Supreme Court of India
Atlas Cycle Industries Ltd. And ... vs State Of Haryana on 4 October, 1978
Equivalent citations: 1979 AIR 1149, 1979 SCR (1)1070
Author: J Singh
Bench: Singh, Jaswant

PETITIONER:
ATLAS CYCLE INDUSTRIES LTD. AND ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT04/10/1978

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
FAZALALI, SYED MURTAZA
KAILASAM, P.S.

CITATION:
1979 AIR 1149 1979 SCR (1)1070
1979 SCC (2) 196
CITATOR INFO :
R 1980 SC1382 (88)
D 1988 SC 535 (24)

ACT:
Essential Commodities Act 1955 (Act 10 of 195)-Section 3(6)Requirement as to laying before both Houses of Parliament-Directory not mandatory-Non-lying of notification fixing the maximum selling prices of various categories of controlled commodities before both Houses of Parliament-Whether results in nullification of the notification.

Delegated Legislation-Provisions relating to laying of delegated legislation of subordinate law making authorities and orders passed by subordinate executive instrumentalities before both Houses of Parliament-"Laying clauses"-Examined and discussed.

HEADNOTE:
The appellants were prosecuted for the offence of acquiring a controlled commodity at a rate higher than the maximum statutory price fixed for such commodity by the Iron
JUDGMENT:

Control Order, 1956. In the course of proceedings before the trial court the appellants made an application u/s 251A & 288 Cr.P.C. raising various objections to their prosecution including, that the notification fixing maximum selling prices of various categories of Iron & Steel including the commodity in question was not placed before the Parliament and as such was not valid. Observing that the laying of the notification before the Parliament could be proved by contemporaneous record and that it was not possible to hold that cognizance of the offence was taken on an invalid report and the order framing the charge was a nullity the trial Court dismissed the application.

In its writ petition filed under Arts. 226 and 227 of the Constitution, the appellants challenged their prosecution on the ground that the control order and the notification did not have the force of law as they had not been laid before the Houses of Parliament within a reasonable time as required by the Essential Commodities Act. The High Court dismissed the writ petition.

On the question, whether the notification fixing the maximum selling price of the commodity was void, for not having been laid before both Houses of Parliament.

Dismissing the appeal, the Court ^ HELD: 1. Non-laying of the notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification. The legislature never intended that non- compliance with the requirement of laying as envisaged by section 3(6) of the Act should render the order void. [1088 C, B]

2. Though section 3(6) of the Act provides that every order made by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament as soon as may be after it is made, the important point to be considered in the absence of a provision prescribing the conditions, the period and the legal effect of the laying of the order before the Parliament is whether the provision is directory or mandatory. The use of the word 'shall' is not conclusive and decisive of the matter and the Court has to ascertain the true intention of the legislature, which is the determining factor, and that must be done by looking carefully to the whole scope, nature and design of the statute. [1078 C-E] State of U.P. v. Manbodhan Lal Srivastava, [1958] S.C.R. 533, The State of Uttar Pradesh and Ors. v. Babu Ram Upadhya, [1961] 2 S.C.R. 679 referred to.

Craies Statute Law 5th Edn. p. 242.

3. Two considerations for regarding a provision as directory are: (1) absence of any provision for the contingency of a particular provision not been complied with or followed and (2) serious general inconvenience and prejudice that would result to the general public if the act of the government or an instrumentality is declared invalid for non-compliance with the particular provision.[1079 C]

4. The policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament, being to keep supervision and control over the aforesaid authorities and instrumentalities, the "laying clauses" assume different forms depending

on the degree of control which the Legislature may like to exercise. The three kinds of laying which are generally used by the Legislature are (i) laying without further procedure (ii) laying subject to negative resolution, (iii) laying subject to affirmative resolution. Each case must depend on its own circumstances or the wording of the statute under which the rules are made. [1079 D, E; 1081 D] Hukam Chand etc. v. Union of India and Ors. [1973] 1 S.C.R. 986 referred to.

Craies Statute Law 7th Edn. pp. 305-307.

5. In the instant case, section 3(6) of the Act merely provides that every order made under section 3 by the Central Government or by any officer or authority of the Central Government, shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament, to approve or disapprove the order made under section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. The requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. Therefore the requirement as to laying contained in section 3(6) of the Act falls within the first category i.e. "simple laying" and is directory and not mandatory. [1081 E-1082 A] Jan Mohammed Noor Mohammed Bagban v. The State of Gujarat and Anr., [1966] 1 S.C.R. 505; relied on.

D. K. Krishnan v. Secretary, Regional Transport Authority Chittor, A.I.R. 1956 AP. 129, State v. Karna (1973) 24 RLW 487.

Mathura Prasad Yadava v. Inspector General, Railway Protection Force, Railway Board, New Delhi and Ors. (1974) 19 MPLJ. 373, Krishna Khanna and Anr. v. State of Punjab, A.I.R. 1958, Punjab 32; approved.

Narendra Kumar and Ors. v. The Union of India and Ors., [1960] 2 S.C.R. 375; distinguished.

Express Newspapers (P) Ltd. and Anr. v. The Union of India and Ors., [1959] S.C.R. 12; In re. Kerala Education Bill 1957, 1959 S.C.R. 995; not applicable.

Bailey v. Williamson 1873 LR VIII Q.B. 118, Storey v. Graham (1899) Q.B. 406 referred to.

& CRIMINAL APPELLATE JURISDICTION: Criminal Appeal 24 of 1976.

From the Judgment and Order dated 31-9-1974 of the Punjab and Haryana High Court in Criminal Writ No. 32 of 1970.

B. Sen. (for appellant No. 1), A. K. Sen (for Appellant No. 2), J. C. Bhatt (for appellant No. 3), F. S. Nariman (for appellant No. 4), A. B. Diwan (for appellant No. 4), I.N. Shroff and H. S. Parihar for the Appellants.

D. Mukherjee, E. C. Agrawala and R. N. Sachthey for the Respondent.

The Judgment of the Court was delivered by JASWANT SINGH, J.-During the course of on spot check carried out by him on December 29, 1964 of B.P. sheets lying in appellant No. 1's factory at Sonepat, the Development Officer (LME-1) of the Directorate General of Technical Development, New Delhi, discovered from an examination of the said appellant's account books that it had during the period intervening between January 1, 1964 and January 12, 1965, acquired black plain iron sheets of prime quality weighing 60.03 metric tons from various parties at a rate higher than the maximum statutory price fixed for such sheets by the Iron and Steel Controller (hereinafter referred to as 'the Controller') in exercise of the powers vested in him under clause 15(1) of the Iron and Steel (Control) Order, 1956 (hereinafter referred to as 'the Control Order. After the Special Magistrate had framed the charges and secured in the Court of the Special Magistrate, Ambala Cantt for an offence under section 120-B of the Indian Penal Code read with section 7 of the Essential Commodities Act, 1955 (Act No. 10 of 1955) (hereinafter referred to as 'the Act') as also for an offence under section 7 of the Act read with clause 15 (3) of the Control Order. After the Special Magistrate had framed the charges and examined sixteen prosecution witnesses, the appellants made an application before him on February 12, 1970 under section 251A (11) and 288 (1) of the Code of Criminal Procedure, 1898 praying that in view of the submissions made therein, the case against them be not proceeded with and they be acquitted. The trial Magistrate dismissed the application vide his order dated June 4, 1970, relevant portion whereof is extracted below for facility of reference :-

> "In the light of the above observations, I am prevented from determining the case otherwise than by making an order of acquittal or conviction which I can pass only after recording further evidence both of prosecution and in defence.
>
> Regarding various objections raised by the learned counsel for the accused on the points that the notifications were not placed before the Parliament and within a reasonable time and also on the points of formation of opinion and delegation of powers I may submit that the prosecution cannot be prevented from adducing evidence regarding the formation of opinion and laying of the notifications before the Parliament which can be proved by the contemporaneous record. Regarding the non-prosecution of the sellers of the black iron sheets it does not lie in the mouth of the accused to say that such and such person has not been prosecuted. I need not to give my observations on merits on the points regarding subsequent exemption of control mens-rea, formation of opinion and delegation of powers in laying notifications before the Parliament and also need not discuss the citations as I will have to consider all these points at the time of final arguments and any order given now will not be proper.

> I dismiss the application of the accused on the short ground that it is not possible for this Court to hold that the cognizance was taken on an invalid report and the order of the Court ordering framing of charge is a nullity on the ground that on record no offence is committed and no cognizance could be taken."

Aggrieved by the aforesaid order of the Special Magistrate, the appellants moved the High Court of Punjab and Harayana under Articles 226 and 227 of the Constitution and section 561-A of the Code of Criminal Procedure, 1898 challenging their prosecution inter alia on the grounds that the Control Order and the notification which formed the basis of their prosecution did not have the force of law as they had not been laid before the Houses of Parliament within a reasonable time as required under section 3(6) of the Act; that the Control Order and the Notification fixing the maximum selling price of the commodity in question for the contravention of which the appellants had been hauled up were invalid as the same did not appear to be preceded by the formation of the requisite opinion under section 3(1) of the Act which was a sine qua non for issue of any order by the Central Government or by the Controller; that none of the 18 concerns which, according to the prosecution sold the aforesaid B.P. sheets to the appellants and who were equally guilty of the offence under section 7 of the Act having been proceeded against, in the Court of the competent jurisdiction, the prosecution of the appellants was violative of Article 14 of the Constitution and that the purchases of the aforesaid B.P. sheets having been openly made and entered in the account books of appellant No. 1, the mens rea which was a necessary ingredient of the offence under section 7 of the Act was totally lacking in the case.

In the return filed by it in opposition to the writ petition, the respondent while denying that the Control Order had not been placed before both Houses of Parliament, as required by sub-section (6) of section 3 of the Act or that the issue of the Control Order or the Notification fixing maximum selling prices of various categories of iron and steel including the commodity in question was not based on the formation of the opinion envisaged by sub-section 1 of section 3 of the Act conceded that the notification fixing the maximum selling prices of the categories of iron and steel including the commodity in question had not been placed before both Houses of Parliament but contended that the provisions of sub-section (6) of section 3 of the Act requiring the placing of the order contained in the aforesaid notification before both Houses of Parliament were directory and not mandatory and the omission to comply with that requirement did not have the effect of invalidating the notification. The respondent further contended that the notification fixing the maximum selling prices of various categories of iron and steel including the black plain iron sheets being a part of the Control Order and a piece of delegated legislation, it was not necessary to lay it before the Houses of Parliament. It was also pleaded by the respondent that the mensrea of the accused was manifest from various manipulations resorted to by them as also from the fact that they wanted to increase their production and earn more profits. The respondent also averred that launching of prosecution against any person depended on the availability of sufficient evidence and that non-prosecution of the sellers of the iron sheets in question did not involve any discrimination as envisaged by Article 14 of the Constitution but was due to non-availability of adequate and reliable evidence against them.

After careful consideration of the rival contentions of the parties, the High Court by its elaborate judgment and order dated May 31, 1974 dismissed the petition overruling the contentions of the appellants. One of the learned Judges of the High Court constituting the Bench which dealt with the writ petition also observed that the Notification in question had not in reality been issued under section 3 of the Act which required it to be laid before both Houses of Parliament but was issued in exercise of the power conferred by section 4 of the Act which plainly related to issue of incidental orders arising out of the nature of the powers conferred and duties imposed thereunder and the purpose whereof was to enable the various authorities mentioned therein to provide the details to fill up gaps in the Control Orders issued under section 3 of the Act so as to ensure the harmonious and rational working of the orders. The High Court, however, being of the opinion that the case involved a substantial question of law relating to the vires of the notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question certified the case as eminently fit for appeal to this Court. This is how the case is before us.

At the hearing of the appeal though the learned counsel for the appellants have reiterated all the contentions raised by them in the aforesaid writ petition, the only substantial question of law with which we are concerned at the present stage is whether the aforesaid notification fixing the maximum selling price of the commodity in question is void for not having been laid before both Houses of Parliament.

For a proper determination of the aforesaid question, it is necessary to notice a few provisions of the Act which are relevant for the purpose of the appeal.

Section 2 is a glossary of the Act. According to clause

(a)(vi) of the said section, iron and steel and manufactured products thereof fall within the ambit of the expression "essential commodity".

Sub-section (1) of section 3 of the Act confers on the Central Government the general power of making and issuing orders providing for regulating or prohibiting the production, supply and distribution of an essential commodity and trade and commerce therein if it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing its equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations.

Sub-section (2) of section 3 of the Act specifies the orders which without prejudice to the generality of the powers conferred by subsection (1) of section 3 can be issued thereunder.

Clause (c) of sub-section (2) of section 3 of the Act authorities the issue of an order for controlling the price at which any essential commodity may be bought or sold.

Sub-section (6) of section 3 of the Act ordains that every order made under this section by the Central or by any officer or authority of the Central Government shall be laid before both Houses of Parliament as soon as may be, after it is made.

Section 4 of the Act lays down that an order made under section 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

Section 5 of the Act deals with delegation of powers. It provides that the Central Government may, by notified order, direct that the power to make orders or issue notifications under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by (a) such officer or authority subordinate to the Central Government, or (b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction.

Section 6 of the Act which embodies the non-obstante clause lays down that any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Section 7 of the Act lays down the penalties which any person contravening any order made under section 3 shall entail.

Section 10 of the Act which deals with offences by the companies provides as follows:-

> "10. (1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :
>
> Provided that nothing contained in this sub- section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. (2) Notwithstanding anything contained in sub- section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. - For the purposes of this section, -
>
> (a) "company" means any body corporate, and includes a firm or other association of individuals; and
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> (b) "director" in relation to a firm means a partner in the firm."

We may also at this stage advert to the Control Order which was issued by the Central Government vide S.R.O. 1109/ESS. COMM/ IRON AND STEEL dated May, 8, 1956 in exercise of the powers conferred on it by section 3 of the Act. Sub-clause (1) of clause 15 of this Order authorities the Controller to fix by notification in the Gazette of India the maximum prices at which any iron and steel may be sold (a) by a producer, (b) by a stockholder including a controlled stockholder and (c) by any person or class of persons. Sub clause (3) of clause 15 of the Control Order which is material for the purpose of the case provides:

> "15. (3) No producer or stockholder or other person shall sell or offer to sell, and no person shall acquire, any iron or steel at a price exceeding the maximum prices fixed under sub-clause (1) or (2)."

It was under sub-clause (1) of clause 15 of the Control Order that the notification in question was issued.

Though sub-section (6) of section 3 of the Act provides that every order made by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament as soon as may be after it is made, the important point to be considered in the absence of analogous statutes like the Statutory Instruments Act, 1946 and the Laying of Documents before Parliament (Interpretation) Act, 1948 prescribing the conditions, the period and the legal effect of the laying of order before the Parliament is whether the provision is directory or mandatory. It is well to remember at the outset that the use of the word `shall' is not conclusive and decisive of the matter and the Court has to ascertain the true intention of the legislature, which is the determining factor, and that must be done by looking carefully to the whole scope, nature and design of the statute. Reference in this connection may be made to the decision of this Court in State of U.P. v. Manbodhan Lal Srivastava. `Reference in this behalf may also be made with advantage to another decision of this Court in The State of Uttar Pradesh & Ors. v. Babu Ram Upadhya(2) where Subba Rao, J. (as he then was) after quoting with approval the passage occurring at page 516 in Crawford "On the Construction of Statutes" as well as the passage occurring at page 242 in `Craies on Statute Law', 5th Edition, observed as follows :-

> "The relevant rules of interpretation may be briefly stated thus: When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from constituting it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

Thus two considerations for regarding a provision as directory are : (1) absence of any provision for the contingency of a particular provision not being complied with or followed and (2) serious general inconvenience and prejudice that would result to the general public if the act of the Government or an instrumentality is declared invalid for non-compliance with the particular provision.

Now the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament being to keep supervision and control over the aforesaid authorities and instrumentalities, the "laying clauses" assume different forms depending on the degree of control which the legislature may like to exercise. As evident from the observations made at pages 305 to 307 of the 7th Edition of Craies on Statute Law and noticed with approval in Hukam Chand etc. v. Union of India & Ors.(1) there are three kinds of laying which are generally used by the Legislature. These three kinds of laying are described and dealt with in Craies on Statute Law (Supra) as under.-

(i) Laying without further procedure,

(ii) Laying subject to negative resolution,

(iii) Laying subject to affirmative resolution.

(i) Simple laying. The most obvious example is in section 10(2) of the 1946 Act. In earlier days, before the idea of laying in draft had been introduced, there was a provision for laying rules etc., for a period during which time they were not in operation and could be thrown out without ever having come into operation (compare Merchant Shipping Act, 1894, s. 417; Inebriates Act 1898, s. 21) but this is not used now.

(ii) Negative resolution. Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is "subject to annulment in pursuance of a resolution of either House of Parliament." This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to "buy off opposition" by proposing some modification.

(iii) Affirmative resolution. The phraseology here is normally "no order shall be made unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament. Normally, no time limit is fixed for obtaining approval none is necessary because the Government will naturally take the earliest opportunity of bringing it up for approval - but section 16(3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 did impose a limit of forty days. An old form (not much used nowadays) provided for an order to be made but not to become operative until a resolution of both Houses of Parliament had been obtained. This form was used in section 10(4) of the Road Traffic Act, 1930 (cf. Road Traffic Act, 1960, s.19 (3) . ..The affirmative resolution procedure necessitates a debate in every case. This means that one object of delegation of legislation (viz. saving the time of Parliament) is to some extent defeated. The procedure therefore is sparingly

used and is more or less reserved to cases where the order almost amounts to an Act, by effecting changes which approximate to true legislation (e.g. where the order is the meat of the matter, the enabling Act merely outlining the general purpose) or where the order replaces local Acts or provisional orders and, most important of all, where the spending, etc. of public money is affected.

Sometimes where speedy or secret action is required (e.g. the imposition of import duties), the order is laid with immediate operation but has to be confirmed within a certain period of Import Duties Act, 1958, s.13(4). This process of acting first and getting approval after has also been adopted in the Emergency Powers Act, 1920 under which a state of emergency can be proclaimed and regulations made. The proclamation must be immediately communicated to Parliament and does not have effect for longer than a month: but it can be replaced by another proclamation. Any regulations made under the proclamation are to be laid before Parliament immediately and do not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for their continuance."

Now at page 317 of the aforesaid Edition of Craies on Statute Law, the questions whether the direction to lay the rules before Parliament is mandatory or merely directory and whether laying is a condition precedent to their operation or may be neglected without prejudice to the effect of the rules are answered by saying that "each case must depend on its own circumstances or the wording of the statute under which the rules are made." In the instant case, it would be noticed that sub-section(6) of section 3 of the Act merely provides that every order made under section 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made under section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (6) of section 3 of the Act falls within the first category i.e. "simple laying" and is directory not mandatory. We are fortified in this view by a catena of decisions, both English and Indian. In Bailey v. Williamson(1) whereby section 9 of the Parks Regulations Act, 1872 passed on June 27, 1872 "to protect the royal parks from injury, and to protect the public in the enjoyment of those royal parks and other royal possessions for the purpose of innocent recreation and exercise" it was provided that any rules made in pursuance of the first schedule to the Act shall be forthwith laid before both Houses of Parliament, if Parliament be sitting, or if not, then within three weeks after the beginning of the then next ensuing session of Parliament; and if any such rules shall be disapproved by either House of Parliament within one month of the laying, such rules, or such parts thereof as shall be disapproved shall not be enforced and Rules for Hyde Park were made and published on September 30, 1872 when Parliament was not sitting and in

November 18, 1872, the appellant was convicted under section 4 of the Act for that he did unlawfully act in contravention of Regulation 8 contained in the first schedule annexed thereto by delivering a public address not in accordance with the rules of the said Park but contrary to the statute, and it was inter alia contended on his behalf that in the absence of distinct words in the statute stating that the rules would be operative in the interval from the time they were made to the time when Parliament should meet next or if Parliament was sitting then during the month during which Parliament had an opportunity of expressing its opinion upon them, no rule made as supplementing the schedule could be operative so as to render a person liable to be convicted for infraction thereof unless the same had been laid before the Parliament, it was held overruling the contention that the Rules became effective from the time they were made and it could not be the intention of the Legislature that the laying of the rules before Parliament should be made a condition precedent to their acquiring validity and that they should not take effect until they are laid before and approved by Parliament. If the Legislature had intended the same thing as in section 4, that the rules should not take effect until they had the sanction of the Parliament, it would have expressly said so by employing negative language.

In Starey v. Graham(2) where it was contended that the Register of Patent Agents Rules, 1889 which had been repealed by Rules of 1890 could not be re-enacted by mere reference without complying with the provisions of section 101, sub-s. 4 of 46 and 47 Vict. c. 57 according to which, a copy of the Rules of 1889 should also have been laid before both Houses of Parliament in order to make them valid, Channell, J. said :

> "I somewhat doubt whether the provisions of section 101 are more than directory and whether it is necessary in any particular case where reliance is placed on such rules to prove that in fact its provisions had been complied with."

In Jan Mohammad Noor Mohammad Bagban v. The State of Gujarat & Anr.(1) where it was urged by the petitioner that the rules framed by the Provincial Government in 1941 in exercise of the powers conferred on it under section 26(1) of the Bombay Agricultural Produce Markets Act (22 of 1939) had no legal validity as they were not laid before each of the Houses of the Provincial Legislature at the session thereof next following as provided by sub-section (5) of section 26 of the Act, this Court rejected the contention and upheld the validity of the said rules. The following observations made in that case by Shah, J. (as he then was) on behalf of the Constitution Bench are apposite:-

> "The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no Legislature in session, the Legislature having been suspended during the emergency arising out of World War II. The session of the Bombay Legislative Assembly was convened for the first time after 1941 on May 20, 1946 and that session was prorogued on May 24, 1946. The second session of the Bombay Legislative Assembly was convened on July 15, 1946 and that of the Bombay Legislative Council on September 3, 1946 and the rules were placed on the Assembly Table in the second session before the Legislative Assembly on September 1, 1946 and before the Legislative Council on September 13, 1946. Section

> 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under s. 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before Houses of Legislature does affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-s. (5) of S. 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that Sub-s. (5) of S. 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. (Emphasis supplied). The rules have been in operation since the year 1941 and by virtue of s. 64 of the Gujarat Act 20 of 1964 they continue to remain in operation.

In D. K. Krishnan v. Secretary, Regional Transport Authority, Chittor(1) where the validity of Rule 13-A of the Madras Motor Vehicles Rules, 1940, made under the Motor Vehicles Act, 1939 empowering the Regional Transport Authority to delegate its functions to the Secretary was challenged on the ground that it was not laid before the Legislature of the Madras State as required by section 133(3) of the Act which provided that the rules shall be laid for not less than fourteen days before the Legislature as soon as possible after they are made and shall be subject to such modification as Parliament or such Legislature may make during the session in which they are so laid, Sabba Rao, J. (as he then was) after an exhaustive review of the case law and the text books on constitutional law by eminent jurists repelled the contention observing as follows :-

> "The aforesaid discussion in the text books and the case law indicate the various methods adopted by the Parliament or legislature to control delegated legislation. That control is sought to be effected by directing the rules or regulations made by the delegated authority to be laid before the Parliament. Where the statute makes the laying of the rules before Parliament a condition precedent or the resolution of the Parliament a condition subsequent, there is no difficulty as in the former case, the rule has no legal force at all till the condition precedent is complied with and in the latter case, it ceases to have force from the date of non-compliance with the condition subsequent.
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> Nor can there be any difficulty in a case where the Parliament or the Legislature, as the case may be, specifically prescribes the legal effect of non- compliance with that condition. But more important question arises when the Parliament directs the laying of the rules before the Parliament without providing for the consequences of non-compliance with the rule.
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> In the case of a statute directing rules to be laid before the Parliament or the Legislature without any condition attached, the rule is only directory. Though the statute says that the rules shall be laid before the Parliament as the provision in the statute is conceived in public interests, the dereliction of the duty by the Minister or other officer concerned in not following the procedure should not be made to affect

> the members of the public governed by the rules. It may be asked and legitimately too that when the Parliament to keep its control over delegated legislation directs that the rules shall be laid before the Parliament and if that rule is construed as directory, the object itself would be defeated. But the Parliament or the Legislature, as the case may be if they intended to make that rule mandatory, they would have clearly mentioned the legal consequences of its non-compliance as they have done in other cases. This rule (i.e. the one contained in Section 133(3) therefore, is not made either a condition precedent or a condition subsequent to the coming into force of the rules. It does not provide for any affirmative resolution. The role continues to be in force till it is modified by the Parliament. If sub-section (3) is only directory, in view of the opinion expressed by us, it is clear from a fair reading of the words used in the section that the rules made under the section came into effect immediately they were published and they continued to be in force because it is not suggested that they were modified by the Legislature. We, therefore, hold that the rule in question is valid."

In State v. Karna(1) where the very question with which we are concerned in the present case cropped up in connection with the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959, a bench of Rajasthan High Court said as follows:-

> "It is important to note that laying the Order before both the Houses of Parliament is not a condition precedent for bringing into force the Order. All that sub-section (6) provides is that every Order made under sec. 3 of the Essential Commodities Act by the Central Government or by any officer or authority of the Central Government shall be laid before both the Houses of Parliament as soon as after it is made. It is significant that the Order is valid and effective from the date it is duly promulgated. Even the limit or period within which it must be placed before the Parliament has not been specified. It is, therefore, not possible to hold that sub-sec. (6) of sec. 3 of the Essential Commodities Act is mandatory. If the legislature intended that in order to provide an adequate safeguard it was necessary to make the said provision mandatory it could have done so in express words. We are, therefore, of the opinion that the order cannot be considered as invalid merely because the State was not able to put on record proof of the fact that the Order was laid before both the Houses of Parliament."

> In Mathura Prasad Yadava v. Inspector General, Rly.

Protection Force, Railway Board, New Delhi & Ors.(1) where it was contended that Regulation 14 of the Railway Protection Force Regulations, 1966 made under section 21 of the Railway Protection Force Act (23 of 1957) was invalid as it was not laid before both Houses of Parliament as required by sub-section (3) of section 21 of the Act, it was held:

> "What then is the consequence of failure to lay the regulation ?……A correct construction of any particular laying clause depends upon its own terms. If a laying clause defers the coming into force of the rules until they are laid, the rules do not

> come into force before laying and the requirement of laying is obligatory to make the rule operative. So the requirement of laying in a laying clause which requires an affirmative procedure will be held to be mandatory for making the rules operative, because, in such cases the rules do not come into force until they are approved, whether with or without modification, by Parliament. But in case of a laying clause which requires a negative procedure the coming into force of the rules is not deferred and the rules come into force immediately they are made. The effect of a laying clause of this variety is that the rules continue subject to any modification that Parliament may choose to make when they are laid; but the rules remain operative until they are so modified. Laying clauses requiring a negative procedure are, therefore, construed as directory. The matter is put beyond controversy by the decision of the Supreme Court in Jan Mohd. v. State of Gujarat (supra). Our conclusion, therefore, is that the laying requirement enacted in section 21(3) of the Act is merely directory. It logically follows that failure to lay Regulation 14 has no effect on its validity and it continues to be effective and operative from the date it was made."

Relying on the decision in D. K. Krishnan v. Secretary Regional Transport Authority, Chittoor (supra), Grover, J. speaking for the bench in Krishna Khanna & Anr. v. State of Punjab(1) said that sub-section (6) of section 3 of the Essential Commodities Act, 1955 was merely of a directory nature and its non-compliance did not render the Punjab Coal Control Order, 1955 invalid or void.

Metcalfe & Ors. v. Cox & Ors. (2) where the Commissioners (charged with the duty of making provisions for improving the administration of the Scotish Universities) assuming to act under powers of section 16 of the Universities (Scotland) Act, 1889 executed an instrument in writing declaring that they had affiliated and did thereby affiliate the University College of Dundee to and make it form part of the University of St. Andrews which was treated as an ordinance and held to be invalid on the ground that it had not been laid before Parliament is not helpful to the appellants, as the decision in that case turned upon the construction of the language of section 20 of the said Act which provided that all ordinances made by the Commissioners are to be published in the Edinburgh Gazette, laid before Parliament and submitted to Her Majesty, the Queen for approval and no such ordinance shall be effectual until it shall have been so published, laid before Parliament and approved by Her Majesty in Council.

The decision of this Court in Narendra Kumar & Ors. v. The Union of India & Ors.(3) on which counsel for the appellants have heavily leaned is clearly distinguishable. In that case, the Non-ferrous Metal Control Order, 1958 was held to be invalid essentially on the ground that the principles specified by the Central Government in accordance with clause 4 of the Order were not published either on April 2, 1958 on which the order was published in the Government Gazette or any other date. It would be noticed that while considering the effect of non publication of the aforesaid principles which formed an integral part of the order by which alone the Central Government could regulate the distribution and supply of the essential commodities, it was only incidentally that a mention was made by the Court to the effect that the principles had not been laid before both Houses of Parliament.

Likewise the decisions of this Court in Express Newspapers (Private) Ltd. & Anr. v. The Union of India & Ors(4) and in re: The Kerala Education Bill 1957 (1959 S.C.R. 995: A.I.R. 1958 S.C. 956) are also not helpful to the appellants. The point involved in the present case was not directly in issue in those cases and the observations made therein about laying were merely incidental.

From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification. Accordingly, we answer the aforesaid question in the negative. In view of this answer, it is not necessary to deal with the other contention raised by the respondent to the effect that the aforesaid notification being of a subsidiary character, it was not necessary to lay it before both Houses of Parliament to make it valid.

In the result, the appeal fails and is dismissed.

N.V.K. Appeal dismissed.