1949 the Essential Supplies (Temporary Powers) Ordinance 14 of 1949 was issued amending Essential Supplies (Temporary Powers) Act, 1946. To the list of essential commodities were added raw cotton, cotton seed, coke and other derivatives of coal. Essential Supplies Temporary Powers (Amendment) Act, 1949 replaced Ordinance 14 of 1949.

27. The Industries (Development and Regulation) Act, 1952 in Section 2 provided expedient to take under control industries set out in the Schedule. Item 23 in the Schedule related to textiles made wholly or in part of cotton including cotton yarn, hosiery and rope.

28. The Essential Supplies (Temporary Powers) Act, 1946 came to an end by operation of Article 369 of the Constitution on January 26, 1955. On the same day Essential Commodities Ordinance, 1955 was promulgated under Entry 33 of List III. The Essential Commodities Act of 1955 came into force on April 1, 1955. The objects and reasons of the 1955 Act were that under Article 369 of the constitution Parliament had power for a period of five years from the commencement of the Constitution to make laws with respect to trade and commerce in and production, supply and distribution of certain essential commodities. The life of the Essential Supplies (Temporary Powers) Act, 1946 was limited to January 26, 1955.

29. The essential commodities to which the 1955 Act applied fell into two broad categories. The first consisted of coal, textiles, iron, steel and paper, etc., which are products of industries under Union control. The second related to foodstuffs, cattle fodder, etc. which are not products of such industries.

30. On October 19, 1962 a notification was issued under Section 2 (xi) of the Essential

Commodities Act, 1955 declaring commodities specified therein used in the process of manufacturing yarn and machinery for manufacturing cloth. Textile Machinery Production and Distribution Order, 1962 was issued under Section 3 of the Essential Commodities Act, 1955 for controlling use and distribution and sale of textile machinery including machines used in manufacture of yarn.

31. These legislative measures show that in regard to the scope of these controls in some cases it is possible with reference to the circumstances relating to nature and use of the commodity in question to institute control right from the point of origin to the point of ultimate consumption. In regard to other commodities control has to stop at some intermediate point. The methods of control has to stop at some intermediate point. The methods of control also vary from commodity to commodity. In regard to the very important matter of the method of pricing, one method is adopted regarding cloth and another method is adopted in regard to steel and a third in regard to other commodities. Empiric process has been resorted to in this organisation of system of control.

32. The 1948 Order was made under Section 3 of the 1946 Essential Supplies Temporary Powers Act referred to as the 1946 Act. Section 16(2) of the 1955 Act which repealed the 1946 Act continued the 1948 Order. The 1946 Act was to provide for the continuance during a limited period of powers to control production, supply and distribution and trade and commerce in certain commodities. Cotton textiles formed one of the essential commodities specified in Section 2(a) (ii) of the 1946 Act. The 1955 Act was also enacted to provided for the control of production, supply and distribution and trade and commerce in certain commodities. Cotton textiles is one of the essential commodities specified in Section 2(a) (iv) of the 1955 Act.

33. Section 3(1) and (2) of the 1946 Act empowered the Central Government for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fair price to regulate or prohibit production, supply and distribution thereof and trade and commerce. Such orders could provide for control of prices of essential commodities, and require any person holding stock to sell whole or specified part at such prices and to such persons as specified in the Order. The Central Government under the 1946 Act could regulate the distribution and supply of essential commodity. The Central Government could delegate its power to any officer or authority mentioned therein.

34. The 1955 Act contains similar power of the Central Government to regulate or prohibit production, supply and distribution and trade and commerce in essential commodities for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fat prices or for securing any essential commodity for the Defence of India or for the efficient conduct of military operations. The 1955 Act also contains similar power to control the prices at which essential commodities may be bought or sold or to require any person holding stock of essential commodity to sell the whole or specified part to Central Government or the State Government or other persons mentioned therein. The 1955 Act empowers the Central Government to provide for regulating or prohibiting production, supply and distribution of essential commodities.

35. Section 3(3) of the 1955 Act provides that where any person sells essential commodity in compliance with an order made with reference to clause (f) of sub-section (2) there shall be paid to him (a) price agreed, if it is consistent with the controlled price, (b) the price calculated with reference to the controlled price if no agreement could be reached, (c) the price calculated at the market rate prevailing in the locality at the date of sale, if neither clause (a) nor clause (b) applies.

36. Clause 22 of the 1948 Cotton Textiles Control Order provides that the Textile Commissioner may specify the maximum prices, ex-factory, wholesale and retail, at which any class or specification of cloth or yarn may be sold; or the principles on which and the manner in which such maximum prices may be determined by a manufacturer, and the markings to be made by a manufacturer or dealer on any class or specification of cloth of yarn manufactured or sold by him and the time and manner of making such markings. The 1948 Order was amended by Cotton Textiles (Control) Amendment Order, 1972. As a result of the amendment Clause 30 of the 1948 Order was substituted by clause 30 in 1972 Order. The amended Clause 30(a) is that the Textile Commissioner may, with a view to securing proper distribution of cloth or yarn and with a view to securing proper distribution of cloth or yarn and with a view to securing compliance with the provisions of this Order, direct any manufacturer or dealer, class of manufactures or dealers (a) to sell or deliver specified quantities of cloth or yarn to specified persons, (b) not to sell or deliver cloth or yarn of specified description except to specified persons and subject to such conditions as the Textile Commissioner may specify. The amended clause further provided that the manufacturers or dealers shall comply with the directions and the Textile Commissioner in making orders shall have regard to the requirements of categories of persons mentioned in sub-clause (a), the availability of cloth or yarn of different descriptions and the requirement of any local area.

37. Clause 36 of the 1948 Order that any person aggrieved by an order of the Textile Commissioner may prefer an appeal to the Central Government within thirty days of the date of communication of such Order and the decision of the Central Thereon shall be final.

38. The 1948 Order continued under the Essential Commodities Act, 1955. Cotton yarn is included in cotton textiles. It was, therefore, not necessary to issue any notification declaring cotton yarn as an essential commodity under Section 2(a) (xi) of the 1955 Act. The Notification dated March 13, 1973 required an explanation to say that yarn for the purpose of the Notification shall mean all cotton yarn except sewing thread and industrial yarn like tyre cord. This explanation was necessary to include all cotton yarn because the decentralised sector was facing severe yarn shortages.

39. The third contention on behalf of the petitioners is that on a true construction of Section 3 of the Essential Supplies (Temporary Powers) Act, 1955 (sic) cannot be construed as authorising the Textile Commissioner to fix an arbitrary price for essential commodities.

40. The fourth contention is that if the provisions of the Cotton textiles Control Order confer arbitrary power on the Textile Commissioner to fix prices for yarn unrelated to the cost of production and reasonable profits to the producer then the provisions become void by reason of infringement of fundamental rights guaranteed by Articles 19(1) (f) and (g) and 31 as well as Article 301 of the Constitution.

41. The fifth contention is that if the said Order does not authorise fraction of price of cotton yarn arbitrarily and without reference to relevant factors such as cost of production and reasonable return, the impugned Notifications which fix a price for yarn below the cost of production of the mills are ultra vires the Cotton Textiles (Control) Order, 1948 inasmuch as the prices fixed under the said Notifications are act based on relevant considerations such as cost of production, reasonable return, but are wholly arbitrary and based on irrelevant considerations.

42. These three contentions turn on the question as to whether controlled price fixed under the impugned notifications has been fixed arbitrarily and it constitutes and unreasonable restriction on the fundamental rights of the petitioners and Article 301. The question of fair price of cotton textile

in the sphere of trade engaged the attention of the Government in 1960. The Government appointed a Tariff Commission to consider several aspects. The recommendations of the Tariff Commission on cotton textiles and prices were these. Control must be comprehensive. Control should embrace the entire range from producer of cloth and yarn to the ultimate consumers. Any system of control consumers because of dealers and middlemen and high prices of substitute products from the decentralised sector. Where control is imposed on conditions of scarcity, the price should encourage growth of output. This is to maintain equilibrium of demand and supply. Price must be fair to the producer to cover his costs. Price must be attractive to sustain growth of output and capital resources, return element, profit motive.

43. The recommendation concerning price control is that cost factors which are beyond the control of the producer as well as factors within the control of the producer like efficiency, productivity, appropriation of profits are all to be considered and on an over-all estimate a return of 12 per cent of capital is reasonable for the industry.

44. Raw cotton counts for about 50 per cent of the value of the finished product. Price of raw cotton should be attractive to the grower in order to raise his output and good quality. The costs of conversion of cotton into finished product are neither stable over a period of time nor uniformly steady in mills. Mills have different equipments and efficiencies. Therefore, it is not possible to establish an invariable set of prices for the products of the industry for a long period.

45. Adjustment of future prices may be necessary to cover changes in variable items of cost of production. Raw cotton figures prominently as one such item. It is said that there should be quarterly revision of prices on the basis of change in the prices of raw cotton. Conversion charges of raw cotton like labour, frights, fuel, power and stores are also to be considered. Labour costs depend on statutory alterations as well as Wage Board Awards or negotiated settlements. The impact of prices of stores is indefinite. In the structure of processing costs an allowance has been included for contingencies in order to meet the cost of stores, power, fuel and to prevent inflation only on those items.

46. Price of particular counts of yarn will have to be determined on the basis of fair average of cost of production with due regard to the cotton mix in each producing establishment. Mixes vary from mill to mill as also from time to time. The range of variation of mixes can be brought to a degree of certain technical limits and on the basis of that average cost of raw material can be determined.

47. Another recommendation of the Tariff Commission emphasised distribution chain. A margin of 18 per cent includes freight charges on ex-mill prices of cloth which had been applied under the system of voluntary control needed no revision. As regards sales of yarn handloom weavers needed protection. It was, therefore, suggested that a maximum of 1.1/2 per cent on ex-mill prices of yarn for sale plus actual freight to the main consuming centres would be adequate.

48. The recommendations of the Tariff Commission were studied. The Government introduced control over price and production namely, control over manufacture and sale of certain varieties of mill made cloth of mass consumption in the month of October, 1964. The prices were worked out after taking into account the costs of production under the particular heads of cotton, labour and other material charges, etc. Prices were stamped on the piece of cloth as the ex-mill price. The retail price of cloth, the excise duty, the category and description of the cloth, the tax mark of the mill and the words "controlled cloth : were also stamped on the cloth. The fixation of price of cloth took into account the recommendations of the Tariff Commission on the prices of cotton yarn.

49. The Report of the Commodity Committee, 1953 dealt with three main types of price control. The first is the ceiling or maximum price. The second is fixed price. The third is ceiling and floor price. The impugned Notifications in the present case adopted the first, viz, fixing ceiling or maximum price. With regard to ceiling or maximum price it has to be balanced between a reasonable margin over and above cost of producer on the one hand and on the other the interest and protection of the consumer because a liberal ceiling will ordinarily not encourage sales at below the maximum price. In some instances what is known as the 'cost plus' formula has been adopted. This formula means cost either of the importer or of the manufacturer as the basis and the addition of a reasonable margin of profit to cover the wholesaler and the retailers. The periodic revision of prices is also noticed with the warning that frequent change in price may cause difficulties to producers who are in possession of large stocks. In the case of imported goods the control is the margin of profit. In the case of manufactured goods control of price of raw materials is required in order to have a control of price for the finished article. If the price of raw material is controlled but not of the commodity which can be produced in place of that raw materials there would be danger of production being diverted to channels over which there is no control. In the last analysis it is said that effectiveness of measures of control lies in the reasonableness of prices fixed. The prices must be fair not only from the point of view of the consumer but also of the producer and the distributor. These are the recommendations of the Commodity Control Committee.

50. The recommendations of the Tariff Board on the cotton yarn and cloth prices in 1948 and of the Tariff Commission on the Cotton Yarn and Cloth prices in 1962 covered all economic aspects of the industry which have an impact on the ex-mill prices of cloth and yarn. The Government acted upon the Tariff Board formula of price fixation of cloth and yarn from 1949 to 1952. Under that formula fair prices were arrived at by taking into account the main elements of the costs of production and those prices were revised every quarter. The Voluntary Scheme of price control introduced in 1964 adopted the basis of price of cloth and yarn prevalent in August, 1959 and certain percentage of increase on account of raw materials, stores and Wages Board Awards. The Tariff Commission view was that the prices should be fair to the of 12 per cent. The control over manufacture and sale of mill made cloth of mass consumption from the year 1964 adopted the formula of cost production taking into account costs, labour material charges and adjustments from time to time in fluctuations of the cost elements.

51. No control over the production and sale of yarn was imposed until March 13, 1973 when the impugned Notifications were issued. Until then the yarn Pool Scheme in respect of yarn of counts up to 40s continued from February 1, 1971 to March 31, 1973. The other was the Voluntary Price and Distribution Scheme in respect of yarn of counts 60s and above introduced on August 1, 1972. The Voluntary Price and Distribution Scheme applied to 50 per cent of the free yarn and the producers were free to sell the rest in the open market. Because cornering, hoarding, speculation, unauthorised despatch to foreign countries, prices of yarn were rising though the production in 1972 rose to 468 million kgs. For yarn up to counts 40s and below there was no price rise up to December, 1972 over the period of preceding 10 months. For counts of 60s and above, the regulated price with effect from August 1, 1972 with 6 per cent increase took into consideration power cut; changes in the price of cotton since August, 1972, increase in labour costs and 40 per cent import duty on imported cotton. The real challenge on the part of the petitioners is that yarn price control has not followed the pattern of price control for cloth by providing for periodic changes in the control price to allow for fluctuations in cost elements.

52. The petitioners contend that the price fixed is arbitrary for the following reasons. Fluctuation in the price of cotton is not taken into consideration. Raw materials, wages and profits are not

considered. Nothing has been done with regard to those who have suffered electricity cut in other States. Costs of production and reasonable profit have not been taken into consideration. The price fixed is December, 1972 rate. December, 1972 rate is not the rate for March, 1973. Therefore, 1972 rate. December, 1972 rate is not the rate for March, 1973. Therefore, there is basic variation between December and March in cotton. Irrespective of the fact whether it is yarn manufactured before December or after December it shall be sold at that price. No reason is disclosed for fixing the price. No norms for fixing the prices are given. There is total non-application of mind to arrive at the price by an alternative method. Those who are producing counts 40s and below are to get price irrespective of any aspect of electricity. It is, therefore, said that the alternative method is that which is fixed by the Tariff Commission. The industry must have reasonable return and fair price will take in cost of production. There should be guidelines in fixing prices. The price fixation which does not fix a price above the cost of production is unreasonable restriction because it poses before the producer the two alternatives between closure and sale below the price. The only guidelines is the recommendation of the Tariff Commission. It is a reasonable return of 12 per cent. The price fixed under the impugned Orders is for a long time. It is for all times to come. There is no computation of cost. The protection is for handloom weavers and powerloom weavers. If cloth was to be obtained at fair price, the price of cloth should be controlled. The industry was facing steep rise in the cost of production from 1965 and profits appeared for the first time in 1972-73. All these factors are, according to the petitioners not taken into consideration in fixing the price.

53. In 1972 there were 670 textile mills. Out of these 291 were composite mills which also consumed yarn produced by them. Out of 18010 spindles 12260 are located in composite mills. Out of 972 Million kgs. of yarn produced 448 million kgs. is free yarn. 416 million kgs. out of 448 million kgs. is for civil consumption. By civil consumption is meant handloom and powerloom weavers and hosiery. There are 72 lakhs of handloom weavers. 4 lakhs are powerloom weavers. 50,000 persons are employed in hosiery industry. The total cloth produced in the country is 8200 million meters. The share of handloom and powerloom is 3777 million meters. The mills produce 4245 million meters. The powerloom and handloom sectors produce 47. 1 per cent of the total cloth production of the country. Handloom and powerloom sector depends for the supply of raw materials yarn on textile mills. Two-thirds of the total yarn produced come from composite mills. The composite mills compete with handloom and powerloom sectors in the production of cloth. Handloom and powerloom industry requires protection. Control over price and distribution of yarn is, therefore, in the interest of the general public.

54. There is a provision of appeal to the Central Government against the order of the Textile Commissioner. That is Clause 36 of the Order. This relief by representation to the relevant authorities is always available to the petitioners.

55. In *Diwan Sugar & General Mills v. Union of India*, this Court considered Sugar Export Promotion Ordinance, 1958. Prices of sugar went up by a rupee per maund during May-June, 1958 in expectation of the Ordinance. Though the industry assured sale of sugar at prices prevalent before the Export policy was announced, there was no fall in prices. Notifications were issued under the Sugar Control Order fixing controlled price below the level of prices at the end of May and in the week preceding June 17, 1958. This Court repelled the contention that the prices were below the cost of production. The sugar crushing season begins about the end of October and finishes about the end of May. The fixation of prices in July, 1958 was on the basis of the 1957-58 season and the market prices were available at the time of the Notification.

56. In an unreported decision in *Sri Krishna Rice Mills v. Joint Director (Food), Vijayawada*, this

Court held that Section 3 of the Essential Commodities Act sufficiently specifies the principles on the basis of which price should be fixed. The Central Government fixed the maximum price for sale of rice of certain quantities. The rice millers contended that Notification fixing fair price violated Articles 14, 19(1) (f), (g) and 31(2) of the Constitution, and, therefore, they were entitled to the rates prevailing in the market. The contentions on Articles 19(1) (f) and (g) were repelled on the rulings of this Court in *Hari Shankar Bagla v. The State of Madhya Pradesh, and Union of India v. Bhanamal Gulzarimal*.

57. In *Sri Krishna Rice Mills case* (supra) the rice was procured after December 30, 1957 at the rate of maximum price fixed by the Government by Notification dated December 30, 1957. The appellants there contended that they had paid higher prices than fixed by the notification. This Court held that unless it could be shown that the reduction of price was not fair, it could not be said that the procurement after December 30, 1957 based on the prices fixed in the Notification of that date was in any manner against the provisions of the Act or was hit by Article 19(1) (f). The Court found that the prices fixed were fair, because the reason for the reduction of prices of December 30, 1957 was that new crop came into the market from November, 1957 and the market prices of rice fell. When prices fall, traders who had made purchases at higher prices have to sell at the reduced rates and, therefore, they cannot complain against rise and fall of prices due to economic factors in an open market. Just as the industry cannot complain of rise and fall of prices due to economic factors in an open market they cannot similarly complain of increase or reduction of prices as a result of notification under Section 3 (1) of the Essential Supplies Act, 1955 because that increase or reduction is also based on economic factors.

58. In *State of Rajasthan v. Nathmal & Mithamal*, the authorities were allowed to freeze any stock of foodgrains and no person could dispose of any foodgrains out of the stock so "freezed" (sic) without the permission of the authority. The order was held to be relatable to the object of the Act, namely, securing equitable distribution and availability at fair prices. The ceiling price of the commodity was Rs. 17.18. The Government procurement price was Rs. 9 per maund. The Court held that it was an unreasonable restriction because the Government was free to sell at a higher price and make a profit. The ceiling price was higher than the fixed price at which the stocks were requisitioned but after requisition, the Government would sell at higher price. Therefore, that was an unreasonable restriction.

59. In *Union of India v. Bhanamal Gulzarimal* (supra). Clause 11B of the Iron and Steel (Control of Production and Distribution) Order, 1941 which conferred power on the Controller to fix maximum price from time to time was challenged on the ground that Clause 11B should have referred to the prices of some specified year as basic prices and should have directed the Controller to prescribe maximum prices by reference to the basic prices. This Court did not accept that contention. The special features of the object which the Control Order is said to achieve are an important consideration. Maximum prices in respect of iron and steel would depend on a rational evaluation from time to time of all factors. This Court will not substitute its determination for that of the discretion of the authority in fixing the fair prices. The Controller with a view to fixing maximum price of iron and steel made a flat reduction of Rs. 30 per ton from the earlier maximum price. The price for sale by registered producers of untested articles was Rs. 333 per ton whereas the price for sale by controlled stock holders was Rs. 363 per ton and the price at which the respondents could sell was Rs. 378 per ton; and as a result of the deduction of Rs. 30 the respondents were required to sell at Rs. 348 per ton. It was alleged that the respondents had purchased commodity at the rate of Rs. 363 per ton from the controlled stockholders and they were compelled to sell at a reduced price. This Court held that losses in respect of particular transactions would not be decisive because the

general effect of the Notification is on all the classes of dealers as a whole."If it is shown that in a large majority of cases, if not all, the impugned Notification would adversely affect the fundamental right of the dealers guaranteed under Articles 19(1) (f) and (g) that may constitute a serious infirmity in the validity of the Notification".

60. In *Narendra Kumar v. Union of India*, this Court emphasised that the test of reasonableness meant the nature of evil that was sought to be remedied, the ratio of the harm caused to the individual citizen by the proposed remedy and the beneficial effect reasonably expected to result to the general public. Clause 3(i) of the Non-ferrous Metal Control Order, 1958 which provided that no person shall sell or offer to sell any non-ferrous metal at a price which exceeds the amount represented by an addition of 3 1/2 per cent of its landed cost and which provided that no person shall purchase or offer to purchase from any person non-ferrous metal at a price higher than at which it is permissible for that other person to sell to him under sub-clause (i) was challenged. This Court held that an addition of 3 1/2 per cent of the landed cost was intended to enable the importers to earn a margin of profit and that this would be the minimum price at which the importers would sell. Any dealer would have to pay at the rate of landed cost plus 3 1/2 per cent in getting the supply of copper from the importers but such a dealer was prevented from charging from his customer anything more than the landed cost plus 3 1/2 per cent thereof. As a result of this any actual consumer of the commodity would have to get it direct from the importer and the channel of distribution through the dealer would disappear. This court held that the evil sought to be remedied was rise in price and some fixation of price, being essential to keep prices within reasonable limits, was reasonable restriction.

61. The balance between freedom to carry on business and special control under reasonable restrictions is required. In *Dwarka Prasad Laxmi Narain v. State of U.P.* the exclusion of incidental charges from the cost items for allowing 10 per cent profit in fixing the controlled prices of coal was attacked to be unfair and discriminatory. This Court held that the omission would only lower the margin of profit. The fixation of price was in the interest of public. In considering the provisions of U.P. Coal Control Order, 1953 this Court said that "a law or Order which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot be held to be unreasonable".

62. The two decisions on which the petitioners relied are *Panipat Co-operative Sugar Mills v. Union of India* and *Anakapalle Co-operative Agricultural & Industrial Society Ltd. v. Union of India* which are on the application of sub-section (3C) of Section 3 of the 1955 Act. That sub-section relates to sugar and there are special features for fixing of price. In *Panipat Sugar Mills case (supra)* it is said that fair price of sugar is to be determined ensuring to the industry a reasonable return on the capital employed in the business of manufacturing sugar but the Government cannot fix any arbitrary price or fix it on extraneous considerations or fix such price that it does not secure a reasonable return on the capital employed in the industry. *Panipat Sugar Mills case (supra)* is governed by sub-section (3C) of Section 3 of the 1955 Act and has, therefore, no relevance to the present case.

63. The case of *Premier Automobiles Ltd. v. Union of India* is on Section 18G of the Industries (Development and Regulation) Act, 1951. The provisions of Section 18G are that the Central Government for securing the equitable distribution, availability at fair prices of any article relatable to any scheduled industry may provide for regulating the supply and distribution thereof and trade and commerce therein. In sub-section (2) of Section 18G it is stated that without prejudice to the generality of the powers conferred by sub-section (1) a notified order made thereunder may provide

for controlling the price at which any such article is bought or sold. In Premier Automobiles case (supra) this Court said that the concept of fair price fixed under Section 18G "takes in all the elements to make it fair for the consumer leaving a reasonable margin of profit to the manufacturer without which no one will engage in any manufacturing activity". These observations were made on the basis of the agreement of the parties there that irrespective of technical or legal points the Court should base its judgment on examination of correct and rational principle and should direct deviation from the report of the Commission of Inquiry appointed by it with the concurrence of the parties only when it is shown that there has been a departure from the established principles or the conclusions of the Commission are shown to be demonstrably wrong or erroneous.

64. The Premier Automobiles case (supra) decision does not consider that the concept of fair prices varies with circumstances in which and the purposes for which the price control is sought to be imposed, This decision because of the special agreement there does not consider that the fixation of fair price with a view to holding the price line may be stultified by allowing periodic increase in price.

65. If fair price is to be fixed leaving a reasonable margin of profit, there is never any question of infringement of fundamental right to carry on business by imposing reasonable restrictions. The question of fair price to the consumer with reference to the dominant object and purpose of the legislation claiming equitable distribution and availability at fair price is completely lost sight of if profit and the producer's return are kept in the forefront. The maintenance or increase of supplies of the commodity or the equitable distribution and availability at fair prices are the fundamental purposes of the Act. If the prices of yarn or cloth are fixed in such a way to enable the manufacturer or producer to recover his cost of production and secure a reasonable margin of profit, no aspect of infringement of fundamental right can be said to arise.

66. In determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable. By its very nature, industry or trade or commerce goes through periods of prosperity and adversity on account of economic and sometimes social and political factors. In a largely free economy when controls have to be introduced to ensure availability of consumer goods like foodstuff, cloth and the like at a fair price it is an impracticable proposition to require the Government to go through the exercise like that of a Commission to fix the prices. The Tariff Board and the Tariff Commission did not deal with the question of fixing prices with a view only to holding price line and in the circumstances that justify giving pre-eminent preference to the interest of the consumer or general public over that of the producers of the commodity and the dealers. Even these Commissions cannot always make a correct estimate of a price which is fair to all because there are intricacies of the trade of all profit making enterprises which a Commission Report points out that many textile mills use cotton mixes with a view to reducing cost and the result of such mixes is difficult to discern.

67. When available stocks go underground and the Government has to step in a control distribution and availability in public interest fixing of price can, therefore, be only empirical. Market prices at a time when the goods did not go underground and were freely available, the general rise in prices, the capacity of the consumer specially in case of consumer goods like foodstuff, cloth, etc. the amount of loss which the industry is able to absorb after having made huge profits in prosperous years, all these enter into the calculation of a fair price in an emergency created by artificial shortages. In this context, the observations of this Court in Chintaman Rao v. State of Madhya Pradesh are that the phrase "reasonable restriction" connotes that the limitation imposed on a person

in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.

68. In *Secretary of Agriculture v. Central Reig Refining Company* the Sugar Act of 1948 which allotted to specified domestic sugar-producing areas, some within and some without the continental United States, an annual quota of sugar, specifying the maximum number of tons which might be marketed on the mainland from each of those areas was challenged. The challenge was based on the Due Process clause of the Fifth Amendment because of alleged discriminatory character and the oppressive effects of the refined sugar quota established by the Act. The Act established limits on the tonnage of refined sugar which might be marketed annually on the mainland from the offshore areas as part of their total sugar quotas. The Act did not subject mainland refiners to quota limitations upon the marketing of refined sugar. The Secretary was authorised to allot the refined sugar quota of a particular area among those marketing the sugar on the mainland from an offshore area to provide a fair distribution of the quota by considering three factors, namely, first processing of sugar to which proportionate shares, determined pursuant to the provisions of the Act pertained; second past marketing; and, third, ability to market the amount allotted.

69. It was held there that the Congress instructed the Secretary to make allotments in such manner and in such amounts as to provide a fair, efficient and equitable distribution. The Secretary was given discretion commensurate with the legislative goal. Allocation of quotas to individual marketers was deemed an essential part of the regulatory scheme. The complexity of problem affecting raw and refined sugar in widely separated and economically disparate areas, accentuated by the instability of the differentiating factors must have persuaded Congress of the need for continuous detailed administrative supervision. The Court, therefore, held that the Secretary's judgment would not be replaced to that of the Court by holding on the record that the Secretary acted arbitrarily in reaching the conviction that the years 1935-41 furnished a fairer measure of past marketings than the war years. It was also said, "Suffice it to say that since Congress fixed the quotas on a historical basis it is not for this Court to reweigh the relevant factors and, per chance, substitute its notion of expediency and fairness for that of Congress. This is so even though the quota thus fixed may demonstrably be disadvantageous to certain areas or persons. This Court is not a tribunal for relief from the crudities and inequities of complicated experimental economic legislation". In the present case the legislative measures have left the question of resolving the economic problems of increasing supplies, equitable distribution and availability of essential commodities at fair prices the judgment of the statutory authorities.

70. The main plank of the petitioner's contention that a fair price means a determination with regard to the cost of raw material, manufacturing cost and a reasonable return on the capital employed in the business was founded on the construction that sub-sections (3), (3A), (3B) and (3C) of Section 3 of Essential Commodities Act, 1955 constitute a single scheme and what is implicit in sub-section (3) is made explicit in sub-section (3C).

71. The power to fix controlled price is in Section 3(2) (c) read with Section 3(1) and not in Section 3(3) of the 1955 Act. In sub-section (2) (c) of Section 3, it is stated that the order may provide for controlling the price at which any essential commodity may be bought or sold. The dominant words in Section 3(1) are that if the Government is of opinion that it is necessary or expedient to provide for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, the Government may, by order, provide as mentioned therein.

72. Sub Section (3) provides that where an order under Section (3) (2) (f) of the Act is made requiring any person holding any stock to sell to the Government or to any officer or to any class of persons, the price under sub-section (3) can be fixed (a) by an agreement consistent with controlled price or (b) if there is no agreement with reference to controlled price or (c) the market price where neither of the two courses is possible.

73. Sub-section (3A), (3B) and (3C) deal with specific cases of foodstuff, foodgrains; edible oilseeds, edible oil; and sugar respectively. Sub-section (3A) of Section 3 is an exception to sub-section (3). Sub-section (3A) applies when there is a notification in the Official Gazette that notwithstanding anything contained in sub-section (3), the price shall be regulated in the case of foodstuff in accordance with the provisions of sub-section (3A). In sub-section (3B) it is stated that where either there is no notification under sub-section (3A) or any such notification has ceased to remain in force by efflux of time, the contingencies mentioned therein will happen. Again, in sub-section (3C) the matters contemplated are similar to sub-section (3B)

74. The differences between sub-sections (3) and (3A) on the one hand and sub-sections (3B) and (3C) on the other are these. Sub-sections (3) and (3A) speak of fixing price by agreement consistent with or with reference to controlled price or failing both market rate prevailing in the locality during three months preceding the date of the notification. Sub-section (3B) speaks either of controlled price or where no such price is fixed the price prevailing or likely to prevail during the post harvest period in the area to which the order applies. In sub-section (3C) which relates to sugar price is to be calculated with reference to minimum price of sugarcane, manufacturing cost of sugar, duty or tax, and a reasonable return and different prices may be provided for different areas or factories or different kinds of sugar.

75. Therefore, controlled price fixed under Section 3(1) read with Section 3(2) (c) is different from price under sub-sections (3A), (3B) and (3C).

76. The control of prices may have effect either on maintaining or increasing supply of commodity or securing equitable distribution and availability at fair prices. The controlled price has to retain this equilibrium in the supply and demand of the commodity. The cost of production, a reasonable return to the producer must have an incentive to produce. The fair price must be fair not only from the point of view of the consumer but also from the point of view of the producer. In fixing the prices, a price line has to be held in order to give preference or predominant consideration to the interest of the consumer or the general public over that of the producers in respect of essential commodities. The aspect of ensuring availability of the essential commodities to the consumer equitably and at fair price is the most important consideration.

77. The producer should not be driven out of his producing business. He may have to bear loss in the same way as he does when he suffers losses on account of economic forces operating in the business. If an essential commodity is in short supply or there is hoarding, cornering or there is unusual demand, there is abnormal increase in price. If price increases, it becomes injurious to the consumer. There is no justification that the producer should be given the benefit of price increase attributable to hoarding or cornering or artificial short supply. In such a case, if an "escalation" in price is contemplated at intervals the object of controlled price may be stultified. The controlled price will enable both the consumer and the producer to tide over difficulties. Therefore, any restriction in excess of what would be necessary in the interest of general public or to remedy the evil has to be very carefully considered so that the producer does not perish and the consumer is not crippled.

78. The petitioners contended that the control over prices of yarn in relation to ex-mill prices would not serve the purpose of control because there is no control over retail prices. The notification dated March 31, 1973 confers power on the Deputy Commissioner and the District Collector to specify maximum prices at which yarn may be sold by the dealer in their respective jurisdiction. In specifying the maximum price, the factors to be taken into consideration are (a) invoiced price of yarn, (b) incidental charges including transport and local taxes, (c) such reasonable margin of profit not exceeding two per cent of the invoiced price as may be determined in each case, and (d) any other relevant factor.

79. In the case of counts of 59s and below, the controlled price fixed is the highest ex-mill price or the highest contract price as the case may be for deliveries effected in December, 1972 with 6 per cent increase in the case of yarn producers situated in the States of Tamil Nadu and Pondicherry. In counts of yarns of 40s and below, there was no increase of price for 10 months ending December, 1972. It means free market price. It reflects costs of production and reasonable return. The normal conditions of supply and demand are indicated.

80. The prices fixed for counts of 59s and below include appreciation in price in 1970-71 when cotton crop was low and the prices in 1971-72 which in spite of bumper crop and fall in price of cotton did not decrease but were higher than the pool prices of the Distribution Scheme. Cotton prices represent 70 per cent of the cost of production of the yarn. In December, 1972 the price of cotton fell by 24 points from 209 to 185 whereas the prices of yarn appreciated by 29 points from 174 to 203. Thus the controlled price fixed for yarn is much more than fair price to the cotton yarn producer. In December, 1972 prices of yarn were favourable to the yarn producer. This is established in Writ Petition of Bihar Cotton Mills. It is stated there that in 1972 favourable market conditions enabled the cotton mills to improve its profit and wipe out 2/3rd of the accumulated losses amounting approximately Rs. 9.30,000.

81. In the case of counts of 60s and above, the regulated yarn prices adopted for individual producers of yarn are the difference between the highest contract price for the relevant count of June 1, 1972 or the nearest date in case no sale was effected on June 1, 1972 and the highest contract price for the relevant count during January, 1972 and allowing one half of the difference to be reduced from June, 1972 price. On this price, a 6 per cent increase has been allowed in addition where there is no electricity power cut. The 6 per cent increase appears to be for allowing changes in the prices of cotton since August, 1972, increase in labour costs and the impact of 40 per cent import duty on imported cotton. January, 1972 is selected as base because it was since January, 1972 that the prices of yarn of superfine counts of 60s and above went up. Price went up at that time on account of strike in Coimbatore mills during February-March, 1972, unauthorised despatch to foreign countries, power cut in Maharashtra and Tamil Nadu. Therefore, January 1972 was the time when normal market forces were in operation. The benefit of one-half of the price increases which took place between January-June, 1972 on account of factors which do not enter into determining the cost of production have also been taken into consideration.

82. The mere suggestion that no provision is made for adjustment on account of changes in the cost of production does not amount to infringement of fundamental right to carry on business and to hold and dispose of property. There is no material to show that increase in yarn prices was on account of cost of production. The fixing of controlled price is much more than a fair price to the producer on the date it is fixed. The prices of new cotton crop, i.e., for September, 1973 to August, 1974 are not known at the time of the fixation of the price. Even when they are known the petitioners will have to show with reference to the different types of mixes used in producing yarn, the impact of cotton

prices on the cost of production of that category of yarn, Further, even if there is increase in the cotton prices, the petitioners can absorb it because the controlled price fixed is more fair to the producer. If he sustains alleged losses for some time, it will be a reasonable restriction because the object of the price control is to hold the price line or revert the prices to normal levels and make available cotton yarn to the handloom and powerloom weavers at a fair price which will enable them to withstand competition from mill made cloth. It is not shown here that the controlled price is so grossly inadequate that it not only results in huge losses but also is a threat to the supply position of yarn. The controlled price is in the interest of the country as a whole for just distribution of basic necessities. The controlled price is neither arbitrary nor an unreasonable restriction.

83. The sixth contention turned on what is described as channelisation of yarn distribution. The impugned orders are made in exercise of powers conferred by Clause 30(1) (a) of the Cotton Textiles (Control) Order, 1948. The producers of yarn are prohibited from selling or delivering yarn to any person other than the five channels mentioned in the order. The five channels are (a) the nominees of the State Governments, (b) the Handloom Export Promotion Council, Bombay, (d) Federation of Hosiery Manufacturers Association and (e) Any other person as may be nominated by the Textile Commissioner.

84. By an Order dated June 21, 1973 counts 17s and below were excepted from the operation of the order. By another Order dated August 4, 1973 counts 40s and below were excepted from the Order. The position of yarn supply is under constant review of the Government. The Press Statement of June 21, 1973 shows that the control over distribution of yarn up to counts 17s is relaxed because the quantities are adequate to meet the demand. Similarly, by subsequent notification, control over distribution of yarn up to counts 40s has been relaxed.

85. The impugned orders as they stand require the producers to sell to these five channels on the basis of directions issued by the Textile Commissioner. The dealers are required to sell or deliver yarn to (a) nominee of the State Government, and (b) any other person as may be nominated by the Textile Commissioner in such quantities as may be determined by the Deputy Commissioner or District Collector.

86. The prices for such sale are on consideration of (a) invoiced price of yarn, (b) incidental charges including transport and local taxes, (c) such reasonable margin of profit not exceeding two per cent of the invoiced prices as the Deputy Commissioner or the District Collector may determine in each case and any other relevant factor. There is thus price control as well as distribution control to meet the problem of availability of goods at reasonable prices.

87. The seventh contention of the petitioners as well as the interveners was that the impugned Orders requiring the producer to deliver yarn only to the five channels of distribution mentioned therein created monopoly in favour of specified persons, and, therefore, there was violation of Articles 19(1) (f) and (g) and 301 of the Constitution. It was also said that there was no obligation on the distribution channels to buy from the mills.

88. Counsel on behalf of the traders who intervened submitted that there was no justification for canalisation of the goods because it was not in public interest and it was a total ban on traders. It was also said that there would be neither equitable distribution; nor availability of goods because the order did not provide that it would reach the weavers and order also did not provide that the agencies were to sell at specified rates. The fifth channel of distribution, viz., "any other person as may be nominated; by the Textile Commissioner" was attacked on the ground that there was no

classification and it conferred arbitrary power of choice.

89. The Cotton Textiles (Control) Order 1948 confers power by Clause 30 to impose control over distribution of yarn. The order states that such power is required to be exercised with a view to securing proper distribution of cloth or yarn. The Textile Commissioner with a view to securing compliance with the directions issued by him shall have regard to (A) requirements of various categories of persons specified in Clause 30; (b) availability of cloth or yarn of different descriptions; and (c) requirements of any local area.

90. Handloom weavers are the bulk consumers of yarn of counts of 40s and below. There is no control over distribution of this yarn. Therefore, it is said that traders in this class of yarn are free to charge any price whereas control is imposed on the producers. The Government excepted counts 40s and below from the operation of the order when availability was ensured. Further, traders in this category of counts 40s and below cannot sell at any price they like because the maximum retail price has to be prescribed by the Deputy Commissioners or the District Collectors and no trader can sell at a price higher than that price. The price specified by the Deputy Commissioners or the District Collectors takes into consideration the reasonable margin of profit not exceeding 2 per cent of the invoiced price. Maximum retail price is specified for all counts. Therefore, profiteering in the sale of yarn of all counts is eliminated.

91. The distribution channels are contended to be monopolies in favour of specified persons. The traders say that they are substituted by the distribution channels as middlemen. The nominees of the State Government under the distribution channel could be any dealer chosen and favoured by the Deputy Commissioner or the District Collector. It is said that freedom of trade is violated. These contentions are unsound for these reasons. The channels of distribution are agencies of the State for distribution purposes. Further the handloom Export promotion Council, Madras, the Cotton Textile Export Promotion Council, Bombay and the Federation of Hosiery Manufacturers Association are associations of users of cotton yarn. They can demand service charges. If middlemen be totally excluded the control scheme does not become unreasonable just because a part of the ban in regard to counts of 40s and below is relaxed. 87 per cent of the total yarn marketed is in counts 40s and below. Traders are permitted to carry on trade in them though prices are specified for such counts. The balance 13 per cent of yarn is in counts of 40s and above. The requirement not to sell yarn at a price above the maximum price operates on all distributing channels. Even if an ordinary dealer is chosen by the Government within the fifth category of distribution channel, viz., "any other person as may be nominated by the Textile Commissioner" such person could also be actual consumer of yarn. The Notification No. CER/20/73 dated March 31, 1973 states that the nominees can be any dealer carrying on business of selling yarn. The distribution control is intended to ensure availability of yarn at reasonable or fair price. Profiteering, hoarding, cornering are the evils to be eliminated. It is not that all dealers in yarn have been denied the right to carry on trade. It is only those whose carrying on trade in yarn would not in the opinion of the Textile Commissioner ensure availability of yarn to actual consumers at the fair price. Black marketing as the expression goes is to be weeded out in this manner. The selection of traders is made on the basis of ensuring availability of yarn at a fair price. Elimination of persons who have hoarded or cornered or are unscrupulous in distribution is intended in public interest. This is a reasonable restriction in the interest of the general public and is contemplated in Article 19(6) of the Constitution.

92. In *Rashbihari Panda v. State of Orissa* the Government invited offers for advance purchases of Kendu Leaves but restricted the invitation to those individuals who had carried out contracts in the previous year without default and to the satisfaction of the Government. The scheme was held by

this Court to be discriminatory and unreasonable upon the rights of persons other than the existing contractors and the scheme of selected purchasers was not protected by Article 19(6) (ii). In the present case, the traders cannot make any profit they like because of specified prices.

93. In *Bhatnagars & Co. v. Union of India* the importers resorted to malpractices leading to speculation and fluctuation in prices. The Government, therefore, canalised distribution of the goods by inviting tenders for the grant of import licences. This Court held that it was open to the Government in national interest to intervene and regulate the distribution in a suitable manner.

94. The power to regulate sale through licensed vendors to whom quotas are allotted and who are permitted to sell yarn at fixed prices has been upheld in *M/s. Dwarka Prasad Laxmi Narain's case* (supra). But a note of possible mischief was indicated in instances where no rule or principle to guide them was stated or where no check or control by higher authority was intended. The Textile Commissioner in the present case is guided by the provisions of Clause 30 of the order as well as by Section 3 of the Essential Commodities Act. The rules or principles for guidance are first equitable distribution, and, second, availability at fair price. Prices are fixed with limited profit to traders. Further, an aggrieved person can appeal to the Central Government.

95. In *Mannalal Jain v. State of Assam* the Assam Foodgrains (Licensing and Control) Order, 1961 conferred power on the authority to have regard to Co-operative Societies in the grant of licences. This Court held that such preference did not create a monopoly. The Co-operative Societies in villages were held to be in a better position for maintaining or increasing supplies and for securing equitable distribution and availability at fair prices in accordance with village economy. The question is whether prohibition of others doing the business is reasonable under Article 19(6).

96. Canalisation orders have been upheld by this Court as reasonable within Article 19(6) of the Constitution. The recent unreported decision in *Daruka & Co. v. Union of India* referred to the earlier decisions in *Glass Chaton case* *Deva Son of Bhimji Gohil case* and upheld the distributing channels of imports and exports of different commodities and goods.

97. The petitioners contend that though the order obliges producers of yarn to sell to persons named there is no obligation on those persons to buy, and, therefore, it is an unreasonable restriction. The petitioners supported this contention by instances where those persons petitioners supported this contention by instances where those persons or bodies failed to lift the stock of yarn. It is said that producers, therefore, suffered losses. There were cases where the allottees did not lift the goods when the voluntary scheme was in operation. The allotment order on record shows that the allotment of yarn is made subject to the conditions that the allotted yarn would be lifted within 15 days of receipt of intimation from the mill after making necessary payments. If any portion of the yarn is not paid for and lifted within the stipulated time, the State Government may intimate the same to the Cotton Corporation of India and the mills concerned. The Cotton Corporation will effect payment and take charge of the yarn. The Textile Commissioner on receipt of such intimation will issue the re-allotment orders and in respect of such re-allotted yarn the allottee State Government will make necessary payments to the Cotton Corporation of India. The conditions of allotment ensure lifting of yarn by the nominees of the State Government within a reasonable time. In the past at the initial stages of the voluntary control scheme the State Government nominees were not adequately financially equipped and that is why there were cases of non-lifting of yarn. It cannot happen now. The Distribution Control Scheme does not impose an unreasonable restriction on the producer's right to carry on his business.

98. It was said on behalf of the State that the petitions were not maintainable because of the proclamation of emergency. During the proclamation of emergency Article 358 does not apply to executive action taken during the emergency if the same is a continuance of a prior executive action or an emanation of the previous law which is otherwise violative of Article 19 or is otherwise unconstitutional. The petitioners challenged the action or previous law to be violative of fundamental rights. This Court in Bennett Coleman & Co. Case said :

"During the proclamation of emergency Article 19 is suspended. But it would not authorise the taking of detrimental executive action during the emergency affecting the fundamental rights in Article 19 without any legislative authority or in purported exercise of power conferred by any pre-emergency law which was invalid when enacted".

Therefore, if it can be shown that the executive action taken during the emergency has no authority as a valid law its constitutionality can be challenged. The Cotton Textiles (Control) Order 1948 was continued by Essential Commodities Act, 1955. The impugned Orders are made under pre-emergency Cotton Textiles control Order. The validity of the impugned Orders is challenged under Article 19(1) (f) and (g) of the constitution on the ground that it is a pre-emergency executive order which could have been challenged under Article 19(1) (f) and (g) before the proclamation of emergency. From that point of view the petitions are competent though the challenge is insupportable on all grounds.

99. For these reasons, the petitions are dismissed. The parties will pay and bear their own costs.

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