NARENDRA KUMAR AND OTHERS

v.

THE UNION OF INDIA AND OTHERS

1959

December 3

(B. P. SINHA, C.J., JAFER IMAM, J. L. KAPUR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Fundamental Rights—Restrictions on such rights—Restriction, if includes prohibition—Provision of law placing total restraint on the exercise of fundamental rights—Constitutionality—Trade in imported copper—Law providing for fixation of price and issue of permits, resulting in elimination of dealers from such trade—Validity —Essential Commodities Act, 1955 (10 of 1955), s. 3—Non-ferrous Metal Control Order, 1958, cls. 3, 4—Constitution of India, Arts. 14, 19(1)(f), 19(1)(g), 19(5), 19(6).

On different dates prior to April 3, 1958, the petitioners entered into contracts of purchase of copper with importers at Bombay and Calcutta, but before they could take delivery from the importers the Government of India, in exercise of its powers under s. 3 of the Essential Commodities Act, 1955, issued on April 2, 1958, the Non-ferrous Metal Control Order, 1958. Clause 3 of the Order provided that no person shall sell or purchase any non-ferrous metal at a price which exceeded the amount represented by an addition of $3\frac{1}{2}\%$ to its landed cost, while under cl. 4 no person shall acquire any non-ferrous metal except under and in accordance with a permit issued in this behalf by the Controller in accordance with such principles as the Central Government may from time to time specify. No such principles, however, were published in the Gazette or laid before the two Houses of Parliament, though certain principles governing the issue of permits by the Controller were specified in a communication addressed by the Deputy Secretary to the Government of India dated April 18, 1958, to the Chief Industrial Adviser, by virtue of which the Controller could issue permits only to certain manufactures and not to any dealer. On April 14, 1958, the petitioners applied for permits to enable them to take delivery of the copper in respect of which they had entered into contracts, but the applications were refused. Thereupon, the petitioners filed a petition under Art. 32 of the Constitution of India challenging the validity of the order refusing the grant of the permit and contended, *inter alia*, (1) that the fixation of the price under cl. 3 of the Non-ferrous Metal Control Order, 1958, which had the effect of driving the dealer out of business in imported copper and likewise, cl. 4 of the said Order read with the communication dated April 18, 1958, which had the effect of completely eliminating the dealers from the trade in imported copper, contravened Arts. 19(1)(f) and 19(1)(g) of the Constitution, and that such total elimination of the dealer amounting as it will to prohibition of any exercise of the right to carry on trade or to acquire property

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was not a mere restriction on the rights and was outside the saving provisions of cls. (5) and (6) of Art. 19, (2) that the principles specified in the communication dated April 18, 1958, being discriminatory in nature as between the manufacturers and dealers in copper, infringed Art. 14, (3) that the said principles, in any case, had no legal force, as they were not mentioned in the Non-ferrous Metal Control Order, nor were they notified in the Official Gazette and laid before both Houses of Parliament in the manner laid down in sub-ss. (5) and (6) of s. 3 of the Essential Commodities Act. It was found that the result of the abuse by the importers of the practical monopoly given to them of the copper market seriously affected the interests of the general public in India, and that to protect these interests of the public the impugned legislation in the form of Non-ferrous Metal Control Order and the subsequent specification of principles was made.

Held: (1) that the word "restriction" in Arts. 19(5) and 19(6) of the Constitution includes cases of "prohibition" also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than was necessary in the interests of the general public.

Chintaman Rao v. *The State of Madhya Pradesh*, [1950] S.C.R. 759, *Cooverjee B. Bharucha* v *The Excise Commissioner and The Chief Commissioner, Ajmer and Others*, [1954] S.C.R 873 and *Madhya Bharat Cotton Association Ltd.* v. *Union of India*, A.I.R. 1954 S.C. 634, followed.

(2) that in the present case, the evil sought to be remedied being the rise in price which led to higher price of consumers' goods in the production of which copper formed a major ingredient, the fixation of a price and a system of permits for the acquisition of the material were reasonable restrictions in the interests of the general public; and that cls. 3 and 4 of the Non-ferrous Metal Control Order, 1958, were accordingly, reasonable restrictions within the meaning of Arts. 19(5) and 19(6)

(3) that the differentia which distinguished dealers as a class from manufacturers placed in the other class had a reasonable connection with the object of the legislation, and, consequently, the principles specified in the communication dated April 18, 1958, did not contravene Art. 14 of the Constitution; and

(4) that the cl. 4 of the Non-ferrous Metal Control Order was not effective without the principles to be specified by the Central Government in the manner laid down by sub-ss. (5) and (6) of

s. 3 of the Essential Commodities Act and as the principles specified in the Communication dated April 18, 1958, were not notified in the Gazette nor laid before both Houses of Parliament, as required under by s. 3, sub-ss. (5) and (6), of the Act, cl. 4 could not be enforced. Accordingly, cl. 4 of the Order, as it stood, was void till such time as the principles are published in accordance with s. 3, sub-ss. (5) and (6).

ORIGINAL JURISDICTION: Petition No. 85 of 1958.

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

C. B. Agarwala, R. Gopalakrishnan and *K. P. Gupta*, for the petitioners.

H. N. Sanyal, Additional Solicitor-General of India, B. Sen and *R. H. Dhebar*, for the respondents.

1959. December 3. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—The three persons who have filed this petition under Art. 32 of the Constitution for enforcement of their fundamental rights conferred by Art. 14, Art. 19(1)(f) and Art. 19(1)(g) thereof are dealers in imported copper and carry on their business at Jagadhri in the State of Punjab. On different dates prior to April 3, 1958, they entered into contracts of purchase of copper with importers at Bombay and Calcutta. Before, however, they could take delivery from the importers the Government of India issued on April 2, 1958, an order called the "Non-ferrous Metal Control Order, 1958" hereafter referred to as "the order" in exercise of its powers under s. 3 of the Essential Commodities Act (Act X of 1955)—referred to hereafter as "the Act". In this order "non-ferrous metal" was defined to mean "imported copper, lead, tin and zinc in any of the forms specified in the Schedule of the order." The Order was from the very beginning made applicable to imported copper. The price was controlled by cl. 3 of the Order which provides in its first sub-clause that "no person shall sell or offer to sell any non-ferrous metal at a price which exceeds the amount represented by an addition of $3\frac{1}{2}\%$ to its landed cost," and in its second sub-clause that "no person shall purchase or offer to

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purchase from any person non-ferrous metal at a price higher than at which it is permissible for that other person to sell to him under sub-cl. (i)." Clause 4 is designed to regulate the acquisition of non-ferrous metal by permit only and provides that "no person shall acquire or agree to acquire any non-ferrous metal except under and in accordance with a permit issued in this behalf by the Controller in accordance with such principles as the Central Government may from time to time specify". Clauses 5 and 6 of the Order made it obligatory on the importers to notify quantities of non-ferrous metal imported and to maintain certain books of account, while the last clause, i.e.. cl. 7 confers powers on the Controller to enter and search any premises in order to inspect any book or document and to seize any non-ferrous metal in certain circumstances. This Order was published in the Gazette of India on April 2, 1958. No principles specified by the Central Government in accordance with cl. 4 of the Order were however published either on this date or any other date. Certain principles were however specified by the Central Government in a communication addressed by the Deputy Secretary to the Government of India dated April 18, 1958, to the Chief Industrial Adviser to the Government of India, New Delhi. The relevant portion of this communication is in these words :

"The following principles shall govern the issue of permits by the Controller :—

(1) In respect of the scheduled industries under the Control of the Development Wing, the Controller will determine the 6 monthly requirements of actual users based on their production in the year 1956;

(2) In the case of small scale industries the Chief Controller of Imports and Exports on the certificate of the State Directors of Industries will inform the Controller of the quantities that the units would be entitled to and thereupon the Controller will make such quantities available to these units from time to time;

(3) The Controller shall normally release one month's requirements at a time to the consuming units

and the permit shall be valid for a period of two months; but if heavy imports are reported the Controller shall have the discretion to issue stocks in larger quantities."

The position immediately on the issue of the Order on April 2, 1958, thus was that no person could buy or sell imported copper at a price above the landed cost plus 3½% thereof and that no person could acquire or agree to acquire such copper except under a permit issued by the Controller. In issuing such permits the Controller was to be governed by such principles as the Central Government would specify. After the principles were specified in the letter of the 18th of April, the Controller could no longer issue any permit to a dealer and could issue permits only to certain manufacturers as indicated in paras. 1 and 2 of the letter.

In view of the requirement of cl. 4 of the Order the petitioners applied on April 14, 1958, for permits to enable them to take delivery of the copper in respect of which they had entered into contracts with different parties. Though no formal order appears to have been passed on these applications, it is not disputed that the applications for permits were refused and no permits were issued to these petitioners. The main contention of the petitioners is two-fold. First, it is said that cl. 4 of the Order read with the principles specified in the letter of the 18th April violates the right conferred on them as citizens of India by Art. 19(1)(f) of the Constitution of India to acquire property and also the right conferred by Article 19(1)(g) to carry on trade, that these violations are not within the saving provisions of Art. 19(5) and 19(6) of the Constitution and therefore are void. Secondly, it is said that the fixation of the price at the landed cost plus 3½% as the maximum also abridge the rights conferred on them by Arts. 19(1)(f) and 19(1)(g) of the Constitution and that this also is not saved by the provisions in Arts. 19(5) and 19(6) and so are void. A further contention is that the principles specified being discriminatory in nature as between the manufacturers and dealers in copper have resulted in violating the right to equal protection of laws to the

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petitioners and thus infringe the right guranteed by Art. 14 of the Constitution. As regards the principles specified in the letter of the 18th April it was further contended that as they form an integral part of the "Order" by which alone the Central Government can regulate the distribution and supply of essential commodities under s. 3 of the Act it was necessary for them to be notified in the Official Gazette as required by its 5th sub-section and to be laid before both Houses of Parliament as required by its 6th sub-section and as these requirements were not fulfilled, the principles have no legal force. Alternatively, it was contended that if the principles are considered not to form part of the order made by the Central Government the regulation in so far as it was by these principles, was outside the Act as s. 3 empowers the Central Government to provide for regulating or prohibiting the production and supply of essential commodities and trade and commerce in essential commodities by an order only and not otherwise.

The petitioners pray for an appropriate writ or order or direction (1) restraining the respondents, the Union of India, the Chief Industrial Adviser to the Government of India and the Development Officer, Ministry of Industry from enforcing cls. 3 and 4 of the order; (2) to quashing the order of the Development Officer rejecting the petitioners' application for grant of permit by a direction to the 2nd and 3rd respondents to grant the applications for permits and (3) restraining them from granting permits to others than the petitioners in respect of copper covered by their contracts with importers.

The application was opposed by the respondents, their main contention being that cls. 3 and 4 of the Order and the "principles" specified are laws which impose reasonable restrictions on the exercise of rights conferred by Arts. 19(1)(f) and 19(1)(g) in the interest of the general public.

While this was the main contention on behalf of the respondents, it was also contended that as the petitioners have not challenged the validity of the Essential Commodities Act and have admitted the

power of the Central Government to make an order in exercise of the powers conferred by s. 3 of the Act it is not open to the Court to consider whether the law made by the Government in making the non-ferrous metal control order and in specifying the principles under cl. 4 of the order violates any of the fundamental rights under the Constitution. It is urged that once it is found that the Government has power under a valid law to provide for regulating or prohibiting the production, supply and distribution of an essential commodity and trade and commerce therein as soon as it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of the essential commodity or for securing its equitable distribution and availability at fair prices, the order made by them can be attacked only if it is outside the power granted by the section or if it is *mala fide*. *Mala fides* have not been suggested and we are proceeding on the assumption that the Central Government was honestly of opinion that it was necessary and expedient to make an order providing for regulation and prohibition of the supply and distribution of imported copper and trade and commerce therein. So long as the Order does not go beyond such provisions, the Order, it is urged, must be held to be good and the consideration of any question of infringement of fundamental rights under the Constitution is wholly beside the point. Such an extravagant argument has merely to be mentioned to deserve rejection. If there was any reason to think that s. 3 of the Act confers on the Central Government power to do anything which is in conflict with the Constitution—anything which violates any of the fundamental rights conferred by the Constitution, that fact alone would be sufficient and unassailable ground for holding that the section itself is void being *ultra vires* the Constitution. When, as in this case, no challenge is made that s. 3 of the Act is *ultra vires* the Constitution, it is on the assumption that the powers granted thereby do not violate the Constitution and do not empower the Central Government to do anything which the Constitution prohibits. It is fair and proper to presume that

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in passing this Act the Parliament could not possibly have intended the words used by it, viz., "may by order provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce in," to include a power to make such provisions even though they may be in contravention of the Constitution. The fact that the words "in accordance with the provisions of the articles of the Constitution" are not used in the section is of no consequence. Such words have to be read by necessary implication in every provision and every law made by the Parliament on any day after the Constitution came into force. It is clear therefore that when s. 3 confers power to provide for regulation or prohibition of the production, supply and distribution of any essential commodity it gives such power to make any regulation or prohibition in so far as such regulation and prohibition do not violate any fundamental rights granted by the Constitution of India.

It is therefore necessary for us to consider, even though *mala fides* on the part of the Government are not alleged, whether the law made by the Central Government by way of subordinate legislation, is a law, which though abridging or taking away the rights conferred by Art. 19(1)(f) and (g), is within the saving provisions of 19(5) and 19(6). On the face of it cl. 4 of the Order read with the principles specified in the letter of the 18th April has the effect of completely eliminating the dealers from the trade in imported copper. It is also reasonably clear that independently of cl. 4 read with the principles, the fixation of the price at which the copper can be bought and sold at 3½% above the landed cost has the effect of driving the dealer out of business in imported copper. The statement made on behalf of the Union of India in paragraph 11 of the counter affidavit that an addition of 3½% of the landed cost was made in fixing the price in para. 3 of the Order in order to enable the importers to earn a margin of profit justifies the conclusion that this will be the minimum price at which the importers will sell. Any dealer would have thus to pay at the rate of landed cost plus 3½% thereof in getting any

supply of copper from the importers. Such dealer is however prevented from charging from his customer anything more than the landed cost plus 3½% thereof. The position therefore clearly is that henceforth any actual consumer of the commodity would have to get it direct from the importer and the channel of distribution through the dealer would disappear.

In deciding whether this total elimination of dealer from trade in imported copper is within the saving provisions of Art. 19(5) and Art. 19(6) we have first to consider the question whether such total elimination is a mere restriction on the rights under Arts. 19(1)(f) and 19(1)(g) or goes beyond "restriction."

On behalf of the petitioners it has been urged that the prohibition of the exercise of a right must be distinguished from restriction on the exercise of a right, and when the Constitution speaks of laws imposing reasonable restrictions on the exercise of rights it does not save laws which prohibit the exercise of any such right. It is urged that the total elimination of the dealer amounting as it will to prohibition of any exercise of the right to carry on trade or to acquire property would therefore be in any case outside the saving provisions of cls. 5 and 6 of Art. 19.

Certain observations made by Kania, C. J., and S. R. Das, J. (as he then was) in *Gopalan's Case* (1) appear at first sight to lend support to this argument. At p. 106 of the Report, Kania, C. J., after pointing out that the deprivation of personal liberty has not the same meaning as restriction of free movement in the territory of India observed :—"Therefore Art. 19(5) cannot apply to a substantive law depriving a citizen of personal liberty. I am unable to accept the contention that the word "deprivation" includes within its scope "restriction" when interpreting article 21".

Das, J., at p. 301 of the Report, says :—

> "Clause (5) of Art. 19, qualifies sub-clause (d) of clause (1) which should, therefore, be read in the light of cl. (5). The last mentioned clause permits the State to impose reasonable restrictions on the

(1) [1950] S.C.R. 88.

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exercise of the right of free movement throughout the territory of India as explained above. Imposition of reasonable restrictions clearly implies that the right of free movement is not entirely destroyed but that parts of the right remain."

It has to be noticed, however, that these observations were made in the context of an argument of conflict between Art. 19(5) and Art. 21 of the Constitution and could not have been intended for general application.

It is worth noticing that in the same year when in *Chintaman Rao* v. *The State of Madhya Pradesh* (1) the constitutionality of the Central Provinces and Berar Regulation of Manufacture of Bidis (Agricultural Purposes) Act, came up for consideration, Mahajan, J., delivering the judgment of the Court, after pointing out that the question was whether the total prohibition of carrying on the business of manufacture of bidis within the agricultural season amounted to a reasonable restriction of the fundamental rights mentioned in Art. 19(1)(g) of the Constitution, based his decision that the impugned law did not come within the saving provisions of Art. 19(6) of the Constitution on the view that the test of reasonableness was not satisfied and not on a view that "prohibition" went beyond "restriction". At p. 764 of the Report the learned Judge says:

> "The effect of the provisions of the Act, however, has no reasonable relation to the object in view but is so drastic in scope that it goes much in excess of that object. Not only are the provisions of the statute in excess of the requirements of the case but the language employed prohibits a manufacturer of bidis from employing any person in his business, no matter wherever that person may be residing. In other words, a manufacturer of bidis residing in this area cannot import labour from neighbouring places in the district or province or from outside the province. Such a prohibition on the face of it is of an arbitrary nature inasmuch as it has no relation whatsoever to the object which the legislation seeks

(1) [1950] S.C.R. 759.

to achieve and as such cannot be said to be a reasonable restriction on the exercise of the right."

The law was struck down because the restriction in this case amounting to prohibition was not reasonable and not because it was a prohibition.

In *Saghir Ahamad's Case* (1) and in *Chamarbaugwala's Case* (2) the question whether prohibition of the exercise of a right was within the meaning of restrictions on the exercise of a right used in cl. 6 was raised but the Court decided to express no final opinion in the matter and left the question open. In *Cooverjee's Case* (3) the Court extended the provisions of cl. 6 of Art. 19 to a law which had the effect of prohibiting the exercise of a right to carry on trade to many citizens. Mahajan, J., delivering the judgment of the Court observed :

> "In order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. It can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business, is, therefore, an important factor in deciding the reasonableness of the restrictions."

In *Madhya Bharat Cotton Association Ltd.* (4), the Court had to consider the constitutionality of an order which in effect prohibited a large section of traders, from carrying on their normal trade in forward contracts. In holding the order to be valid, Bose, J., delivering the judgment of the Court said "Cotton being a commodity essential to the life of the community, it is reasonable to have restrictions which may, in certain

(1) [1955] 1 S.C.R. 707.
(2) [1957] S.C.R. 874.
(3) [1954] S.C.R. 873, 879.
(4) A.I.R. 1954 S.C. 634.

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circumstances, extend to total prohibition for a time, of all normal trading in the commodity."

It is clear that in these three cases, *viz.*, *Chintaman Rao's Case* (1), *Cooverjee's Case* (2) and *Madhya Bharat Cotton Association Ltd. Case* (3) the Court considered the real question to be whether the interference with the fundamental right, was "reasonable" or not in the interests of the general public and that if the answer to the question was in the affirmative, the law would be valid and it would be invalid if the test of reasonableness was not passed. Prohibition was in all these cases treated as only a kind of "restriction". Any other view would, in our opinion, defeat the intention of the Constitution.

After Art. 19(1) has conferred on the citizen the several rights set out in its seven sub-clauses, action is at once taken by the Constitution in cls. 2 to 6 to keep the way of social control free from unreasonable impediment. The raison d'etre of a State being the welfare of the members of the State by suitable legislation and appropriate administration, the whole purpose of the creation of the State would be frustrated if the conferment of these seven rights would result in cessation of legislation in the extensive fields where these seven rights operate. But without the saving provisions that would be the exact result of Art. 13 of the Constitution. It was to guard against this position that the Constitution provided in its cls. 2 to 6 that even in the fields of these rights new laws might be made and old laws would operate where this was necessary for general welfare. Laws imposing reasonable restriction on the exercise of the rights are saved by cl. 2 in respect of rights under sub-cl. (a) where the restrictions are "in the interests of the security of the State;" and of other matters mentioned therein; by cl. 3 in respect of the rights conferred by sub-cl. (b) where the restrictions are "in the interests of the public order; by cls. 4, 5 and 6 in respect of the rights conferred by sub-cls. (c), (d), (e), (f) & (g) the restrictions are "in the interest of the general public"—in cl. 5 which is in respect of rights conferred by sub-cls. (d),

(1) [1950] S.C.R. 759. (2) [1954] 873, 879.
(3) A.I.R. 1954 S.C. 634.

(e) & (f) also where the restrictions are "for the protection of the interests of any scheduled tribe". But for these saving provisions such laws would have been void because of Art. 13, which is in these words:— "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void; (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void . . . "

As it was to remedy the harm that would otherwise be caused by the provisions of Art. 13, that these saving provisions were made, it is proper to remember the words of Art. 13 in interpreting the words "reasonable restrictions" on the exercise of the right as used in cl. (2). It is reasonable to think that the makers of the Constitution considered the word "restriction" to be sufficiently wide to save laws "inconsistent" with Art. 19(1), or "taking away the rights" conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt therefore that they intended the word "restriction" to include cases of "prohibition" also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot therefore be accepted. It is undoubtedly correct, however, that when, as in the present case, the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court.

In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, to the beneficial effect reasonably expected to

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result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public.

The position of the copper trade at the end of March, 1958, within two days of which the impugned order was made is fairly clear. Copper is so largely required by the industries in India for producing various consumer's goods and also sheets and other articles which are needed as raw material in other industries that the position that it is an essential commodity cannot be and has not been disputed. The quantity of copper produced in India is so small as compared with the normal needs of the Industry that for many years the Industry had to depend on imports from abroad. It was apparently because of the importance of this metal for the industries in India that copper was kept for a long time in the Open General List and free import was permitted. When however the foreign exchange position of the country deteriorated and it was felt necessary in the larger interests of the country to conserve foreign exchange as much as possible copper was excluded from the Open General List from July 1, 1957, and it became necessary to obtain a licence before copper could be imported. During the period July to September 1957 licences were granted to both established importers of coppers as also to actual users not being established importers. During the period October 1957 to March 1958, licences were granted to established importers only. Whatever the motive of such exclusion of actual users might have been, the result was disastrous. Having a practical monopoly of this imported commodity a handful of importers was in a position to dictate terms to consumers and by March 1958 the price of copper in India per ton was Rs. 3,477 as against the international price of Rs. 2,221. It is not disputed that result of the abuse by the importers of the practical monopoly given to them of the copper market seriously affected the interests of the general public in India. Nor is it disputed that it was in an honest effort to protect these interests of the public that the

impugned legislation in the form of Non-ferrous Metal Control Order and the subsequent specification of principles was made.

The first evil sought to be remedied by the law being thus the rise in price—which was bound to be reflected in the higher price of the consumers' goods in the production of which copper formed a major ingredient —an order controlling the price would of course be the first obvious step for fighting this evil. Experience has shown however that if nothing else is done it is practically impossible to make the control of price effective. The essential subsidiary step therefore was to introduce a system of permits so that the persons acquiring copper could be known. A system of permits would also be of great help in ensuring that the raw material would go to those industries where it was needed most and distributed in such quantities to several industries in different parts of the country as would procure the greatest benefit to the general public. Clause 3 of the Order fixes a price while cl. 4 introduces a system of permits for the acquisition of the material. Some fixation of price, being essential to keep prices within reasonable limits, must therefore be held to be a reasonable restriction in the interests of the general public. Was it necessary, however, that the prices should be fixed in such a manner as to eliminate the dealer completely, as has been done in the instant case? The introduction of a system of permits was also clearly necessary in the interests of the general public. Was it necessary however to specify the principles that would drive the dealer out of business? These questions require careful consideration, for the injury inflicted on the dealer by such elimination is very great and in spite of the presumption of Constitutionality that attaches to every law the Court ought to examine with special care laws which result, as in the present case, in total restraint of rights conferred by the Constitution.

That middleman's profits increase the price of goods which the consumer has to pay is axiomatic. It is entirely wrong to think that the middleman gets his profits for nothing and one has to remember that the

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middleman by forming the distribution channel between the producers and consumers relieves the producers of the burden of storing goods for a length of time and the risk attendant thereto and relieves the consumers of the trouble and expense of going to the producer who may be and often is a long distance away. It is however in the very nature of things that the middleman has to charge not only as regards the interest on the capital invested by him, and a reasonable remuneration for mangement but also in respect of the risks undertaken by him—what the economists call the "entrepreneur's risk." These charges often add to a considerable sum. It has therefore been the endeavour at least in modern times for those responsible for social control to keep middlemen's activities to the minimum and to replace them largely by co-operative sale societies of producers and co-operative purchase societies of the consumers. While it is clear that the middleman does perform important services, it is equally clear that the interests of the public would be best secured if these services could be obtained at a price lower than what the middleman would ordinarily charge. If the middleman ceases to function because of the fixation of price at landed cost plus $3\frac{1}{2}\%$, the manufacturers who require copper as their raw material will have to establish contacts with importers. This will mean some trouble and inconvenience to them but it is reasonable to think that the saving in the cost of obtaining the raw material would more than compensate them for this. The lower cost of the raw material is also likely to be reflected—in a competitive market—in the lower price of the consumer's goods, of which copper is a raw material, and thus redound to the benefit of the general public.

It must therefore be held that cl. 3 of the Order even though it results in the elimination of the dealer from the trade is a reasonable restriction in the interests of the general public. Clause 4 read with the principles specified must also be held for the same reason to be a reasonable restriction.

It was next urged that these principles are discriminatory as between manufacturers and dealers and so

violate Art. 14 of the Constitution. Quite clearly the dealers and manufacturers are by these principles placed in different classes and while some manufacturers are eligible for permits dealers are not. It is equally clear however from what has already been said about that the differentia which distinguish dealers as a class from manufacturers placed in the other class have a reasonable connection with the object of the legislation. There is therefore no substance in the contention that the specification of the principles violates Art. 14 of the Constitution.

While however cl. 3 of the Order is clearly within the Act, the question whether cl. 4 read with the principles is within the Act or not is not free from difficulty. If the principles had been specified in the Order itself and/or had been notified in the Official Gazette and laid before both the Houses of Parliament in the manner indicated in sub-ss. (5) and (6) of s. 3 of the Act, the regulation by cl. 4 would have been within the Act. These principles were not however mentioned in the Order nor were they notified or laid before both Houses of Parliament in the manner laid down in sub-ss. (5) and (6) of s. 3. The regulation in so far as it is by these principles is therefore not a regulation by an order under s. 3 of the Act but wholly outside it and so would not come within the protection of the saving provisions of cls. 5 and 6 of Art. 19 of the Constitution.

But without the principles, cl. 4 of the Order is not effective. The system of permits which this clause is designed to introduce can come into existence only if the permits can be issued; but permits can be issued only in accordance with the principles laid down by the Central Government. It is not possible to build on the use of the words "may specify" in cl. 4 an argument that so long as no principles are specified the Controller would have authority to issue permits by exercise of his own judgment and discretion. The words used in cl. 4 do not permit such a construction and compel the conclusion that so long as the principles are not specified by the Central Government no permit can be issued by the Controller. Enforcement of the provision that no person shall acquire or agree

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to acquire except under a permit, would thus, so long as the principles are not specified in a legal manner as required by sub-ss. (5) and (6) of s. 3 of the Essential Commodities Act, would mean a total stoppage of the copper trade—not only of the transactions of dealers but of any transaction whatever in imported copper. On the face of it this could not be a reasonable restriction in the interests of the general public. There is no escape therefore from the conclusion that so long as principles are not specified by the Central Government by an Order notified in accordance with sub-s. (5) and laid before both Houses of Parliament in accordance with sub-s. 6 of s. 3 the regulation by cl. 4 as it is now worded is not within the saving provisions of Arts. 19(5) and 19(6) of the Constitution, and is void as taking away the rights conferred by Arts. 19(1)(f) and 19(1)(g).

All that is necessary to make cl. 4 effective is that some principles should be specified, and these notified in the Gazette and laid before the Houses of Parliament. It may be necessary from time to time to specify new principles in view of the changed circumstances; these have again to be notified in the Gazette and laid before the Houses of Parliament, in order to be effective. So long as new principles do not come into operation, by being specified by Government, and thereafter notified in the Gazette and laid before Houses of Parliament, the previous principles last specified, notified in the Gazette and laid before Houses of Parliament, will remain effective. As, however, the principles specified in the letter of the 18th April have not been notified in the Gazette, nor laid before Houses of Parliament, and no principles appear to have been specified before or after that date, cl. 4 of the order, as it now stands, must be struck down as void.

The petitioners are therefore entitled to relief only in respect of cl. 4 of the order. We direct that an order be issued restraining the respondents from enforcing cl. 4 of the Non-ferrous Metal Control Order, so long as principles in accordance with law, are not published in the Official Gazette and laid before the

Houses of Parliament in accordance with sub-s. (5) and sub-s. (6) of s. 3 of the Essential Commodities Act.

As the petition has succeeded in part and failed in part, we order that the parties will bear their own costs.

Petition partly allowed.

RATHOD BHIMJIBHAI MASRUBHAI RAJPUT AND ANOTHER

v.

THE STATE OF BOMBAY AND OTHERS

(S. K. DAS, J. L. KAPUR and A. K. SARKAR, JJ.)

Taluqdari Tenure—Abolition of—"Lal-liti" lands—Liability for land revenue—Taluqdari lands—Taluqdari Estate—Bombay Land Revenue Code, 1879 (Bom. V of 1879), s. 136(1)—Gujrat Taluqdars' Act, 1888 (Bom. VI of 1888), ss. 4, 5, 22, 31—Bombay Taluqdari Tenure Abolition Act, 1949 (Bom. LXII of 1949), ss. 2(3), (4), 3, 5(1)(a),(b), 5(2)(a) 17(c).

The appellants who were holders of certain lands known as "Lal-liti" lands were assessed to land revenue under the provisions of the Bombay Land Revenue Code, 1879, after the Bombay Taluqdari Tenure Abolition Act, 1949, came into force. "Lal-liti" lands were granted originally by Taluqdars in Gujrat to cadets, widows of the family and relations for maintenance and to village servants and others, either in reward for past services or as remuneration for services to be performed. Before the establishment of British rule, Taluqdars had the position of semi-independent chiefs, but subsequent to the establishment of British rule they became mere owners of proprietary estates holding lands directly from Government, and in respect of such estates the Gujrat Taluqdars' Act, 1888, was passed providing for their revenue administration. The appellants claimed that these lands had been enjoyed without payment of any "jama" since pre-British times and that the exemption from payment of land revenue was not affected by the Bombay Taluqdari Tenure Abolition Act, 1949. The High Court took the view that the lands were liable to be assessed under s. 5 of that Act. It was contended for the appellants, *inter alia*, that no liability for payment of land revenue in respect of "Lal-liti" lands could arise under s. 5 of the Act, because (1) the Taluqdar retained no interest in such lands after the grant and, consequently, such lands were not taluqdari lands within the meaning of s. 2(3) of the Act, (2) clause (a) of s. 5(1) of the Act was merely declaratory,