RAJASTHAN HIGH COURT

Jaipur Udhyog Ltd.

Vs.

Union of India

Civil Writ Petn. No. 147 of 1968
(D.S. Dave, C.J. and C.M. Lodha, J.)

12.08.1968

JUDGMENT

Lodha, J.

1. This writ petition has been filed under Article 226 of the Constitution of India challenging the constitutionality and validity of the Cement Control Order, 1967.

2. The petitioner is a Limited Company, it is carrying on business in the manufacture of cement and has a factory at Sawai Madhopur in the State of Rajasthan.

3. In exercise of the powers conferred by Sections 18-G and 25 of the Industries (Development and Regulation) Act, 65 of 1951 (which will hereinafter be called 'the Act') and other powers enabling it in that behalf, the Central Government made the Cement Control Order, 1967 (which will hereinafter be called 'the Order'). Section 18-G of the Act, which deals with the powers of the Central Government to control supply, distribution, price, etc., of certain articles, reads as follows :-

> " 18-G. (1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.
> (2) Without prejudice to the generality of the powers conferred by sub-section (1), a notified order made thereunder may provide
> (a) for controlling the prices at which any such article or class thereof may be

bought or sold;
(b) for regulating any licences, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof;
(c) for prohibiting the withholding from sale of any such article or class thereof ordinarily kept for sale;
(d) for requiring any person manufacturing, producing or holding in stock any such article or class thereof to sell the whole or part of the articles so manufactured or produced during a specified period or to sell the whole or a part of the articles so held in stock to such person or class of persons and in such circumstances as may be specified in the order;
(e) For regulating or prohibiting any class or commercial or financial transactions relating to such articles or class thereof which in the opinion of the authority making the order are, or if unregulated are likely to be detrimental to public interest;
(f) for requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to mark the articles exposed or intended for sale with the sale price or to exhibit at some easily accessible place on the premises the pricelists of articles held for sale and also to similarly exhibit on the first day of every month, or at such other time as may be prescribed, a statement of the total quantities of any such articles in stock;
(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and
(h) for any incidental or supplementary matters, including, in particular, the grant or issue of licenses, permits or other documents and the charging of fees there for.
(3) Where, in pursuance of any order made with reference to clause (d) of sub-section (2), any person, sells any article, there shall be paid to him the price there for -
(a) where the price can consistently with the controlled price, if any, be fixed by agreement, the price so agreed upon;
(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any, fixed under this section;
(c) where neither Clause (a) nor Clause (b) applies, the pries calculated at the market rate prevailing in the locality at the date of sale.
(4) No order made in exercise of any power conferred by this section shall be

called in question in any Court.

(5) Where an order purports to have been made and signed by an authority in exercise of any power conferred by this section, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

Explanation. - In this section the expression "article or class of articles" relatable to any scheduled industry includes any article or class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry."

Section 25 deals with delegation of powers and it runs as under :-

"25. (1) The Central Government may, by notified order, direct that any power exercisable by it under this Act (other than the power given to it by Sections 16 and 18-A) shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority (including in the said expressions any Development Council, State Government or officer or authority subordinate to the Central Government) as may be specified in the direction.

(2) Any power exercisable by a State Government by virtue of a direction under sub-section (1) may, unless otherwise provided in such direction, be exercised also by such officer or authority subordinate to that State Government as it may, by notified order, specify in this behalf."

4. We may at this stage also refer to the provisions of the Order as it is their validity that is the main point for our determination in this petition. The Preamble of the Order recites that –

"For the purpose of securing the equitable distribution and availability at fair prices of cement, the supply and distribution of, and trade and commerce in, cement should be regulated."

Clause (2) of the Order is the definition clause. Sub-clause (b) defines "Controller" as meaning the Cement Corporation of India Limited.

Clause (3) deals with the power of the Central Government to prohibit removal of cement and runs as follows :-

"3. Power to prohibit removal. - No producer shall remove or permit the removal of any cement, whether sold or unsold, from the precincts of his factory or from any other part of his premises to any place outside the precincts of such factory or premises except with the previous permission in writing of the Central Government."

5. Clause (4) confers power on the Central Government to direct sale or transport and reads as under:-

4. Power to direct sale or transport. - The Central Government, by order, require any producer to sell cement to such person or class of persons or to transport cement to such destinations by such modes of transport and on such terms and conditions, as may be specified in the Order."

6. Clause (5) deals with the power of the Central Government to direct disposal of stock :-

"5. Power to direct disposal of stock. - The Central Government may, with a view to securing proper distribution of cement, issue such orders, general or special, as may be necessary, to transaction by way of sale of cement effected by him pay within one month of the date on which he realizes the price of such cement, to the Controller, an amount equivalent to the amount, if any, by which the free on rail destination price of such cement realized by him exceeds the aggregate of the following amounts, namely :-

(i) the ex-factory price of such cement calculated in accordance with the rates specified in the schedule;

(ii) a selling agency commission calculated at the rate of Rs. 1.25 per metric tone;

(iii) the excise duty paid thereon; and

(iv) in the case of packed cement, the charges fixed by the Central Government in respect of the packing or the containers under the first proviso to Clause 8:

Provided that the expenditure incurred by the producer on freight by the cheapest mode of transport or where any other mode of transport has been specified by the Central Government under Clause 4, by such mode of transport in respect of such transaction shall be reimbursed to the producer by the Controller from out of the Cement Regulation Account referred to in Clause 11.

10. Wholesale and retail prices. - (1) The maximum price at which cement may

be sold by a dealer (whether wholesale or retail) shall be such as may be fixed by the State Government and no dealer (whether wholesale or retail) shall sell cement exceeding such maximum price.

(2) In fixing the maximum price under sub-clause (1), the State Government shall have due regard to -

(i) the price fixed under Clause 8;

(ii) handling (including charges in respect of packing or containers) and transporting charges;

(iii) godown charges;

(iv) stockist's commission;

(v) local taxes, if any.

11. Cement Regulation Account. - (1) The Controller shall maintain an account to be known as the Cement Regulation Account to which shall be credited the amounts paid by the producer under Clause 9 and such any producer as to the disposal of his stock.

Clause (6) deals with the maintenance and production of accounts, etc., by every producer, of cement, when required by the Central Government.

7. It would be proper to reproduce the rest of the clauses of the Order in extenso as the validity of almost all of these clauses has been called into question :-

"7. Retention prices. - The ex-factory prices admissible to the producer for the different varieties of cement shall be as specified in the Schedule.

8. Price at which producer may sell. - No producer shall, himself or by any person on his behalf sell –

(a) rapid, hardening cement and low heat cement at a price exceeding Rs. 148.53 per metric tonne,

(b) any other variety of cement at a price exceeding Rs. 125.53 per metric tonne, free on rail destination railway station plus the excise duty paid thereon;

Provided that in the case of packed cement, there shall be added to the price referred to in this clause such charges as may be fixed by the Central Government in respect of packing or the containers and the Central Government may fix different charges for different kinds of packing or containers, as the case may be:

Provided further that the Central Government may allow rebate, discount or commission in the price of cement sold to the Government through the Directorate General of Supplies and Disposals or intended for export out of India.

Explanation. - For the purposes of this Order, the expression "free on rail destination railway station" means the price (including the cost of transport by the cheapest mode) except where any other mode of transport has been specified by the Central Government under Clause (4) at the destination point.

9. Payment to Cement Regulation Account. - (1) Every producer shall, in respect of each other sums of money as the Central Government may, after the appropriation made by Parliament by law in this behalf, be granted by the Central Government.

(2) The amount credited under sub-clause (1) shall be spent only for the following purposes, namely :-

(i) paying or equalizing the expenditure incurred by the producer on freight in accordance with the provisions of this Order;

(ii) equalizing concession, if any, granted in the matter or price for supplies to Government or for purposes of export under the second proviso to Clause 8;

(iii) expenses incurred by the Controller in discharging the functions under this order subject to such limits, if any, as may be laid down by the Central Government in this behalf.

(3) The Controller shall cause accounts to be kept of all moneys received and expended by him from out of the Cement Regulation Account and he shall prepare and submit such report and returns relating to the said account as may be required by the Central Government from time to time.

(4) The balance, if any, remaining unspent in the Cement Regulation Account shall be disbursed in accordance with such directions as may be given by the Central Government in this behalf.

12. Power to vary the prices and to alter the Schedule :-

The Central Government may, having regard to any change in any of the factors relevant for the determination of prices of cement, such as an increase or decrease in the cost of production or distribution, by notification in the Official Gazette, vary the price fixed in this order or alter the Schedule to this order as appear to it to be necessary.

13. Delegation :-

All powers exercisable by the Central Government under this Order except

under Clauses 8, 11 (2) and 12 shall also be exercisable by the Controller.

14. Procedure regarding claims by Producers :-

Every producer shall make an application regarding his claim for any reimbursement towards equalizing freight or equalizing concession in the matter of export price to the Controller who may, in settling the claim, require the producer to furnish all details relating thereto, including the cost of freight incurred, excise duty, if any paid, etc.

THE SCHEDULE

(See Clause 7)

Name of Producer		**Price per metric tonne**
Ex-works Price:		
1. M/s. Dalmia Cement (Bharat) Ltd., Dalmianagar	90.5	
2. M/s. Andhra Cement Co. Ltd., Vijayawada	90.5	
3. M/s. Orissa Cement Ltd., Rajgangpur	90.5	
4. M/s. K. C. P. Ltd., Macherla	90.5	upto an annual production of 115,000 tonnes
	96	for every tonne beyond 115,000 tonnes per annum
5. M/s. Rohtas Industries Ltd., Dalmianagar	90.5	
6. M/s. Mysore Iron and Steel Works Ltd., Bhadravati	90.5	
7. M/s. Associated Cement Companies Ltd.;		
New Porbandar Works	96	
Jamul Works	96	

Dwarka Works	90.5	upto an annual production of 245,000 tonnes
	96	for every tonne beyond 245,000 tonnes per annum.
Other Works	90.5	
8. U. P. Government Cement Factory, Churk.	90.5	upto an annual production of 220,000 tonnes
	96	for every tonne beyond 220,000 tonnes
9. M/s. Dalmia Dadri Cement Ltd., Dalmia Datri	90.5	
10. M/s. Bagalkot Cement Co. Ltd., Bagalkot	90.5	
11. M/s. Ashoka Cement Ltd., Dalmianagar	90.5	
12. M/s. Jaipur Udyog Ltd., Sawaimadhopur	90.5	
13. M/s. India Cements Ltd. :-		
Talaiyuthu Works	93.5	
Sankaridrug Works	96	
14. M/s. Birla Jute Mfg. Co. Ltd., Satna	93.5	upto an annual production of 225,000 tonnes.
	96	for every tonne beyond 225,000 tonnes per annum.
15. M/s. Birla Jute Mfg.	96	

Co., Chittorgarh		
16. M/s. Shree Digvijay Cement Co. Ltd.:		
Sikka Works	93.5	upto an annual production of 260,000 tonnes.
	96	for every tonne beyond 260,000 tonnes per annum provided that the combined production of the Sikka and Sewree Works is not Less than 410,000 tonnes in that Year.
Sewree Works	129.75	exclusive of actual wharfage charges paid at Sikka on Clinker.
17. Kalyanpur Lime and Cement Works Ltd., Banjari.	96.5	upto an annual production of 150,000 tonnes.
	96	for every tonne beyond 150,000 tonnes per annum.
18. Sone Valley Portland Cement Co. Ltd., Japla	93.5	
19. M/s. Panyam Cement and Mineral Industries Ltd., Cement Nagar	96	
20. M/s. Saurashtra Cement and Chemical Industries Ltd., Rajapalayam	96	
21. M/s. Madras Cements	96	

Ltd., Rajapalayam		
22. M/s. Mysore Cements Ltd., Ammasundra	96	
23. M/s. Assam Cements Ltd., Ammasundra	96	
24. M/s. Industrial Development Corporation of Orissa Ltd., Bargarh	96	
25. M/s. Travencore Cements Ltd., Kottayam	113.25	

In the case of rapid hardening cement and low cement, an additional price of Rs. 7 and Rs. 10 per metric tonne may be added to the price specified above."

For a correct appraisal of the various contentions raised on behalf of the petitioner it would be necessary to examine the circumstances in which the impugned order was made. Cement had been a controlled commodity for a number of years till the end of December 1965. It was decontrolled with effect from 1st January 1966. The petitioner's case is that before decontrol there was shortage of cement generally in all parts of the country resulting in lot of inconvenience to the consumers. It is stated that after decontrol, the production capacity of the cement industry was considerably increased during the years 1966 and 1967 with the result that cement was freely available to the consumers at the prices approved by the Government. It is the admitted case of the parties that the Government of India while decontrolling cement with effect from 1st January, 1966, allowed a general increase of 13% per metric tonne in the ex-factory price of cement payable to all producers. According to the petitioner this increase of Rs. 13 per metric tone was made by the Government to reover the rise in the cost of production as estimated by the Government as also to create the Cement Expansion Reserve Account at the rate of Rs. 4 per tonne. The petitioner's contention is that cement was freely available in all parts of India at the prices approved by the Government, and as such it was neither necessary nor was it expedient to make the Order for regulating the supply and distribution of cement in the year 1968. It is contended in the first place that the Central Government have acted on extraneous considerations in promulgating the Order which is outside the scope of Section 18-G

of the Act and therefore should be struck down. The second contention raised on behalf of the petitioner is that the retention prices or the ex-factory prices mentioned in the schedule to the Order have been fixed by the Government arbitrarily without any basis, and that has resulted in unlawful discrimination between the petitioner and the other producers and, therefore, the order is violative of Article 14 of the Constitution. In this connection it has also been argued that the Order infringes the petitioner's fundamental right to carry on trade or business as guaranteed under Artical 19 (1) (g) of the Constitution of India and is therefore liable to be struck down.

10. Apart from the general attack directed against the 'Order' as a whole, the petitioner has also challenged most of the provisions of the Order separately.
The contentions of the petitioner in this respect may be summed up as below :-

(1) The delegation by the Central Government of the powers exercisable by it under the said order to the Cement Corporation of India Limited is illegal inasmuch as the said Corporation is neither an officer nor an authority as envisaged by Section 25 (1) of the Act. It is urged that the definition of 'Controller' given in clause (2) (b) is ultra vires of Section 25 of the Act.
(2) That Clause 3 of the said 'Order' which prohibits the removal of cement outside the precincts of the factory or its premises except with the previous permission of the Central Government in writing, is beyond the powers of the Central Government.
(3) That Clause (4), which empowers the Central Government to require any producer to sell cement to such persons or class of persons or to transport on such terms and conditions, as may be specified by the Central Government, is void inasmuch as it confers unrestricted and arbitrary powers on the Central Government.
(4) That Clause (7) and the Schedule in which the ex-factory prices for the various producers of cement have been fixed, are bad and violative of the petitioner's fundamental right under Articles 14 and 19 (1) (g) of the Constitution.
(5) That the second proviso to Clause (8) empowering the Central Government to obtain its requirements of cement through the Directorate General of Supplies and Disposals at a discount is violative of Articles 14 and 19 (1) (g) and (f) of the Constitution.
(6) That Clauses (9) and (11), which deal with payments by producers to the

Cement Regulation Account and the disposal of the funds by the Central Government or its delegate result in deprivation of the petitioner's property without any authority of law and without any compensation and are therefore void.

11. The petition has been opposed by the Central Government. It is contended on their behalf that subsequent to the decontrol of cement there were complaints and representations to the Government that the Cement produced by the various units was not being properly distributed and it had become scarce in certain parts of the country where it was not easily available. It was stated that the earlier Cement Control Order of 1961 was itself issued after enquiry by Tariff Commission which had gone into the various factors bearing upon the ex-factory price of manufacturing units in the country. Subsequently, the Government revised the ex-factory rates from time to time having regard to the changing conditions and the differentiation made in regard to the ex-factory price of the units, and was based upon the recommendations of the Commission and the Statistics calculated, subsequently by the Government from time to time. It is urged that the ex-factory price or what is known as retention price existed even at the time of decontrol and no new innovation has been made in the impugned Control Order. It is stated that unless the movement of cement was regulated, the deficit areas might have suffered and unless F. O. R. price was fixed the producers would have sold it only in the areas adjacent to the factory. It has also been mentioned that the F. O. R. destination price really means the price which the purchaser has to pay to the producer including freight, transport charges etc., and the burden of payment of all these charges falls on the buyer. The Government fixed Rupees 25.48 as the freight after having taken into consideration the freight in different parts of the country payable from the producing centers to the places of consumption. It is urged that the freight is a liability of the buyer and payment of such amount into the Cement Regulation Account in no way causes any loss to the producers, who can have no grievance in this respect. According to the Central Government there was no complete decontrol of cement from 1-1-66. What was introduced from 1-1-1966 was a partial or experimental decontrol as the industry agreed to a form of self-regulating control to continue the same system of uniform F.O.R. price all over India, to sell cement within the price list approved by the Govt. from time to time and to the same price differential in regard to the retention prices of the producers. However, during the year 1967, the Government received complaints about shortage of cement in certain States and the demand for cement also considerably increased with the improved conditions

of agriculture and, therefore, the Government reviewed the working of the informal control arrangement towards the end of 1967 and since it found certain defects in the working of the informal control arrangement it promulgated the impugned order. It was further considered that a Central Organization was necessary to keep watch over the production, and also to see that an export market in cement is built up and the remote areas not having cement factory or adequate supply continue to be supplied adequately. The Government, it is alleged, found that the private organization set up by the cement industry must be substituted by a Government controlled agency to secure equitable distribution of cement in the country at a fair price. It is stated that the Government's decision to reintroduce control of cement from 1-1-1968 was thus neither based on extraneous considerations nor on insufficient grounds, nor is mala fide in law. As regards the validity of the different retention prices fixed in the Schedule to the Order, it is submitted that in 1961, Tariff Commission, after an examination of individual cases of the different producers, recommended different prices to be given to the producers. The commission did not find it possible to arrive at a common price for all the units, because of existing wide disparity in cost of production of different units. While accepting recommendations of the commission the Government prescribed a uniform ex-works price of Rs. 69.50 per tonne for the industry. The Government had however to recognize that in the case of those few units having appreciably higher costs on account of special reasons, an extra price had to be allowed. These prices were subject to adjustment whenever called for, consequent on Governmental actions including escalation of prices on account of fuel and power. Thus increases were given to the industry from time to time and further general increase of Rs. 13 per tonne was allowed with effect from 1-1-66. At the time of decontrol in 1966, the cement industry agreed to continue the same three sets of retention prices built upon the recommendation of the Tariff Commission as accepted by the Government. These are the same prices now notified in the schedule to the Cement Control Order 1967. The retention price allowed to the petitioner and notified in the schedule is, therefore, based on the recommendation of the Tariff Commission and on the same considerations as are applicable to others similarly situated. The Government took all relevant factors into account in fixing the retention prices of the different producers and the different prices allowed to the various producers are rational and logical and, therefore, neither arbitrary nor mala fide. There was thus, according to the Government, no question of discrimination or any unreasonable restriction on carrying on trade or business in cement. The contentions advanced on behalf of the petitioner with respect to the validity of individual clauses as summed up

above in the earlier part of this judgment have also been opposed. We propose to deal with the various points argued by the learned counsel for the petitioner in the same order in which we have mentioned them above.

12. The first question that calls for our decision is whether the impugned order is beyond the authority conferred on the Central Government by Section 18-G of the Act and is based on extraneous considerations and is thus mala fide? Section 18G, provides that the Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provision or this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.
It is urged by the learned counsel for the Central Government that during the period of informal control by the industry in the year 1966-67, which has been characterized by the petitioner as a complete decontrol, there were complaints from the States of Punjab and Haryana about shortage of cement in those States and there was a deterioration in the supply also during April-June, 1966 and the rainy season in particular. Besides that as a result of improvement in the general economy, Government activity also began to increase and thus demand for cement was bound to increase, particularly in the context of a drive to export cement. It was further considered necessary to keep a continuous watch over the production to see that the production was not allowed to create scarcity conditions intentionally and to ensure that remote areas not having cement factory or adequate supply, continued to be supplied adequately. Thus the Government's case is, that the control was reintroduced for securing equitable distribution and availability at a fair price of cement throughout the country. It is clear from the said reply which we nave no reason to disbelieve that the purpose and policy of the impugned Order is to ensure that cement be made available to the consumers throughout the country at a reasonable price and that the export market for cement may also be built up. We, therefore, find ourselves unable to accept the petitioner's contention that the impugned Order is outside the scope of Section 18-G of the Act or that it is based on extraneous consideration. The contention that the order is mala fide has to be stated only to be rejected. We shall proceed, therefore, on the basis that the Order is within the scope of the powers conferred on the Central Government by Section 18-G of the Act.

13. This brings us to the question whether the Order is arbitrary and discriminatory

and is thus violative of Articles 14 and 19 (1) (g) of the Constitution. It is argued that the retention price fixed in the Order is arbitrary and there is no safeguard against abuse of powers by the Government. It is submitted that there is no basis disclosed in the Order as to how varying ex-factory prices for different manufacturers of cement in India have been fixed.

14. The contention of the learned counsel for the petitioner is that the impugned order is invalid also because it imposes an unreasonable restriction on the petitioner's right to carry on trade under Article 19 (1) (g) of the Constitution. The petitioner's grievance is that the Government takes away the profits accruing from the sale of the cement manufactured by the petitioner by compelling the petitioner only to retain ex-factory price and giving away the rest in the Cement Regulation Account. It is urged that this amounts to deprivation of petitioner's property without any benefit to the public and is a clear case of expropriation by the Government.
It is said that under Clause 8 of the Order it is permissible to a producer to sell any other variety of cement except rapid hardening cement and low heat cement at a price not exceeding Rupees 125.53 per metric tonne free of rail destination railway station plus excise duty paid thereon. The ex-factory price, which the petitioner would get on such cement as prescribed in the schedule is only 98.50 p. According to the petitioner the difference in the ex-factory price and F. O. R. price minus freight and packing charges, if any, would go to the Cement Regulation Account and the petitioner would thus be deprived of his legitimate profits on the sale of its cement.

15. It is no doubt correct that different ex-factory prices have been fixed in the case of the 25 cement producers mentioned in the schedule to the Order ranging from 90.50 to 129.75 per metric tonne. In this connection it would be relevant to note that even in the earlier cement Control Order 1961 different ex-factory prices were fixed in respect of each producer of cement and the petitioner was one of them, but no challenge was made to that Order on the ground that the Order of 1961 was discriminatory, because it fixed different prices for the various producers of cement. It is no doubt correct that the petitioner cannot be estopped from challenging the validity of fixing different ex-factory prices in the impugned order merely because it failed to challenge the same contained in the previous Order of 1961, yet it must be said that the point in this respect now urged before us never appeared then, as a possible source of grievance either to the petitioner or to any other party situated similarly as the petitioner and this is a factor, which goes against the petitioner. In this connection we may refer to the

observations of their Lordships of the Supreme Court in *Bhagwati Saran v. State of U. P.,* [1] wherein it was observed :-

> "The fact that on that occasion no contention was urged challenging the validity of the notification as beyond the powers of the Controller, on the grounds now put forward clearly indicates, that the matters now urged never appeared then, as a possible source of grievance to a party situated similarly as the second appellant."

It is clear from the reply filed on behalf of the Government that in 1961 the Tariff Commission after examination of the cases of the different producers individually, recommended as many as 10 different retention prices to be given to the producers as it did not find it possible to arrive at a common price for majority of the units, because of the then existing wide disparity in cases of different units. While accepting the recommendations of the Commission, the Government prescribed the uniform ex-works price of Rs. 69.50 per tone in the industry; but the Government realized that in the case of those few units having appreciably higher costs on account of special reasons an extra price must be allowed. An extra price of Rs. 3 per tonne over Rs. 69.50 per tonne was allowed on this basis to India Cement, Digvijaya Cement, Satana Cement, Kalyanpur Cement and Sonwali Cement. An additional price of Rs. 5.50 per tonne was allowed to the new units, Paniyam Cements, Saurashtra Cements, and Madras Cements. An increase of Rs. 25.50 was allowed in the case of Travencore Cement. Thus, the Government made three sets of prices, viz. Rs. 69.50, Rs. 72.50 and Rs. 75 per tonne excluding Rs. 95 per tonne in the case of Travencore Cement. Later on the Government made further increases to the tune of Rs. 8 per tonne from time to time, upto 31st December, 1965. A further general increase of Rs. 13 per tonne was allowed with effect from 1-1-1966. It is urged on behalf of the Government that at the time of decontrol in 1966 the industry agreed to continue the same three sets of retention prices built up on the recommendations of the Tariff Commission, as accepted by the Government and the same prices have been notified in the schedule to the Order. It has also been stated that in the case of new units such as Orissa Industrial Development Corporation, Bargarh, the highest price of Rs. 96 per tonne has been allowed on account of the higher capital costs involved. It is also said that the ex-factory price allowed to the petitioner is based on the recommendations of the Tariff Commission and on the same considerations as are applicable to the others similarly placed. It is thus argued on behalf of the Government that different prices allowed to

the various producers are rational and logical and neither arbitrary nor mala fide. In support of his argument the learned counsel for the Government has relied upon the following observations in AIR 1961 SC 928 :

> "Differentiation could never per se be discrimination, nor is there any presumption that the adoption of different rules for groups differently situated is unequal treatment violative of Article 14; on the other hand, the presumption is the other way and the party that alleges unjustifiable discrimination should establish it to the satisfaction of the Court. We consider that there is no material on the basis of which an argument could be sustained that the special conditions to which learned counsel adverted contained any element of unfair irrational discrimination to attract Article 14.

Again in *M/s. Diwan Sugar and General Mills (Private) Ltd. v. Union of India,* [2] while dealing with the validity of the Sugar (Control) Order, 1955 and the impugned notification fixing ex-factory price of sugar in Punjab, Uttar Pradesh and North Bihar, their Lordships were pleased to observe as follows :-

> "Reading Section 3 of the Act with the preamble, it would be obvious that the object of the Act is to provide for control of the production, supply and distribution of, trade and commerce in essential commodities in the interest of the general public, so that the supplies of such commodities may be maintained or increased, their equitable distribution secured and they may be available to the general public at fair prices. Considering the history of sugar control and the trends which appeared in the market from April 1958, it cannot possibly be said that the impugned notification does not subserve the purpose of the Act and the Order. There can be little doubt that fixation of ex-factory prices of sugar mills in the main surplus areas would have the effect of stabilizing sugar prices for the general public, which is the consumer, at a fair level and make sugar available at fair prices."

In that case only ex-factory price was fixed, but no wholesale or retail prices were fixed for the sale of sugar. It was urged that the notification was bad as it failed to fix prices for the ultimate consumer. This argument was repelled and it was held that in the circumstances it was not necessary for the Government to fix wholesale or retail prices. As regards ex-factory price fixed by the Government their Lordships observed :

> "What prices the Government will fix depend upon their estimate of the situation, which would serve the object of the Act."

16. In the present case the Government have not stopped at merely fixing ex-factory prices, but has also fixed F. O. R. price to be charged from the dealer (vide clause 8). Under Clause 10 the maximum price at which cement may be sold by a dealer has also to be fixed by the State Government. Thus under the impugned Order the Government has fixed the ex-factory prices, in respect of each producer, F. O. R. price at which a producer may sell cement to a dealer and provision has also been made under clause 10 authorising the State Government to fix maximum price at which the dealer (whether wholesale or retail) may sell cement to the consumers. The Government has disclosed in detail the circumstances, which led it to fix different ex-factory prices in respect of each producer and we are of opinion that the argument on behalf of the petitioner that there is discrimination in the matter of fixation of ex-factory prices is purely theoretical. The argument about discrimination cannot hold good merely because there is differentiation in the matter of fixation of ex-factory prices, especially when the differentiation is based on rational and logical grounds disclosed by the Government. The argument of the learned counsel for the petitioner that the impugned order is discriminatory and consequently violative of Article 14 of the Constitution is, therefore, without force.

17. In this connection we may also draw attention to Clause 12 of the Order which says that the Central Government, having regard to any change in any of the factors relevant for determination of prices of cement such as an increase or decrease in the cost of production or distribution by the Notification in the Official Gazette vary the price fixed in the Order or alter the Schedule to this Order as appears to it to be necessary. This clause indicates that the different retention prices which have been fixed or which may be fixed hereafter cannot be arbitrary but all the factors relevant for determination of prices of cement such as increase or decrease in the cost of production or distribution are taken into consideration. Thus the guiding principles for fixation of ex-factory prices are contained in the order itself and it is open to the producers to move the Government for altering the ex-factory prices whenever an occasion arises for the same regard being had to the factors mentioned in Clause 12 of the Order. Thus there is no force in the petitioner's contention that the retention prices fixed in the order are arbitrary or that there is no safeguard against abuse of powers or that the order is discriminatory.

18. Coming next to the question of unreasonable restriction on the petitioner's right to carry on trade the learned counsel for the petitioner has strongly relied on the

following observations of their Lordships in *Chintamanrao v. State of Madhya Pradesh,*:- [3]

> "The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates, Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19 (1) (g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality." The Government's case is that the petitioner is only entitled to ex-factory price and whatever is left after payment of packing and transport charges etc., is utilised for equalising the expenditure on freight and for equalising concession if any granted in the matter of price for supply to Government or for purpose of export, and for expenses incurred by the "Controller" in discharging the functions under the Order. It is urged by the learned counsel for the Central Government that whatever is credited to the Cement Regulation Account under Clause (11) of the order is to be borne by the consumers in India and not by the producers.

19. We have carefully examined the rival contentions of the parties. The ex-factory price fixed by the Government in the case of the petitioner has not been alleged, much less proved to be below cost of its production. The Government's right to fix Ex-factory prices cannot be challenged, so also the F. O. R. destination prices at which cement can be sold to the dealers cannot be called into question. The contention of the petitioner that there is an unreasonable restriction on his right to carry on trade under Article 19 (1) (g) of the Constitution and also on his right to acquire, hold and dispose of property under Article 19 (1) (f) of the Constitution, is, in our opinion, devoid of force. The restrictions, in our opinion, are reasonable in the interest of the general public and for securing equal distribution and availability at fair prices of cement throughout the country. In support of his arguments, the learned counsel for the petitioner strongly relied upon *State of Rajasthan v. Nathmal,* [4] In the case of Nathmal, the Supreme Court struck down the later part of Clause 25 of the Rajasthan Foodgrains Control Order, 1949. It appears that the impugned clause empowered the

Government to requisition the stock at a price lower than the selling price thus causing loss to the persons whose stocks were freezed while at the same time the Government was free to sell the same stocks at higher price and make a profit. On account of this vicious tendency of the impugned clause, it was struck down inasmuch as it was treated as a typical case which showed how business of the grain dealers would be paralysed by the operation of such a clause. It was held that the clause offended against Article 31 (2). But in the present case, none of these conditions exists, and, therefore, in our view, Nathmal's case, AIR 1954 SC 307 does not lend any assistance to the petitioner.

20. Learned counsel for the petitioner also drew our attention to *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay,* [5] in support of his argument under Article 19 (1) (f) of the Constitution, wherein it was held :-

> "Articles 31 (1) and 31 (2) are not mutually exclusive and it is not an essential requisite of acquisition under Article 31 (2) that there should be a transfer of title to the State. Deprivation of property and substantial abridgement of the rights of the owner are also within Article 31 (2) and a law which produces those results must in order to be valid, satisfy the conditions laid down in that Article.

Thus Articles 31 (1) and 31 (2) cover the same ground, and substantial interference with rights to property would be within the operation of Article 31 (2).
It would, therefore, follow that Section 3 (1) in so far as it relates to the payment of unpaid accumulations to the Board under Section 3 (2) (b) was bad as infringing Article 31 (2) in that it deprives the employer of its moneys without giving any compensation." Suffice it to say that the facts of that case are quite distinguishable from the facts of the present case and in the present case it cannot be held that the petitioner has been deprived of his property without any authority of law in disregard of the provisions of Articles 19 and 31 of the Constitution.

21. At one stage the learned counsel also argued that the impugned order was a colorable piece of legislation. We are, however, not impressed by this argument. The idea conveyed by the expression "colorable legislation" is that although apparently the legislature passes a statute purporting to act within the limits of its powers yet in substance and in reality it has transgressed these powers, the transgression being

veiled by what appears on proper examination, to be a mere pretence or disguise e.g. where the power to acquire property for public purpose, is used to acquire property for the purpose of disposing it at a profit. Nothing has been shown to us how the impugned order falls within the mischief of "colorable legislation". The Government has not promulgated this order for the purpose of making any profit or augmenting its revenue. The object which was intended to be achieved was securing of equitable distribution and availability at fair prices of cement. The means which were required to be adopted in the achievement of the said object have been clearly enumerated in the order itself and we fail to see any other purpose behind the order except the one mentioned in the preamble itself. The petitioner's contention that the impugned Order is a colorable piece of legislation is, therefore, devoid of substance.

22. There is another aspect of the matter to which we may conveniently advert at this stage, though it has not been argued before us by any of the parties, but since it has an important bearing on the decision of the case, we must make mention of it.

23. The important question that arises for our consideration is, whether the petitioner, which is a limited company, registered under the Indian Companies Act, 1956, can ask for the enforcement of the fundamental rights granted to the citizens under Article 19 of the Constitution. It is clear that the fundamental rights conferred by Article 19 are conferred only on citizens. The question naturally arises whether the petitioner which is a company registered under the Indian Companies Act, is a 'citizen' within the meaning of Article 19. In this connection we may refer to the following observations of their Lordships of the Supreme Court in *State Trading Corporation of India Ltd. v. Commercial Tax Officer,*[6]:-

> "It is clear on a consideration of the provisions of Part III of the Constitution that the makers of the Constitution deliberately and advisedly made a clear distinction between fundamental rights available to 'any person' and those guaranteed to 'all citizens.' In other words, all 'citizens' are 'persons' but all persons are not citizens under Constitution."

24. Their Lordships were further pleased to observe:-

> "It is thus absolutely clear that neither the provisions of the Constitution, part II, nor of the Citizenship Act aforesaid, either confer the right of citizenship on, or recognize as citizen, any person other than a natural person. That appears to be

> the legal position, on an examination of the relevant provisions of the Constitution and the Citizenship Act."

On the question whether corporation can acquire citizenship, their Lordships observed as follows :

> "It seems to us, in view of what we have said already as to the distinction between citizenship and nationality, that corporations may have nationality in accordance with the country of their incorporation but that does not necessarily confer citizenship on them ..... We must therefore, hold that these two provisions that is "Part II of the Constitution and Citizenship Act" are completely exhaustive of the citizens of this country and these citizens can only be natural persons. The fact that corporations may be nationals of the country, for purposes of international law will not make them citizens of this country for purposes of municipal law or the Constitution. Nor do we think that the word 'Citizen' used in Article 19 of the Constitution was used in a different sense from that in which it was used in part II of the Constitution."

In this view of the matter, their Lordships were pleased to hold that a State Trading Corporation a company registered under the Indian Companies Act, 1956, is not a citizen within the meaning of Article 19 of the Constitution and cannot ask for the enforcement of fundamental rights granted to the citizens under the said article. This position was further reiterated by the Supreme Court in *British I. S. N. Co. Ltd. v. Jasjit Singh* [7] and *Tata Engineering and Locomotive Co. Ltd. v. The State of Bihar,* [8] The result is that a company is not a 'citizen' within the meaning of Article 19 and therefore, cannot invoke that Article. From this standpoint also, the attack made by the petitioner under Article 19 of the Constitution against the impugned order cannot succeed. We are, therefore, of the opinion that the contention raised on behalf of the petitioner in connection with the fundamental rights under Article 19 of the Constitution cannot be accepted.

24. We may now deal with the objections raised by the learned counsel for the petitioner to the various clauses of the impugned order. It is submitted by him that the definition of the word 'Controller' given in Clause 2 (b) is bad and ultra vires of the provisions of Section 25 of the Act. It is submitted that under this section the Central Government can delegate some of the powers exercisable by it under the Act, to any

officer or authority (including any Development Council, State Government or officer or authority subordinate to the Central Government) as may be specified in the directions. It is argued that the Cement Corporation of India is neither an officer nor an authority as envisaged by Section 25 of the Act. It is a corporation engaged in competitive business with different manufacturers of cement in India. In support of his contention he has relied upon *Bhagwan Swarup v. State of Maharashtra,* [9] and *Rajasthan State Electricity Board Jaipur v. Mohanlal,* [10] The reply on behalf of the Central Government is that the Cement Corporation is a Public sector undertaking and could be invested with legal authority and empowered to enforce F. O. R. price and movement of cement. It was also urged that even though the said corporation has been formed with the purpose, amongst others, of setting up cement factories to undertake trade and commerce in cement, the corporation is not producing cement and is not expected to produce it till the end of 1969. As such, it is not a competitor in the business of manufacturing and selling cement and it has been asked to undertake this work on 'no profit no loss' basis. It was submitted that Article 4 of the Memorandum and Articles of Association of the Corporation authorized it to act as an agent.

25. It is true that under Section 25 of the Act the power can be delegated by the Central Government either to an officer or an authority. It is conceded by Shri N. Raju learned counsel for the Central Government, that the Cement Corporation of India Ltd., is not an officer. We have therefore, only to see whether the said corporation can fall within the ambit of the term 'authority' as used in Section 25 of the Act. The word 'authority' has not been defined in the Act, but it has been mentioned in the section itself that it will include any Development Council, State Government or Officer or authority subordinate to the Central Government. In AIR 1967 SC 1857 supra, while dealing with the scope of the term 'authority' their Lordships observed as follows :-

> "The meaning of the word 'authority' given in Webster's Third New International Dictionary, which can be applicable is a public administrative agency or corporation having quasi-governmental powers and authorized to administer a revenue producing public enterprise. This dictionary meaning of the word 'authority' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India and we do not

see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution."

The contention of Mr. Chagla is that the Cement Corporation of India Ltd. does not exercise any governmental or quasi-governmental function whereas Mr. N. Raju contends that by the impugned order the Central Government has constituted the said corporation as an authority. It is correct that by virtue of the powers conferred upon it by the Central Government, the Cement Corporation of India Ltd. has been created an authority after coming into force of the impugned Order. But the question is, was it an authority prior to that? Our answer is in the negative, because it would be clear from the Memorandum and Articles of Association of the said corporation which have been placed on the record that it was registered as a company and no powers were conferred upon it to carry out governmental or quasi-governmental functions. It appears to us that the intention of the Legislature clearly was that any person to whom the government may delegate its functions under the Act must be an officer or authority. In this view of the matter, the contention of Mr. Chagla must be accepted and we hold, that the definition of the term 'controller' in Clause 2 (b) of the impugned order is bad and must be struck down.

26. The next attack is directed against Clause 3 of the impugned order. It is argued that Section 18-G of the Act does not confer any power on the Central Government to prohibit removal of cement outside the precincts of the factory or outside the premises of the producer. The learned counsel for the Central Government, on the other hand, has argued that the provision contained in Clause (3) of the impugned order is not an unreasonable restriction and the Government is empowered to place such a restriction in exercise of its powers under Section 18-G of the Act. It is contended that the permission contemplated under the Clause is only formal and not a single instance has been pleaded where the permission was sought for and refused. It is submitted that this is only an incidental and supplementary provision and is not intended to operate as a restriction. It is true that the petitioner has nowhere alleged in the writ petition nor was able to tell us even during the course of arguments that there has been any instance in which the government had refused permission for removal of cement from the premises or precincts of the factory to the detriment of the petitioner. In our view, such a power is implied in the general power conferred by Section 18-G of the Act and unless it were so conferred, it may be difficult to carry out the purpose and object of the impugned order. Moreover, we cannot presume that the Government will abuse its

power in the matter of granting permission for removal of cement from the factory as and when it is sought on just and proper grounds. As already stated above, Mr. N. Raju has informed us that the permission, contemplated under this clause is only formal and as no instance of the abuse of power under this clause has been brought to our notice, we do not see any grounds for striking it down.

27. So far as the attack against Clause 4 of the impugned Order is concerned, all that has been said on behalf of the petitioner is that the power given to the Government for ordering any producer to sell cement to any person or to transport it to any destination by such mode of transport and on such terms and conditions, as may be specified in the order, is arbitrary and void as no guiding principles have been laid down in the impugned order for proper exercise of this power. It is contended by Mr. Chagla that transportation is not a part of the business of the petitioner and the mode of transport specified in a particular case by the controller may not be available and so also the terms and conditions laid down by it may not be economical. We are, however, not impressed by the argument advanced on behalf of the petitioner in this respect. We cannot assume that the Government would ask any producer of cement to transport cement by such mode as may not be available. So far as terms and conditions are concerned, the producer has to be paid only ex-factory price over and above the charges for transport and packing etc. We, therefore, fail to see how any terms and conditions detrimental to the interest of the producer can be imposed under this clause. We are, therefore, unable to declare this clause void.

28. Coming to Clause 7 of the impugned order which deals with retention or ex-factory price, it is enough to state that the impugned order, as a whole, has been attacked on the basis of this very clause which forms the back-bone of the whole Order and we have already dealt with this part of the petitioner's case in the earlier portion of our judgment. We may state even at the risk of repetition that the Government has power to fix ex-factory prices of cement and it has also power to fix different ex-factory prices in respect of the various producers. We have also held that this power is neither arbitrary nor discriminatory. This clause, in our opinion, is, therefore, valid and we do not think it necessary to reiterate here all the reasons in support of our view which we have already given above in detail.

29. The second proviso to Clause 8 has been attacked on the ground that it empowers the Central Government to obtain its requirement of cement through the Directorate-

General of Supply and Disposal at a discount and the quantum of discount has been left to the discretion of the Central Government. It is urged that this power is violative of the provisions of the Constitution. The reply on behalf of the Central Government is that the provision enabling the Central Government to obtain its requirement through the Directorate General of Supply and Disposal is in public interest and cannot be questioned. The petitioner has failed to show how such power is ultra vires the provisions of the Constitution. In our view, such a restriction on the right of the producer of the cement by which the Government may allow rebate or discount in the price of cement sold to them or intended for export out of India could not be unreasonable. Provision has been made in the impugned order to equalise concession, if any, granted in the matter of price for supplies to Government or for purposes of export (vide Clause 11 (2) (ii)) and thus the owners of the factory would not be put to any loss as the loss entailed by such concessions would be borne by the consumers in India and not by the producers. In this connection, we may refer to the ***Lord*** *Krishna Sugar Mills Ltd. v. Union of India,* [11] wherein, while dealing with the question of the validity of the Sugar Export Promotion Act, 1958, their Lordships were pleased to observe that,

> "the restriction was not unreasonable because arrangement was made to save the owner of the factories from loss and, the loss entailed by the export of sugar was to be borne by the consumers in India and not by the producers."

30. Then, we come to the last ground of attack directed against Clauses 9 and 11 of the impugned order. Before we deal with the question of the validity of these clauses, it would be necessary to state that the Order in question was amended by the Cement Control (Amendment) Order, 1968, vide Notification dated 12-1-1968 by which sub-clause (1) of Clause 9 was substituted as below :-

> 'Clause 9 (1) - Every producer shall in respect of each transaction by way of sale of cement effected by him, pay within one month of the close of the month in which sale shall take place to the controller, an amount equivalent to the amount, if any, by which the free-on-rail destination
> .. ..

The effect of this amendment is that the producers of the cement may have to pay from their own pockets various amounts to the Controller while they may not receive the sale price of cement from the consumers. It is submitted that the amended sub-

clause (1) of Clause 9 of the Order amounts to expropriation and is neither legal nor justified. The learned counsel for the Government frankly conceded that he is unable to support this Amendment. We have, therefore, no hesitation to declare that Clause 2 of the Cement Control (Amendment) Order, 1968 by which sub-clause (1) of Clause 9 was amended as stated above, is bad and liable to be struck down.

31. It may be noted that the power of the Government to create the Cement Regulation Account has not been called into question. But what is objected to, is that under Clause 9 if the expenditure incurred by the producer on freight happens to be less than what is charged from the dealer i.e. Rs. 25.48 paisa per tonne, the producer cannot retain the excess amount and has to pay it in the Cement Regulation Account and if it happens to be more than Rs. 25.48 paisa per tonne, the producer has to pay in the first instance though he may be reimbursed later on in respect of such transaction. It is submitted that such a condition contained in Clause 9 is unreasonable. The Government's reply is that they fixed Rs. 25.48 paisa per tonne as the freight after having taken into consideration the freight in different parts of the country payable from the producing centers to the places of consumption and this has been taken as the basis for inclusion in the F. O. R. destination price. It has been stated by the Government in its reply that only those producers who incur a freight less than Rs. 25.48 paisa per tonne are required to pay the excess amount into the Cement Regulation Account and those producers who incur a freight more than Rs. 25.48 paisa are reimbursed by the Government out of the Cement Regulation Account. In this connection it may be mentioned that the F. O. R. destination price is the price which the purchaser has to pay to the producer including the freight, transport charges and other factors. The burden of payment of all these charges falls on the buyer, and, therefore, the difference between the actual freight and the fixed freight of Rs. 25.48 paisa per tonne in case the actual freight is less, goes to the Cement Regulation Account from the pocket of the buyer and the producer or manufacturer cannot, in our opinion, make any grievance of it. It is also clear that the amount which thus goes to the Cement Regulation Account is utilized besides other purposes, for paying or equalizing the excess expenditure incurred by the producer on freight. In case the actual freight happens to be more than Rs. 25.48 paisa per tonne, the producer is reimbursed from the Cement Regulation Account later on. There is no doubt that the payment is deferred for some time. But deferred payment, in our opinion, by itself, is not deprivation of property nor an encroachment upon any fundamental rights. Thus there is no force in the contention raised on behalf of the petitioner on this ground

also.

32. In this connection Mr. Chagla has also argued that even though the producer of cement may by negotiations and efforts secure the maximum price at which the cement may be sold, yet he would not be entitled to retain the full profits in the transaction which may be legitimately due to him. Under Clause 9 he has to pay the excess of the aggregate of the amounts mentioned in sub-clauses (i), (ii), (iii) and (iv) of Clause 9, that is, all that the producer will be entitled to retain with himself is only the ex factory price plus selling agency commission at the rate of Rs. 1.25 per metric tonne plus the packing charges. What the producer gets as the price of cement over and above the four items mentioned in Clause 9 has to be paid by him to the Cement Regulation Account and thus, it is submitted that the profits earned on the goods manufactured by the petitioner are taken away by the Government and put in the Cement Regulation Account. It is contended that this is a sort of tax on the producer without an authority of law. The reply on behalf of the Government is that the producer is only entitled to get the ex-factory price plus the actual expenses incurred by him. Whatever excess is paid by the buyer is not the property of the producer but it is a burden borne by the consumers and this excess amount which goes to the Cement Regulation Account is utilized for the purposes mentioned in Clause 11 (2) of the Order. After due consideration of the arguments advanced by the learned counsel on both the sides we are of the view that the producer is not deprived of any of his profits which are legitimately due to him according to the Order. All that the petitioner is entitled to get under the Order is the ex-factory price plus the prescribed selling agency commission, plus the actual expenses incurred by him on freight, packing etc. and all that is paid by the purchaser over and above these and the excise duty, is paid into the Cement Regulation Account for the purposes of equalizing the expenditure incurred on freight and also for equalizing concession, if any, granted in the matter of price for supplies to the Government or for the purposes of export. A part of the fund is also utilised for expenses incurred by the Controller in discharging the functions under the Order. Thus this equalization is for adjustment of not only disparities in freight but also of profits between producers who sell within India to private parties and those who sell to the Government or export outside India at concessional prices. It would, therefore, be not correct to say that the whole amount which the producer gets from the purchaser belongs to him. We have already held in an earlier part of our judgment that the impugned Order does not place any unreasonable restrictions on the producers of Cement. The Order clearly aims at serving the national interests. In the

first place the producer is not put to any loss because the Order makes it clear that all his profits will be included in the ex-factory price. Excess demand is made only on the consumer or the purchaser. Thus the petitioner is not deprived of any of his legitimate profits and the contention raised on behalf of the petitioner in this connection cannot be accepted.

33. Coming to Clause 11, the contention raised by Mr. Chagla on behalf of the petitioner is that sub-clause (4) of Clause 11 provides that it is competent for the Central Government to use the balance, if any, remaining unspent in the Cement Regulation Account for purposes other than those mentioned in the preamble to the impugned Order such as for the purpose of increasing the Gevernment assets or revenues, and therefore, this sub-clause cannot be held to be valid.
Sub-clause (4) to Clause 11 provides that after the amount credited under Sub-clause (1) has been spent for the purposes mentioned in Sub-clause (2), the balance, if any, remaining unspent in the Cement Regulation Account shall be disbursed in accordance with such directions as may be given by the Central Government in this behalf. The argument is put in this way. It may be open to the Government to give any directions for disbursement of this amount which may not have any thing to do with the purposes of the Cement Control Order. In support of his contention Mr. Chagla has referred to an unreported judgment of the Supreme Court in *State of M. P. v. Ranojirao Shinda*[12] and *State of M. P. v. Krishnarao Shinda,*[13] in which Act No. XVI of 1963 of Madhya Pradesh was challenged before their Lordships of the Supreme Court as ultra vires the provisions of the Constitution. The respondents in that case were entitled to receive cash grants from the Government of Madhya Pradesh. The impugned Act abolished such grants but provided the payment of certain compensation to the grantees. While dealing with the provisions of the impugned Act, their Lordships were pleased to observe :

> "If it is held that State by the exercise of the power in eminent domain can acquire choses in action and money belonging to its citizens, by paying a fraction of the money as compensation, the fundamental rights guaranteed under Article 19 (1) would be deprived of all its contents and that Article will cease to have any meaningful purpose. The power conferred under Article 31 (2) is not taxing power. That power cannot be utilised for enriching the offers of the State. It is true that the abolition of the cash grants would augment the resources of the State but that cannot be considered as a public purpose under Article 31 (2).

* * * * * * * *"

"The Act which empowers the State to appropriate some one else's property for itself solely with a view to augment the resources of the State, cannot be considered as a reasonable restriction in the interest of the general public."

34. In the end their Lordships came to the following conclusion :-

"If Article 19 (5) is interpreted to mean that State can take by authority of law any one's property for the purpose of increasing its assets or revenue, the guarantee given by Article 19 (1) (f) would become illusory, a proposition to which this Court cannot subscribe."

35. The observations made in the above mentioned case, in our opinion, have no application to the present case. The balance left in the Cement Regulation Account after spending the amount according to sub-clause (2) is not sought to be utilized for the purpose of augmenting the resources of the Government.

On the other hand, Mr. N. Raju, learned Counsel for the Government, submits that the words 'such directions' used in sub-clause (4) are ejusdem generis, that is, the balance has to be spent for purposes similar to those mentioned in sub-clause (2). He has also submitted that the Cement Regulation Account is a composite fund consisting of not only what is paid by a producer under Clause 9, but also such other sums of money as the Central Government may pay, after due appropriation made by the Parliament by law in this behalf. Thus, it is argued that the Government also contributes to this fund. It is also contended that at any rate what is paid by the producer to the Cement Regulation Account is not a part of the Ex-factory price to which alone the producer is entitled, but it is the burden borne by the consumers and therefore, the petitioner, who is a producer cannot make any grievance on the account.

36. We have carefully considered the arguments advanced by the learned Counsel for the parties and are of the view that this clause does not empower the Government to appropriate any part of the Cement Regulation Account for purposes other than those mentioned in the preamble to the Order, nor does it authorize the Government to use any funds of the Cement Regulation Account to increase its assets or revenues. It is also clear that what constitutes this Cement Regulation Fund is not part of the producer's property. In this view of the matter, we are unable to hold that sub-clause (4) to Clause 11 is invalid.

37. During the course of arguments, learned Counsel for the petitioner supplied to us the break up of the figure of Rs. 125.53 paisa which is the F. O. R. price per tonne excluding the excise duty and packing charges. Some argument was advanced in respect of this break up by learned Counsel for both the parties, but we dp not feel persuaded to go into the question whether the various items in the break up are correct and justified, for two reasons, firstly, because this break up was not given in the writ application and no ground has been taken in respect of this break up in the writ petition itself. Secondly, scrutiny of the break up of the gross F. O. R. destination price of cement is not at all necessary according to our view. We have held that the petitioner is entitled to get only the ex-factory price fixed for it in the Order and the actual expenses incurred by it in transport, packing etc., and nothing more, and what is paid by the consumer over and above goes to the Cement Regulation Account. Thus, no part of the petitioner's property constitutes the Cement Regulation Account and the petitioner is thus not deprived of his property. Mr. Chagla also contended that the whole of the price i.e. Rs. 125.53 per tonne paid by the dealer is the petitioner's property and the petitioner is entitled to retain the whole of it. This contention, in our view, is not correct and we have already given above the reasons in support of our view.

38. Before we close, we may mention that while judging the vires of the impugned Order and the reasonableness of the various restrictions put upon the producers of cement, we have to look to other circumstances, such as a review of the cement industry, the agreements made by the cement producers during the period of decontrol, price adjustments and price control, and other national interests such as export etc. as, in our opinion, they have an important bearing upon the reasonableness of the legislation. In the *State of Madras v. V. G. Row,* [14] Patanjali Sastri, Chief Justice, 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 authorizing the imposition of the restrictions considered them to be reasonable."

If we may say so with utmost respect this passage summarizes the law on the subject fully and precisely. What is reasonable in a particular set-up may be unreasonable in society with a different background. On a careful consideration of the various clauses of the impugned Order, we are of the view that the Order as a whole is not liable to be struck down as an unreasonable restriction on the petitioner's rights, nor is it ultra vires of any provisions of the Constitution or of the Act, expert the following clauses :- Clause 2(b) - Definition of 'Controller' is bad inasmuch as the Cement Corporation of India Ltd., is neither an officer nor an authority, and, therefore, no functions of the Central Government can be delegated to it under the Act. This clause is therefore, ultra vires Section 25 of the Act and is hereby struck down. This would mean that the Cement Corporation of India Limited respondent No. 2 cannot exercise any of the powers under this Order. Sub-clause (1) of Clause 9 of the Order, as amended by Clause 2 of the Cement Control (Amendment) Order, 1968 is also struck down, with the result that sub-clause (1) of Clause 9 as it originally stood is restored. The rest of the order is legal and valid.

39. We, therefore, allow the writ application in part and hold that the definition of 'Controller' contained in Clause 2 (b) of the order is void and so also sub-clause (1) of Clause 9 of the Order as amended by the Cement Control (Amendment) Order, 1968. The Cement Corporation of India Ltd., respondent No. 2, is restrained from exercising any powers under the impugned Order. All other prayers contained in the writ application are disallowed. In the circumstances of the case, we leave the parties to bear their own costs.

Application allowed in part.

Cases Referred.

1. AIR 1961 SC 928

2. AIR 1959 SC 626
3. AIR 1951 SC 118
4. AIR 1954 SC 307
5. AIR 1958 SC 328
6. AIR 1963 SC 1811
7. AIR 1964 SC 1451
8. AIR 1965 SC 40.
9. AIR 1965 SC 682
10. AIR 1967 SC 1857
11. AIR 1959 SC 1124
12. Civil Appeal No. 1730 of 1966
13. Civil Appeal No. 1731 of 1966: D/- 21-3-68: (Since reported in AIR 1968 SC 1053)
14. AIR 1952 SC 196, 200