

ORISSA HIGH COURT

Jagadish Patel

Vs

Patel Tobacco Co.

M.J.C. No. 78 of 1951 and Cri. Misc. Nos. 85 and 86 of 1951

(Das, C.J. and Narasimham, J.)

25.03.1952

JUDGMENT

Narasimham, J.

1. The petitioners in Cri. Misc. Nos. 85 and 86 of 1951 have been prosecuted for contravention of the provisions of the Orissa Kendu Leaves (Control and Distribution) Order, 1949 which is an offence punishable under Section 10 of the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act, 1947 (Orissa Act I of 1947). The petitioner in M. J. C. No. 78 of 1951 is the owner of some landed property in Mouza Laikera in the District of Sundargarh who has felt aggrieved by the enforcement of the Orissa Kendu Leaves (Control and Distribution) Order, 1949 in respect of the leaves of the kendu trees situated in his property. The sole question for consideration in all the three cases is the validity of some of the provisions of the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act, 1947 (hereafter referred to as the impugned Act) and the Provisions of the Orissa Kendu Leaves (Control and Distribution) Order 1949 (hereinafter referred to as the Impugned Order). Consequently, all the three cases have been heard together and will be governed by this judgment.

2. The impugned Act was passed by the Orissa Legislature and after receiving the assent of the Governor-General came into force on the 12.3.1947. In a sense it may be taken to be a supplement to the provisions of the Essential Supplies (Temporary Powers) Act (XXIV of 1946) which was passed by the Central Legislature chiefly with a view to enable the Provincial Government to continue in force various control Orders formerly issued under the provisions of the Defence of India Rules for regulating the production, supply, and distribution of some essential articles. The Central Act was limited in its application to some essential commodities only as defined in Section 2 of that Act. The Orissa Legislature seems to have thought that similar powers should be conferred in respect of other essential articles and with this object in view it passed the impugned Act which very closely follows the language of the Central Act. The Preamble of the impugned Act is as follows :

"Whereas it is expedient to provide for the continuance during a limited period of powers to control the production, processing; supply, distribution, transport and prices of essential

articles and of trade and commerce therein and for requisitioning of property;"

The life of the impugned Act was originally limited to two years but provision was made for its extension for further period. On 14.2.1951 the Orissa Legislature repealed and re-enacted the provisions of the impugned Act by another Act known as the Orissa Essential Articles Control, and Requisitioning (Temporary Powers) Act, 1950 (Orissa Act XII of 1951) and by Section 18 of that Act kept alive all orders passed under the 1947 Act. As the alleged dates of the commission of the offences in Cri. Misc. Nos. 85 and 88 of 1951 are in April, 1950 and as the provisions of the two Acts are almost identical, the earlier Act of 1947 alone will be discussed in this judgment.

3. Clause (a) of Section 2 of the impugned Act defines an 'essential article' as follows:

" 'Essential article' means any of the articles which is specified in the Schedule to this Act and any other article which may be declared by the Provincial Government by notified order to be an essential article;"

The schedule specifies the following articles. (1) Livestock (including poultry); (2) Fish; (3) Oil-Cakes and manures; (4) Cattle-feed (including bran); (5) Fuel (including the firewood); (6) Hides and skins; (7) Leathers; (8) Cement; and (9) Drugs.

Section 3 which is the main impugned provision may also be quoted in full.

"3 (1) The Provincial Government, so far as it appears to them to be necessary or expedient for maintaining, increasing or securing supplies of essential articles or for arranging for their equitable distribution and availability at fair prices or for directing, maintaining or increasing the production of any essential article, may by notified order, provide for regulating or prohibiting the production, supply, distribution and transport of essential articles and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), and order made there under may provide :

(a) for regulating by license, permits or otherwise the production of manufacture of any essential articles;

(b) for controlling the prices at which any essential articles may be brought and sold;

(c) for prohibiting or regulating by license permits or otherwise the storage, distribution transport, disposal, acquisition, use or consumption of an essential article;

(d) for prohibiting withholding from sale of any essential article ordinarily kept for sale;

(e) for requiring any person holding stocks of an essential article to sell them at fair prices to specified persons or class of persons or in specified circumstances;

(f) for regulating or prohibiting any class of commercial or financial transactions relating to any essential article, which in the opinion of the Provincial Government are, or if unregulated are likely to be detrimental to the public interest;

(g) for collecting any information or statistics with a view to regulating or prohibiting any

of the aforesaid matters;

(h) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any article to declare their stocks of essential articles to maintain and allow inspection of or produce for inspection any books, accounts and records relating to their business, and to furnish any other information relating thereto;

(i) for regulating the processing of any essential article;

(j) for exercising over the whole or any part of an existing undertaking, such functions of control and subject to such conditions, as may be specified in the order;

(k) for any incidental and supplementary matter including in particular the entering and search of premises, vehicles, vessels and aircraft the seizure by a person authorized to make such search of any article in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licenses, permits or other documents, and the charging of fees therefor."

It will be noticed that the provisions of this section are very similar to the provisions of Section 3 of the Central Act which again are almost identical with the provisions of Rule 81 (2) of the Defense of India rules. Section 4 of the impugned Act confers on the Provincial Government the power of requisitioning and acquisition of property, movable or immovable for the purpose of

"maintaining, increasing or securing supplies of any essential article or for arranging its equitable distribution and availability at fair prices or for directing, maintaining or increasing the production of any essential article....."

Provision is made in Section 5 for payment of compensation for the requisition or acquisition of the property for the said purpose. Section 7 authorizes the Government to delegate some of their powers under the Act. Section 8 which is also an impugned provision may be quoted in full.

"Any order made under Section 3 or Section 4 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or any instrument having effect by virtue of any enactment other than this Act."

Section 9 deals with the mode of publication and Sections 10, 11, 12 and 13 deal with the penalties for contravention of the orders made under the Act and other ancillary matters. Section 14 makes a departure from the general rule of burden of proof in criminal cases and shifts the burden of proof in respect of certain ingredients of an offence under the Act on an accused. The other sections are not material.

4. By notification No. 2-A dated 1.1.1948 the Government of Orissa applied the provisions of the impugned Act to all Orissa States in exercise of the powers conferred on them by Section 4 of the Extra-Provincial Jurisdiction Act, 1947. They also issued notifications (4306-R and 4308-R dated the 9th April, 1949) declaring 'kendu leaves' to be essential article for the purpose of the impugned Act and then made the Orissa Kendu Leaves (Control and Distribution Order, 1949 (vide notification No. 4307-R dated the 9th April, 1949) which was brought into force in the old province of Orissa and the Orissa States Kendu Leaves (Control and Distribution Order, 1949

(vide notification No. 4309-R dated the 9th April, 1949) brought into force in Orissa States.

5. The main provisions of the impugned Order deal with the control of any undertaking involving the collection, purchase, sale or storage for sale of kendu leaves by requiring any person engaged in such an undertaking to obtain a licence from the prescribed authority and requiring the licensee to obey the direction that may be given to him from time to time by the Divisional Forest Officer and conferring on the latter officer necessary ancillary powers for enforcing compliance with the terms of such a licence (clauses (III), (IV), (V), (VIII) and (X)). Clause (IX) of the Order authorizes the District Magistrate to fix the minimum price at which a licensee shall be bound to purchase kendu leaves from the owner of such trees and it further provides that the licensee shall purchase kendu leaves offered to him by any owner of private trees in the unit for which he is given permit. Clause (XI) authorizes either the Conservator of Forests or the District Magistrate to direct any person holding stock of kendu leaves to sell such stock to a licensee at the minimum price fixed by the District Magistrate. Clause (VII) prohibits the transport of kendu leaves from any place in a unit within a district to another district within the Province except in accordance with a permit issued by the appropriate authority. Thus the main purpose of the impugned Order is to prevent indiscriminate and unrestricted competition in the purchase of kendu leaves by requiring any person engaged in such an undertaking to obtain a license from the appropriate authority and also fixing a minimum price below which the said leaves could not be purchased from the owners of the trees. The movement of the leaves from one unit to another within the district or from one district to another within the Province was regulated by the issue of permits. Apparently one of the primary objects of the Order was to ensure minimum price to the owners of the kendu trees and to prevent their being exploited by unscrupulous middleman.

6. At this stage it will be useful to point out the importance of kendu leaves in the rural economy of some of the districts of Orissa such as Sambalpur, Angul and the former Orissa States contiguous to them. In those areas kendu trees grow spontaneously in waste lands and forests and their leaves have a special commercial demand as they are used in the manufacture of bidis. The Central Provinces Tenancy Act, 1898, which is in force in Sambalpur contains no provision regulating the respective rights of the zamindar, the village Gaontia and the occupancy tenants in respect of kendu trees that grow in their lands. Consequently, with the expansion of bidi trade and the abnormal increase in the commercial value of these leaves bitter disputes and litigations used to crop up amongst various landowners. As early as 1939, a Committee appointed by the Government to report on the Sambalpur Land Laws devoted three pages to a discussion of this vexed dispute in the district and suggested some amendments to the Tenancy Laws regulating the fights of the tenants and landlords in respect of the leaves. Pages 63 to 65 of the Report of the Sambalpur Land Laws Committee may be referred to in this connection. The Committee further found that the zamindar or malguzar was conferring a monopoly trade in kendu leaves to persons of his choice and insisting that the tenants should sell the leaves to his lessee and not a rival dealer. For some reason or other the implementing of the report of the Committee was delayed. But in 1947, a Bill known as the Sambalpur Tenancy Bill was introduced in Orissa Legislature in which special provision was made defining the rights of tenants and landlords in kendu leaves (see clause 97 of the Bill). This bill also has subsequently been put into cold storage with the result that in 1949 prior to the passing of the Orissa Kendu Leaves (Control and Distribution) Order, 1949 the unsatisfactory condition noticed by the Sambalpur Land Laws Committee in 1939 continued to exist. Though kendu trees are of spontaneous growth the high value that the leaves fetch in the market has given the leaves in the said areas as much importance as any

valuable money crop. It may be that kendu leaves are not essential for the life of the people of the said areas. But it may be reasonably held that they are essential for the economic welfare of landowners in those areas and consequently the declaration of those leaves as 'essential article' within the meaning of the impugned Act would not be doing violence to the dictionary meaning of the expression 'essential article'. The Government made the said Order under Section 3 of the impugned Act "for the purpose of arranging for their equitable distribution and availability at fair prices". It was however urged that in administering the impugned Order the Dist. Magistrates concerned have practically maintained the unsatisfactory conditions that prevailed before by granting licences to deal in kendu leaves to monopolists and by fixing a low minimum price in consequence of which the interests of the general public of those districts have been sacrificed for the sake of the monopolists. It was further urged that the licensees were purchasing kendu leaves at Rs. 7/- or Rs. 8/- per bag in Orissa and selling them at Calcutta and other places at such a high price as Rs. 100/- to Rs. 120 per bag. This argument however is not material in considering the validity of the provisions of the impugned Order which in terms merely provides for the regulation of undertakings involving kendu leaves by the issue of licence and the fixation of minimum price for those leaves. If a District Magistrate in a particular district confers monopoly and fixes abnormally low price it may be a matter for the consideration of executive authorities. But, it cannot justify holding the impugned Order to be ultra vires. As observed by Kania, C.J., in '*Dr. N. B. Khare v. State of Delhi*',

"Abuse of power given by law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension."

To a similar effect are the observations of Patanjali Sastri, C.J., in the recent decision of the Supreme Court of India in '*State of West Bengal v. Anwar Ali*'², His Lordship while discussing the case of '*Yick Wo v. Hopkins*'³, pointed out that the case was no authority for the view that

"the vesting in a public authority of a discretion which is liable to abuse by arbitrary exercise contrary to its intendment is a sufficient ground for condemning a statute as discriminatory and unconstitutional."

Moreover, as pointed out by his Lordship :

"It is to be presumed that a public authority will act honestly and reasonably in the exercise of its statutory powers."

Therefore in considering the validity of the impugned Act and the impugned Order, it is unnecessary to discuss whether the price fixed for kendu leaves by the District Magistrate is a fair price and whether the administration of the Order has maintained the evils for the removal of which the Order was made.

7. The main arguments advanced by Mr. P. Misra and Mr. S. K. Ray on behalf of the petitioners may be summarized as follows :

1. Clause (a) of section 2 of the Impugned Act unconditionally delegates to the State

Government the power of declaring any article to be an essential article and it is invalid to that extent as amounting to abdication of legislative functions by the legislature.

2. Section 3 of the impugned Act also amounts to complete abdication of function by the legislature in respect of all matters connected with essential articles and is therefore invalid.

3. Section 8 of the Impugned Act also is invalid for the same reason and also because it declares that any order made under Section 3 or 4 shall prevail if there is any inconsistency between that order and any other Act.

4. The owner of kendu leaves has the fundamental right to hold his property and to carry on any business in respect of those leaves (see Article 19 (1)(f) and (g) of the Constitution) and the impugned Order is not saved by clauses (5) and (6) of Article 19 inasmuch as the restrictions contained in the said Order are unreasonable and not in public interests.

5. Clause (VII) of the impugned Order is invalid as offending Section 297 of the Government of India Act, 1935.

8. Thus, the main question for consideration is whether Sections 2, 3 and 8 of the impugned Act are typical instances of valid delegation or else whether they amount to abdication of functions by legislature and as such invalid. The recent decision of the Supreme Court in *'In Re The Delhi Laws Act'*, has clarified the whole question dealing with delegated legislation and it is therefore unnecessary to enter into a lengthy discussion on the subject. It is sufficient to quote the following conclusion in the Judgment of Fazl Ali, J. :

"(1) The legislature must normally discharge its primary legislative function itself and not through others.

(2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is

ancillary to and necessary for the full and effective exercise of its power of legislation.

(3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency, acts as a subordinate authority and does not become a parallel legislature.

(4) The doctrine of separation of powers and the judicial interpretation it has received in America since the American constitution was framed, enables the American Courts to check undue and excessive delegation but the courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to 'abdication and self-effacement.'

Thus the test to be applied is whether the impugned provision of the Act amounts to 'abdication and self-effacement' or not. Fazl Ali, J., himself has pointed out at page 820 that

"What constitutes abdication and what class of cases will be covered by that expression will always be a question of fact, and it is by no means easy to lay down any comprehensive formula to define it, but it should be recognized that the rule against abdication does not prohibit the Legislature from employing any subordinate agency of its own choice for doing such subsidiary acts as may be necessary to make its legislation effective, useful and complete."

9. Taking clause (a) of Section 2 of the impugned provision, I think it is a typical instance of conditional legislation which is validly permitted by all authorities. It merely says that any article specified in the schedule to the Act and any other article which may be declared by the Provincial Government to be an essential article shall be an essential article. Some of the articles have been specified in the Schedule. For the rest the Provincial Government have been given unfettered discretion. It was urged that in exercise of the power the Provincial Government may declare any article they liked to be an essential article and on such declaration all the provisions of the impugned Act would become applicable to that article. In such a case the effect would be that by a mere declaration the Provincial Government would make, as it were, a self-contained law for that article. But it is well settled that once the legislature declares the policy of law and fixes, the legal principles which are to be controlled in given cases it may validly invest any administrative body with powers to ascertain facts and conditions to which the policy and principles apply. The nearest parallel case in the present case will be found in '*Baxter v. Ah Way*⁵', There the question for consideration by the High Court of Australia was whether sub-section (g) of Section 52 of the Customs Act 1901 was a valid instance of delegation of legislative power. Section 52 enumerated in a series of sub-sections what were prohibited imports for the purpose of the Act. Sub-section (g) however was as follows : "All goods the importation of which may be prohibited by proclamation". Thus authority concerned (The Governor-General, in Council) was given an unfettered discretion by mere proclamation to prohibit the importation of any class of goods and soon after the issue of such proclamation those goods became prohibited imports for the purpose of the Act. The argument, that the said sub-section was invalid was rejected by the learned Judges of the High Court and Griffith, C.J., pointed out :

"And unless the legislature is prepared to lay down at once and for all time or for so far into the future as they may think fit, a list of prohibited goods, they must have power to make a prohibition depending upon a condition, and that condition may be the coming into existence or the discovery of some fact."

Isaacs, J., further pointed out that :

"the practical necessity for excluding some articles unprovided for in the Act might arise when Parliament was in recess or otherwise was unable to meet the emergency in time." This decision has been quoted with approval in the decision of the Supreme Court

mentioned above and it may therefore be taken as sufficient authority in the present case also.

Though the impugned Act is a temporary Act, the legislature could not foresee at the time of the passing of the Act what articles were likely to become essential articles throughout the life of the Act. They therefore while specifying some in the Schedule conferred power on the Government to add to the list in the Schedule. As it was impossible to provide for all future contingencies, conditional legislation became necessary leaving it to the Government to apply the impugned Act to a particular class of goods. I would therefore hold clause (a) of section 2 to be valid.

10. Section 3 of the impugned Act is a typical instance of subsidiary legislation which also is a well-known legislative practice in modern times. It is not practicable for a legislature to provide for varying details and machinery for the purpose of administering an Act and consequently it may entrust to subordinate agency ancillary powers to make regulations and rules for the purpose of administering the Act.

11. Delegated legislation of this type which was extensively practiced in English Parliamentary legislation aroused considerable hostile comment (see Lord Hewart's *New Despotism*) and in 1929 a Committee was appointed to report what safeguards were desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of law. The Committee whose report was published in 1932 approved what it called the normal type of delegated legislation and observed that it was not only justifiable but even inevitable because :

- "(a) It Relieved pressure on Parliamentary time, leaving the Parliament to deal with essential principles of legislation,
- (b) Parliament cannot effectively deal with technical matters,
- (c) administrative details cannot be worked out in time, nor can the contingencies or local conditions to be provided for be foreseen,
- (d) unknown future conditions demand flexibility,
- (e) the need to experiment and profit by experience cannot otherwise be met,
- (f) sudden emergencies cannot otherwise be handled."

12. The Indian statute book also abounds in instances of delegation of power to make regulations, rules, and orders under the provisions of an Act. Mr. Misra did not challenge the power of the legislature to entrust to a subordinate agency the power to make regulations on subsidiary or ancillary matters. But he urged that Section 3 was extremely wide and that it amounted in effect to complete effacement of the legislature itself. I am however unable to accept this argument. It is true that Section 3 is very wide and authorizes the Government to make orders providing for the regulation or prohibition of the production, supply, distribution and transport of essential articles and trade and commerce therein. But it cannot be said that the section amounts to transfer of plenary powers of legislation in respect of essential articles. The subordinate agency cannot make any regulation for requisition or acquisition of any property which power was retained by the Legislature itself in Sections 4 and 5. Similarly, the penalty for contravention of any provision of the order made under Section 3, the rule of evidence to be applied in prosecutions for contravention of the orders were all laid down in the Act itself. Section 8 expressly says that any order made under Section 3 cannot prevail if it is inconsistent

with the provisions of the Act. Thus the legislature having laid down the general law in respect of the essential articles left it to the Provincial Government to make orders for the limited purpose mentioned in Section 3.

13. Instances of such delegation are so numerous that I would content myself with quoting a few only. As early as 1883 in '*Hodge v. The Queen*'⁶, Section 4 of the Liquor License Act of 1887 of Ontario was held to be valid though it conferred on License Commissioners power to pass resolutions for regulating sale of liquor in taverns and for other ancillary purpose. It was pointed out that this power was

"ancillary to legislation and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail."

In '*Victorian Stevedoring and General Contracting Co. P. Ltd. and Meakes v. Dignan*'⁷ the following section of the Transport Workers Act of 1928-29 was held to be valid.

"The Governor-General may make regulations not inconsistent with this Act, which, notwithstanding anything in any other Act but subject to the Acts Interpretation Act, 1901-1918 and the Acts Interpretation Act, 1904-1916, shall have the force of law, with respect to the employment of transport workers, and in particular for regulating the engagement, service, and discharge of transport workers, and the licensing of persons as transport workers, and for regulating or prohibiting the employment of unlicensed persons as transport workers, and for the protection of transport workers."

Here also the delegation is of a very wide type; yet the learned Judge of the High Court of Australia held the section to be valid. In British Columbia ('RE NATURAL PRODUCTS MARKETING (B. C.) Act (1937) 4 Bom LR (Canada) 298') the question for decision was whether the power conferred on the Lieutenant-Governor in Council to establish marketing boards for the control and regulation of the 'transportation, packing, storage and marketing of natural products within the Province' was invalid as amounting to abdication of legislative powers. The Canadian Courts held it to be a valid piece of delegated legislation relying on '*Hodge v. The Queen*'. They quoted with approval the following observation of Anglin, J., '*In Re George Edwin Gray*'⁸,

"A complete abdication by Parliament of its legislative functions is something so inconceivable that the constitutionality of an attempt to do anything of the kind need not be considered. Short of such an abdication, any limited delegation would seem to be within the ambit of a legislative jurisdiction certainly as wide as that which it has been said by incontrovertible authority that it is as plenary and as simple.... as the Imperial Parliament in the plenitude of its powers possessed and could bestow."

Doubtless the said observations were made in respect of some provisions of the War Measures Act 1914 which was an emergency measure. But the Natural Products Act was a peace-time legislation and there also the same principle of wide delegation short of complete abdication of

legislative functions was held to be permissible. Martin, C.J., pointed out that a statute whereby "a carte blanche powers were delegated over affected fruit lands areas to cope with pest" and another statute whereby power was conferred on Lieutenant Governor in Council to make rules of the widest scope were all held to be valid instances of delegated legislation. The observations of Martin, C.J., in that case were endorsed by the Privy Council in '*Shannon v. Lower Mainland Dairy Products Board*⁹',

14. It is unnecessary to cite other decisions which have all been fully discussed by the Supreme Court in the Delhi Laws Act case. So long as some residuary power is retained by the legislature, delegation however wide in scope will not amount to abdication or self-effacement. I have already shown that Sections 4 to 18 of the impugned Act indicate unmistakably that the legislature retained to itself certain powers in respect of essential articles and by Section 3 delegated to the Provincial Government powers (undoubtedly wide) in respect of limited matters only, namely, regulation or prohibition of the production, supply, distribution and transport of essential articles and trade and commerce therein and for limited purposes as stated therein. Its validity is fully supported by the authorities cited above.

15. Section 3 of the impugned Act is very similar to rule 81 (2) of the Defence of India Rules which were made under the Defence of India Act. The said Act and the said Rules provided for delegation of the widest kind and various Control Orders were issued during the war period in exercise of the powers conferred by the said Rules. Those Orders were never challenged on the ground that the relevant provisions of the Defence of India Act under which they were made amounted to abdication of legislative power. The only Indian decision on the subject is that reported in '*Har Kishandas v. Emperor*¹⁰', where the High Court rejected the contention that Rule 26 of the Defence of India Rules was invalid on the ground that it was made under Section 2 (2) (x) of the Defence of India Act which was ultra vires as amounting to abdication of legislative power. It is true that the impugned Act is not an emergency provision like the Defence of India Act. But it is a temporary Act meant to cover the transitional period from the date of the termination of the war till the establishment of normal conditions in the State and I see no difference in principle as regards constitutional validity between the widest kind of delegation permitted by the Defense of India Act and similar delegation permitted by the impugned Act.

16. Mr. Misra relied on a recent decision of the Nagpur High Court reported in '*State v. V.S. Phadke*¹¹', where it was held that earthenware articles such as jars, cups and saucers were not essential to the life of community. But that case is clearly distinguishable from the present case. There the question turned on the construction of rule 81-A of the Defence of India Rules which expressly referred to supplies and services 'essential to the life of community'. That rule was continued in force by the Emergency Provisions (Continuance Ordinance) 1946. Some other provisions of the Defence of India, Rule 81-D (1)(a) or Rule 34 (3) which enabled the Provincial Government to notify certain articles essential to the life or existence of the community were not kept alive by that Ordinance; and consequently in construing the surviving portion of Rule 81-A of the Defence of India Rules the learned Judge relied on the dictionary meaning of the expression "essential" and held that unless an article was 'indispensable, or important in the highest degree' it could not be said to be essential to the life of community. In the present case, however, the impugned Act does not say that an 'essential article' must be essential to the life or existence of the community and the list of articles specified in the Schedule to the impugned Act indicates that what the Legislature contemplated was any article which though not essential to the

life of community may be essential to the general welfare of the community or a class of persons. For instance, hides and skins, leather and cement (though specified in the Schedule) can by no stretch of imagination, be held to be essential to the life of community and there is no reason why kendu leaves which are so important to the prosperity of landowners in certain areas of Orissa should be considered to be less essential than the aforesaid three articles.

17. I now take up Section 8 of the impugned Act. If the Legislature has the power to say that any provision of the impugned Act shall prevail notwithstanding any inconsistency between that provision and any provision of any other Act then there is no legal bar to the legislature further declaring that an order made under any provision of the Act shall equally prevail notwithstanding any inconsistency between that order and a provision of any other Act. This conclusion is based on the well-known rule that an Order, if validly made under any provision of the Act, has the same force as a provision of the Act itself. The Legislature has provided for the contingency of an order, being ultra vires the Act by expressly saying in Section 8 that an order which is inconsistent with the Act would not be saved by that section. Therefore, the validity of Section 8 should be examined with reference to the power conferred by the Government of India Act, 1935 on a Provincial Legislature to enact laws inconsistent with other Acts. Sub-section (2) of Section 107 of the Government of India Act says that if any provision of a Provincial law is inconsistent with any provision of an existing Indian law or of an earlier central law with respect to any matter enumerated

in the Concurrent List, then the Provincial law if assented to by the Governor-General shall prevail notwithstanding such inconsistency. The impugned Act was assented to by the Governor-General and therefore by virtue of Section 8 any provision of the impugned Act or Order made thereunder must prevail over other earlier Acts (whether Central or Provincial) relating to matters in the Concurrent List. Doubtless the Act cannot prevail if there is any inconsistency between any (of its?) provisions and any Central Act in respect of matters in the federal legislative list (List of the seventh Schedule to the Government of India Act) or of a later Central Act in respect of matters in the Concurrent List. But that question is academic here. Even if such a question were to arise, the principle laid down in '*Macleod v. Attorney-General For New South Wales*¹²', would be a complete answer in support of the limited validity of Section 8.

18. In the Australian case cited already '46 Commonwealth Law Reports p. 73 the Transport Workers Act contained the following provisions :

"The Governor-General may make regulations not inconsistent with this Act, which, 'notwithstanding anything in any other Act' but subject to the Acts Interpretation Act, 1901-1918 and the Acts Interpretation Act 1904-1916, 'shall have the force of law'."

It will be noticed that the words underlined (here in single quotations) are very similar to the language used in Section 8 and they also declared that subsidiary regulations made under the Transport Workers Act shall prevail notwithstanding any inconsistency with any other Act of the Commonwealth. In holding such a provision to be valid Evatt, J., observed :

"Regulations validly made by a commonwealth authority other than Parliament itself, acquire the character of laws of the Commonwealth. Whether they supplant any previous Commonwealth law, depends upon the circumstances of the particular case. But if the

express will of the Commonwealth Parliament is that the regulations shall prevail over statutes passed by Parliament itself then they do prevail. Section 3 clearly expresses such an intention on the part of Parliament."

These observations apply with equal force in considering the validity of Section 8 of the impugned Act.

19. As regards the arguments based on Article 19 of the Constitution, it is not challenged that notwithstanding the guarantee of freedom to hold property and to carry on trade and business conferred by sub-clauses (f) and (g) of clause (1) of that Article, the State may impose reasonable restrictions on the exercise of such rights in the interests of the general public as permitted by clauses (5) and (6) of that Article itself. The principal question therefore for consideration is whether the restrictions imposed by the impugned Order are 'reasonable' and 'in public interests'. Considering the evil that was intended to be remedied it cannot be seriously urged that some kind of State Control of the transport of and trade in kendu leaves and the fixation of fair prices for those leaves was necessary. Without such control powerful zamindars in districts like Sambalpur or Sundergarh, may by giving monopoly rights to their own lessees compel the poor tenants to sell their leaves to them, almost for a song and thus deprive them of valuable addition to their income. The impugned Order benefits the poor cultivators by fixing a minimum price. It also guarantees a ready buyer for kendu leaves by issue of licenses and compelling the licensee to purchase the leaves from the owners. It may be, as urged by the petitioners, that the impugned Order has not been given to favorites who have practically acquired monopoly rights. The truth of these may be examined by superior authorities but they are not relevant in considering whether the restrictions contained in the provisions of the order are 'reasonable and 'in the interests of the general public'.

20. I may now take up the objection raised to clause (VII) of the impugned Order on the ground that it contravened the provisions of sub-section (1) of Section 297 of the Government of India Act, 1935. That sub-section prohibits any ban on inter-provincial movement of goods either by an Act of the Provincial Legislature or by an executive order. Clause (VII) of the impugned Order however expressly refers to movement of kendu leaves 'within the Province'. It does not say that for export from the State of Orissa to any place outside the State of Orissa, permit is required. The State Legislature's power to restrict the movement of goods within the Province by issue of permits is derived from items 27 and 29 of List II of the Seventh Schedule to the Government of India Act. I think reliance on Section 297 of the Government of India Act is quite futile.

21. For the aforesaid reasons I would hold that Sections 2 (a), 3 and 8 of the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act, 1947 and the provisions of the Orissa Kendu Leaves (Control and Distribution) Order 1949 are not ultra vires either the Constitution or the Government of India Act, 1935 and are valid. The trial in Crl. Misc. cases Nos. 85 and 86 of 1951 should be taken up and completed expeditiously. All the petitions are rejected; but without costs.

Das, C.J.

22. I agree and have nothing usefully to add.

Petitions rejected.

Cases Referred.

¹1950 SCR p. 519 at p. 526

²AIR 1952 SC 75

³(1886) 118 US 356

⁴1912', (1951) Scr P. 747

⁵(1910) 8 Comw LR 626

⁶(1884) 9 AC 117

⁷46 Comw Lr 73

⁸57 Canadian SCR 150 at p. 176

⁹(1938) AC 708 (PC)

¹⁰AIR 1944 Lah 33 at p. 47

¹¹AIR 1950 Nag 186

¹²(1891) AC 455