Supreme Court of India
Laxmi Khandsari Etc. Etc vs State Of U.P. & Ors on 9 March, 1981
Equivalent citations: 1981 AIR 873, 1981 SCR (3) 92
Author: S M Fazalali
Bench: Fazalali, Syed Murtaza

PETITIONER:
LAXMI KHANDSARI ETC. ETC.

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT09/03/1981

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KOSHAL, A.D.

CITATION:
1981 AIR 873 1981 SCR (3) 92
1981 SCC (2) 600 1981 SCALE (1)455
CITATOR INFO :
F 1987 SC1867 (6)

ACT:
Essential Commodities Act 1955, S. 3 and Sugarcane (Control) Order 1966, Clause 8-Notification by Cane Commissioner-Imposition of a ban for a month and half on operation of power crushers of Khandsari units in reserved area of mill-Validity of-Exemption in favour of vertical power crushers-Whether discriminatory and justified.

HEADNOTE:
In the State of Uttar Pradesh, sugarcane was produced by the sugar mills through the 'hydraulic process' and by the power crushers through the 'open pan process'. Both the mills as also the crushers drew their raw material, namely sugarcane from sugarcane growers. In order to facilitate production by the sugar mills, most of which were controlled by the State, reserved area of the fields growing sugarcane was fixed through out the State.

With a view to removing nation-wide shortage of sugar, enhancing sugar production and achieving an equitable distribution of the commodity so as to make it available to consumers at reasonable rates, the Cane Commissioner in exercise of the powers conferred under clause (8) of the

Sugarcane (Control) Order, 1966 issued a notification dated 9th October, 1980 which directed that no power crusher other than vertical power crushers manufacturing gur or rab from sugarcane grown on their own fields or a Khandsari unit or any agent of such owner in the reserved area of a mill could be worked until December 1, 1980.

The petitioners who were owners of power crushers of Khandsari units and had taken out regular licences under the Uttar Pradesh Khandsari Sugar Manufacturers Licensing Order 1967, assailed the notification which limited the ban to work power crushers for a period of one month and a half i.e. from October 9. 1980 to December 1, 1980 in writ petitions to this Court. They contended: (1) The notification, as also the Control Order under which it was passed are violative of Article 19(1)(g) and the restrictions contained therein do not contain the quality of reasonableness. (2) Clause 8 of the Control Order under which the notification had been issued suffers from the vice of excessive delegation of powers and is, therefore, violative of Article 14 of the Constitution. The Notification seeks to establish a monopoly in favour of the sugar mills at the cost of the petitioners, and must be struck down as being violative of Article 14. (3) There is no rational nexus between the prohibition contained in the Notification preventing the crushers of petitioners from working them and the object sought to be achieved by it. (4) Clause 8 of the Control Order does not contemplate a complete prohibition of the production of an article but envisages only a regulation of the period of hours of working. (5) The Notification violates the principles of natural justice inasmuch as it was passed without hearing the petitioners whose rights were curtailed as they were put completely out of production. (6) The impugned Notification by imposing a prohibition against the working of the power crushers amounts to a partial revocation of the licences granted to the petitioners under clause 3 of the
93
Licensing Order and is, therefore violative of clause 11. (7) The impugned Notification goes against the very spirit and object of the Act of 1955 and in fact, frustrates the equal distribution and production of sugar which was the objective of the Notification.

On behalf of the respondent-State it was submitted that: (1) An order passed under clause 8 of the Control Order is of a legislative character and therefore the question of the application of the principles of natural justice, does not arise. (2) The notification does not violate Article 14 or Article 19 because it is in public interest and aimed at maintaining and securing proper and equitable distribution of sugar. (3) The Notification is justified by the fact that the recovery of sugar from sugarcane in case of Khandsari units run by power crushers is between 4 to 6 per cent whereas in the case of sugar

factories it ranges between 9-1/2 to 11-1/2 per cent, so that utilisation of sugarcane in the case of mills is double of that of the power crusher. (4) The Khandsari produced by the crushers has got a very narrow sphere of consumption as it is used mostly by halwais or villagers, whereas sugar produced by the sugar mills is consumed in far larger quantities by the public. The action taken in order to protect national interest and distribution of sugar to the entire country on rational basis cannot be said to be an unreasonable restriction. (5) There is a marked difference between the quality of Khandsari and that of sugar produced by the mills in their character, specification, etc. (6) The question of natural justice does not arise because the crusher owners were fully aware of the situation and had also knowledge of the considerations which prevailed with the Government in stopping crushers for a short period in order to boost production by the sugar mills and fix support price for the sugarcane supplied to the mills. (7) Clause 8 of the Control Order uses the words period or working hours' which are wide enough to embrace within their ambit a fixed period of time covering more than a day as also hours of work on any working day.

Dismissing the writ petitions and appeals,

^

HELD: The impugned Notification cannot be said to contain the quality of unreasonableness but is per se fair and reasonable. In so far as the word 'vertical' used in the Notification is concerned, it must be struck down as being violative of Article 14. This, however, does not render the entire Notification void because the word 'vertical' is clearly severable from the other portions of the Notification. All that has to be done is to read the Notification void because the word 'vertical' as a result of which the exemptions from the ban will include all owners of power crushers whether vertical or horizontal which manufacture Gur or rab from sugarcane grown on their fields. As the Notification has already spent its force, if any order is passed in future, the Government will see that such an invidious discrimination is not repeated. [134F; 124H-125B]

1(i) Where a citizen complains of the violation of fundamental rights contained in any of sub-clauses (a) to (g) of Article 19 the onus is on the State to prove or justify that the restraint or restrictions imposed on the fundamental rights under clauses 2 to 6 of the Article are reasonable. [104 C]

Saghir Ahmed v. The State of U.P. and Ors. [1955] 1 S.C.R. 707 and Mohammed Faruk v. State of Madhya Pradesh and Ors. [1959] 1 S.C.C. 853.

94

(ii) Fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by

the State in public interest under clauses 2 to 6 of Article 19. What are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. No hard or fast rule of universal application can be laid down, but if the restriction imposed appear to be consistent with the Directive Principles of State Policy they would have to be upheld as the same would be in public interest and manifestly reasonable. [105D-E, G]

(iii) Restrictions may be partial, complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential to the life of the community and the said restriction has been imposed for limited period in order to achieve the goal. Freezing of stocks of food-grains in order to secure equitable distribution and availability on fair prices have been held to be a reasonable restriction. [105-106A, C]

Narendra Kumar and Ors. v. The Union of India and Ors. [1960] 2 S.C.R. 375, M/s. Diwan Sugar and General Mills (P) Ltd. and Ors. v. The Union of India, [1959] 2 Supp. S.C.R.123 and The State of Rajsthan v. Nath Mal and Mitha Mal, [1954] S.C.R. 982 referred to.

(iv) In determining the reasonableness of restrictions imposed by law in the field of industry, trade or commerce, the mere fact that some of the persons engaged in a particular trade may incur loss due to the imposition of restrictions will not render them unreasonable because it is manifest that trade and industry pass through periods of prosperity and adversity on account of economic, social or political factors. In a free economy, controls have to be introduced to ensure availability of consumer goods, like food-stuffs, cloth or the like at a fair price and the fixation of such a price cannot be said to be an unreasonable restriction. [107-A-B]

(v) Where restrictions are imposed on a citizen carrying on a trade or commerce in an essential commodity, the aspect of controlled economy and fair and equitable distribution to the consumer at a reasonable price leaving an appreciable margin of profit to the producer is undoubtedly a consideration which does not make the restriction unreasonable. [107 C]

State of Madras v. V.G. Row, [1960] 2 S.C.R. 375, Mineral Development Ltd. v. The State of Bihar and Anr., [1960] 2 S.C.R. 609, Collector of Customs, Madras v. Nathella Sampathu Chetty and Anr. [1962]3 S.C.R. 786 and M/s. Diwan Sugar and General Mills (P.) Ltd. and Ors. v. U.O.I. [1959] 2 Supp. S.C.R. 123 referred to.

(vi) A restriction on the right of a trader dealing in essential commodities, or fixation of prices aimed at bringing about distribution of essential commodities keeping the consumers interests as the prime consideration cannot be regarded as unreasonable. [110 C]

In the instant case, the Petitioners by rushing to Court the moment the Notification was issued, deprived the State as also themselves of the actual con-
95
sequences of the notification and the prejudice which it really may have caused. They did not at all show any patience in waiting for a while to find out if the experiment functioned successfully and in the long run paid good dividends. As the petitioners obtained stay orders the experiment died a natural death and the Notification remained ineffective. [111D-E]

Prag Ice and Oil Mills and Anr. etc. v. Union of India, [1978] 3 S.C.R. 293, referred to.

(vii) In the case of essential commodities like sugar the question of the economic production and distribution thereof must enter the verdict of the Court in deciding the reasonableness of the restrictions. In such cases even if the margin of profit left to the procedure is slashed that would not make the restriction unreasonable. The reason is that such a trade or commerce is subject to rise and fall in prices and other diverse factors, and if any measure is taken to strike a just balance between the danger sought to be averted and the temporary deprivation of the right of a citizen to carry on his trade, it will have to be upheld as reasonable restriction. [112 G-113A]

Shree Meenakshi Mills Ltd. v. U.O.I. [1974] 2 S.C.R. 398 and Saraswati Industrial Syndicate Ltd. v. U.O.I.[1975] 1 S.C.R. 956 referred to.

(viii) The restriction imposed by the Notification in stopping the crushers for the period 10th October to 1st December, 1980 is in public interest and bears a reasonable nexus to the object which is sought to be achieved, namely, to reduce shortage of sugar and ensure a more equitable distribution of this commodity. Taking an overall picture of the history of sugar production it cannot be said that the stoppage of sugar crushers for a short period is more excessive than the situation demanded.

Madhya Bharat Cotton Association Ltd. v. Union of India and Anr. A.I.R. 1954 S.C. 634 referred to.

2(i) The Control Order has been passed under the authority of section 3 of the Act of 1955 which has been held to be constitutionally valid and not in any way discriminatory so as to attract Article 14. The Control Order itself contains sufficient guidelines, checks and balances to prevent any misuse or abuse of the power. The Central Government under clause 8 on whom the power is conferred is undoubtedly a very high authority who must be presumed to act in a just and reasonable manner. [119 E-F]

Chinta Lingam and Ors. v. Government of India and Ors. [1971] 2 S.C.R. 871 and V.C. Shukla v. State (Delhi Admn.), [1980] 3 S.C.R. 500.

(ii) There was no question of creating any monopoly to benefit the mills. A very large majority of the mills were controlled by the State or co-operative societies and only a small fraction of them were working in the private sector. In view of the low working cost of the crushers they sought to outcompete the mills and deprive them of the requisite amount of sugarcane which they should have got. It was not only just but also essential to boost the production of the factories so that while sugar may be produced on a large scale and sugarcane may not be wasted which would have been the case if most of the sugarcane went
96
to the crusher. The recovery of sugarcane juice by the mills is double that by the crushers and if the latter were allowed to operate the wastage would have been almost 50 per cent which could have been avoided if sugarcane was allowed to be utilised by the mills. [121 E-G]

(iii) If in the larger public interest it becomes necessary to compel the sugarcane growers to supply sugarcane to the mills at a particular rate in order to meet a national crisis, no person can be heard to say that his rights are taken away in an unjust or discriminatory fashion. Personal or individual interests must yield to the larger interests of community. This was the philosophy behind the passing of the Act of 1955. [123 F-G]

3. It has not been proved that there is any real distinction between a vertical and a horizontal power crusher. Both are regarded as falling in the same class. The Notification by exempting vertical power crushers and prohibiting horizontal power crushers is clearly discriminatory and the discrimination is not justified by any rational nexus between the prohibition and the object sought to be achieved. [124 G]

4. (i) Clause 8 used the words 'period or hours to be worked'. A plain reading of this expression reveals that the words 'period' and 'hours' have been used to connote to different aspects. Clause 8 contemplates regulation of working of the sugar by two separate methods-(1) Where only hours of work per day are to be regulated or fixed, and (2) the word 'period' which has nothing to do with the hours to be worked but it refers to another category of regulation, namely, whether a crusher is to run or not for a particular period of time. [125 D-E]

In the instant case, the Notification has resorted to the first category, viz. the 'period' of the working of the crushers, that is about one and a half month, and has not at all touched or impinged upon the working hours of the crushers. If, however, the notification had fixed certain hours of the day during which only the crushers could work, then the Notification would have resorted to the alternative

mode of regulation, which obviously has not been done. The impugned Notification is, therefore, wholly consistent with the provisions contained in clause 8 of the Control Order. [125 G-126A]

5. (i) Two prominent features exclude the rules of natural justice in the instant case. Section 3 of the Act of 1955 under which the Control Order was passed really covers an emergent situation so as to meet a national crisis, involving the availability or distribution of any essential commodity which may make it necessary to restrict or control the business carried on by a citizen. There was an acute shortage of sugar which was not made available to consumers at reasonable rates and the situation caused serious dissatisfaction among the people. Nothing short of immediate and emergent measures taken to solve this crisis would have eased out the situation. If hearing was to be given to so may owners of power crushers, it would have completely defeated and frustrated the very object not only of the Notification but also of the Act of 1955 and created complications which may have resulted in a further deterioration of an already serious situation. If the rules of natural justice were not applied in such an emergent case, the petitioners cannot be heard to complain. Afterall, the Notification directed stoppage of operation only for a very short period and the petitioners would have had an opportunity of recouping their loss after they were allowed to function because the proportion of consumption of Khandsari Sugar was limited.

97

The petitioners were, therefore, not seriously prejudiced but have rushed to this Court rather prematurely. [128 B-C; F-129 A]

Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. [1978] 2 S.C.R. 272, Maneka Gandhi v. U.O.I. [1978] 2 S.C.R. 621, S.L. Kapoor v. Jagmohan, [1980] 4 S.C.C. 379 and Prag Ice and Oil Mills and Anr. v. U.O.I. [1978] 3 S.C.R. 293, referred to.

(ii) The impugned Notification is a legislative measure. The rules of natural justice therefore stand completely excluded and no question of hearing arises. The passing of the notification was a trial and error method adopted to deal with a very serious problem. [129 G-H, 130 F]

Chairman, Board of Mining Examination and Anr. v. Ramjee, [1977] 2 S.C.R. 904, Joseph Beauhernais v. People of the State of Illinois, 96 L.ed. 919 at 930 and Bates v. Lord Hailsham of St. Marylebone and Ors. [1972] 1 W.L.R. 1373; at 1378 referred to.

6. A revocation of licence means that the licence has not been suspended but cancelled for all times to come entailing civil consequences and complete abolition of the right for the exercise of which the licence was granted. A temporary suspension of the working of the crushers owned by

the petitioners cannot amount to a revocation, either complete or partial. The proviso to sub-clause (2) of clause 11 of the Control Order does not at all envisage a partial or periodical revocation of a licence. The proviso comes into play only if a licence is revoked or cancelled once for all. The proviso is wholly inapplicable to the facts of the instant case. [132 C-D]

State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh, [1969] 2 S.C.R. 392.

7. The Notification ex-facie cannot be said to have been passed without due care and deliberation. The impugned Notification having been passed under section 3 of the Act it fulfils all the conditions contained therein, viz. it is expedient for maintaining or increasing the supply of an essential commodity, namely sugar which is included in clause (e) of the section 3 of the Act of 1955 and it regulates the supply and distribution of the essential commodities of the trade and commerce. Neither the Control Order nor the impugned Notification is against the tenor and spirit of section 3. It is manifestly clear from the circumstances disclosed that it is in pursuance of the aim and object for which section 3 was enshrined in the Act of 1955 that the Control Order and the Notification were promulgated. [133E; H-134 C]

8. In case Government decides to impose a ban in future on the power crushers or other units, a bare minimum hearing not to all the owners of Khandsari units but to only one representative of the Association representing them, and getting their views, would help the Government in formulating its policy. Even if an emergent situation arises, a representation against the proposed action may be called for from such Association and considered after giving the shortest possible notice. [135A-B]

9. Whenever any steps for banning production is taken, the Government has to evolve some procedure to detect the defaulters and ensure compliance of the baning order. [136 C]

98

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 5637- 41,5643-45, 5646-47,5649-51, 5597-98,5553-67,5609-11,5516- 20,5623-28,5657, 5673-74,5702-23,5668, 5659-67,5733, 5740- 42, 5782-84, 5763-64, 5762,5747-52,5779-81,5745, 5785, 5737- 39, 5841-43, 5786-5797, 5861-62 and 5863-64 of 1980. (Under Article 32 of the Constitution.) AND Civil Appeal No. 2734 of 1980.

Appeal by special leave from the Judgment and Order dated 12.11.1980 of the Allahabad High Court in W.P.No. 3115/80.

R.A. Gupta for the Petitioners in WPs.5637-41/80, 5797,5733/80 and CA No.2734/80.

A.P.S. Chauhan, Roopendra Singh Gajraj Singh, and C.K. Ratnaparkhi for the Petitioners in WP 5762/80.

B.S. Chauhan, Birj Bihari Singh Sridhar for the Petitioner in WP 5745/80.

Rameshwar Dial and Sarwa Mitter for the Petitioners in WPs 5782-84/80 R.K. Garg, S.N. Kacker, R.K. Jain and R.P. Singh for the Petitioners in WPs 5553-5567, 5616-5620, 5646, 5647, 5750-52, 5779-81,5623-28,5646-47, 5649-5651,5643-45,5702 to 5723, 5673-5674,5659 to 5667,5740-42, 5737-39 and 5841- 43/80.

R.P. Singh for the Petitioners in WPs 5609-11 & 5597- 98/80.

Soli J.Sorabjee, Arvind Minocha and Mrs. Veena Minocha for the Petitioners in WP 5661/70.

Mohan Behari Lal for the Petitioners in WPs 5785/80, 5786/80, and 5657/80.

A.K. Gupta for the Petitioners in WPs 5763-64/80. Lal Narain Sinha Att. Genl., S.C. Maheshwari Addl. Advocate General (U.P.), O.P. Rana, Mrs.Shobha Dikshit for the Respondents in all the matters.

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

> "Lucknow, Thursday 9th October 1980 In exercise of the powers under clause 8 of the Sugarcane (Control) Order, 1966 read with the Central Government, Ministry of Food & Agriculture, Community Development and Cooperation (Department of Food), Government of India Order No. GSR 122/Ess. Comm/Sugarcane dated July 16, 1966, I, Bhola Nath Tiwari, Cane Commissioner, Uttar Pradesh hereby direct that no owner of power Crusher (other than those vertical power crushers which manufacture Gur or Rab from Sugarcane grown on their own fields) or a Khandsari Unit or any agent of such owner shall in any reserved area, of any Sugar Mill work the Power Crusher, or the Khandsari Unit prior to December 1, 1980 during the Year 1980-81.
>
> By Order Bhola Nath Tiwari Cane Commissioner Uttar Pradesh"

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

It is not disputed that sugar was being produced in the State of U.P. by the sugar mills through hydraulic process and by the power crushers through what is known as the 'open pan process'. Both the mills as also the crushers drew their raw material, namely, sugarcane, from the sugarcane growers. In order to facilitate production by the sugar mills, most of whom were controlled by the State, a reserved area of the fields growing sugarcane was fixed throughout the State The Notification applied only to the reserved areas of a mill and not to any other areas. In other words, any area which fell outside the reserved area was not affected by the Notification and the power crushers situated in that area could still manufacture Khandsari by the open pan process. Thus, it would be seen that the ban imposed by the notification was confined only to a particular area in the State of U.P.

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

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

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

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

This brings us now to the various contentions raised by counsel for the petitioners and the respondents. As the Notification has already spent its force, we propose to deal only with the important and relevant contentions that have been advanced before us.

The counsel for the petitioners headed by Mr. Garg, Mr. Mridul and others raised the following constitutional points before us :-

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

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

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

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

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

(6) The impugned Notification violative of clause 11 of the Control Order itself inasmuch as the prohibition against the working of the power crushers amounts to partial revocation of the licences of the petitioners granted to them under clause 3 of the Licensing Order. Clause 11 of the Control Order clearly provides that no adverse orders could be passed against any manufacturer without hearing him. (7) Even though the impugned Notification purports to have been passed under the Control Order which itself was passed under s. 3 of the Act of 1955 yet if the notification is properly considered and the mischief it causes is borne in mind, it goes against the very spirt and object of the Act of 1955 and, in fact, frustrates the equal distribution and production of sugar which apparently seems to be the objective of the impugned notification.

The Attorney-General and the Additional Advocate General appearing for the Union of India and the State of U.P. respectively countered the submissions made by the petitioners on the following grounds:

(1) An order passed under clause 8 of the Control Order is of a legislative character and therefore the question of the application of the principles of natural justice to it does not arise.

(2) The Notification does not violate Art. 14 or 19 because it is in great public interest and is aimed at maintaining and securing proper and equitable distribution of sugar in view of the nation wide shortage of the commodity.

(3) The Notification is justified by the fact that recovery of sugar from sugarcane in case of khandsari units run by power crushers is between 4 to 6 per cent whereas in the case of sugar factories it ranges between 9 1/2 to 11 1/2 per cent, so that utilisation of sugarcane in the case of mills is double that of the power crushers. In these circumstances, khandsari units and mills belong to two different classes which cannot be said to be similarly situate so as to attract Art. 14 (vide pp. 69-70 of W.P .5565-5567 of 1980 Bhagwati Sugar Industry's case).

(4) The khandsari produced by the crushers has got a very narrow sphere of consumption as it is used mostly by halwais or villagers, whereas sugar produced by the sugar mills is consumed in far larger quantities by the public in India generally and in foreign countries after export. Therefore, the sugar mills fall within a special class and the question of hostile discrimination does not arise. Similarly, the action taken in order to protect national interests and distribution of sugar to the entire country on a rational basis cannot be said to be an unreasonable restriction.

(5) There is a marked difference between the quality of khandsari and that of sugar produced by the mills in their character, specification, etc., which is evident from the various reports filed by the State. (6) The question of natural justice does not arise because the crusher owners were fully aware of the situation and had also knowledge of the considerations which prevailed with the Government in stopping crushers for a short period in order to boost production by the sugar mills and fix support price for the sugarcane supplied to the mills. However, as the Notification has expired, if proper guidelines are laid down by the Court, before passing a fresh order the State will certainly hear the petitioners in order to know their point of view.

(7) Clause 8 of the Control Order uses the words `period' or working hours' which are wide enough to embrace within their ambit a fixed period of time covering more than a day as also hours of work on any working day.

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

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

(g) thereof, the onus is on the State to prove or justify that the restraint or restrictions imposed on the fundamental rights under clauses 2 to 6 of the Article are reasonable. In the instant case, we are mainly concerned with sub-clauses 4, 5 and 6 of Art.19. As far back as 1955 this Court in Saghir Ahmad v. The State of U.P, and Ors.(1) made this position very clear and observed as follows :-

"There is undoubtedly a presumption in favour of the constitutionality of a legislation. But when the enactment on the face of it is found to violate a fundamental right guaranteed under article 19(1) (g) of the Constitution, it must be held to be invalid unless those who support the legislation can bring it within the purview of the exception laid down in clause (5) of the article. If the respondents do not place any materials before the Court to establish that the legislation comes within the permissible limits of clause (6), it is surely not for the appellants to prove negatively that the legislation was not reasonable and was not conducive to the welfare of the community."

A similar view was taken in Mohammed Faruk v. State of Madhya Pradesh and Ors.(2) where this Court, speaking through Shah, J. reiterated the position mentioned above in the following words:

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

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

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

It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under clauses 2 to 6 of Art.19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. It is difficult to lay down any hard or fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand. It is manifest that in adopting the social control one of the primary considerations which should weigh with the Court is that as the directive principles contained in the Constitution aim at the establishment of an egalitarian society so as to bring about a welfare state within the frame-work of the Constitution, these principles also should be kept in mind in judging the question as to whether or not the restrictions are reasonable. If the restrictions imposed appear to be consistent with the directive principles of State policy they would have to be upheld as the same would be in public interest and manifestly reasonable.

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

Another important consideration is that the restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and the danger or evil sought to be avoided. Thus freezing of stocks of food-grains in order to secure equitable distribution and availability on fair prices have been held to be a reasonable restriction in the cases of Narendra Kumar and Ors. v. The Union of India and Ors.(1) M/s. Diwan Sugar and General Mills (P) Ltd. and Ors v. The Union of India and The State of Rajasthan v. Nath Mal and Mitha Mal(3).

These are some of the general principles on the basis of which the quality of reasonableness of a particular restriction can be judged and have been lucidly adumbrated in State of Madras v. V.G. Row's(4) case. Another important test that has been laid down by this Court is that restrictions should not be excessive or arbitrary and the Court must examine the direct and immediate impact of the restrictions on the rights of the citizens and determine if the restrictions are in larger public interest while deciding the question that they contain the quality of reasonableness.

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

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

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

In fact, the leading case decided by this Court which may justly be regarded as the locus classicus on the questions as to what are reasonable restrictions is V.G. Row's case (supra) where Patanjali Sastri, C.J., speaking for the Court observed as follows:

> "It is important in this context to bear in mind that the test of reasonableness, where ever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part,

> and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

This case was followed in a later decision of this Court in Mineral Development Ltd. v. The State of Bihar and Anr.(1) where after quoting the observations of Patanjali Sastri, C.J., as extracted above, Subba Rao, J., speaking for the Court observed as follows:-

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

In the case of Collector of Customs, Madras v. Nathella Sampathu Chetty and Anr.(2) the observations of Patanjali Sastri, C.J., were endorsed by this Court when Ayyangar, J., speaking for the Court, made the following observations:

> "There are several decisions of this Court in which the relevant criteria have been laid down but we consider it sufficient to refer to a passage in the judgment of Patanjali Sastri, C.J., in State of Madras v. V.G. Row."
>
> In M/s. Diwan Sugar and General Mills (Private) Ltd.

and Ors. v. U.O.I.(3) which was also a case arising out of the Act of 1955 and the Sugar Control Order of 1955 promulgated by the Central Government under s. 3 of the said Act, a Constitution Bench of this Court while examining the nature of the restrictions imposed in that case took into account the various circumstances and observed :

> "Clause 5 of the Order lays down the factors which have to be taken into consideration in fixing prices. These factors include among other things a reasonable margin of profit for the producer and/or trade and any incidential charges. This was kept in mind when prices were fixed by the impugned notification... The prices were prevalent in the free market and must certainly have taken account of a fair margin of profit for the producer, though in the case of an individual factory due to factors for which the producer might himself be responsible, the cost of production might have been a little more. Therefore, the prices fixed by the Government by the impugned notification can on no circumstances be said to have been proved to be below the cost of production."
>
> ... ...

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

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

> "The clause authorises the Commissioner and various others authorities mentioned therein and such other officers as may be authorised by the Commissioner to frreeze any stock of foodgrains held by a person... Nor do we think that the power to freeze the stocks of foodgrains is arbitrary or based on no reasonable basis.
>
> ... ...
>
> We are clear, therefore, that the freezing of stocks of food-grains is reasonably related to the object which the Act was in-
>
> tended to achieve, namely, to secure the equitable distribution and availability at fair prices and to regulate transport, distribution, disposal and acquisition of an essential commodity such as foodgrains."

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

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

We are fortified in our view by a decision of this Court in Prag Ice and Oil Mills and Anr. etc. v. Union of India(1) where Beg, C.J. observed as follows :-

> "All the tests of validity of the impugned price control or fixation order are, therefore, to be found in section 3 of the Act. Section 3 makes necessity or expediency of a control order for the purpose of maintaining or increasing supplies of an Essential Commodity or for securing its equitable distribution at fair prices the criteria of validity. It is evident that an assessment of either the expediency necessity of a measure, in the light of all the facts and circumstances which have a bearings on the subjects of price fixation, is essentially a subjectives matter. It is true that objective criteria may enter into determinations of particular selling prices of each kilogram of mustard oil at various time. But, there is no obligation to have to fix the price in such a way as to ensure reasonable profits to the producer or manufacturer. It has also to be remembered that the objective is to secure equitable distribution and availability at fair prices so that it is the interest of the consumer and not of the producer which is the determining factor in applying any objective tests at any particular time."

The observations extracted above, furnish a complete answer to the contentions raised by the petitioners on contention No. 1.

Furthermore, we would like to reiterate what Chandrachud, C.J,, observed in that case regarding the history and the manner in which the petitioners rushed to this Court :-

> "Before closing, we would like to mention that the petitioners rushed to this Court too precipitately on the heels of the Price Control Order. Thereby they deprived themselves of an opportunity to show that in actual fact, the Order causes them irreparable prejudice. Instead they were driven through their ill- thought haste to rely on speculative hypotheses 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."

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

It was vehemently contended by Mr. Garg that the Notification or the Control Order is in direct contravention of the Directive Principles of State policy contained in Art. 39 in part IV of the Constitution inasmuch as instead of developing small-scale industries like the crushers the Notification has curbed the rights of their owners in order to benefit the mills. It is true that one of the important considerations which must weigh with the Court in determining the reasonableness of

a restriction is that it should not contravene the Directive Principles contained in Part IV of the Constitution which undoubtedly has a direct bearing on the question as held by this Court in the cases of Saghir Ahmad v. State of U.P. and Ors.(1) and The State of Bombay and Anr. v. F. N. Balsara(2) where this Court made the following observations :

> "The new clause in Article 19(6) has no doubt been introduced with a view to provide that a State can create a monopoly in its own favour in respect of any trade or business, but the amendment does not make the establishment of such monopoly a reasonable restriction within the meaning of the first clause of Article 19(6). The result of the amendment is that the State would not have to justify such action as reasonable at all in a Court of law and no objection could be taken to it on the ground that it is an infringement of the right guaranteed under Article 19(1) (g) of the Constitution"
>
> (Saghir Ahmed's case) "In judging the reasonableness of the restrictions imposed by the Act, one has to bear in mind the directive principles of State policy set forth in Article 47 of the Constitution."
>
> (Balsara's case) In the instant case, however, if the argument of the Attorney General is to be accepted, there is no violation of the Directive Principles because the main object sought to be achieved by a temporary suspension of the business of the petitioners is to ensure large-scale production of white sugar and to make it available to the consumers at reasonable rates which is an implementation rather than a contravention of the Directive Principles particularly clauses (b) and (c) of Art. 39. Whether the State has been able to prove this fact or not would be considered when we deal with the facts and materials placed before us by the parties.

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

> "If fair price is to be fixed leaving a reasonable margin of profit, there is never any question of infringement of fundamental right to carry on business by imposing reasonable restrictions. The question of fair price to the consumer with reference to the dominant object and purpose of the legislation claiming equitable distribution and availability at fair price is completely lost sight of if profit and the producer's return are kept in the fore-front..... 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 control 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."

According to the Attorney General by virtue of the impugned Notification this is exactly what the Central Government wants to achieve by banning the working of power crushers for a short period. This case was followed in another decision of this Court in Saraswati Industrial Syndicate Ltd. v. U.O.I.(2) which was also a case of a notification issued under clause 7 of the Control Order of 1966, where the following observations were made:

> "It is a well-known fact that rationalisation of industry by the use of modern methods, reduces the amount of labour needed in more mechanised modes of manufacture. Therefore, we do not think that these assertions could prove any inequitable treatment meted out to the Haryana manufacturers of sugar. In any case no breach of a mandatory duty, which could justify the issue of writ of mandamus, was established.' In the light of the principles enunciated and the decisions discused above, we now proceed to examine the facts and circumstances placed before us by the Union of India to prove that the restrictions imposed under the impugned Notification contain the quality of reasonableness and are not violative of Art. 19(1)(g). The main pleas of the State of U.P. which have been adopted by the Union of India, are to be found in paragraphs 6 to 11 of the counter affidavit filed by the respondents in writ petition Nos.

5565-5567 of 1980. The respondents have taken the stand that there has been a very steep rise in the prices of sugar which is doubtless an essential commodity. It has further been alleged that one of the major factors responsible for the present rise in the prices of sugar is that there is a sharp rise in the demand for consumption of sugar whereas its production has slumped to a very low level. In order to illustrate the point it has been averred that the demand of sugar in the country has increased to over 60 lakh tonnes whereas production of the commodity in the preceding year (1979-80) was only about 39.5 lakh tonnes. In order to meet the demand the Central Government had to import for the first time after several years 2 lakh tonnes of sugar at a cost of about one hundred crores of rupees. One reason for the shortfall in production during 1979-80 was the poor availability of cane to the

sugar factories. This in turn resulted from the worst drought conditions faced by our country particularly the State of U.P. which is one of the main suppliers of sugarcane. Yet another cause of the shortage was that the sugar famine led to the large scale diversion of cane to gur and khandsari manufacturers. The counter-affidavit then proceeds to give a chart of the production of sugar by the crushers and the mills.

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

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

Thus, in view of the factors detailed above, it was contended by the Union of India that it was in public interest that with a view to remove shortage of sugar and achieve equal distribution of

sugarcane to the mills the impugned notification was passed which seems to strike a just balance between the requirements of the country and those of the khandsari units. The Attorney General contended that since the ban was imposed only for a very short period of about one month and a half, there could be no appreciable loss to the khandsari units, and even if there was some loss it could be recouped after the ban was lifted because the working cost of the khandsari units was much less than that of the mills. In other words, by virtue of the policy adopted by the Government in passing the impugned notification, a fair margin of profit was left to the khandsari units which were not completely closed. It was further stated that out of 89 sugar mills in the entire State of U.P., 18 sugar mills are owned by the U.P. State Sugar Corporation which is a Government company and controlled by the State. Sixteen sugar mills are under the cooperative sector in which the Government Investment is considerable and these mill are run by cooperative societies of which cane growers are shareholders. Thus, the ultimate benefit did undoubtedly go to the sugarcane growers also through the profits made by the cooperative societies. The learned counsel, Mr. Garg, appearing for the petitioners countered the inferences drawn by the respondents with the submission that although the above facts may not be disputed yet it was not correct to say that the khandsari units had put the mills completely out of competition. It was suggested that the khandsari units were also, apart from paying a higher price to the sugarcane growers, prepared to be subjected to compulsory levies or excise duty levied on the mills or to such terms as the Government may like to put on the owners of the crushers. The argument is, no doubt, attractive but we are not sure if and when these harsher terms are imposed on the petitioners, it would be possible for them to run the crushers and make the huge profits which they are making without the aforesaid impositions. At any rate, since the impugned notification has expired, the Government will certainly consider the desirability of a reappraisal of the situation after taking into account this aspect of the matter. It was further pointed out by the Union of India that only 39 sugar mills are in the private sector and ensuring actual availability of sugar at reasonable rates to the sugar mills was the prime consideration which formed the basis of impugned notification in conformity with the object of the Act of 1955 and the Control Order so as to maintain a fair price for the general public. Learning a lesson from the performance of the sugar market in the preceding year, the Government thought it more desirable to channelise the production of sugarcane so that the interests of neither the sugar mill owners nor of the khandsari units nor those of the cane-growers suffered.

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

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

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

> "Originally, the percentage of recovery in traditional khandsari units did not go beyond 6.5 per cent, but recent innovations have raised the recovery ratio to almost 9.5 per cent. Thereby the two processes have become almost commutative. In inversion loss, however, there is some difference. In the large-scale sugar mills, only ten per cent of the sugar is lost while in small khandsari plants the loss can be as much as 30 per cent."

and great reliance has been placed on these observations of the author. It may be noted, however, that the author has not cited any expert opinion as the foundation for his conclusion nor has he referred to any experiment carried out by him personally. In fact he has not even disclosed the source of his information. Apart from that the book fully supports the averments of the respondents that the percentage of recovery in traditional khandsari units did not go beyond 6.5 per cent. Besides, there is no evidence or allegation in any of the affidavits filed by the petitioners to the effect that any new methodo-

logy or innovation was adopted by any of the petitioners. In these circumstances, the extract from the book does not appear to be of any assistance to the petitioners.

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

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

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

In Madhya Bharat Cotton Association Ltd. v. Union of India & Anr.(1) while considering a restriction imposed for a short time, this Court observed as follows :-

> "Further, cotton being a commodity essential to the life of the community, it is reasonable to have restriction which may, in certain circumstances, extend to total prohibition for a time, of all normal trading in the commodity. Accordingly, we are of opinion that Clause 4 of the Cotton Control Order of 1950 does not offend Art. 19 (1) (g) of the Constitution because sub- clause (5) validates it."
>
> (Emphasis supplied) In that case the restriction imposed on cotton was for a short period of one month in February 1954 and for another month in May 1954; and was held to be justified and a reasonable restraint so as not to be violative of Art 19 (1) (g). The situation here is similar. Afterall, the petitioners were working their crushers under a licence granted to them under the Licensing Order and the impugned notification merely seeks to regulate the right and not to abolish the same.

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

This takes us to contention No. 2 raised by the petitioners. It was submitted before us that clause 8 of the Control Order under which the impugned notification has been issued suffers from the vice of excessive delegation of powers and is, therefore, violative of Art. 14 of the Constitution. It was argued that as the notification seeks to establish a monopoly in favour of the sugar mills at the cost of the petitioners it seeks to make per se an invidious discrimination which is writ large on the very face of the notification which is, therefore violative of Art. 14.

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

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

To begin with it may be noticed that the power to issue orders or directions from time to time is conferred on the Central Government which is undoubtedly a very high authority and must be

presumed to act in a just and reasonable manner. This point is well settled and concluded by several decisions of this Court as detailed below. In Chinta Lingam & Ors. v. Government of India Ors., (1) this Court made the following observations:

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

This case was followed in V. C. Shukla v. State (Delhi Admn.)(2) where one of us (Fazal Ali, J.) speaking for the Court observed as follows :

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

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

Secondly, clause 8 merely seeks to regulate and guide the conditions and the circumstances under which the manufacturers may exercise their rights. In other words, any order passed under clause 8 is prima facie purely of a regulatory nature. It was, however, submitted that the Notification has been passed by the Cane Commissioner, Government of U.P. and it does not contain any materials or reasons why the ban was imposed on the crushers owned by the petitioners. As the Notification itself has been passed under clause 8 of the Control Order read with Government of India G.S.R. No. 1122 dated July 16, 1966 and under the Essential Commodities Act it was not necessary for the Cane Commissioner to have stated or detailed the reasons why the Notification was issued. In fact, the Notification and the Control Order have to be read in the light of the main Act, viz., the Act of 1955, which itself provides the necessary guide lines, namely, that it is essential in public interest and to secure proper distribution of an essential commodity to pass orders by various authorities from time to time. This is the scheme of s. 3 of the Act of 1955 which has not been challenged before us by the petitioners.

It was further argued in the same token that the impugned notification seeks to establish a monopoly in favour of the sugar mills at the cost of the petitioners who have been selected for hostile discrimination as against the mills. While detailing and narrating the facts and the history of sugar production we have already shown that the State has placed cogent materials before us to show why the sugar mills had to be given a special treatment by temporarily stopping the production of sugar by the crushers. We have already dealt with the various factors while examining contention

No. 1 of the petitioners and it is not necessary for us to repeat the same here. There was no question of creating any monopoly to benefit the mills particularly when a very large majority of the mills were controlled by the State or cooperative societies and only a small fraction of them were working in the private sector. In view of the low working cost of the crushers they sought to outcompete the mills and deprive them of the requisite amount of sugarcane which they should have got. It was not only just but also essential to boost the production of the factories so that white sugar may be produced on a large scale and sugarcane may not be wasted which would have been the case if most of the sugar-cane went to the crushers. We have pointed out that the recovery of sugarcane juice by the mills is double that by crushers, and if the latter were allowed to operate the wastage of the sugarcane would have been almost 50 per cent which could have been avoided if sugar cane was allowed to be utilised by the mills.

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

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

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

> "This plantation sugar is crystalline, white lustrous and has a purity of 99.8 per cent. The size of the crystal of this sugar varies from 0.3 to 2.5mm. This sugar is graded according to the Indian sugar standards: Sugar corresponding to 30A is very white sugar with grain size of about 2.5mm. While 27 E refers to less white sugar with grain size of about 0.4 mm. The numeral 30, 29 and 27 indicate the decreasing order of the whiteness of the sugars and the letters A E to the grade of the grain size Apart from these sugars produced in well established commercial factories, the similar type of which are known in other countries, another kind of sugar produced perhaps only in

> India and nowhere else, is the khandsari sugar which is being manufactured in small scale industrial units While, in the sulphitation factories the classified sugar syrups are boiled under vacuum, in Khandsari units the same is carried out in the open pans. This sugar used to be palish yellow in colour Nagaranjars and his co-workers studied the conductivity of plantation white sugars and refined sugars and found distinctive difference in conductivity of plantation white sugar and refined sugar."

It has been clearly averred in para 15 of the counter affidavit filed by Mr. Bhola Nath Tiwari, Cane Commissioner, Government of U.P. (who issued the impugned notification) that in year 1978-79 the production in the reserved areas was 578.78 lakh tonnes out of which the percentage of cane utilised by the sugar mills was 27.24 whereas it was 9.73% in the case of the khandsari manufactured by power crushers. It is also stated that out of the total quantity of sugarcane only 45.23 per cent was utilised by gur manufacturers and the remaining 17.5 per cent was used for seed, feed and chewing purposes etc. Similarly, in the year 1979-80 there was a steep fall in the production of sugarcane from 578.78 lakh tonnes in the previous year to 471.11 lakh tonnes. Owing to this loss of production, there was keen competition for purchase of sugarcane between the sugar mill owners and the khandsari units. As a result of this unhealthy competition sugar mills had to close down prematurely resulting in the loss of production of sugar.

A very attractive argument was submitted before us by Mr. Gupta, appearing for some of the owners of power crushers. It was submitted that so far as the petitioners represented by him were concerned, they were growing sugarcane in their own fields and had installed power crushers in their own land though the said land fell within the reserved area. It was argued that these petitioners fell in a separate category and the Government could not compel them to supply sugarcane to the mills instead of using the sugarcane grown by them in their own crushers. An apparent snag in this argument is that if in the larger public interest it becomes necessary to compel the sugarcane growers to supply sugarcane to the mills at a particular rate in order to meet a national crisis, no person can be heard to say that his rights are taken away in an unjust or discriminatory fashion...Personal or individual interests must yield to the larger interests of the community. This is exactly the philosophy behind the passing of the Act of 1955.

Merely because the petitioners are growing sugarcane in their own fields and own power crushers, therefore, they cannot be treated as a class separate from the others owners of power crushers situated within the reserved area of the the mills.

Secondly, it was argued by Mr. Gupta and, in our opinion, rightly that the impugned notification is ex-facie discriminatory inasmuch as it differentiates between vertical and horizontal power crushers without any rhyme or reason. He submitted that no rational basis has been suggested by the State for making the distinction when both types of crushers produce almost the same quantity of khandsari and apply the same mechanical process (open pan process). What difference does it make, says Mr. Gupta, if a power crusher is vertical or horizontal ? In the case of a horizontal power crusher rollers are in a horizontal line situated on the surface whereas in the vertical power crusher the rollers instead of being on the surface are in a vertical position without there being any difference in the working of the two crushers. We are of the opinion that this argument of Mr. Gupta

is sound and must prevail. The Additional Advocate-General, U.P. sought to draw several distinctions between a vertical power crusher and a horizontal one, namely, (1) a vertical power crusher can crush 1500 quintals of sugarcane per month whereas a horizontal one crushes 5600 quintals of the commodity in the same period; (2) vertical power crushers are non commercial and fall within the category of cottage industry whereas horizontal power crushers are included in the category of small-scale industry; (3) vertical power crushers are run by their owners them selves and draw supplies from sugarcane growers and (4) vertical power crusher do not require any licence. So far as the last part of the argument of the Additional Advocate-General of U.P. that vertical power crushers do not require a licence is concerned, it is factually wrong because all such crushers require a licence by virtue of the Orders passed by the Central Government under s.3 of the Act of 1955. Regarding the other distinctive features the mere ipse dixit of deponent Gupta who has sworn an affidavit, there is absolutely no documentary evidence to support the features pointed out or relied upon by the Additional Advocate General. In these circumstances, it has not been proved to our satisfaction that there is any real distinction between a vertical and a horizontal power crusher, and we regard both as falling in the same class. The notification by exempting vertical power crushers and prohibiting horizontal power crushers is clearly discriminatory and the discrimination is not justified by any rational nexus between the prohibition and the object sought to de achieved.

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

We now come to contention No.4 by which it was urged that the express language of clause 8 of the Control Order does not contemplate a complete prohibition of the production of an article but envisages mere regulation of the period or hours of working. It was argued that the words 'period or hours' used in clause 8 are relatable only to the number of actual hours in a day for which the crushers may be permitted to work from time to time and not a complete stoppage or prohibition of the crushers for a period of a month or two. Clause 8, as extracted supra, uses the words 'period or hours to be worked.' A plain reading of this expression clearly reveals that the words 'period' and 'hours' have been used to connote two different aspects of the matter. In other words, clause 8 contemplates regulation of working of the sugar by two separate methods (1) where only hours of work per day are to be regulated or fixed, for instance, where a crusher normally works for 10 hours, a notification under this clause may provide that it should work only for 8 hours or 6 hours or 10 hours a day or for a number of days. (2) The word 'period' however, has nothing to do with the hours to be worked but it refers to another category of regulation viz., whether a crusher is to run or not for a particular period of time. We are unable to agree with the contention of Mr. Garg that the two words must be taken to have been used in clause 8 in the same sense. In fact, this interpretation of the words will cause violence to the language of the statutory provision and instead of advancing its object it would frustrate the purpose which clause 8 seeks to subserve. In the instant case, the

notification has resorted to the first category, viz., the period of the working of the crushers, that is to say, about one and a half month, and has not at all touched or impinged upon the working hours of the crushers. If, however, the notification had fixed certain hours of the day during which only the crushers could work, then the notification would have resorted to the alternative mode of regulation, which obviously has not been done in this case We are unable to agree with the contention put forward by Mr. Garg and hold that the impugned notification is wholly consistent with the provisions contained in clause 8 of the Control Order.

Contention Nos. 5, 6 and 7 relate to the objection taken by the petitioners to the validity of the impugned notification on several grounds. In regard to contention No. 5, the notification has been attacked on the ground that the Central Order violates the principles of natural justice inasmuch as it was passed without hearing the petitioners whose valuable rights were involved and their trade was stopped and they were put completely out of production even though for a short period of about one and a half month. It was contended that though clause 8 does not expressly provide for a hearing yet even if it be considered to be an administrative order, the rule of audi alteram partem fully applies and the Cane Commissioner should have passed the impugned notification only after hearing the petitioners. Reliance was placed for this proposition on a large number of authorities. It is true that with the growth of law in our country, this Court has consistently held for the last few years that the rules of natural justice must apply even to an administrative order unless the same are expressly excluded. Mr. Garg as also other counsel for the petitioners submitted that the mere fact that there is no express provision in clause 8 for hearing the petitioners before imposing any restrictions on their business provides good reason to hold that the right to be heard was inherent in the very act of prohibition since the stoppage of the business of the petitioners would entail civil consequences. Thus, they argued, as no hearing was given to the petitioners, the notification was void and inoperative. Reliance was placed on the observations of Krishna Iyer, J., in Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.(') which may be extracted thus:-

> "Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of Authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law The dichotomy between administrative and quasi- judicial functions vis-a-vis the doctrine of natural justice is presumably Obsolescent after Kraipak 1970 1 SCR 457 in India and Schmidt (1969 (2) Ch.. 149) in England.
>
> ... ...
>
> The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness. The Election Commission is an institution of central importance and enjoys far-reaching powers and the greater the power to affect others' right or liabilities the more necessary the need to hear.

... ...

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

Strong reliance was also placed on the observations of this Court in Maneka Gandhi v. U. O. I.(') where Bhagwati, J., after full discussion of the entire subject, observed thus:-

> "The law must, therefore now be taken to be well settled that even in an administrative proceeding which involves civil consequences, the doctrine of natural justice must be held to be applicable." Similarly, in a very recent case S. L. Kapoor v.

Jagmohan(2) this Court had taken an opportunity to emphasis the importance of rules of natural justice and reiterated as follows:

> "The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of "administrative action". Now from the time of the decision of this Court in State of Orissa v. Dr. (Miss) Binapani Dei [1967] 2 S.C.R. 625, even an administrative order which involves civil consequences...must be made consistently with the rules of natural justice."

A number of other decisions were also cited on the question of natural justice and we agree with the propositions adumbrated by Mr. Garg that normally where an administrative order adversely affects the valuable rights of the party affected, a reasonable opportunity of hearing must be given to the person affected. The instant case, however, contains two prominent features which exclude the rules of natural justice. Section 3 of the Act of 1955 under which the Control Order was passed really covers an emergent situation so as to meet a national crisis involving the availability or distribution of any essential commodity which may make it necessary to restrict or control the business carried on by a citizen. It has already been pointed out by us while discussing the case of the respondent that there was an acute shortage of sugar which was not made available to consumers at reasonable rates and the situation caused serious dissatisfaction among the people. Nothing short of immediate and emergent measures taken to solve this crisis would have eased out the situation. We are fortified in this opinion by a Constitution Bench decision of this Court in Prag Ice and Oil Mills and Anr. v. U. O. I.(') where Chandrachud, C. J.. observed as follows:-

> "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."

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

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

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

(Emphasis ours) Having regard to the facts in the instant case, a temporary ban on power crushers of a particular type was a measure governed by same, if not higher, considerations as an order of fixation of price.

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

In Chairman Board of Mining Examination and Anr. v. Ramjee(') Krishna Iyer, J. speaking for the Court, pointed out that there may be cases where rules of natural justice can be dispensed with. In this connection he observed as follows:

> "Natural justice is no unruly horse, no lurking land mine nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice, can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating."
>
> (Emphasis supplied) In Joseph Beauharnais v. People of the State of IIIinois(2) the following observations were made which are apposite to the facts of the present case :-
>
> "This being so, it would be out of bounds for the judiciary to deny the legislature a choice of policy, provided it is not unrelated to the problem and not forbidden by some explicit limitation on the State's power. That the legislative remedy might not in practice mitigate the evil, or might itself raise new problems, would only manifest once more the paradox of reform. It is the price to be paid for the trial-and- error inherent in legislative efforts to deal with obstinate social issues."
>
> The passing of the notification in the instant case was an act of a legislative character and was really a trial-

and-error method adopted to deal with a very serious social problem.

In Bates v. Lord Halsham of St. Marlebone and Ors.(3) under similar circumstances a statutory committee had made an order in relation to powers to licence hackney carriages. Commenting on this provision Megarry, J. Observed as follows:-

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

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

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

In contention No. 6 another infirmity pointed out by the learned counsel for the petitioners was that the impugned notification is clearly violative of clause 11 of the Control Order itself because the prohibition against the working of the power crushers even for a short period amounted to a partial revocation of the licences granted to the petitioners under clause 3 of the Licensing Order. In order to appreciate this contention it is necessary to extract clause 11 (2) of the Control Order which runs:-

> "(2) Where all or any of the powers conferred upon the Central Government by this Order have been delegated in pursuance of sub-clause (I) (b) to any officer or any authority of a State Government, every Order or direction issued by such officer or authority in exercise of that power may be amended, varied or rescinded by the State Government to whom the officer or authority is subordinate either suo motu, or on an application made within a period of thirty days from the date of the order or direction.
>
> Provided that no order revoking a licence or permit issued to a person shall be made without giving such person an opportunity to make representation."

Reliance was particularly placed on the proviso extracted above. It was contended that even a temporary suspension of the operation of power crushers amounted to a partial revocation of the licence granted to the petitioners and that therefore it was incumbent on the authorities concerned to give the petitioners an opportunity of being heard and making a representation before such revocation took effect. The Attorney General rightly pointed out that neither subclause (2) nor the proviso thereto is attracted in the instant case. It is true that the petitioners got licences under the Licensing Order which was also passed under the Act of 1955. A revocation of a licence means that the licence has not been suspended but cancelled for all times to come entailing civil consequences and complete abolition of the right for the exercise of which the licence was granted. A temporary suspension of the working of the crushers owned by the petitioners cannot amount to a revocation, either complete or partial. In fact, in our opinion, the proviso to sub-clause (2) of clause 11 of the Control Order does not at all envisage a partial or periodical revocation of a licence. The proviso would come into play only if a licence is revoked or cancelled once for all. Since a revocation or cancellation of the licence would operate to the serious prejudice of the licensee and affect him adversely, it was considered necessary and expedient to give him a hearing. We are fully satisfied that the impugned notification does not attract the conditions laid down in the proviso so as to confer upon the petitioners a right of hearing. The proviso is, therefore, wholly inapplicable to the facts of the present case.

It was further submitted by the counsel for the petitioners that even if clause 11 did not apply because the notification is of a legislative character a hearing would have removed the apprehensions of the petitioners. This argument has no substance because once it is held that the notification is impressed with a legislative character, the question of hearing does not arise. It may be true that despite the fact that there is no necessity of hearing, the Government could have evolved

some method of giving a very short notice to the Association and taking its views. But the omission to do so would not vitiate the notification impugned. It is well settled that possibility of an alternative scheme which might have been but has not been designed, would not be sufficient to make a restriction unreasonable. In State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh(1) this Court observed as follows:-

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

Lastly, on contention No. 7 it was urged that the impugned notification, which purports to have been passed under the Control Order (which itself was a subordinate legislation passed under s.3 of the Act of 1955) if properly considered along with the serious mis-chief it causes to the citizens, goes against the very spirit and object of the Act of 1955 and frustrates the equitable distribution and production of sugar which apparently seems to be the main object sought to be achieved. This argument has already been considered by us when we dealt with the various facts and materials produced before us to justify the impugned notification. We have already pointed out that in view of an extraordinary situation viz., the sugar famine and the increasing demand of sugar by the consumers, the interests of the consumers had to rank above all considerations. The notification, as stated by us earlier strikes a just balance between the needs of the consumers and the harm which may be done to the owners of the crushers. The degree and urgency of the evil sought to be remedied by a social control is the purport and the central theme of the impugned notification. Having regard to the various aspects which we have indicated above, it cannot be argued with any show of force that the remedy sought by the notification is in any way arbitrary or excessive. On the other hand, the report of the experts, stoppage of the production of sugar by the factories, the drought conditions and other factors have to enter into the decision of the Government in passing the impugned notification. The notification ex facie cannot be said to have been passed without due care and deliberation. Relevant portion of Section 3 of the Act of 1955 runs thus:-

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

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

Having regard, therefore, to the facts and circumstances proved in this case, it cannot be said that either the Control Order or the the impugned notification is against the tenor and spirit of section 3.

On the other hand, it is manifestly clear from the circumstances disclosed above that it is in pursuance of the aim and object for which s.3 was enshrined in the Act of 1955 that the Control Order and the notification were promulgated. The contention of the learned counsel for the petitioners on this score is accordingly overruled.

Mr. Rameshwar Dayal, appearing for some of the petitioners raised a novel argument which was to the effect that not only the notification impugned but also the Control Order was violative of Art. 14 of the Constitution. It was contended that since the State had already fixed reserved areas for the factories, the selection of khandsari units for banning or stopping their production amounted to a mini classification without any rational basis. We are, however, unable to accept this contention because in view of the various circumstances discussed above, the classification, if at all, was based on a reasonable nexus with the object sought to be achieved by the notification. Certain other aspects were also raised by Mr. Dayal which amount to almost a repetition of the main arguments placed before us by Mr. Garg and the counsel following him.

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

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

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

Secondly, could it not be possible for the Government to allow the crushers to function by regulating the working hours or to fix a quota of sugarcane to be delivered to the mills and the crushers in the

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

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

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

N.V.K. Petitions and Appeal dismissed.