

Prag Ice And Oil Mills And Anr. Etc. Etc. vs Union Of India (Uoi) [Alongwith Writ ... on 21 February, 1978

**Equivalent citations: AIR1978SC1296, 1978CRILJ1281A, (1978)3SCC459,
[1978]3SCR293**

Author: Y.V. Chandrachud

Bench: M.H. Beg, Y.V. Chandrachud, P.N. Bhagwati, S. Murtaza Fazal Ali, P.N. Shinghal, Jaswant Singh, D.A. Desai

ORDER

New Delhi, the 30th September, 1977. S. O. WHEREAS the Central Government is of opinion

NOW, THEREFORE, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1947, the Central Government hereby orders as follows:

1. Short title, extent and commencement. --(1) This order may be called the Mustard Oil Control Order, 1977.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. Definition:--In this Order, "dealer" means a person engaged in the business of the purchase or sale of mustard oil.

3. Price at which a dealer may sell. No dealer shall, either by himself or by any person acting through him, sell mustard oil at a price higher than the maximum price fixed by the Government.

Sd/-

(T. Balakrishnan),

Joint Secretary to the Govt. of

India

(File No. 26 (16)/77-ECR)"

2. The Control Order was passed in exercise of the powers conferred upon the Central Government by the Essential Commodities Act, 1947.

"Section 3 (1) If the Central Government is of opinion that it is necessary or expedient in the public interest to regulate the supply of, or the price of, any essential commodity, it may, by order, make such regulations as it may think fit for the purpose of securing the availability of such commodity at reasonable prices."

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), an order may be made—
(a) xxx xxx xxx (b) xxx xxx xxx

(c) for controlling the price at which any essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution or sale of any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept in stock;

(f) for requiring any person holding in stock, or engaged in the production, or in the business of selling, any essential commodity, to—

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him;

(b) in the case of any such commodity which is likely to be produced or received by him, to sell such part of the quantity as may be specified in the order.

Explanation 1. -- An order made under this clause in relation to foodgrains, edible oils and other essential commodities, may be made in relation to the whole or any part of the quantity held in stock or produced or received by him.

Explanation 2. -- For the purpose of this clause, "production" with its grammatical variations, includes the process of manufacturing, processing, refining, or any other process which results in the production of any essential commodity.

We are not concerned here with other provisions of Section 3 (2).

3. Section 3 (3), which will be relevant for the purposes of interpretation, runs as follows:—

"3 (3) Where any person sells any essential commodity in compliance with an order made under sub-section (1), the price at which such commodity is sold shall be—

(a) Where the price can, consistently with the controlled price, if any, fixed under this order, be ascertained, that price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any, fixed under this order;

(c) Where neither Clause (a) nor Clause (b) applies, the price calculated at the market price at the time of sale.

Again, Sub-section (3-A) lays down:

"(3A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the price of any essential commodity, it may, by order, direct that the price of such commodity shall be fixed at such level as may be specified in the order.

(ii) Any notification issued under this subsection shall remain in force for such period as may be specified in the order.

(iii) Where, after the issue of a notification under this sub-section, any person sells

(a) where the price can, consistently with the controlled price of the foodstuff, if any

(b) where no such agreement can be reached, the price calculated with reference to the c

(c) where neither Clause (a) nor Clause (b) applies, the price calculated with reference

(iv) For the purpose of Sub-clause (c) of Clause (iii), the average market rate prevaili

4. Additional Sub-sections (3B) and (3C) will also require consideration in order to arr

"(3B) Where any person is required, by an order made with reference to Clause (f) of Sub

(a) the controlled price, if any, fixed under this section or by or under any other law

(b) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible o

(d) the recommendations, if any, of the agricultural prices commission with regard to th

(3C) Where any producer is required by an order made with reference to Clause (f) of Sub

(a) the minimum price, if any, fixed for sugarcane by the Central Government under this

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

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- (a) the authorized controller shall exercise his functions in accordance with any instru
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- 3(6) Every order made under this section by the Central Government or by any officer or
6. It has also to be remembered that it the mechanism of price control of some essential
7. The petitioners assail the control order on four grounds: firstly, that it violates t
8. We need not consider Article 301 of the Constitution as the petitions do not, beyond
"Parliament may by law impose such restrictions on the freedom of trade, commerce or i
9. Although, Article 302 does not speak of "reasonable" restrictions, yet, it is evident
10. It was, however, vehemently urged on behalf of the petitioners that the Control Order
"31B. Validation of certain Acts and Regulations.-- Without prejudice to the generalit
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32. It will be seen from the provisions of Section 3 (3) of the Act that price fixation

33. The cases cited before us on price control relate to the sphere in which the criteri

"Two principal questions arise in these appeals : (1) what is the true interpretation

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34. In Meenakshi Mills' case (supra), Ray, C. J., disapproved of the decision of this C

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The guiding factors laid down in Clause (7) of the Sugar Control Order, 1966, were held

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Citing Reference:

Discussed

Hari Shankar Bagla v. State of Madhya Pradesh

Godavari Sugar Mills Ltd. v. S.B. Kamble	***
Latafat Ali Khan v. State of U. P.	***
Panipat Cooperative Sugar Mills v. Union of India	***
Shree Meenakshi Mills Ltd. v. Union of India	***
Premier Automobiles Ltd. v. Union of India	***
Saraswati Industrial Syndicate Ltd. v. Union of India	***
Leo Nebbia v. People of the State of New York, (1933) 291 US 502 : 78 L Ed 940	***
Shri Hari Kishan Bagla v. State of Madhya Pradesh	***
Shree Meenakshi Mills Ltd. v. Union of India	***
Vasantlal Maganbhai Sanjanwala v. The State of Bombay and Ors.	***
State of Gujarat v. Shri Ambica Mills Ltd.	***
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K. C. Gajapati Narayan Deo and Ors. v. The State of Orissa	***
Joseph Beaubarnais v. People of the State of Hmnois96 Lawyers 'Edition 919	***
Metropolis Theater Co. v. City of Chicago 57 Lawyers' Edition 730	***

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1. The ninety-one writ petitions before us for delivery of our reasons in support of our

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44. Y. V. CHANDRACHUD, P. N. BHAGWATI, S. MURTAZA FAZAL ALI, P. N. SHINGHAL AND JASWANT

45. We will give our reasons later since as at present advised, with great respect, we a

(Dated May 5, 1978)

Y.V. Chandrachud, C.J.

46. On September 30, 1977, the Government of India in its Ministry of Civil Supplies and Cooperation issued the Mustard Oil (Price Control) Order 1977, in exercise of the power conferred by Section 3 of the Essential Commodities Act, 10 of 1955. The Price Control Order provides by Clause 3 that no dealer shall either by himself or by any person on his behalf sell or offer to sell any mustard oil at a retail price exceeding Rs. 10/- per kilogram, exclusive of the cost of container but inclusive of taxes. Clause 2 defines a 'dealer' to mean a person engaged in the business of purchase, sale, or storage for sale of mustard oil.

47. The Price Control Order was challenged in this Court by several dealers on the ground, mainly that it violates Articles 14, 19(1)(f) and 19(1)(g) of the Constitution. Article 301 was cited but not

argued upon with any seriousness.

48. The argument that the Price Control Order offends against the right to property and the right to carry on trade or business requires for its appreciation and decision the awareness that by the 40th Amendment passed in 1976, the Essential Commodities Act was placed in the Ninth Schedule to the Constitution as item 125. One of the main contentions of the Union Government in answer to the petitioners' challenge to the constitutionality of the Price Control Order is that " since the Act, by reason of its being placed in the Ninth Schedule, is immune from attack on the ground that its provisions violate the fundamental rights guaranteed by Part III of the Constitution, the Price Control Order which is but a creature of the Act must enjoy the same immunity. This contention has found favour with the learned Chief Justice, Shri M. H. Beg but, with respect, we are unable to share his view.

49. Article 31A of the Constitution saves laws which provide for matters mentioned in Clauses (a) to (e) thereof from a challenge under Articles 14, 19 or 31 notwithstanding anything contained in Article 13 of the Constitution. Article 31A which was introduced by the Constitution (First Amendment) Act, 1951, validates certain Acts and Regulations providing that without prejudice to the generality of the provisions contained in Article 31A, "none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof" shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of Part III. On a plain reading of this article it seems to us impossible to accept that the protective umbrella of the Ninth Schedule takes in its everwidening wings not only the Acts and Regulations specified therein but also Orders and Notifications issued under those Acts and Regulations. Article 31B constitutes a grave encroachment on fundamental rights and doubtless as it may seem that it is inspired by a radiant social philosophy, it must be construed as strictly as one may, for the simple reason that the guarantee of fundamental rights cannot be permitted to be diluted by implications and inferences. An express provision of the Constitution which prescribes the extent to which a challenge to the constitutionality of a law is excluded, must be construed as demarcating the farthest limit of exclusion. Considering the nature of the subject-matter which Article 31B deals with, there is, in our opinion, no justification for extending by judicial interpretation the frontiers of the field which is declared by that article to be immune from challenge on the ground of violation or abridgement of fundamental rights. The article affords protection to Acts and Regulations specified in the Ninth Schedule. Therefore, whenever a challenge to the constitutionality of a provision of law on the ground that it violates any of the fundamental rights conferred by Part III is sought to be repelled by the State on the plea that the law is placed in the Ninth Schedule, the narrow question to which one must address oneself is whether the impugned law is specified in that Schedule. If it is, the provisions of Article 31B would be attracted and the challenge would fail without any further inquiry. On the other hand, if the law is not specified in the Ninth Schedule, the validity of the challenge has to be examined in order to determine whether the provisions thereof invade in any manner any of the fundamental rights conferred by Part III. It is then no answer to say that though the particular law, as for example a Control Order, is not specified in the Ninth Schedule, the parent Act under which the Order is issued is specified in that Schedule.

50. The Mustard Oil (Price Control) Order, 1977; was passed Under Section 3 of the Essential Commodities Act, 1955, which by the relevant part of its Sub-section (1) empowers the Central Government to provide by an order for regulating or prohibiting the production, supply and distribution of an essential commodity Or trade and commerce therein, if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing its equitable distribution and availability at a fair price. Since the Act of 1955 has been placed in the Ninth Schedule, none of its provisions, including of course Section 3(1), is open to attack on the ground that it ever was or is inconsistent with or takes away or abridges any of the rights conferred by any provision of Part III of the Constitution. But that is the farthest that the immunity offered by Article 31B can go. In other words, speaking of a provision directly in point, Section 3(1) of the Act of 1955 is not open to 'challenge on the ground, to take a relevant instance, that it violates the guarantee contained in Article 19(1)(f) or 19(1)(g) of the Constitution. But there is no justification for extending the protection of that immunity to an Order passed Under Section 3 of the Act like the Mustard Oil (Price Control) Order. Extending the benefit of the protection afforded by Article 31B to any action taken under an Act or Regulation which is specified in the Ninth Schedule, appears to us to be an unwarranted extension of the provisions contained in Article 31B, neither justified by its language nor by the policy or principle underlying it. When a particular Act or Regulation is placed in the Ninth Schedule, the Parliament may be assumed to have applied its mind to the provisions of the particular Act or Regulation and to the desirability, propriety or necessity of placing it in the Ninth Schedule in order to obviate a possible challenge to its provisions on the ground that they offend against the provisions of Part III. Such an assumption cannot, in the very nature of things, be made in the case of an Order issued by the Government under an Act or regulation which is placed in the Ninth Schedule. The fundamental rights will be eroded of their significant content if by judicial interpretation a constitutional immunity is extended to Orders the validity of which the Parliament at least theoretically, has had no opportunity to apply its mind. Such an extension takes for granted the supposition that the authorities on whom power is conferred to take appropriate action under a statute will act both within the framework of the statute and within the permissible constitutional limitations, a supposition which past experience does not justify and to some extent falsifies. In fact, the upholding of laws by the application of the theory of derivative immunity is foreign to the scheme of our Constitution and accordingly orders and Notifications issued under Acts and Regulations which are specified in the Ninth Schedule must meet the challenge that they offend against the provisions of Part III of the Constitution. The immunity enjoyed by the parent Act by reason of its being placed in the Ninth Schedule cannot proprio vigore be extended to an offspring of the Act like a Price Control Order issued under the authority of the Act. It is therefore open to the petitioners to invoke the writ jurisdiction of this Court for determination of the question whether the provisions of the Price Control Order violate Articles 14, 19(1)(f) and 19(1)(g) of the Constitution.

51. The learned Solicitor General relies, justifiably, on two decisions of this Court in *Vasantlal Maganbhai Sanjanwala v. The State of Bombay and Ors.*, and *Latafat Ali Khan and Ors. v. The State of U.P.O.*, in support of his argument that the Price Control Order must receive the protection of the Ninth Schedule to the same extent as the Essential Commodities Act under which that order was issued and which has been placed in the Ninth Schedule. In *Vasantlal Maganbhai* [1971] Supp. S.C.R. 719, the view of Section 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, was

challenged on the ground that it suffered from the vice of excessive delegation. In exercise of the power conferred by Section 6(2), the State Government had issued a Notification fixing the maximum rent payable by tenants of lands situated in the areas specified in the schedule appended to the Notification. The validity of that Notification was challenged on the ground that it offended against Article 31 of the Constitution. The first contention was rejected by the majority which held that Section 6(2) did not suffer from excessive delegation. On the second question it was held by the Court that since the Bombay Tenancy Act was placed in the Ninth Schedule, the Notification which was issued Under Section 6(2) of that Act could not be challenged on the ground that it violated Article 31. Subba Rao J., who was in minority, did not consider the latter point regarding the validity of the Notification issued Under Section 6(2) because he took the view that Section 6(2) suffered from the vice of excessive delegation and was therefore unconstitutional. This decision undoubtedly lends support to the contention of the Union Government that if an Act or Regulation is specified in the Ninth Schedule, any order or notification issued under it would equally be entitled to the protection of that Schedule. We are, however, of the opinion, respectfully, that the decision in *Vasantlal Maganbhai (supra)* does not reflect the true legal position which, according to us, is that the immunity enjoyed by an Act placed in the Ninth Schedule cannot be extended to an order or notification issued under it. The decision of the Court appears to have been influenced largely by the consideration that the only argument advanced against the validity of the notification was that in substance it amended the provisions of Section 6(1) and was therefore a fresh legislation to which Article 31B could not apply. The Court rejected that argument and held that if Section 6(2) was valid, the exercise of the power validly conferred on the Provincial Government could not be treated as a fresh legislation.

52. The decision in *Latajat Ali Khan (supra)* contains no reasons beyond the bare statement that "if a statutory rule is within the powers conferred by a section of a statute protected by Article 31B, it is difficult to say that the rule must further be scrutinised under Articles 14, 19, etc.". It is clear from the judgment that since the Court was of the opinion that "at any rate" the impugned provisions of U.P. Imposition of Ceiling on Land Holdings Act and the Rules were part of a scheme of land reform and were therefore protected from attack under Article 31A of the Constitution, it did not think it necessary to examine the question whether statutory rules framed under the Act which was placed in the Ninth Schedule would enjoy the same immunity.

53. The decision of this Court in *Godavari Sugar Mills Ltd. and Ors. v. S.B. Kumble and Ors.* appears to us to be in point and it supports the petitioners' contention that the benefit of Article 31B of the Constitution cannot be extended to an order or notification issued under an Act which is placed in the Ninth Schedule. The Bombay High Court while affording protection of Article 31B to the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961, which was included in the Ninth Schedule, also granted the benefit of that protection to the later Amending Acts of 1968, 1969 and 1970 on the ground that they were only ancillary or incidental to Section 58 of the Principal Act. That view was rejected by this Court on the ground that if the protection afforded under Article 31B is extended to amendments made to an Act or Regulation subsequent to its inclusion in the Ninth Schedule, the result would be that even those provisions would enjoy the protection which were never scrutinised and could not, in the very nature of things, have been scrutinised by the prescribed majority vested with the power of amending the Constitution. That, according to the Court, would be

tantamount to giving a power to the State Legislature to amend the Constitution in such a way as would enlarge the contents of the Ninth Schedule to the Constitution. Khanna, J, who spoke for the Court, observed that "Article 31B carves out a protected zone", that any provision which has the effect of making an inroad into the guarantee of fundamental rights must be construed very strictly and that it is not permissible to the Court to widen the scope of such a provision or to extend the frontiers of the protected zone beyond what is warranted by the language of the provision. In the result, it was held that the entitlement to protection cannot be extended to provisions which were not included in the Ninth Schedule and that this principle would hold good irrespective of the fact whether the provision in regard to which the protection was sought dealt with new, substantive matters or with matters which were merely incidental or ancillary to those already protected. This decision shows unmistakably that the circumstance that a Control Order is a mere creature of the parent Act and is incidental or ancillary to it cannot justify the protection of the Ninth Schedule being extended to it on the ground that the parent Act is incorporated in that Schedule.

54. But having won the battle on a point of law, undoubtedly of public importance, the petitioners have to lose the war of price fixation because there is no substance in their grievance that the Price Control Order offends against Articles 14, 19(1)(f) and 19(1)(g). Taking first the challenge under Article 14 for consideration, the argument is that the impugned Order treats the entire country as one unit regardless of regional variations relating to factors like the cost of procurement of raw material and freight. The contention, in other words, is that the order is over-inclusive since it treats unequals as equals by imposing an identical burden upon a wider range of individuals than those who can legitimately be treated as constituting one single class for the purpose of remedying the mischief at which the law aims. In the first place, the averments in the various Writ Petitions are far too vague and general to justify the application of Article 14. The petitioners have failed to show by acceptable data that they fall into a separate class altogether and cannot therefore be subjected to the restraints of a single order of price fixation. It may be that economic factors governing the mustard oil trade vary from region to region as in the case of any other trade and further, the pattern of the trade may differ in different growing regions and manufacturing center like Uttar Pradesh, Rajasthan, Bihar, West Bengal, Punjab and Orissa. But that by itself cannot justify the argument that different prices must be fixed for different regions and that failure to do so would necessarily entail discrimination. 'Dealers' in Mustard Oil, wherever they operate, can legitimately comprise a single class for the purpose of price fixation, especially as it is undisputed that the two basic constants of the trade are that the cost of mustard seed constitutes 94 per cent of the cost of the mustard oil and that about 3.12 kilograms of seed goes into the extraction of one kilo gram of oil. Fixation of different prices for different regions will, in this background, frustrate the very object of the exercise that an essential commodity should be made available to the consumer at a fair price. Consumer goods have a disconcerting tendency to disappear from regions where prices are lower and they notoriously migrate to areas where higher prices rule. Besides, the grievance of the West Bengal dealers that since they have to import mustard seed from Uttar Pradesh their cost of production is higher than in Uttar Pradesh can be met with the answer that in any event, West Bengal has also to import at least 1/3rd of its total annual requirement of 1.3 lakhs of Metric tones of Mustard Oil. Uttar Pradesh grows 66% of the total production of mustard seed whereas West Bengal grows only 6%. The question really is whether dealers in different regions can be said to be so differently situated in the context of and in relation to the purpose for which the Price Control Order

is issued that one common price for dealers all over the country can reasonably be described as discriminatory as against some of them. As observed earlier, there is no reliable data to support this contention and we cannot accept the charge of over-inclusiveness for the mere reason that dealers in a certain region have to import their raw material from another region. Perhaps, the high rate of turnover and consumption in a region like West Bengal may easily absorb the additional cost of freight. We are therefore unable to hold, to use the language of Mathew J., in *State of Gujarat v. Shri Ambica Mills Ltd.* that the Government of India, infixing one common price for mustard oil for the whole country, has acted like Herod who ordered the death of all male children born on a particular day because one of them would some day bring about his downfall.

55. It is interesting that in matters of price fixation, whichever method the authorities adopt is made the subject-matter of challenge for one reason or another, often conflicting and contradictory. In *Saraswati Industrial Syndicate Ltd. v. Union of India* one of the contentions on behalf of the manufacturers of sugar was that sugar prices should not have been determined on the basis of 22 different zones but should have been determined either on an All-India basis or for a unit of fix zones. That contention was rejected by this Court but the case is an instance of how a division of the country into separate zones for the purpose of fixing the price of an essential commodity does not offer a commonly acceptable solution. It is doubtless that if lower prices were fixed for Uttar Pradesh on the ground that the dealers there were not required to import raw material from outside, a hue and cry would have been raised that the Government of India was victimising the dealers in a particular area for the irrelevant reason that it grew the raw material in abundance. In the ultimate analysis, the mechanics of price fixation has necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of operators, the processual basis of price fixation has to be accepted in the generality of cases as valid.

56. That takes us to the petitioners' contention that the Price Control Order is violative of the petitioners' rights under Articles 19(1)(f) and 19(1)(g) of the Constitution. The case of *M/s. Prag Ice & Oil Mills* who are petitioners in Writ Petition No. 712 of 1977 is as follows :

57. The average cost of production mustard oil, when the Price Control Order was issued, was about Rs. 1351.10p per quintal i.e. Rs. 13.51 per kilogram. Taking into consideration overhead costs and p allowing for a reasonable margin of profit, the fair selling price of mustard oil Would come to Rs. 14.01 per kilogram at the factory gate. Petitioners, being wholesalers, sell their goods to other wholesalers and retailers some of whom have to transport the goods at considerable distances from the petitioners' factory. Under the impugned Order the price of mustard oil is fixed at Rs. 10/- per kilogram which means that the petitioners have to sell the goods to the retailer at about Rs. 8.50 per kilogram since the retailer has to provide for a margin of at least Rs. 1.50 per kilogram for his costs and a small profit. Thus the petitioners have to suffer a loss of over Rs. 5/- per kilogram as a result of the Price Control Order. By this method, the petitioners are deprived of their right to acquire and hold their property and carry on their trade or business of extracting, manufacturing and selling mustard oil. The price of Rs. 10/- per kilogram has been fixed, according to the petitioners, arbitrarily and without any application of mind. These allegations contained in the Writ Petition of *M/s. Prag Ice & Oil Mills* may be taken as representing broadly the grievance of the other petitioners who are more or less similarly situated.

58. Those allegations have been traversed by Shri V. Srinivasan, Deputy Secretary to the Ministry of Civil Supplies and Cooperation Government of India, on behalf of the Union Government. Shri Srinivasan has stated in his affidavit that in March 1977, the retail price of mustard oil in several mustard oil consuming centers ranged between Rs. 9.75 and Rs. 10.81 per kilogram. It became necessary to issue the impugned Order in view of the fact that the price of mustard oil was increasing persistently in spite of the fact that the prices of other edible oils were showing a declining trend. The available stocks disappeared from the market suddenly and the Government had to intervene in order to control the distribution of an essential commodity in public interest. The fixation of price in these circumstances was necessarily empirical, for which purpose the Government took into account prices which were prevailing in the market when the goods were freely available, the general level of prices of other edible oils the purchasing power of the consumer and the amount of loss which the industry was able to absorb after it had made huge profits in prosperous years. The affidavit further says that even at Rs. 10/- per kilogram, it was possible for the petitioners to make a small profit but, whether or not the dealers made any profit, the validity of the Price Control Order was not liable to be challenged on the ground that the dealers would incur a loss if they were obliged to sell mustard oil at Rs. 10/- per kilogram. The question as to which was the fair price to the consumer was kept by the Government in the forefront and by that method alone could the dominant object of the Essential Commodities Act be achieved effectively.

59. Shri Srinivasan's affidavit further states that mustard seed is grown mainly in the rabi season, i.e., from September to October and February to March and the peak marketing season is from April to June. The mustard crop is by and large grown by small farmers who have no staying ability and who, in their anxiety to dispose of their produce as quickly as possible after the harvest, sell their produce between April and June. From this it is stated to follow that the millers effect the bulk of their purchases during the first quarter of the year and therefore, the petitioners could not be heard to contend that the price of mustard seed after the coming into force of the impugned Price Control Order should be taken into account for determining the cost which they have to incur in producing mustard oil. The affidavit contains a table showing the prices paid by the millers and the prices received by the farmers for the mustard seed. The fair price of the mustard oil, according to the Government, could be fixed on the basis of weighted average price or the mean price of the mustard seed. But in order not to cause hardship to the dealers, the price was fixed at Rs. 10 per kilogram on the basis of the average of the highest and the lowest of the market prices prevailing during the period of bulk arrivals of the seed in the market, The prices ranging at ten different centers are alleged to have been taken into account, namely, Aligarh, Allahabad, Hapur, Gauhati, Hathras, Jullundur, Kanpur, Moga, Rohtak and Srinagar. Those prices yield a mean price of around Rs. 350/- per quintal of mustard seed and upon that basis the retail price worksout to be less than Rs. 10/- viz., Rs. 9.95 per kilogram.

60. Considering these rival contentions and the data which has been produced before us in support thereof, we are unable to accept the petitioners' submission that the Price Control Order is violative of their rights under Articles 19(1)(f) and 19(1)(g) of the Constitution. In the first place, it is impossible to determine in these Writ Petitions the accuracy of the petitioners' case that they purchase mustard seed from month to month and from week to week as the crushing of the seed progresses. We see no reason to doubt the statement contained in the affidavit filed on behalf of the

Government of India that most of the growers of mustard seed are small agriculturists who have hardly any staying ability and are therefore compelled to sell their produce immediately after the harvesting season, that is to say, between March and June. If the prices of mustard seed prevailing during that period are taken into account, it is difficult to accept that the price of Rs. 10/-per kilogram is so patently unreasonable as to be violative of the petitioners' right to hold property or to do trade/ or business.

61. An argument was repeatedly advanced before us on behalf of the petitioners that it is futile to fix the price of oil without at the same time fixing the ceiling price of the raw material, namely, the mustard seed. This contention is also effectively met by the respondent's plea that the bulk of the purchases are made by the petitioners immediately after the harvesting season and that, considering the pattern of the trade in mustard seed it is wholly unnecessary to control the price of the seed in order effectively to control the price of mustard oil. It is significant that whereas mustard seed was sold in certain areas at prices ranging between Rs. 480/- and Rs. 530/- per quintal in September 1977, prices after the promulgation of the impugned Price Control Order had come down to a range between Rs. 365/-and Rs. 390/- per quintal. This has not been denied by the petitioners but they describe the phenomenon as irrelevant for the purpose of determining the legality of the Price Control Order. Their contention, in which we find no substance, is that the consequence of the Price Control Order cannot be looked at for the purpose of deciding whether the price of mustard oil was fixed in accordance with legally acceptable principles. The proof of pudding, as the saying goes, is in the eating, and no court can shut its eyes to the fact that the Price Control Order produced the salutary and tangible result of bringing down the price of raw material.

62. The basic rule of construction in these matters, as observed in *Vrajlal Manilal & Co. and Ors. v. State of Madhya Pradesh and Ors.* is that a mere literal or mechanical construction is not appropriate where important questions such as the impact of an exercise of a legislative power on constitutional provisions and safeguards thereunder are concerned. In cases of such a kind, two rules of construction have to be kept in mind : (1) that courts generally lean towards the constitutionality of a legislative measure impugned before them upon the presumption that a legislature would not deliberately flout a constitutional safeguard or right, and (2) that while construing such an enactment the court must examine the object and the purpose of the impugned Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning.

63. Section 3(1) of the Essential Commodities Act, 1955, empowers the Central Government to fix the prices of essential commodities if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at a fair price. Sub-section (2)(c) of Section 3 provides that without prejudice to the generality of the power conferred by Sub-section (1), an order made under that Sub-section may provide for controlling the price at which any essential commodity may be bought or sold. The dominant purpose of these provisions is to ensure the availability of essential commodities to the consumers at a fair price. And though patent injustice to the producer is not to be encouraged, a reasonable return on investment or a reasonable rate of profit is not the sine qua non of the validity of action taken in furtherance of the powers conferred by Section 3(1) and Section 3(2)(c) of the Essential Commodities Act. The interest of the consumer has to be kept in the

forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration.

64. We are not impressed by the play of statistics on the part of the petitioners which is designed to show that as a result of the Price Control Order, they are faced with a loss of about Rs. 5/- per kilogram on the sale of mustard oil. We will ignore, while we are on this point, the pronounced reiteration of the respondent that the petitioners have made huge profits in past years and that their concerns are sufficiently prosperous to be able to absorb a small loss for a temporary period. But even in the absence of satisfactory proof of the extent of the profits made by the petitioners in past years, we are of the opinion that the circumstance that the petitioners may have to suffer a loss over a short period immediately following upon the promulgation of the Price Control Order will not render the Order constitutionally invalid. The interplay of economic factors and the laws of demand and supply are bound eventually to have their impact on the pattern of prices prevailing in the market. If the dealer cannot lawfully sell the finished product at more than Rs. 10/- per kilogram, the price of raw material is bound to adjust itself to the price of the product. Subsequent events unmistakably demonstrate the effect of such interplay and the favourable reaction which the Price Control Order has produced on the price of mustard seed. But above all things, it is necessary to bear in mind in matters of the present nature what Krishna Iyer, J., said in *B. Bauerjee v. Anita Pan.* that such provisions have to be viewed through a socially constructive, not legally captious microscope to discover a glaring unconstitutional infirmity, that when laws affecting large chunks of the community are enacted stray misfortunes are inevitable and that social legislation without tears, affecting vested rights, is virtually impossible.

65. Having considered the matter from every possible angle, we are unable to accept the petitioners' contention that the impugned Price Control Order is so unreasonable as to be constitutionally invalid. As observed by Beg J., in *Saraswati Industrial Syndicate*, (supra) it is enough compliance with the constitutional mandate if the basis adopted for price fixation is not shown to be so patently unreasonable as to be in excess of the power to fix the price.

66. Learned counsel for the petitioners expressed the fear that the fixation of an uneconomic price will drive the manufacturers out of the market and thus the very source of supply of an essential commodity will dry up, thereby frustrating the object of the Essential Commodities Act that the consumer must get his basic needs at a fair price. The fallacy of this contention is that immediately prior to the promulgation of the Price Control Order the consumer was denied the chance to get the mustard oil at a price which he could reasonably afford. For him, therefore, the supply had already dried up. If, after the issuance of the order, the supply position shows no improvement, that consequence cannot be legitimately attributed to the operation of the Price Control Order, At best, the Order can then be said to have failed to achieve its purpose.

67. This discussion will not be complete without reference to the decision of a Constitution Bench of this Court in *Shree Meenakshi Mills Ltd. v. Union of India*. The question which arose in that case was as regards the validity of a notification fixing fair prices of cotton yarn. It was contended on behalf of the petitioners therein that the price fixed was arbitrary because the fluctuation in the price of cotton was not taken into consideration; the price of raw materials, the liability for wages and the

necessity for ensuring reasonable profit to the trader were not taken into account; and above everything else, the industry was not ensured a reasonable return on its investment. These contentions were rejected by this Court on the ground that, just as the industry cannot complain of rise and fall of prices due to economic factors in an open market, it cannot similarly complain of some increase in or reduction of prices as a result of a notification issued Under Section 3(1) of the Essential Commodities Act because, such increase or reduction is also based on economic factors. Dealing with the contention that a reasonable profit must be assured to the manufacturers, the Court held that ensuring a fair price to the consumer was the dominant object and purpose of the Essential Commodities Act and that object would be completely lost sight of, if the producer's profit was kept in the fore-front. Ray C.J., speaking for the Court, observed :

In determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable. By its very nature, industry or trade or commerce goes through periods of prosperity and adversity on account of economic and sometimes social and political factors. In a largely free economy when controls have to be introduced to ensure availability of consumer goods like foodstuff, cloth and the like at a fair price, it is an impracticable proposition to require the Government to go through the exercise like that of a Commission to fix the prices.

Another passage from the judgment of the learned Chief Justice which has an important bearing on the instant case is to the following effect:

When available stocks go underground and the Government has to step in to control distribution and availability in public interest, fixing of price can, therefore, be only empirical. Market prices at a time when the goods did not go underground and were freely available, the general rise in prices, the capacity of the consumer specially in case of consumer goods like food-stuff, cloth etc. the amount of loss which the industry is able to absorb after having made huge profits in prosperous years, all these enter into the calculation of a fair price in an emergency created by artificial shortages.

68. On this aspect of the matter, the Court cited with approval a passage from an American decision, *Secretary of Agriculture v. Central Reig Refining Company* 94 Law Ed. 381 to the effect that Courts of Law cannot be converted into tribunals for relief from the crudities and inequities of complicated experimental economic legislation.

69. Counsel for the petitioners relied upon the decisions in *Panipat Cooperative Sugar Mills v. Union of India* A.I.R. 1973 S.C. 536 and *Anakapalle Cooperative Agricultural and Industrial Society Ltd. v. Union of India* in support of their contention that fixation of a price without ensuring a reasonable return to the producers or dealers is unconstitutional. The infirmity of this argument, as pointed out in *Meenakshi Mills v. Union of India*, (supra) is that these two decisions turn on the language of Section 3(3c) of the Essential Commodities Act under which it is statutorily obligatory to ensure to

the industry a reasonable return on the capital employed in the business of manufacturing sugar. These decisions can, therefore, have no application to cases of price fixation Under Section 3(1) read with Section 3(2)(c) of the Act. Cases falling under Sub-sections 3A, 3B and 3C of Section 3 of that Act belong to a different category altogether.

70. It is customary in price fixation cases to cite the oft-quoted decision in Premier Automobiles Ltd. and Anr. etc. v. Union of India [1972] 2 S.C.R. 526 which concerned the fixation of price of motor cars. It is time that it was realized that the decision constitutes no precedent in matters of price fixation and was rendered for reasons peculiar to the particular case. At page 535 of the Report Grover J., who spoke for the Court, stated at the outset of the judgment: "Counsel for all the parties and the learned Attorney General are agreed that irrespective of the technical or legal points that may be involved, we should base our judgment on examination of correct and rational principles and should direct deviation from the report of the Commission which was an expert body presided over by a former judge of a High Court only when it is shown that there has been a departure from established principles or the conclusions of the Commission are shown to be demonstrably wrong or erroneous By an agreement of parties the Court was thus converted into a Tribunal for considering every minute detail relating to price fixation of motor cars. Secondly, as regards the escalation clause, the Court recorded at page 543 that it was not disputed on behalf of the Government, and the Attorney General accepted the position, that a proper method should be devised for escalation or de-escalation. Thirdly, it is clear from page 544 of the Report that the Learned Attorney General also agreed that a reasonable return must be allowed to the manufacturers on their investment. The decision thus proceeded partly on an agreement between the parties and partly. on concessions made at the Bar. That is the reason why the judgment in Premier Automobiles (supra) cannot be treated as a precedent and cannot afford any appreciable assistance in the decision of price fixation cases.

71. The contention that the Price Control Order is arbitrary because it is not limited in point of time is without any merit. In the very nature of things, orders passed Under Section 3(1) read with Section 3(2) of the Essential Commodities Act are designed primarily to meet urgent situations which require prompt and timely attention. If a price control order brings about an improvement in the supply position or if during the period that such an order is in operation there is a fall in prices so as to bring an essential commodity within the reach of the ordinary consumer, the order shall have lost its justification and would in all probability be withdrawn. That in fact is what has happened in the instant case. It appears that the supply position having improved, of so at any rate seems to be the assessment of the situation by the Government, the order has been recently withdrawn.

72. Learned counsel for the petitioners laid great stress on the circumstance that, as is shown by the affidavit filed on behalf of the Union Government, the Price Control Order did not take into account the circumstance that the cost of production of mustard oil includes a fairly large margin of profit of the middleman. It is urged that small millers cannot afford to make large investments and lock up their limited capital and therefore resort is required to be had to the intervention of the middleman who is in a position to invest a large capital in the purchase of raw material and who, naturally, expects a fair return on his investment. The intervention of the middleman is an acknowledged

reality of all trades and businesses. The fact that the middleman's profit increases the price of goods which the consumer has to pay, was described by this Court in *Narendrd Kumar and Ors. v. The Union of India and Ors.* as 'axiomatic'. As observed in that case, since the middleman's charges often add to a considerable sum, it has been the endeavour in modern times for those responsible for social control to keep the middleman's activities to the minimum and to attempt to replace them largely by cooperative sale societies of producers and cooperative purchase societies of consumers. The elimination of the middleman is bound to cause trouble and inconvenience, but the ultimate savings in the cost of the finished product could more than balance that inconvenience. The argument of the petitioners really amounts to a rigid insistence that they are entitled to carry on their business as they please, mostly in a traditional manner, regardless of its impact on public interest. But, property rights are not absolute, and important as the right of property may be, the right of the public that such rights be regulated in common interest is of greater importance. These correlative rights, as observed in *Leo Nebbia v. People of the State of New York* 78 Lawyers 'Edition 940, are always in collision : "No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need." In the words of Justice Roberts who delivered the opinion of the Court in *Leo Nebbia* (supra) :

The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty.

73. Counsel for the petitioners characterised the fixation of price in the instant case as a veiled transgression of power conferred by Section 3(1) of the Essential Commodities Act. In support of that submission the judgment of this Court in *K. C. Gajapati Narayan Deo and Ors. v. The State of Orissa* [1954] S.C.R. 1 was cited in which it was said that when a legislative power is defined by reference to purpose, legislation not directed to that purpose will be invalid. We are unable to appreciate how, if the Government has got the power to fix a fair price of an essential commodity, it can be said that they have under a pretext trespassed upon a field which does not properly belong to them. The power conferred by Section 3(1) of the Essential Commodities Act is undoubtedly purposive. But it seems to us incontrovertible that the Price Control Order was promulgated by the Government in order to achieve the purpose set out in Section 3(1) of the Act. The fact that a legislative remedy or an administrative order passed in exercise of a statutory power is ineffective to mitigate an evil may show that it has failed to achieve its purpose, highlighting thereby the paradox of reform. But, as observed in *Joseph Beaubarnais v. People of the State of Illinois* 96 Lawyers 'Edition 919, that "is the price to be paid for the trial-and-error inherent in legislative efforts to deal with obstinate social issues". We are, therefore, unable to hold that by fixing a fair price for mustard oil, the Government has committed a veiled and subtle trespass upon private rights or upon a legislative field which is not open to them to occupy.

74. To sum up, it seems to us impossible to accept the contention of the petitioners that the impugned Price Control Order is an act of hostile discrimination against them or that it violates their right to property or their right to do trade or business. The petitioners have taken us into the minutest details of the mechanism of their trade operations and they have attempted to demonstrate in relation thereto that a factor here or a factor there which ought to have been taken into account while fixing the price of mustard oil has been ignored. Dealing with a similar argument it was observed in *Metropolis Theater Co. v. City of Chicago* 57 Lawyers' Edition 730 that to be able to find fault with a law is not to demonstrate its invalidity. "It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.... The Parliament having entrusted the fixation of prices to the expert judgment of the Government, it would be wrong for this Court, as was done by common consent in *Premier Automobiles* (supra) to examine each and every minute detail pertaining to the Governmental decision. The Government, as was said in *Permian Basin Area Rate Cases*, (supra) is entitled to make pragmatic adjustments which may be called for by particular circumstances and the price control can be declared unconstitutional only if it is patently arbitrary, discriminatory or demonstrably irrelevant to the policy which the legislature is free to adopt. The interest of the producer and the investor is only one of the variables in the "constitutional calculus of reasonableness" and Courts ought not to interfere so long as E-the exercise of Governmental power to fix fair prices is broadly within a "zone of reasonableness". If we were to embark upon an examination of the desperate contentions raised before us on behalf of the contending parties we have no doubt that we shall have exceeded our narrow and circumscribed authority.

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

76. The impugned Price Control Order is, therefore, valid and the challenge made thereto by the petitioners has to fail. These are our reasons in support of the order passed earlier that the Petitions be dismissed with costs.