

M/s. Laxmi Khandsari and Others

Vs

State of U. P. and Others

Writ Petitions 5637-41, 5643-45, 5646-47, 5649-51, 5597-98, 5553-67, 5609-11, 5616-20, 5623-28, 5657, 5673-74, 5702-23, 5668, 5659-67, 5733, 5740-42, 5782-84, 5763-64, 5762, 5747-52, 5779-81, 5745, 5785, 5737-39, 5841-43, 5786, 5797, 5861-62, & 5863-64 of 1980 and Civil Appeal No. 2734 of 1980

(Syed M. Fazal Ali, A.D. Koshal JJ)

09.03.1981

JUDGMENT

FAZAL ALI, J. -

1. Inspired by the objective of removing nation-wide shortage of sugar and for the purpose of enhancing sugar production in order to achieve an equitable distribution of the commodity so as to make it available to consumers at reasonable rates and thereby relieving the sugar famine, the Cane Commissioner, Government of Uttar Pradesh by virtue of a notification dated October 9, 1980, acting under Clause 8 of the Sugar-cane (Control) Order, 1966 (hereinafter referred to as the 'Control Order') directed that no power crusher, with certain exceptions, of a khandsari unit or any agent of such owner in the reserved area of a mill could be worked until December 1, 1980. The exact contents of the notification may be extracted thus :

Lucknow, Thursday, October 9, 1980 :

In exercise of the powers under Clause 8 of the Sugar cane (Control) Order, 1966 read with the Central Government, Ministry of Food Agriculture, Community Development and cooperation (Department of Foods), Government of India Order No. GSR 122/Ess. Com. /Sugar-cane dated July 16, 1966, I, Bhola Nath Tiwari, Cane Commissioner, Uttar Pradesh hereby direct that no owner of power crusher (other than those vertical powers crushers which manufacture Gur or Rab from sugar cane grown on their own fields) or a Khandsari Unit or any agent of such owner shall in any reserved area, of any Sugar Mill work the power crusher, or the Khandsari Unit prior to December 1, 1980 during the year 1980-81.

By Order Bhola Nath Tiwari Cane Commissioner Uttar Pradesh##

2. The Control Order was passed by the Central Government in exercise of the powers conferred on it by Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the 'Act of 1955'). In order to understand the contentions raised by the parties it may be necessary to analyse the prominent features of the above notification with reference to the situation it was intended to meet.

3. It is not disputed that sugar was being produced in the State of U. P. by the sugar-mills through hydraulic process and by the power crushers drew their raw material, namely, sugar-cane, from the

sugar cane growers. In order to facilitate production by the sugar-mills most of whom were controlled by the state, a reserved area of the fields growing sugar-cane was fixed throughout the State. The notification applied only to the reserved areas of a mill and not to any other areas. In other words, any area which fell outside the reserved area was not affected by the notification and the power crushers situated in that area could still manufacture khandsari by the open pan process. Thus, it would be seen that the ban imposed by the notification was confined only to a particular area in the State of U. P.

4. Secondly, the notification limited the ban to work power crushers only to a short period of one month and a half i. e., from October 9, 1980 to December 1, 1980. Thirdly (and it has also not been disputed) the owners of power crushers of khandsari units, who are the petitioners in these cases, had taken out regular licenses under the U. P. Khandsari Sugar Manufacturers Licensing Order of 1967 (hereinafter referred to as the 'Licensing Order'). It, therefore, logically follows that the power crushers owned or worked by the petitioners were governed by the conditions of the licenses under which they were working the crushers. Forthly, what was prohibited by the notification was only the manufacture of khandsari while the production of gur or rab from sugar-cane grown in the fields belonging to the owners of the crushers was left out of the ambit of the notification.

5. We have mentioned these essential features of the notification because the most important argument put forward before us by the counsel for the petitioners has been that it imposes unreasonable restrictions on the right of the petitioners under Article 19(1) (g) of the Constitution to carry on their trade, namely, production khandsari. A subsidiary argument buttressing the main contention was that the notification intends to create a monopoly in favour of the sugar-mills at the cost of the crushers owned by the petitioners and is, therefore, clearly violative not only of Article 19(1) (g) but also of Article 14 of the Constitution. We would, however, deal with this aspect of the matter when we examine the contentions raised by the counsel for the parties.

6. The Attorney-General, appealing for the Union of India, and Mr. Maheshwari, Additional Advocated General appearing for the State of U. P., contended that the decision to ban the power crushers of the petitioners was taken as a part of a high powered policy to boost the production of sugar which had fallen during the year 1979-80 with the result that in the current year the country acted a great sugar famine. As the situation called for some positive action to increase the production, the mater having been discussed at the 34th Annual Convention of Sugar Technologists of India, it was decided to ban the production of khandsari by the power crushers for a limited period.

7. A large number of documents in the nature of affidavits, counter-affidavits, report and books have been filed by the counsel for both the parties in support of their respective contentions. We might also mention here that the notification has since spent its force and, in fact, was not carried into effect because immediately after it was issued the present writ petitions were filed in this Court and the petitioners obtained stay of the operation of the notification from this Court. The Attorney-General, however, insisted that the matter should be finally decided so that if the Central Government wants to take any steps of this kind in future, it may be aware of the correct constitutional or legal position. The petitioners also insisted that the constitutional and legal questions involved in these cases may be decided even though our decision may be more or less of an academic value.

8. This brings us now to the various contentions raised by counsel for the petitioners and the respondents. As the notification has already spent its force, we propose to deal only with the

important and relevant contentions that have been advanced before us.

9. The counsel for the petitioners headed by Mr. Garg, Mr. Soli J. Sorabjee and other raised the following constitutional points before us :

(1) The notification, as also the Control order under which it was passed are clearly violative of Article 19(1) (g) and the restrictions purported to be placed on the rights of the petitioners do not contain the quality of reasonableness.

(2) Clause 8 of the Control Order which the impugned notification has been issued suffers from the vice of excessive delegation of powers and is, therefore, violative of Article 14 of the Constitution. By the same token, as the impugned notification seeks to establish a monopoly in favour of the sugar-mills at the cost of the petitioners, invidious discrimination is writ large on the very face of the notification which must be struck down as being violative of Article 14.

(3) There is absolutely no rational nexus between the prohibition contained in the notification preventing the crushers of the petitioner from working them and the object sought to be achieved by it. Thus, the State had selected the petitioners for hostile discrimination between one segment and another of persons engaged in the purchase of sugar-cane, its sale and production of sugar without striking a just balance between the manufacturers of gur, khandsari and sugar. India lives in villages and it was not understandable why the Central Government was bent on reducing the support price of sugar-cane which was adversely affecting the sugar-cane growers because while the mills were not able to pay a reasonable price the crushers were able to pay a handsome price for the sugar-cane supplied to them by the growers. When tested for reasonableness, therefore, the notification completely fails.

(4) Clause 8 of the Control Order does not contemplate a complete prohibition of the production of an article but envisages only a regulation of the period or hours of working.

(5) The notification violets the principles of natural justice inasmuch as it was passed without hearing the petitioners whose valuable rights were curtailed as they were put completely out of production even though for a short period.

(6) The impugned notification is violative of Clause 11 of the Control Order itself inasmuch as the prohibition against the working of the power crushers amounts to a partial revocation of the licenses of the petitioners granted to them under Clause 3 of the Licensing Order. Clause 11 of the Control Order clearly provides that no adverse orders could be passed against any manufacturer without hearing him.

(7) Even though the impugned notification purports to have been passed under the Control Order which itself was passed under Section 3 of the Act of 1955 yet if the notification is properly considered and the mischief it causes is borne in mind, it goes against the very spirit and object of the Act of 1955 and, in fact, frustrates the equal distribution and production of sugar which apparently seems to be the objective of the impugned notification.

10. The Attorney-General and the Additional Advocate General appealing for the Union of India

and the State of U. P. respectively countered the submissions made by the petitioners on the following grounds :

- (1) An order passed under Clause 8 of the Control Order is one of a legislative character and therefore the question of the application of the principles of natural justice to it does not arise.
- (2) The notification does not violate Article 14 or Article 19 because it is in great public interest and is aimed at maintaining and securing proper and equitable distribution of sugar in view of the nation-wide shortage of the commodity.
- (3) The notification is justified by the fact that recovery of sugar from sugar-cane in case of khandsari units run by power crushers is between 4 to 6 per cent whereas in the case of sugar factories it ranges between 9 1/2 to 11 1/2 percent, so that utilisation of sugar-cane in the case of mills is double that of the power crushers. In these circumstances, khandsari units and mills belong to two different classes which cannot be said to be similarly situate so as to attract Article 14. (Vide pp. 69-70 of WPs. Nos. 5565-5567 of 1980 - Bhagwati Sugar Industry case.)
- (4) The khandsari produced by the crushers has got a very narrow sphere of consumption as it is used mostly by halwais or villagers, whereas sugar produced by the sugar-mills is consumed in far larger quantities by the public in India generally and in foreign countries after export. Therefore, the sugar-mills fall within a special class and the question of hostile discrimination does not arise. Similarly, the action taken in order to protect national interests and distribution of sugar to the entire country on a rational basis cannot be said to be an unreasonable restriction.
- (5) There is a marked difference between the quality of khandsari and that of sugar produced by the mills in their character specification, etc., which is evident from the various reports filed by the State.
- (6) The question of natural justice does not arise because the crusher owners were fully aware of the situation and had also knowledge of the considerations, which prevailed with the government in stopping crushers for a short period in order to boost production by the sugar-mills and fix support price for the sugar-cane supplied to the mills. However, as the notification has expired, if proper guide-lines are laid down by the court, before passing a fresh order the State will certainly hear the petitioners in order to know their point of view.
- (7) Clause 8 of the Control Order uses the words 'period or working hours' which are wide enough to embrace within their ambit a fixed period of time covering more than a day as also hours of work on an working day.

11. We might also mention that some of the sugar-cane growers have supported the arguments advanced by the petitioners. We now proceed to scrutinise and examine the contentions of the counsel for the petitioners.

12. On the contention according to which the impugned notification is violative of Article 19(1) (g), it may be necessary to dwell in some detail. It is no doubt well settled that where a citizen complains of the violation of fundamental rights contained in sub-clause (g) of clause (1) of Article

19 or for that matter in any of sub-clause (a) to (g) thereof, the onus is not the State to prove or justify that the restraint or restrictions imposed on the fundamental rights under clauses (2) to (6) of the Article are reasonable. In the instant case, we are mainly concerned with sub-clauses (4), (5) and (6) of Article 19. As far back as 1955 this Court in *Saghir Ahmad v. State of U. P.* made this position very clear and observed as follows :

There is undoubtedly a presumption in favour of constitutionality of a legislation. But when the enactment on the fact of it is found to violate a fundamental right guaranteed under Article 19(1) (g) of the Constitution, it must be held to be invalid unless those who support the legislation can bring it within the purview of the exception laid down in clause (6) of the Article. If the respondents do not place any materials before the court to establish that the legislation comes within the permissible limits of clause (6), it is surely not for the appellants to prove negatively that the legislation was not reasonable and was not conducive to the welfare of the community.

13. A similar view was taken in *Mohammed Faruk v. State of M. P.* where this Court, speaking through Shah, J. reiterated the position mentioned above in the following words : (SCC p. 856, para 8)

When the validity of a law placing restriction upon the exercise of fundamental rights in a Article 19(1) is challenged, the onus of proving to the satisfaction of the court that the restriction is reasonable lies upon the State.

14. We, therefore, fully agree with the contention advanced by the petitioners that where there is a clear violation of Article 19(1)(g), the State has to justify by acceptable evidence, inevitable consequences or sufficient materials that the restriction, whether partial or complete, is in public interest and contains the quality of reasonableness. This proposition has not been disputed by the counsel for the respondents, who have, however, submitted that from the circumstances and materials produced by them the onus of proving that the restrictions are in public interest and are reasonable has been amply discharged by them.

15. This brings us to the main question as to the circumstances under which restrictions imposed by the State can be said to contain the quality of reasonableness. For this purpose, almost all the decisions of this Court on the subject have been placed before us and it may be necessary to notice those of them which have a close bearing on the point at issue.

16. It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under clauses (2) to (6) of Article 19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. It is difficult to lay down any hard and fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand. It is manifest that the adopting the social control one of the primary considerations which should weigh with the court is that as the directive principles contained in the Constitution aim at the establishment of an egalitarian society so as to bring about a welfare State within the framework of the Constitution,

these principles also should be kept in mind in judging the question as to whether or not the restrictions are reasonable. If the restrictions imposed appear to be consistent with the directive principles of State policy they would have to be upheld as the same would be in public interest and manifestly reasonable.

17. Further, restrictions may be partial, complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential to the life of the community and the said restriction has been imposed for a limited period in order to achieve the desired goal.

18. Another important consideration is that the restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and the danger or evil sought to be avoided. Thus freezing of stock of food grains in order to secure equitable distribution and availability on fair prices have been held to be a reasonable restriction in the cases of *Narendra Kumar v. Union of India* *Diwan Sugar & General Mills (P.) Ltd. v. Union of India* and *State of Rajasthan v. Nath Mal and Mitha Mal*.

19. These are some of the general principles on the basis of which the quality of reasonableness of a particular restriction can be judged and have been lucidly adumbrated in *State of Madras v. V. G. Row* case. Another important test that has been laid down by this Court is that restrictions should not be excessive or arbitrary and the court must examine the direct and immediate impact of the restrictions on the rights of the citizens and determine if the restrictions are in larger public interest while deciding the question that they contain the quality of reasonableness.

20. In such cases a doctrinaire approach should not be made but care should be taken to see that the real purpose which is sought to be achieved by restricting the rights of the citizens is subserved. This can be done only by examining the nature of the social control, the interest of the general public which is subserved by the restrictions, the degree and urgency of the evil sought to be mitigated by the restrictions and the period during which the restrictions are to remain in force. At the same time the possibility of an alternative scheme which might have been but has not been enforced would not expose the restrictions to challenge on the ground that they are not reasonable.

21. Finally, in determining the reasonableness of restrictions imposed by law in the field of industry, trade or commerce, the mere fact that some of the persons engaged in a particular trade may incur loss due to the imposition of restrictions will not render them unreasonable because it is manifest that trade and industry pass through periods of prosperity and adversity on account of economic, social or political factors. In a free economy controls have to be introduced to ensure availability of consumer goods like food-stuffs, clothes or the like at a fair price and the fixation of such a price cannot be said to be an unreasonable restriction in the circumstances.

22. Thus, apart from the various other factors which we have referred to above where restrictions are imposed on a citizen carrying on a trade or commerce in an essential commodity, the aspect of controlled economy and fair and equitable distribution to the consumer at a reasonable price leaving an appreciable margin of profit to the producer is undoubtedly a consideration which does not make the restriction unreasonable.

23. In fact, the leading case decided by this Court which may justly be regarded as the locus classicus on the question as to what are reasonable restrictions is *V. G. Row* case where Patanjali

Sastri, C. J., speaking for the court observed as follows :

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. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

24. This case was followed in a later decision of this Court in *Mineral Development Ltd. v. State of Bihar* where after quoting the observations of Patanjali Sastri, C. J., as extracted above, Subba Rao, J., speaking from the court observed as follows :

These observations, if we may say so with great respect, lay down the correct principle. It follows that it is the duty of this Court to decide, having regard to the aforesaid considerations and such others whether a particular statute satisfies the objective test of 'reasonableness'.

25. In the case of the *Collector of Customs, Madras v. Nathella Sampathu Chetty* the observations of Patanjali Sastri, C. J., were endorsed by this Court when Ayyangar, J., speaking for the court, made the following observations :

There are several decisions of this Court in which the relevant criteria have been laid down but we consider it sufficient to refer to a passage in the judgment of Patanjali Sastri, C. J., in *State of Madras v. V. G. Row*.

26. In *Diwan Sugar & General Mills (Private) Ltd. v. Union of India* which was also a case arising out of the Act of 1955 and the Sugar Control Order of 1955 promulgated by the Central Government under Section 3 of the said Act, a Constitution Bench of this Court while examining the nature of the restrictions imposed in that case took into account the various circumstances and observed :

Clause 5 of the Order lays down the factors which have to be taken into consideration in fixing prices. These factors include among other things a reasonable margin of profit for the producer and/or trade and any incidental charges. This was kept in mind when prices were fixed by the impugned notification... These prices were prevalent in the free market and must certainly have taken account of a fair margin of profit for the producer, though in the case of an individual factory due to factors for which the producer might himself be responsible, the cost of production might have been a little more. Therefore, the prices fixed by the government by the

impugned notifications can in no circumstances be said to have been proved to be below the cost of production.

... In these circumstances if price is fixed in this area, price all over India is practically fixed, and it is not necessary to fix prices separately so far as factories in other States which are said to be mainly deficit, are concerned.... There is, therefore, in our opinion, no discrimination in effect by the fixation of prices in these three regions.

27. It will be noticed that even though Clause 5 had fixed prices, the court upheld the restrictions because a reasonable margin of profit for the producer was left and did not insist that the producer should be allowed to have full sway in the production of sugar to the maximum capacity possible. Similarly, one of the important tests laid down by this Court was that the price prevailing in the free market must be taken into account in the formula of fixation of price for essential commodities. Secondly, while dealing with the price control imposed on factories in various States, this Court held that the policy of fixation of price could not be challenged because the States where they were fixed were deficit areas. We might mention here that the sheet-anchor of the argument of the Attorney-General is that the impugned notification was passed in order to relieve the sugar famine by boosting the production of sugar by mills. Similarly, in Nath Mal and Mitha Mal case, which was also a case dealing with food grains, an order freezing the stocks of the commodity in order to secure its equitable distribution so as to make it available at a fair price to consumers was upheld by this Court with the following observations :

The clause authorise the Commissioner and various other authorities mentioned therein and such other officers as may be authorised by the Commissioner to freeze any stock of food grains held by a person... Nor do we think that the power to freeze the stocks of food grains is arbitrary or based on no reasonable basis...

We are clear, therefore, that the freezing of stocks of food grains is reasonably related to the object which the Act was intended to achieve namely, to secure the equitable distribution and availability at fair prices and to regulate transport, distribution, disposal and acquisition of an essential commodity such as food grains.

28. The most material ratio of this case is that even the freezing of stocks of food grains with a view to securing their equitable distribution and availability was held to be a reasonable restriction. Even if by seizing the food stocks the right of a citizen to trade in food grains was seriously impaired and hampered yet such a State action was justified on the ground of public interest.

29. On a parity of reasoning, therefore, a restriction (on the right of a trader dealing in essential commodities) like the ban in the instant case or fixation of prices aimed at bringing about distribution of essential commodities keeping the consumers interests as the prime consideration, cannot be regarded as unreasonable.

30. We are fortified in our view by a decision of this Court in *Prag Ice & Oil Mills v. Union of India* where Beg, C. J., observed as follows : (SCC p. 477, para 21)

All the tests of validity of the impugned price control or fixation order are, therefore, to be found in Section 3 of the Act. Section 3 makes necessity or expediency of a control order for the purpose of maintaining or increasing supplies of an essential

commodity or for securing its equitable distribution at fair prices the criteria of validity. It is evident that an assessment of either the expediency or necessity of a measure, in the light of all the facts and circumstances which have a bearing on the subjects of price fixation, is essentially a subjective matter. It is true that objective criteria may enter into determinations of particular selling prices of each kilogram of mustard oil at various times. But, there is no obligation here to fix the price in such a way as to ensure reasonable profits to the producer or manufacturer. It has also to be remembered that the object is to secure equitable distribution and availability at fair prices so that it is the interest of the consumer and not of the producer which is the determining factor in applying any objective tests at any particular time.

31. The observations extracted above, furnish a complete answer to the contentions raised by the petitioners on contention (1). Furthermore, we would like to reiterate what Chandrachud, C. J., observed in that case regarding the history and the manner in which the petitioners rushed to this Court : (SCC p. 499, para 72)

Before closing, we would like to mention that the petitioners rushed to this Court too precipitately on the heels of the Price Control Order. Thereby they deprived themselves of an opportunity to show that in actual fact, the Order causes them irreparable prejudice. Instead, they were driven through their ill-thought haste to rely on speculative hypothesis in order to buttress their grievance that their right to property and the right to do trade was gone or was substantially affected. A little more patience, which could have been utilised to observe how the experiment functioned, might have paid better dividends.

32. This is exactly what the petitioners have done in this case by rushing to this Court the moment the notification was issued and thus depriving the State as also themselves of the actual consequences of the issuing of the notification and the prejudice which it really may have caused. They did not at all show any patience in waiting for a while to find out if the experiment functioned successfully and in the long run paid good dividends. As the petitioners obtained stay orders from this Court on filing these petitions, the experiment died a natural death and the notification remained ineffective.

33. It was vehemently contended by Mr. Garg that the notification or the Control Order is in direct contravention of the directive principles of State policy in Article 39 in Part IV of the Constitution inasmuch as instead of developing small-scale industries like the crushers the notification has curbed the rights of their owners in order to benefit the mills. It is true that one of the important considerations which must weigh with the court in determining the reasonableness of a restriction is that it should not contravene the directive principles contained in Part IV of the Constitution which undoubtedly has a direct bearing on the question as held by this Court in the cases of *Saghir Ahmad v. State of U. P.* and *State of Bombay v. F. N. Balsara* where this Court made the following observations :

The new clause in Article 19(6) has no doubt been introduced with a view to provide that a State can create a monopoly in its own favour in respect of any trade or business; but the amendment does not make the establishment of such monopoly a reasonable restriction within the meaning of the first clause of Article 19(6). The result of the amendment is that the State would not have to justify such actions as reasonable at all in a court of law and no objection could be taken to it on the ground

that it is an infringement of the right guaranteed under Article 19(1) (g) of the Constitution. (Saghir Ahmad case)

In judging the reasonableness of the restrictions imposed by the Act, one has to bear in mind the directive principles of State policy set forth in Article 47 of the Constitution.

34. In the instant case, however, if the argument of the Attorney-General is to be accepted, there is no violation of the directive principles because the main object sought to be achieved by a temporary suspension of the business of the petitions is to ensure large-scale production of white sugar and to make it available to the consumers at reasonable rates which is an implementation rather than a contravention of the directive principles particularly clauses (b) and (c) of Article 39. Whether the State has been able to prove this fact or not would be considered when we deal with the facts and materials placed before us by the parties.

35. Another important aspect to which we may advert at this stage is the test which should be laid down to determine the reasonableness of a restriction involving a citizen carrying on trade or business in an essential commodity. We have already seen that this Court has held the fixation of price of sugar or freezing of stocks of food grains does not amount of an unreasonable restriction on the fundamental right to trade enshrined under Article 19(1) (g). There are other case in which this Court has clearly held that in the case of essential commodities like sugar the question of the economic prediction and distribution thereof must enter the verdict of the court in deciding the reasonableness of the restrictions. In such cases even if the margin of profit left to the producer is slashed that would not make the restriction unreasonable. The reason for this view is that such a trade or commerce is subject to rise and fall in prices and other diverse factors which may destroy or prohibit one industry or the other so as to affect the general body of the consumers and if any measure is taken to strike a just balance between the danger sought to be averted and the temporary deprivation of the right of a citizen to carry on his trade, it will have to be upheld as a reasonable restriction. In *Shree Meenakshi Ltd. v. Union of India* Ray, C. J., speaking for the court observed as follows : (SCC p. 490, paras 65 & 66)

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 are kept in the forefront.....

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 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.

36. According to the Attorney-General by virtue of the impugned notification this is exactly what the Central Government wants to achieve by banning the working of the power crushers for a short period. This case was followed in another decision of this Court in *Saraswati Industrial Syndicated Ltd. v. Union of India* which was also a case of a notification issued under Clause 7 of the Control Order of 1966, where the following observations were made : (SCC p. 634, para 5)

It is a well known fact that rationalisation of industry by the use of modern methods, reduces the amount of labour needed in more mechanised mode of manufacture. Therefore, we do not think that these assertions could prove any inequitable treatment meted out to the Haryana manufacturers of sugar. In any case, no breach of a mandatory duty, which could justify the issue of a writ of mandamus, was established.

37. In the light of the principles enunciated and the decisions discussed above, we now proceed to examine the facts and circumstances placed before us by the Union of India to prove that the restrictions imposed under the impugned notification contain the quality of reasonableness and are not violative of Article 19(1) (g). The main pleas of the State of Uttar Pradesh which have been adopted by the Union of India, are to be found in Paragraphs 6 to 11 of the counter-affidavit filed by__ the respondents in Writ Petitions 5565-5567 of 1980. The respondents have taken the stand that there has been a very steep rise in the prices of sugar which is doubtless an essential commodity. It has further been alleged that one of the major factors responsible for the present rise in the prices of sugar is that there is a sharp rise in demand for consumption of sugar whereas its production has slumped to a very low level. In order to illustrate the point it has been averred that the demand of sugar in the country has increased to over 60 lakh tonnes whereas production of the commodity in the preceding year (1979-80) was only about 39.5 lakh tonnes. In order to meet the demand, the Central Government had to import for the first time after several years 2 lakh tonnes of sugar at a cost of about one hundred crores of rupees. One reason for the shortfall in production during 1979-80 was the poor availability of cane to the sugar factories. This in turn resulted from the works drought conditions faced by our country particularly in the State of Uttar Pradesh which is one of the main suppliers of sugar-cane. Yet another cause of the shortage was that the sugar famine led to the large-scale diversion of cane to gur and khandsari manufacturers. The counter-affidavit then proceeds to give a chart of the production of sugar by the crushers and the mills.

38. It was further averred that unless the position was set right the stocks of 1979-80 would have been exhausted completely by the middle of November 1980. To meet this national crisis, the Government of India took various steps to increase the production of sugar in the country during the current season (1980-81). In the first place, the Government of India allowed rebated in the basic excise duty on excess sugar production in order to serve as an incentive to the sugar-mills to start early cane crushing operation. This step however, could not possibly have the desired effect unless the sugar factories got the raw material, viz., constant supply of sugar-cane. Indisputably sugar-cane is utilised for manufacture of sugar, gur, rab and khandsari and some of the quantity is also utilised for seed, feed and chewing. It was further alleged that the crushers particularly those producing gur were in the advantages position so as to be able to purchase cane at a very high rate and out compete the sugar factories. It was possible for the crusheres to pay a higher price because no excise duty or compulsory levy was imposed on them. On the other had, the factories suffered from certain disabilities, namely, sixty-five per cent of the sugar production was taken by the Government of India on levy process and excise duty on free sale sugar was very high as compared to khandsari sugar. Further, the government required distribution of molasses at a fixed price of Rs. 6 per quintal to the mills whereas there was no such obligation on the power crushers. Finally, because of the monthly release system the factories could sell only released quantity during a particular month whereas there was no such restriction on khandsari units owned by the petitioners. These steps taken by the then government resulted in an unhealthy competition causing diversion of cane from the sugar factories with the result that sugar factories could get only 61.5 per cent of the bonded cane. It was further pointed out in the counter-affidavit that keeping in view the fact that the sugar stocks of 1979-80 were likely to be exhausted by the middle of November 1980, it was considered necessary

to maintain an adequate of sugar-cane to the sugar factories which would have started production earlier because of the incentives given to them by the Government of India.

39. In an additional affidavit filed by the respondents, sworn by Karan Singh, Joint Cane Commissioner, Government of Uttar Pradesh, it was pointed out that khandsari sugar could never be a substitute for sugar produced by sugar-mills because khandsari sugar is not used for domestic purpose in preference to mill sugar as the former has higher molasses content and has unpleasant smell and taste. Further, there is no gradation of khandsari sugar as its grain is not regular and bold. It was further alleged that in public distribution it is only the mill sugar which is supplied at fair price to the consumers at large and which also forms the bulk of the export. The khandsari sugar, according to the respondents, was generally consumed for preparation of sweets, boora and batasha and was consumed mostly by the halwais. There is no reliable evidence to rebut the aforesaid facts detailed in the counter-affidavit of the respondents.

40. Thus, in view of the factors detailed above, it was contended by the Union of India that it was in public interest that with a view to remove shortage of sugar and achieve equal distribution of sugar-cane to the mills the impugned notification was passed which seems to strike a just balance between the requirements of the country and those of the khandsari units. The Attorney-General contended that since the ban was imposed only for a very short period of about one month and a half, there could be no appreciable loss to the khandsari units, and even if there was some loss it could be recouped after the ban was lifted because the working cost of the khandsari units was much less than that of the mills. In other words, by virtue of the policy adopted by the government in passing the impugned notification, a fair margin of profit was left to the khandsari units which were not completely closed. It was further stated that out of 89 sugar-mills in the entire State of U. P., 18 sugar-mills are owned by the U. P. State Sugar Corporation which is a Government company and controlled by the State. Sixteen sugar-mills are under the cooperative sector in which the government investment is considerable and these mills are run by cooperative societies of which cane growers are shareholders. Thus, the ultimate benefit did undoubtedly go to the sugar-cane growers also through the profits made by the cooperative societies. The learned counsel, Mr. Garg, appealing for the petitioners countered the inferences drawn by the respondents with the submission that although the above facts may not be disputed yet it was not correct to say that the khandsari units had put the mills completely out of competition. It was suggested that the khandsari units were also, apart from paying a higher price to the sugar-cane growers, prepared to be subjected to compulsory levies or excise duty levied on the mills or to such terms as the government may like to put on the owners of the crushers. The argument is, no doubt, attractive but we are not sure if and when these harsher terms are imposed on the petitioners, it would be possible for them to run the aforesaid impositions. At any rate, since the impugned notification has expired the government will certainly consider the desirability of a reappraisal of the situation after taking into account this aspect of the matter. It was further pointed out by the Union of India that only 39 sugar-mills are in the private sector and ensuring actual availability of sugar-cane at reasonable rates to the sugar-mills was the prime consideration which formed the basis of the impugned notification in conformity with the object of the Act of 1955 and the Control Order so as to maintain a fair price for the general public. Learning a lesson from the performs of the sugar market in the proceeding year, the government thought it more desirable to channelise the production (sic) of sugar-cane so that the interests of neither the sugar-mill owners nor of the khandsari units nor those of the cane growers suffered.

41. It was then contended that the impugned notification far from causing any appreciable damage or loss to the petitioners serves a two-fold purpose which ensures equitable production and

distribution of sugar.

42. Another important argument advanced by the Attorney-General which has impressed us most is one resulting from the use by the mills of the hydraulic process as distinguished from the open pan process employed by khandsari units for the production of sugar. The consequence is the recovery of sugar from sugar-cane in the case of khandsari units run by power crushers is between 4 to 6 per cent whereas in the case of sugar factories it ranges between 9 1/2 to 11 1/2 per cent. Thus, the overall position is that the utilisation of sugar-cane by the mills is double that by the crushers and the crushers are not able to produce more than existing 4 to 6 percent, half of the total quantity of sugar-cane supplied to them goes waste which, if utilised by the factories, would have served for production of more sugar.

43. This solid distinction between the two processes of manufacture followed by the mills and the crushers is, in our opinion, a very rational distinction which puts the mills in a different class and which also provides a reasonable nexus between the restrictions imposed on the crushers and the object sought to be achieved. The petitioners sought to falsify the figures quoted by the Union of India regarding the percentage of recovery of sugar by reference to a book written by Mr. Bepin Behari, and entitled Rural Industrialization In India. On page 100 of the book, the author has observed as follows :

Originally, the percentage of recovery in traditional khandsari units did not go beyond 6.5 percent, but recent innovations have raised the recovery ratio to almost 9.5 per cent. Thereby the two processes have become almost competitive. In inversion loss, however, there is some difference. In the large-scale sugar-mills, only ten percent of the sugar is lost while in small khandsari plants the loss can be as much as 30 percent and great reliance has been placed on these observations of the author. It may be noted, however, that the author has not cited any expert opinion as the foundation for his conclusion nor has he referred to any experiment carried out by him personally. In fact he has not even disclosed the source of his information. Apart from that the book fully supports the averments of the respondents that the percentage of recovery in traditional khandsari units did not go beyond 6.5 per cent. Besides, there is no evidence or allegation in any of the affidavits filed by the petitioners to the effect that any new circumstances, the extract from the book does not appear to be of any assistance to the petitioners.

44. On the other hand, the facts detailed by the respondents in the various counter-affidavits filed by them are based on the statistics maintained by the government from year to year and reports of experts. One such report entitled Studies on Specific Conductances of Indian Sugar has been filed by the State before us and it gives the entire history and economics of sugar production.

45. After a careful consideration of the arguments and documents produced by both the parties we are satisfied that the restriction imposed by the impugned notification in stopping the crushers for the period October 10 to December 1, 1980 is in public interest and bears a reasonable nexus to the object which is sought to be achieved, namely, to reduce shortage of sugar and ensure a more equitable distribution of this commodity.

46. One of the tests that has been laid down to determine the reasonableness of a restriction is to find out if the restraint is more excessive than that warranted by the situation. In the instant case, taking an overall picture of the history of sugar production it cannot be said that the stoppage of

sugar crushers for a short period is more excessive than the situation demanded.

47. In *Madhya Bharat Cotton Association Ltd. v. Union of India* while considering a restriction imposed for a short time, this Court observed as follows :

Further, cotton being a commodity essential to the life of the community, it is reasonable to have restrictions which may, in certain circumstances, extend to total prohibition for a time, of all normal trading in the commodity. Accordingly, we are of opinion the Clause 4 of the Cotton Control Order of 1950 does not offend Article 19(1) (g) of the Constitution because sub-clause (5) validates it.

48. In that case the restriction imposed on cotton was for a short period of one month in February 1954 and for another month in May 1954, and was held to be justified and a reasonable restraint so as not to be violative of Article 19(1) (g). The situation here is similar. After all, the petitioners were working their crushers under a licence granted to them under the Licensing Order and the impugned notification merely seeks to regulate the right and not to abolish the same.

49. For the above reasons the first contention put forward by the petitioners that the restrictions imposed by the impugned notification are unreasonable is hereby overruled and it is held that such restrictions clearly contain the quality of reasonableness and when tested on the touchstone of the principles laid down by the various authorities referred to above, they fully satisfy all the requirements of a reasonable restriction.

50. This takes us to contention (2) raised by the petitioners. It was submitted before us that Clause 8 of the Control Order under which the impugned notification has been issued suffers from the vice of excessive delegation of powers and is, therefore, violative of Article 14 of the Constitution. It was argued that as the notification seeks to establish a monopoly in favour of the sugar-mills at the cost of the petitioners it seeks to make per se an invidious discrimination which is writ large on the very face of the notification which is, therefore, violative of Article 14.

51. As regards the first limb of the argument it may be necessary to state that the Control Order itself has been passed under the authority of Section 3 of the Act of 1955 which has been held by this Court to be constitutionally valid and is not in any way discriminatory so as to attract Article 14. The Control Order itself having been passed under Section 3 contains sufficient guide-lines, checks and balances to prevent any misuse or abuse of the power conferred on the authorities concerned under Clause 8. Clause 8 runs thus :

8. Power to issue directions to producers of khandsari sugar, power crushers, khandsari units, crushers and cooperative societies. - The Central Government may, from time to time, by general or special order, issue directions to any producer of khandsari sugar or owner of a power crusher, khandsari unit or crusher or the agent of such producer or owner or a cooperative society, regarding the purchase of sugar-cane or sugar-cane juice, production, maintenance of stocks, storage, price, packing, payment, disposal, delivery and distribution of sugar-cane, gur, gul, jaggery and rab or khandsari sugar or the period or hours to be worked.

52. To begin with it may be noticed that the power to issue orders or directions from time to time is conferred on the Central Government which is undoubtedly a very high authority and must be presumed to act in a just and reasonable manner. This point is well settled and concluded by several

decisions of this Court as detailed below. In *Chinta Lingam v. Government of India*, this Court made the following observations : (SCC p. 772, para 4)

At any rate it has been pointed out in more than one decision of this court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment.. It was said that though the power was discretionary but it was not necessarily discriminatory and abuse of power could not be easily assumed. There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law.

This case was followed in *V. C. Shukla v. State (Delhi Admn.)* where one of us (Fazal Ali, J.) speaking for the court observed as follows : (SCC p. 273, para 43)

Furthermore, as the power is vested in a very high authority, it cannot be assumed that it is likely to be abused. ON the other hand, where the power is conferred on such a high authority as the Central Government, the presumption will be that the power will be exercised in a bona fide manner and according to law.

53. Moreover, the power cannot be said to be arbitrary or unguided because the impugned notification derives its course from Section 3 of the Act of 1955 which clearly lays down sufficient guide-lines and the existence of certain conditions for proper distribution of an essential commodity. The said guide-lines therefore, govern the authority passing the impugned notification.

54. Secondly, Clause 8 merely seeks to regulate and guide the conditions and the circumstance under which the manufactories may exercise their rights. In other words, any order passed under Clause 8 is prima facie purely of a regulatory nature. It was, however, submitted that the notification has been passed by the Cane Commissioner, Government of U. P. and it does not obtain any materials or reasons why the ban was imposed on the crushers owned by the petitioners. As the notification itself has been passed under Clause 8 of the Control Order read with Government of India GSR No. 1152 dated July 16, 1966 and under the Essential Commodities Act it was not necessary for the Cane Commissioner to have stated or detailed the reasons why the notification was issued. In fact, the notification and the Control Order have to be read in the light of the main Act, viz., the Act of 1955, which itself provides the necessary guide lines, namely that it is essential in public interest and to secure proper distribution of an essential commodity to pass orders by various authorities from time to time. This is the scheme of Section 3 of the Act of 1955 which has not been challenged before us by the petitioners.

55. It was further argued in the same token that the impugned notification seeks to establish a monopoly in favour of the sugar-mills at the cost of the petitioners who have been selected for hostile discrimination at against the mills. While detailing and narrating the facts and the history of sugar production we have already shown that the State has placed cogent materials before us to show why the sugar mills had to be given a special treatment by temporarily stopping the production of sugar by the crushers. We have already dealt with the various factors while examining contention (1) of the petitioners and it is not necessary for us to repeat the same here. There was no question of creating any monopoly to benefit the mills particular when a very large majority of the mills wee controlled by the State or cooperative societies and only a small fraction of them were working in the private sector. In view of the low working costs of the crushers they sought cane which they should have got. It was not only just but also essential to cost the production of the factories so that white sugar may be produced on a large scale and sugar-cane may not be wasted

which would have been the case if most of the sugar-cane went to the crushers. We have pointed out that the recovery of sugar-cane juice by the mills is double that by crushers, and if the latter were allowed to operate the wastage of the sugar-cane would have been almost 50 per cent which could have been avoided if sugar-cane was allowed to be utilised by the mills.

56. The third limb of the argument on this point was that there was no rational nexus between the prohibition contained in the notification preventing the petitions from working their crushers, even though for a short period, and the object sought to be achieved by it. This contention also most necessarily fail as we have already shown that such nexus existed.

57. It was argued by Mr. Garg that as India lives in villages it was not understandable why the Central Government was bent on reducing the support price of sugar-cane and thus causing loss to the sugar-cane growers. It is true that the mills were not in a position to pay as high a price for sugar-cane as the crushers but that was for so many reasons which we have discussed above namely the various liabilities which were imposed on the mills. e. g., the excise duties, the levy etc. Once a certain amount of stability was achieved in the sugar-cane industry the ultimate benefit would undoubtedly go to the sugar-cane grower even though he may have to be therefore in public interest that a lesser support price for sugar-cane had been fixed. Moreover, it was for the central Government who was in the know of the circumstances prevailing in the State or for that matter in the country to determine the support price of sugar-cane. Even though the crushers may have paid a higher price, in the long run, the sufferers would be the sugar-cane growers as also the consumers who would be deprived of the sugar produced by the mills which was undoubtedly superior to the khandsari sugar and has a vaster area of consumption in the country and is also meant for purposes of export.

58. The report entitled Studies on Specific Conductances of Indian Sugar referred to above, details the distinctive features of the white sugar produced by the mills and the Khandsari sugar where the various features of the nature and character of sugar are pointed out thus :

This plantation sugar is crystalline, white lustrous and has a purity of 99.8 per cent. The size of the crystal of this sugar varies from 0.3 to 205 mm. This sugar is graded according to the Indian Sugar Standards : Sugar corresponding to 30-A is very white sugar with grain size of about 2.5 mm. While 27-E refers to less white sugar with grain size of about 0.4 mm. The numerals 30, 29 and 27 indicate the decreasing order of the whiteness of the sugars and the letter A E to the grade of the grain size... Apart from these sugars produced in well established commercial factories, the similar type of which are known in other countries another kind of sugar produced perhaps only in India and nowhere else, is the khandsari sugar which is being manufactures in small scale industrial nits. While in the sulphitation factories the classified sugar syrups are boiled under vacuum, in khandsari units the same is carried out in the open pants. This sugar used to be palish yellow in colour... Nagaranjaras and his co-workers studied the conductivity of plantation white sugars and refined sugars and found distinctive difference in conductivity of plantation white sugar and refined sugars.

59. It was been clearly averred in para 15 of the counter affidavit filed by Mr. Bhola Nath Tiwari, Cane Commissioner, Government of U. P. (Who issued the impugned notification) that in the years 1978-79 the production in the reserved areas was 578-78 lakh tonnes out of which the percentage of cane utilised by the sugar mills was 27.24 whereas it was 9.73 per cent in the case of khandsari

manufactures by power crushers. It is also stated that out of the total quantity of sugar-cane only 45.53 per cent was utilised by gur manufactures and the remaining 17.5 per cent was used for seed, feed and chewing purposes etc. Similarly in the years 1979-80 there was a steep falling the production of sugar-cane from 578.78 lakh tonnes in the previous year to 471.11 lakh tonnes. Owing to this loss of production, threw as keen competition for purchase of sugar-cane between the sugar mills owners and the khandsari unit. As a result of this unhealthy competition sugar mills had to close down prematurely resulting in the loss of production of sugar.

60. A very attractive argument was submitted before us by Mr. Gupta, appearing for some of the owners of power crushers. It was submitted, that so far as the petitioners represented by him were concerned, they were growing sugar-cane in their own fields and had installed power crushers in their own land thought the said land fell within the reserved area. It was argued that these petitioners fell in a separate category and the government could not compel them to supply sugar-cane to the mills instead of using the sugar-cane grown by them in their own crushers. An apparent snag in this argument is that if in the larger public interest it becomes necessary to compel the sugar-cane growers to supply sugar-cane to the mills at a particular rate in taken away in an unjust or discriminatory fashion..... Personal or individual interests must yield to the larger interests of the community. This is exactly the philosophy behind the passing of the Act of 1955.

61. Merely because the petitioners are growing sugar-cane in their own fields and own power crushers therefore they cannot be treated as a class separate from the other owners of power crushers situated within the reserved area of the mills.

62. Secondly it was augured by Mr. Gupta and, in our opinion, rightly that the impugned notification is ex facie discriminatory inasmuch as it differentiates between vertical and horizontal power crushers without any rhyme or reasons. He submitted that nor rational basis has been suggested by almost the same quantity of khandsari and apply the same mechanical process (Open pan process). What difference does it make, says Mr. Gupta, if a power crusher is vertical or horizontal? In the case of a horizontal power crusher rollers are in a horizontal line situated on the surface whereas in the vertical power crusher the rollers instead of being on the surface are in a vertical portion without there being any difference in the working of the two crushers. We are of the opinion that this argument of Mr. Gupta is sound and must prevail. The Additional Advocate General, U. P. sought to draw several distinctions between a vertical power crusher and a horizontal one, namely, (1) a vertical power crusher can crush 1500 quintals of sugar-cane per month whereas a horizontal one crushes 5600 quintals of the commodity in the same period; (2) vertical power crushers are non-commercial and fall within the category of cottage industry whereas horizontal power crushers are included in the category of small scale industry; (3) vertical power crushers run by their owners themselves and draw supplies from sugar-cane growers and (4) vertical power crushers do not require any licence. So far as the last part of the argument of the Additional Advocate General of U. P. the vertical power crushers do not require a licence is concerned, it is factually wrong because all such crushers require a licence by virtue of the Orders passed by the Central Government under Section 3 of the Act of 1955. Regarding the other distinctive features the mere ipse dixit of deponent Gupta who has sworn an affidavit, there is absolutely no documentary evidence to support the features pointed out or relied upon by the Additional Advocate General. In these circumstances it has not been proved to our satisfaction that there is any real distinction between a vertical and a horizontal power crusher, and we regard both as falling in the same class. The notification by exempting vertical power crushers and prohibiting horizontal power crusher is clearly discriminatory and the discrimination is not justified by any rational nexus between the prohibition and the object sought to be achieved.

63. In these circumstances, therefore we hold that insofar as the word vertical used in the impugned notification is concerned, it must be struck down as being violative of Article 14. This, however does not render the entire notification void because the word vertical used in the notification is clearly severable from the other portions of the notification. All that has to be done is to read the notification without the word vertical as a result of which the exemption from the ban will include all owners of power crushers (where vertical or horizontal) which manufacture gur or rab from sugar-cane grown on their fields. Again, as the notification has already spent its force, if any order is passed in future, the government will see to it that such an invidious discrimination is not repeated.

64. We now come to contention (4) by which it was urged that the express language of Clause 8 of the Control Order does not contemplate a complete prohibition of the production of an article but envisages mere regulation of the period or hours of working. It was argued that the words period or hours used in the Clause 8 are relatable only to the number of actual hours in a day for which the crushers may be permitted to work from time to time and not a complete stoppage or prohibition of the crushers for a period of a month or two. Clause 8, as extracted supra, uses the words period or hours to be worked. A plain reading of this expression clearly reveals that the words period and hours have been used to connote two different aspects of the matter. In other words, Clause 8 contemplates regulation of working of the sugar (sic) by two separate methods-(1) Where only hours of work per day are to be regulated or fixed, for instance, where a crusher normally works for 10 hours a notification under this clause may provide that it should work only for 8 hours or 6 hours or 10 hours a day for a number of days. (2) the word period however has nothing to do with the hours to be worked but it refers to another category of regulation, viz., whether a crusher is to run or not for a particular period of time. We are unable to agree with the contention of Mr. Garg that the two words must be taken to have been used in Clause 9 in the same sense. In fact, this interpretation of the words will cause violence to the language of the statutory provisions and instead of advancing its object it would frustrate the purpose which Clause 8 seeks to subserve. In the instant case, the notification has assented to the first category, viz, the period of the working of the crushers, that is to say about one and a half month and has not at all touched or impinged upon the working hours of the crushers. If however, the notification had fixed certain hours of the day during which only the crushers could work then the notification would have resorted to the alternative mode of regulation which obviously has not been done in this case. We are unable to agree with the contention put forward by Mr. Garg and hold that the impugned notification is wholly consistent with the provisions contained in Clause 8 of the Control Order.

65. Contentions (5), (6) and (7) relate to the objection taken by the petitioners to the validity of the impugned notification on several grounds. In regard to contention (5), the notification has been attacked on the ground that the Control Order violates the principles of natural justice inasmuch as it was passed without hearing the petitioners whose valuable rights were involved and their trade was stopped and they were put completely out of production even though for a short period about one and a half month. It was contended that though Clause 8 does not expressly provide for a hearing yet even if it be considered to be an administrative order, the rule of audi alteram partem fully applies and the Cane Commissioner should have passed the impugned notification only after hearing the petitioners. Reliance was placed for this proposition on a large number of authorities. It is true that with the growth of law in our country, this Court has consistently held for the last few years that the rules of natural justice must apply even to an administrative order unless the same are expressly excluded. Mr. Garg as also other counsel for the petitioners submitted that the mere fact that there is no express provision in Clause 8 for hearing the petitioner before imposing any restrictions on their business provides good reason to hold that the rights to be heard was inherent in the very act of

prohibition since the stoppage of the business of the petitioners would entail civil consequences. Thus, they argued, as no hearing was given to the petitioners, the notification was void argued, as no hearing was given to the petitioner, the notification was void and inoperative. Reliance was placed on the observations of Krishna Iyer, J., in Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, which may be extracted thus : (SCC pp. 432, 433, 437 & 446, paras 43, 44, 56 & 73)

Indeed natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudications to make fairness a creed of life. It has many colours and shades many forms and shapes and save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest time and not a mystic testament of judge made law....

The dichotomy between administrative and quasi judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescent after Kraipak in India and Schmidt in England.

* * *

The procedural pre-condition of fair hearing, however minimal even post decisional has relevance to administrative and judicial gentlemanliness. The Election Commission is an institution of central importance and enjoys far reaching powers and the greater the power to affect other right or liabilities the more necessary the need to hear.

* * *

We consider it a valid point to insist on observance of natural justice in the area of administrative decision making so as to avoid devaluation of this principle by administrators already alarmingly insensitive to the rationale of audi alteram partem'.

66. Strong reliance was also placed on the observations of this Court in Maneka Gandhi v. Union of India where Bhagwati, J., after full discussion of the entire subject observed thus : (SCC P. 289, Para 12)

The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

67. Similarly, in a very recent case S. L. Kapoor v. Jagmohan this Court had taken an opportunity to emphasise the importance of rules of natural justice and reiterated as follows : (SCC p. 385 para 7)

The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of "administrative action". Now, from the time of the decision of this Court State of Orissa v. Dr. (Miss) Binapani Dei, "even an administrative order which involves civil consequences..... must be made consistently with the rules of natural justice."

68. A number of other decisions were also cited on the question of natural justice and we agree with the propositions adumbrated by Mr. Garg that normally where an administrative order adversely affects the valuable rights of the party affected, a reasonable opportunity of hearing must be given to the person affected. The instant case, however, contains two prominent features which exclude the

rules of natural justice. Section 3 of the Act of 1955 under which the Control Order was passed really covers an emergent situation so as to meet a national crisis involving the availability or distribution of any essential commodity which may make it necessary to restrict or control the business carried on by a citizen. It has already been pointed out by us while discussing the case of the respondents that there was as acute shortage of sugar which was not made available to consumers at reasonable rates and the situation caused serious dissatisfaction among the people. Nothing short of immediate and emergent measures taken to solve this crisis would have eased out the situation. We are fortified in this opinion by a Constitution Bench decision of this Court in *Prag Ice & Oil Mills v. Union of India* where Chandrachud, C. J. observed as follows : (SCC p. 493, para 60)

The dominant purpose of these provisions is to ensure the availability of essential commodities to the consumers at a fair price. And though patent injustice to the producer is not to be encouraged, a reasonable return on investment or a reasonable rate of profit is not the sine qua non of the validity of action taken in furtherance of the powers conferred by Section 3(1) and Section 3(20 (c) of the Essential Commodities Act. The interest of the consumer has to be kept in the forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration.

69. If hearing was to be given to so many owners of power crushers, it would have completely defeated and frustrate the very object not only of the notification but also of the Act of 1955 and created complication which may have resulted in a further deterioration of an already serious situation. IF the rules of natural justice were not applied in such as emergent case, the petitioners cannot be heard to complain. After all the notification directed stoppage of operation of the petitioners crushers only for a very short period and they would have had an opportunity of recouping their loss after they were allowed to function because the proportion of consumption of khandsari sugar was limited as indicated above. The petitioners were, therefore, not seriously prejudiced and have rushed to this Court rather prematurely.

70. The Attorney General had, however, much more effective answer to the contention raised by Mr. Garg on this point. It was submitted by the Attorney General that having regard to the circumstances, the background and the situation in which the impugned notification was issued under Clause 8 of the Control order, it had a statutory complexion and should be regarded as purely legislative in character. He added that no one had ever argued that before and that, therefore the question of hearing or complying with the rules of natural justice would not arise. The Attorney General placed reliance on a decision of this Court in *Saraswati Industrial Syndicate Ltd.* and particularly on the following observations made by Beg. J. : (SCC p. 636, para 13)

Price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore give rise to a complaint that a rule of natural justice has not been followed in fixing the price. Nevertheless the criterion adopted must be reasonable. Reasonableness, for purposes of judging whether there was an "excess of power" or an "arbitrary" exercise of it is really the demonstration of a reasonable nexus between the mattes which are taken into account in exercising a power and the purposes of exercise of that power.

Having regard to the facts is the instant case, a temporary ban on power crushers of a particular type

was a measure governed by same, if not higher, considerations as an order of fixation of price.

71. The last mentioned case is a authority for the proposition that an order like the impugned notification is a legislative measure. That being the position, the rules of natural justice stand completely exclude and no question of hearing arises. Mr. Garg, however, submitted that in that case the petitioner did not urge that the price fixation required a quasi judicial procedure. Even so that court clearly decided that a measure like the one we have in the instant case in surely of a legislative character and there is no question of complying with the rules of natural justice in such cases.

72. In Board of Mining Examination v. Ramjee Krishna Iyer, J., speaking for the Court, pointed out that there may be cases where rules of natural justice can be dispensed with. In this connection he observed as follows : (SCC p. 262, para 13)

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against the form features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating

73. In Joseph Beauharnais v. People of the state of Illinois the following observations were made which are apposite to the facts of the present case :

This being so it would be out of bounds for the judiciary to deny the legislature a choice of policy. Provide it is not unrelated to the problem and not forbidden by some explicit limitation on the States power. That the legislative remedy might not in practice mitigate the evil, or might itself raise new problems would only manifest once more the paradox of reform. It is the price to be paid for the trial and error inherent in legislative efforts to deal with obstinate social issues.

74. The passing of the notification in the instant case was an act of a legislative character and was really a trial and error method adopted to deal with a very serious social problem.

75. In Bates v. Lord Hailsham of St. Marylebone under similar circumstances a statutory committee had made an order in relation to powers to license hackney carriages. Commenting on this provision Megarry, J. observed as follows :

In the present case, the committee in question has an entirely different function : it is legislative rather than administrative or executive. The function of the committee is to make or refuse to make a legislative instrument under delegated powers. The order, when made, will lay down the remuneration for solicitors generally and the terms of the order will have to be considered and construed and applied in number less cases in the future.... Many of those affected by delegated legislation, and affected very substantially are never consulted in the process of enacting that legislation; and yet they have no remedy.

76. For the reason aforesaid we find ourselves in complete agreement with the argument of the Attorney General that the impugned notification having been passed to effectuate the object or ideal to be achieved in order to solve a national crisis cannot but be considered a legislative measure so

as to exclude rules of natural justice. The contention raised by the petitioners on this ground is therefore, overruled.

77. In contention (6) another infirmity pointed out by the learned counsel for the petitioners was that the impugned notification is clearly violative of clause 11 of the Control Order itself because the prohibition against the working of the power crushers even for a short period amounted to a partial revocation of the licence granted to the petitioners under clause 3 of the Licensing Order. In order to appreciate his contention it is necessary to extract Clause 11(2) of the Control Order which runs thus :

(2) Where all or any of the powers conferred upon the Central Government by this Order have been delegated in pursuance of sub clause (2) (b) to any officer or any authority of a state Government every Order or direction issued by such officer or authority in exercise of that power may be amended varied or rescinded by the State Government to whom the officer or authority is subordinate either suo motu, or on an application made within a period of thirty days from the date of there Order or direction.

Provided that no order revoking a licence or permit issued to a person shall be made without giving such person an opportunity to make representation.

78. Reliance was particularly place on the proviso extracted above. It was contended that even a temporary suspension of the operation of power crushers amounted to a partial revocation of the licence granted to the petitioners and that therefore it was incumbent on the authorities concerned to give the petitioners an opportunity of being heard and making a representation before such revocation took effect. The Attorney generally rightly pointed out that neither sub clause(2) nor the proviso thereto is attracted in the instant case. It is true that the petitioner got licences under the Licensing Licence means that the licence has not been suspended but cancelled for all times to come entailing civil consequences and complete abolition of the right for the exercise of which the licence was granted. A temporary suspension of the working of the crushers owned by the petitioners cannot amount to a revocation, either complete or partial. In fact, tin our opinion, the proviso to sub-clause (2) of the Clause 11 of the Control Order does not at all envisage a partial or periodical revocation of a licence. The proviso would come into play only if a licence is revoked or cancelled once for all. Since a revocation or cancellation of the licence would operate to the serious prejudice of the licensee and affect him adversely, it was considered necessary and expedient give him a hearing. We are fully satisfied that the impugned notification does not attract the conditions laid down in the proviso so as to confer upon the petitioners a right of hearing. The proviso, is therefore, wholly inapplicable to the facts of the present case.

79. It was further submitted by the counsel for the petitioners that even if Clause 11 did not apply because the apprehensions of the petitioners. This argument has no substance because once it is held that the notification is impressed with a legislative character, the question of hearing does not arise. It may be true that despite the fact that there is not necessity of bearing, the government could have evolved some methods of giving a very short notice to the Association and taking its views. But the omission to do so would not vitiate the notification impugned. It is well settled that possibility of an alternative scheme which might have been butt has not been designed would not be sufficient to make a restriction unreasonable. In State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh this Court observed as following :

The legislature has designed a scheme by which reasonable restrictions are placed upon the right of citizen to dispose of his property : possibility of an alternative scheme which might have been but has not been designed, will too justifiable expose the first scheme to the attack that it imposes unreasonable restrictions.

80. Lastly on contention (7) it was urged that the impugned notification which purports to have been passed under the Control Order (which itself was subordinate legislation passed under Section 3 of the Act of 1955) if properly considered along with the serious mischief it cause to the citizens, equitable distribution and production of sugar which apparently seems to be the main object sought to be achieved. This argument has already been considered by us when we dealt with the various facts and materials produced before us to justify the impugned notification. We have already pointed out that in view of an extraordinary situation viz., the sugar famine and the increasing demand of sugar by the consumers, the interest of the consumers had to rank above all considerations. The notification as stated by us earlier strikes a just balance between the needs of the consumers and the harm which may be done to the owners of the crushes. The degree and urgency of the evil sought to be remedied by a social control is the purport and the central theme of the impugned notification. Having regard to the various aspects which we have indicated above, it cannot be argued with any show of force that the remedy sought by the notification is in any way arbitrary or excessive. On the other hand the report of the exports, stoppage of the production of sugar by the factories, the drought conditions and other factors have to enter in to the decision of the government in passing the impugned notification. The notification ex facie cannot be said to have been passed without due care and deliberation. Relevant portion of Section 3 of the Act 1955 runs thus :

3. (1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, (or for securing any essential commodity for the defence of India or the efficient conduct of military operations) it may, by order, provide for regulating or prohibiting the production supply and distribution thereof and trade and commerce therein.

81. The impugned notification having been passed under Section 3 of the Act, it fulfills all the conditions contained therein, viz, it is expedient for maintaining or increasing the supply of essential commodity names sugar which is included in clause (e) of Section 2 of the Act of 1955 and it regulates the supply and distribution of that essential commodity and the trade and commerce therein.

82. Having regard therefore to the facts and circumstances proved in this case it cannot be said that either the control Order for the impugned notification is against the tenor and spirit of Section 3. On the other hand it is manifestly clear from the circumstances disclosed above that it is in pursuance of the aim and object for which Section 3 was enshrined in the Act of 1955 that the Control Order and the notification were promulgated. The contention of the learned counsel for the petitioner on this score is accordingly overruled.

83. Mr. Rameshwar Dayal, appearing for some of the petitioner raised a novel argument which was to the effect that not only the notification impugned but also the control order was violative of Article 14 of the Constitution. It was contended that since the state had already fixed reserved areas for the factories, the selection of khandsari units for banning or stopping their production amounted to a mini classification units for banning or stopping their production amounted to a mini classification without any rational basis. We are, however, unable to accept this contention because

in view of the various circumstances discussed above, the classification, if at all it was based on a reasonable nexus with the object sought to be achieved by the notification. Certain other aspects were also raised by Mr. Dayal which amount to almost a repetition of the main arguments placed before us by Mr. Garg and the counsel following him.

84. Thus, on an overall consideration of the various aspects of the matter we are fully satisfied that applying the well-established tests of reasonableness, the impugned notification cannot be said to contain the quality of unreasonableness but is per se fair and reasonable and fully satisfies the conditions laid down by this Court in determining whether or not a restriction is reasonable.

85. Before closing the judgment we would like to lay down certain guide lines for any future policy that the government may consider fit to shape in the light of the discussion on the points raised before us in this case. In fact, both counsel for the petitioners and the Attorney General had requested us to lay down certain guide lines to so that the government may benefit from the same. Although we have upheld the impugned notification but having regard to the special features of the present case we are not quite satisfied that a better policy to control sugar or increase its production could not be followed which may satisfy the parties concerned, viz., the crushers, the mills, the sugar-cane growers and the consumers.

86. In case the government decides to impose a ban in future on the power crushers or other units. It may consider the desirability of giving a bare minimum hearing not too all the owners of khandsari units but to only one representative of the Association representing them all, and getting their views on the subject. It is possible that they might give some suggestions which the government would like to incorporate in formulating its policy. Even if the government thinks that an emergent situation has arisen and it may not be possible to give a hearing at least representation against the proposed action may be called for from such Association and considered after giving the shortest possible notice. Not that such action is a legal requirement but it will generate greater confidence of the persons who may be affected by any order to be passed against them. In the same token, we may mention that when in passing an order like the impugned one the government has adopted the trial and error method, it would be in the fitness of things if the matter is carried to its logical end so that any future order passed contains the colour and quality of objectivity.

87. Secondly, could it not be possible for the government to allow the crushers to function by regulating the working hours or to fix a quota of sugar-cane to be delivered to the mills and the crushers in the ratio of 60 : 40 or 70 : 30 as may be advised by the experts and to insist that on the crushers and the mills should pay a uniform price to the cane growers? The counsel for the petitioners have brought to our notice a disturbing element in the entire case which is that in the past although the sugar-cane growers supplied sugar-cane on condition of payment to them of the support price fixed by the government yet the mills did not pay the price to the cane growers for a long time with the result that arrears accumulate running into lakhs of rupees. It would indeed be extremely desirable for the government to take steps to see that payment of the price of the quantity of the cane supplied to the mills or the crushers is paid against delivery or at any rate, within a reasonable time therefore so as to provide a strong incentive to the farmers to increase their production and earn substantial profits by supplying the sugar-cane to mills or crushers during the crushing season (October to May).

88. Lastly, it was represented to us by the petitioners that the crushers are used for the twin purpose of production of khandsari sugar and gur, rab, etc., but as the crushers are sealed by the officers of the government, the owners are not in a position to produce even gur or rab on the production of

which not only no ban has been imposed by the impugned notification but the same has been completely exempted from the purview of the notification. Thus, it was asserted that the owners of crushers who want to switch over to production of gur, or rab, because of the ban imposed by the government on the production of khandsari may be allowed to do so. The Attorney General, however, pointed out that if this course is adopted it will be difficult to detect as to how many crushers are producing khandsari sugar in the garbs of gur or rab. Wherever any step for banning production is taken, the government has to evolve some procedure to detect the defaulters and with the resource at its command, we cannot understand why a special staff cannot be appointed on a temporary basis for looking after the compliance of the order by the crushers and making surprise checks periodically. Another method to prevent the abuse of the privilege of production of gur or rab by producing khandsari in a clandestine fashion may be to insert a condition in the licences of the manufacturers of khandsari sugar that if they produce khandsari during the period of the ban their licences would be cancelled.

89. The result is that all the contentions raised by the petitioner except the one raised by Mr. Gupta that the introduction of the word vertical was violative of Article 14 of the Constitution are rejected. The word vertical must be considered to have been deleted from the impugned notification. Since the impugned notification has already spent its force, no relief can be given even to the petitioners represented by Mr. Gupta. But, in future the government will bear in mind the infirmity pointed out. The petitions along with the civil appeal, are accordingly dismissed but in the circumstances without any order as to costs.

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