Supreme Court of India
Union Of India & Anr vs Cynamide India Ltd. & Anr on 10 April, 1987
Equivalent citations: 1987 AIR 1802, 1987 SCR (2) 841
Author: O C Reddy
Bench: Reddy, O. Chinnappa (J)

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
CYNAMIDE INDIA LTD. & ANR.

DATE OF JUDGMENT10/04/1987

BENCH:
REDDY, O. CHINNAPPA (J)
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SINGH, K.N. (J)

CITATION:
1987 AIR 1802 1987 SCR (2) 841
1987 SCC (2) 720 JT 1987 (2) 107
1987 SCALE (1)728
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D 1988 SC1301 (8)
R 1988 SC1737 (75)
R 1990 SC 334 (102)
E 1990 SC1277 (31,38,43)
R 1990 SC1851 (30)

ACT:
Drugs (Prices Control) Order, 1979: Paragraphs 3, 12, 13 & 27: Bulk Drugs--Price fixation of--Whether legislative activity--Principles of natural justice whether applicable to-Cost of production-----Whether can be determined by a subordinate legislating Body--Price fixation-Review--Nature of--Formulations--Fixation of retail prices--Whether to await the result of review application.

Constitution of India, Articles 32 & 226--Essential Commodities-Price fixation of---Whether matter for investigation and interference by Court.

Practice and Procedure: Essential Commodities--Price fixation of--Interim order staying implementation of notification fixing prices--Courts not to pass orders which would be against public interest.

Constitution of India, Article 39(b)--Material resources of the community--Distribution of to sub-serve common

good--Obligations of State.

HELD:

Paragraph 3 of the Drugs (Prices Control) Order, 1979 made by the Central Government in exercise of powers under s. 3(2)(c) of the Essential Commodities. Act, 1955 empowers the Government, after making such enquiry as it deems fit, to fix the maximum price at which the indigenously manufactured bulk drug shall be sold. Clause (2) of Paragraph 3 provides that while so fixing the price of a bulk drug, the Government may take into account the average cost of production of such bulk drug manufactured by a efficient manufacturer and allow a reasonable return on net worth. Paragraph 12 empowers the Government to fix leader prices of formulations of categories I and II, while paragraph 13 empowers the Government to fix retail prices of formulations of category III. Paragraph 27 enables any person aggrieved by any notification or order under the various paragraphs aforesaid to appeal to the Government for a review.
The Central Government issued notifications under paragraph 3
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of the 1979 Order fixing the maximum prices at which various indigenously manufactured bulk drugs could be sold. The manufacturers first filed review applications under paragraph 27 of the Order and thereafter writ petitions under Art. 226 of the Constitution challenging the notifications. The High Court quashed those notifications on the ground of failure to observe the principles of natural justice. Since prices of formulations are primarily dependent on prices of bulk drugs, the notifications fixing the retail prices of formulations issued during the pendency of review petitions were also quashed.

In the appeal by the Union of India, it was contended that the fixation of maximum price under paragraph 3 of the Order was a legislative activity and, therefore, not subject to any principle of natural justice, that paragraph 27 of the Order gave a remedy to the manufacturers to seek a review of the order fixing the maximum price under paragraph 3, that such review did not partake the character of a judicial or quasi,judicial proceedings, and that at the time of the hearing of the review application the matter underwent thorough and detailed discussion between the parties and the Government as well as the Bureau of Industrial Costs and Prices, and that the prices had not been fixed in an arbitrary manner.

For the respondents, it was contended that unlike other price control legislations, the Drugs (Prices Control) Order was designed to induce better production by providing for a fair return to the manufacturers; that the provision for an enquiry proceeding the determination of the price of a bulk

drug, the prescription in paragraph 3, clause 2 that the average cast of production of the bulk drug manufactured by an efficient manufacturer should be taken into account and that a reasonable return on net worth should be allowed, and the provision for a review of the order determining the price, established that price fixation under the Order was a quasi-judicial activity obliging the observance of the rules of natural justice; that the review, for which provision is made by paragraph 27, was certainly of quasi-judicial character and, therefore, it was necessary that the manufacturers should be informed of the basis for the fixation of the price, that the price had been fixed in an arbitrary manner and the Government was not willing to disclose the basis on which the prices were fixed on the pretext that it may involve disclosure of matters of confidential nature; that since the price of formulations were dependent on the prices of bulk drugs, these should not have been prescribed until the review application was disposed of, that the undertaking given by the parties before the High Court while obtaining ex-parte interim order to main-

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tain the stanus-quo on the prices of bulk drugs and formulations prevailing before the issue of notifications, and in case of dismissal of their petitions to deposit the difference in the prices of the formulations in the Court, lapsed with the disposal of the writ petition and it could no longer be enforced; and that the delay in filing special leave petitions against other manufacturers should not be condoned as the Government was well versed litigant as compared to private litigants.

Allowing the appeal, the Court,

HELD: 1. Price fixation is neither the function nor the forte of the Court. The Court is concerned neither with the policy nor with the rates. But it has jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, the Court will, if necessary, enquire into the question whether the policy and factors were present to the mind of the authorities specifying the price. Its examination would stop there. The mechanics of price fixation are not concern of the executive. The Court will not revaluate the considerations even if the prices were demonstrably injurious to some manufacturers or producers. It will, of course, examine if there was any hostile discrimination. [852E-H]

Secretary of Agriculture v. Central Reig Refining Company, 338 604; Prag Ice & Oils Mills v. Union of India, [1978] 3 SCC 459 and Welcom Hotel v. State of Andhra Pradesh , [1983] 4 SCC 575, referred to.

2. Profiteering, by itself, is evil. Profiteering in the

scarce resources of the community, much needed life-sustaining food stuffs and fife saving drugs is diabolic. It is a menace which has to be lettered and curbed. The Essential Commodities Act, 1955 is a legislation towards that end, in keeping with the duty of the State enshrined in Art. 39(b) of the Constitution towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. [851E-F]

The right of the citizen to obtain essential articles at fair prices and duty of the State to provide them are thus transformed into the power of the State to fix prices and obligation of the producer to charge no more than the price fixed. [854F]

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Shree Meenakshi Mills Ltd. v. Union of India, [1974] 1 SCC 468; Hari Shankar Bagla v. State of Madhya Pradesh, [1955] 1 SCR 380; Union of India v. Bhanamal Gulzarimal , [1960] 2 SCR 627; Sri Krishna Rice Mills v. Joint Director (Food), (unreported), State of Rajasthan v. Nathmal and Mithamal, [1954] SCR 982; Narendra Kumar v. Union of India, [1960] 2 SCR 375, Panipat Co-operative Sugar Mills v. Union of India, [1973] 1 SCC 129; Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Union of India, [1973] 3 SCC 435 and Premier Automobiles Ltd. v. Union of India, [1972] 2 SCR 526, referred to.

3.1 A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character not directed against a particular situation. It is intended to operate in future. It is conceived in the interest of the general consumer public. [854E-F]

3.2 Price fixation is more in the nature of a legislative activity than administrative. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases. [853F-H; 854A]

Secretary of Agriculture v. Central Reig Refining Company, 338 US 604, and Saraswati Industrial Syndicate Ltd. v. Union of India, [1974] 2 SCC 630, referred to.

3.3.1 Price fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise

when the owner of property or goods is compelled to sell his property or goods to the Government or its nominee and the price to be paid is directed by the legislature to be determined according to the statutory guidelines laid down by it. In such situations the determination of price may acquire a quasi-judicial character. [854G-H; 855A]

3.3.2 Section 3(2)(f) of the Essential Commodities Act enables the

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Central Government to make an order requiring any person engaged in the production of any essential commodity to sell the whole or a specific part of the quantity produced by him to the Government or its nominee. Section 3(3)(C) provides for the determination of the price to be paid to such a person. If the provisions of s. 3(2)(c), under which the price of an essential commodity may be controlled, are contrasted with s. 3(3)(C) under which payment is to be made for a commodity required to be sold by an individual to the Government, the distinction between a legislative act and a non-legislative act will at once become clear. The order made under s. 3(3)(c), which is not in respect of a single transaction, nor directed to a particular individual, is clearly a legislative act, while an order made under s. 3(3)(C), which is in respect of a particular transaction of compulsory sale from a specific individual, is a nonlegislative act. [860B-H; 861A-B]

3.3 The order made under s. 3(2)(c) controlling the price of an essential commodity may itself prescribe the manner in which price is to be fixed but that will not make the fixation of price a non-legislative activity, when the activity is not directed towards a single individual or transaction but is of a general nature, covering all individuals and all transactions. The legislative character of the activity is not shed and an administrative. or quasi-judicial character acquired merely because guidelines prescribed by the statutory order have to be taken into account. [861B-C]

3.4 Legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing, in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. But where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity. [852H; 853A-C]

New India Sugar Works v. State of Uttar Pradesh, [1981] 2 SCC 293; Laxmi Khandsari v. State of Uttar Pradesh, [1981] 2 SCC 600; Ramesh Chandra Kachardas Porwal v. State of Maharashtra, [1981] 2 SCC 722; Bates v. Lord Hailsha, of St.

Marylebone, [1972] 1 WLR 1973; Edinburgh and Dalkeith Rv. v. Wauchope Per Lord Brougham, [1842] 8 CI & F 700, 720; British Railways Board v. Pickin, [1974] 1 All ER 609, Sarkar Sasta Anaj Vikreta Sangh v. State of Madhya Pradesh,
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[1981] 4 SCC 471 and Tharoo Mal v. Puranchand, [1978] 1 SCC 102, referred to.

3.5 Nothing in the scheme of the Drugs (Prices Control) Order, 1979 leads to the inference that price fixation under that Order is not a legislative activity but a quasi-judicial activity which would attract the observance of the principles of natural justice. Nor is there anything in the scheme or the provisions of that Order which otherwise contemplates the observance of any principle of natural justice or kindred rule, the non-observance of which would give rise to a cause of action to a suitor. [871G-H; 872A-B]

4.1 Occasionally the legislature directs the subordinate legislating body to make 'such enquiry as it think fit' before making the subordinate legislation. In such a situation, while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body and the subordinate legislation is not open to question on the ground that the enquiry was not as fur as it might have been. The provision for such an enquiry is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information' from all and whatever source considered necessary. It is the sort of enquiry which the legislature itself my cause to he made before legislating, an enquiry which will not confer any right an anyone other than the enquiring body. It is different from an enquiry in which an opportunity is required to he given to persons likely to he affected. The former is an enquiry leading to a legislative activity while the latter is an enquiry which ends in an administrative or quasi-judicial decision. [853D-F]

4.2 In the present case, paragraph 3 of the Drugs (Prices Control) Order, 1979 is an enabling provision. "Such an enquiry as it thinks fit" contemplated by it is an enquiry of the former character to he made for the purposes of fixing the maximum price at which a bulk drug may he sold, with a view to regulating its equitable distribution and making it available at a fair price for the benefit of the ultimate consumer in consonance with Art. 39(b) of the Constitution. It is primarily from the consumer public's point of view that the Government is expected to make its enquiry. The need of the consumer public is to he ascertained and making the drug available to them at a fair price is its ultimate aim. The enquiry is to he made from that angle and directed towards that end. Information may he gathered from whatever source considered desirable by the Government. [872B-E]

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4.3 In fixing the price of a bulk drug, the Government is expressly required by the Order to take into account the average cost of production of such bulk drug manufactured by 'an efficient manufacturer' and allow a reasonable return on 'net worth'. For this purpose too, the Government may gather information from any source including the manufacturers. Here again the enquiry by the Government need not be restricted to 'an efficient manufacturer' or some manufacturers; nor need it be extended to all manufacturers. What is necessary is that the average cost of production, by 'an efficient manufacturer' must be ascertained and a reasonable return allowed on 'net worth'. Being a subordinate or delegated legislative activity, the enquiry must necessarily comply with the statutory conditions, if any, no more and no less, and no implications of natural justice can be read into it unless it is a statutory condition. [866B-D]

5.1 The review provided by paragraph 27 of the Order, of the order made under paragraph 3 fixing maximum price of indigenously manufactured drugs, and under paragraphs 12 and 13 fixing leader and retail prices of formulations, is akin to a post-decisional hearing which is sometimes afforded after the making of some administrative orders, but not truly so. It is a curious amalgam of a hearing which occasianally precedes a subordinate legislative activity such as the fixing of municipal rates etc. and a post decisional hearing after the making of an administrative or quasi-judicial order. it is a hearing which follows a subordinate 'legislative activity intended to provide an opportunity to affected persons such as the manufacturers, the industry and the consumer public to bring to the notice of the subordinate legislating body the difficulties or problems experienced or likely to he experienced by them consequent on the price fixation, whereupon the Government may make appropriate orders. More precisely it is a review of subordinate legislation by a legislating body at the instance of an aggrieved person. [873B; 874C-D]

5.2 The reviewing authority has the fullest freedom and discretion under paragraph 27 of the Order to prescribe its own procedure and consider the matter brought before it so long as it does not travel beyond the parameters prescribed by paragraph 3 in the case of a review against an order made under that paragraph and the respective other paragraphs in the case of other orders. But whatever procedure is adopted, it must be a procedure tuned to the situation. [873H; 874A-B]

Vrajlal Manilal & Co. v. Union of India & Anr., [1964] 7 SCR 97; Shivaji Nathubhai v. Union of India & Ors., [1960] 2 SCR 775; Maneka Gandhi v. Union of India,[1978] 2 SCR 621; Swadeshi Cotton Mills v.

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Union of India, [1981] 2 SCR 533 and Liberty Oil Mills v. Union of India, [1984] 3 SCR 676, distinguished.

6.1 So long as the method prescribed and adopted by the subordinate legislating body in arriving at the cost of production of bulk drugs was not arbitrary and opposed to the principal statutory provisions, it could not legitimately be questioned. [878F]

6.2 It is open to the subordinate legislating body to prescribe and adopt its own mode of ascertaining the cost of production and the items to be included and excluded in so doing. Such a body is under no obligation to follow the method adopted by the Income-tax authorities in allowing expenses for the purpose of ascertaining income and assessing it. There may be many items of business expenditure which may be allowed by Income-tax authorities as legitimate expenses but which can never enter the cost of production. It is open to such an authority to adopt a rough and read but otherwise not unreasonable formula rather than a needlessly intricate so-called scientific formula. [878D-H]

It could not therefore, be said in the instant case, that the subordinate legislating authority acted unreasonably in prescribing the norms in the manner it has done.

7.1 From the legislative nature of the activity of the Government, it is clear that it is under no obligation to make any disclosure of any information received and considered by it in making the order but in order to render effective the right to seek a review given to an aggrieved person, the Government, if so requested by the aggrieved manufacturer, is under an obligation to disclose any relevant information which may reasonably be disclosed pertaining to 'the average cost of production of the bulk drug manufactured by an efficient manufacturer' and 'the reasonable return on net worth'. [874C-E]

7.2 In the instant case, the procedure followed by the Government in furnishing the requisite particulars at the time of the hearing of the review applications and discussing across the table the various items that hod been taken into account was sufficient compliance with the demands of fair play in the case of the class of persons claiming to by affected by the fixation of maximum price under the Drugs (Prices Control) Order. It cannot, therefore, be said that there was anything unfair in the procedure adopted by the Government. [876D-E]

8. This Court cannot constitute itself into a court of appeal over

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the Government in the matter of price fixation. The questions that obsolete quantitative usages had been taken into consideration, proximate cost data had been ignored, and the data relating to the year ending November 1976 had been adopted as the basis; that there were errors in totalling, errors in the calculation of prices of utilities, errors in the calculation of 'net worth' and many other similar errors, were questions to be raised before the Government in the review application under paragraph 27. [877A-C]

9.1 It is the necessary duty of the Government to proceed to fix the retail price of a formulation as soon as the price of the parent bulk drug is fixed. Though the price fixation of formulations is dependent on the price of the bulk drug, it is not to await the result of a review application which in the end may turn out to be entirely without substance. In view of the public interest, therefore, it is necessary that the price of formulation should be fixed close on the heels of the fixation of bulk drug price. [879D-E; G]

9.2 The ups and downs of commerce are inevitable it is not possible to devise a fool proof system to take care of every possible defect and objection. It is certainly not a matter at which the court could take a hand. All that court may do is to direct the Government to dispose of the review application expeditiously according to a time bound programme. [879F-G]

10. Though the price of a bulk drug is dependent on innumerable variables, it does not follow that the notification fixing the maximum price must necessarily be struck down as obsolete by the mere passage of time. The applications for review must be dealt with expeditiously and whenever they are not so dealt with, the aggrieved person may seek a mandamus from the court to direct the Government to deal with the review application within a time frame-work. [880B-C]

11. Where prices of essential commodities are fixed in order to maintain or increase their supply or for securing their equitable distribution and availability at fair prices, the court should not make any interim order staying the implementation of the notification fixing the prices. Such orders are against the public interest and ought not to be made by a court unless it is satisfied that no public interest is going to suffer. In matters of fixation of price, it is the interest of the consumer public that must come first and any interim order must take care of that interest. [880D-F]

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In the instant case, the order made by the High Court has the manufacturers on terms, but the consumer public has been left high and dry. [881D]

12. Apart from the fact that an appeal is ordinarily considered to be a continuation of the original proceeding, in the present case, further orders of the Supreme Court were also in contemplation and such further orders could only be made if appeals were preferred to the Supreme Court. There was no doubt in anyone's mind that the matter would be taken up in appeal to the Supreme Court whichever way the writ petitions were decided. The undertakings given by the parties in the present cases, were thus intended to and do continue to subsist. [881E-F]

[The Government is directed to dispose of the review applications after giving notice of hearing to the manufac-

turer. The hearing to be given within two months and the review applications disposed of within two weeks after the conclusion of the hearing.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1603 of 1985 etc. From the Judgment and Order dated 17.12.1984 of the Delhi High Court in C.W.P. No. 820 of 1981.

G. Ramaswamy, Additional Solicitor General G. Subramani- um, C.V. Subba Rao and A. Subba Rao for the Appellants. A.B. Diwan, S.I. Thakar, D.D. Udeshi, H.S. Merchant, Ravinder Narain, Mrs. A.K. Verma and D.N. Mishra for the Respondents.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. It was just the other day that our brothers Ranganath Misra and M.M. Dutt, JJ. had to give directions in a case (Vincent Panikurbangara v. Union of India) where a public spirited litigant had complained about the unscrupulous exploitation of the Indian Drug and Pharma- ceutical Market by multinational Corporations by putting in circulation low-quality and even deleterious drugs. In this group of cases we are faced with a different problem of alleged exploitation by big manufacturers of bulk drugs. The problem is that of high prices, bearing, it is said, little relation to the cost of production to the manufacturers. By way of illustration, we may straightaway mention a glaring instance of such high-pricing which was brought to our notice at the very commencement of the hear- ing. 'Barlagan Ketone', a bulk drug, was not treated as an essential bulk drug under the Drugs (Prices Control) Order, 1970 and was not included in the schedule to that order. A manufacturer was, under the provisions of that Order, free to continue to sell the drug at the price reported by him to the Central Government at the time of the commencement of the order, but was under an obligation not to increase the price without the prior approval of the Central Government. The price which the manufacturer of Barlagan Kotone, report- ed to the Central Government in 1971 was Rs.24,735.68 per Kg. After the 1979 Drugs (Prices Control) Order came into force, the distinction between essential and non-essential bulk drugs was abolished and a maximum price had to be fixed for Barlagan Ketone also like other bulk drugs. The manufac- turer applied for fixation of price at Rs.8,500 per Kg. The Government, however, fixed the price at Rs.1,810 per Kg. For the moment, ignoring the price fixed by the Government, we see that the price of Rs.24,735 per Kg. at which the manu- facturer was previously selling the drug and at which he continues to market the drug to this day because of the quashing of the order fixing the price by the High Court, is so unconsciously high even compared with the price claimed by himself that it appears to justify the charge that some manufacturers do indulge in 'profiteering'. Profiteering, by itself, is evil. Profiteering in the scarce resources of the community, much needed life-sustain- ing food-stuffs and lifesaving drugs is diabolic. It is a menance which had to be lettered and curbed. One of the principal objectives of the Essential Commodities Act, 1955 is precisely that. It must be remembered that Art. 39(b) enjoins a duty on the State towards securing 'that the ownership and control of the material resources of the community are so distributed as best to subserve the common good'. The Essential Commodities Act is a legislation to- wards that end. Section 3(1) of the Essential Commodities Act enables the Central Government, 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 their equitable distribution and

availability at fair price', to 'provide for regulating or prohibiting by order, the production, supply and distribution thereof and trade and commerce therein'. In particular, s. 3(2)(c) enables the Central Government, to make an order providing for controlling the price at which any essential commodity may be bought or sold. It is in pursuance of the powers granted to the Central Government by the Essential Commodi- ties Act that first the Drugs (Prices Control) Order, 1970 and later the Drugs (Prices Control) Order, 1979 were made.

Armed with authority under the Drugs (Prices Control) Order, 1979 the Central Government issued notifications fixing the maximum prices at which various indigenously manufactured bulk drugs may be sold by the manufacturers. These notifica- tions were questioned on several grounds by the manufactur- ers and they have been quashed by the Delhi High Court on the ground of failure to observe the principles of natural justice. Since prices of 'formulations' are primarily de- pendent on prices of 'buli drugs', the notifications fixing the retail prices of formulations were also quashed. The manufacturers had also filed review petitions before the Government under paragraph 27 of the 1979 Order. The review petitions could not survive after the notifications sought to be reviewed had themselves been quashed. Nevertheless the High Court gave detailed directions regarding the manner of disposal of the review petitions by the High Court. The Union of India has preferred these appeals by Special leave of this Court against the judgment of the High Court. The case for the Union of India was presented to us ably by Shri G. Ramaswami, the learned Additional Solicitor General and the manufacturers were represented equally ably by Shri Anil Diwan.

Before we turn to the terms of the Drugs (Prices Con- trol) Order, 1979 we would like to make certain general observations and explain the legal position in regard to them.

We start with the observation, 'Price-fixation is nei- ther the function nor the forte of the Court'. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant consid- erations kept out of the determination of the price. For example, if the Legislature has decreed the pricing policy and prescribed the factors which should guide the determina- tion of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assem- bling of the raw materials and the mechanics of price fixa- tion are the concern of the executive and we leave it to them. And, we will not revaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The Court will, of course, examine if there is any hostile discrimination. That is a different 'cup of tea' altogether.

The second observation we wish to make is, legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate 'legislation, it may happen that Parliament may itself provide for a notice and for a hearing-there are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate--,in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. The right here given to

rate payers or others is in the nature of a concession which is not to detract from the character of the activity as legislative and not quasijudi- cial. But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity.

Occasionally, the legislature directs the subordinate legislating body to make 'such enquiry as it thinks fit' before making the subordinate legislation. In such a situa- tion, while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body and the subordinate legislation is not open to question on the ground that the enquiry was not as full as it might have been. The provision for 'such enquiry as it thinks fit' is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information from all and whatever source and not intended to vest any right in any one other than the subordinate-legislating body. It is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right on anyone.

The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legis- lation and administration to vanish into an illusion. Admin- istrative, quasi-judicial decisions tend to merge in legis- lative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is 'difficult in theory and impossible in practice'. Though difficult, it is necessary that the line must sometimes be drawn as different legal fights and conse- quences may ensue. The distinction between the two has usually been expressed as 'one between the general and the particular'. 'A legislative act is the creation and promulgation of a general rule of conduct without refer- ence to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'. 'Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; adminis- tration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.' It has also been said "Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situa- tions". But, this is only a bread distinction, not neces- sarily always true. Administration and administrative adju- dication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legisla- tive and non-legislative acts. A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transac- tions. It is a direction of a general character, not direct- ed against a

particular situation. It is intended to operate in the future. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligation of the producer to charge n6 more than the price fixed. Viewed from whatever angle, the angle of general application the prospectivity of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity. Price- fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of property or goods is compelled to sell his property or goods to the Government or its nominee and the price to be paid is directed by the legislature to be determined accord- ing to the statutory guidelines laid down by it. In such situations the determination of price may acquire aquasi-judicial character. Otherwise, price fixation is generally a legislative activity. We also wish to clear a misapprehension which appears to prevail in certain circles that price-fixation affects the manufacturer or producer primarily and therefore fairness requires that he be given an opportunity and that fair opportunity to the manufacturer or producer must be read into the procedure for price-fixa- tion. We do not agree with the basic premise that price fixation primarily affects manufacturers and producers. Those who are most vitally affected are the consumer public. It is for their protection that price-fixation is resorted to and any increase in price affects them as seriously as any decrease does a manufacturer, if not more. The three observations made by us are well-settled and wellfounded on authority. The cases to which we shall now refer, will perhaps elucidate what we have tried, unfelici- tously, to express.

In Shree Meenakshi Mills Ltd. v. Union of India, [1974] 1 SCC 468 a notification fixing the ex-factory price of certain counts of cotton yarn was questioned on the ground that the price had been arbitrarily fixed. After referring to Hari Shanker Bagla v. State of Madhya Pradesh, [1955] 1 SCR 380; Union of India v. Bhanamal Gulzarimal, [1960] 2 SCR 627; Sri Krishna Rice Mills v. Joint Director (Food), (unreported); State of Rajasthan v. Nathmal and Mithamal, [1954] SCR 982; Narendra Kumar v. Union of India, [1960] 2 SCR 375; Panipat Co-operative Sugar Mills v. Union of India, [1973] 1 SCC 129; Anakapalle Co-operative Agricultural & Industrial Society Ltd. v. Union of India, [1973] 3 SCC 435 and Premier Automobiles Ltd. v. Union of India, [1972] 2 SCR 526 a constitution bench of the court observed that the dominant object and the purpose of the legislation was the equitable distribution and availability of commodities at fair price and if profit and the producer's return were to be kept in the forefront, it would result in losing sight of the object and the purpose of the-legislation. If the prices of yarn or cloth were fixed in such a way to enable the manufacturer or producer recover his cost of production and secure a reasonable margin of profit, no aspect of infringe- ment of any fundamental right could be said to arise. It was to be remembered that the mere fact that some of those were engaged in the industry, trade or commerce alleged'that they were incurring loss would not render the law stipulating the price unreasonable. It was observed, "The control of prices may have effect either on maintaining or ,increasing supply of com- modity or securing equit-

able distribution and availability at fair prices. The controlled price has to retain this equilibrium in the supply and demand of the commodity. The cost of production, a reasonable return to the

producer of the commodity are to be taken into account. The producer must have an incentive to produce. The fair price must be fair not only from the point of view of the consumer but also from the point of view of the producer. In fixing the prices, a price line has to be held in order to give preference or pre-dominant consideration to the interest of the consumer or the general public over that of the produc- ers in respect of essential commodities. The aspect of ensuring availability of the essen- tial commodities to the consumer equitably and at fair price is the most important considera- tion.

The producer should not be driven out of his producing business. He may have to bear loss in the same way as he does when he suf-

fers losses on account of economic forces operating in the business. If an essential commodity is in short supply or there is hoarding, concerning or there is unusual demand, there is abnormal increase in price. If price increases, it becomes injurious to the consumer. There is no justification that the producer should be given the benefit of price increase attributable to hoarding or cornering or artificial short supply. In such a case, if an "escalation" in price is contem- plated at intervals, the object of controlled price may be stultified. The controlled price will enable both the consumer and the producer to tide over difficulties. therefore, any restriction in excess of what would be neces- sary in the interest of general public or to remedy the evil has to be very carefully considered so that the producer does not perish and the consumer is not crippled."

The cases of Panipat Sugar Mills and Anakapalle Co-operative Agricultural Society were distinguished on the ground that they were governed by sub-section (3C) of sec. 3 of the Essential Commodities Act and therefore, had no relevance to the case before the Constitution Bench. The case of Premier Automobiles was distinguished on the ground that the deci- sion was rendered by invitation and on the agreement of the parties irrespective of technical and legal questions. The Court quoted with approval a passage from Secretary of Agriculture v. Central Reig Refining Company, 330 US 604, stating, "Suffice it to say that since Congress fixed the quotas on a historical basis it is not for this Court to reweigh the relevant factors and, per chance, substitute its notion of expediency and fairness for that of Congress. This is so even though the quota thus fixed may demonstrably be disadvantageous to certain areas or persons. This Court is not a tribunal for relief from the crudities and inequities of complicated experimental economic legisla- tion ".

In Saraswati Industrial Syndicate Ltd. v. Union of India, [1974] 2 SCC 630; the Court observed, "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, there- fore, 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 rea- sonable nexus between the matters which are taken into account in exercising a power and the purposes of exercise of that power."

It was also reiterated that the decision in Shree Meenakshi Mills' case was based on a special agreement between the parties and therefore, had no relevance to the question before them.

In Prag Ice & Oil Mills v. Union of India, [1978] 3 SCC 459 a Constitution Bench of seven judges of this court had to consider the validity of the Mustard Oil (Price Control) Order, 1977, an Order made in exercise of the powers con- ferred upon Central Government by the Essential Commodities Act. Chandrachud, J. speaking for the court approved the observation of Beg, CJ. in Saraswati Industrial Syndicate that it was enough compliance with the Constitutional man- date if the basis adopted for price fixation was not shown to be so patently unreasonable as to be in excess of the power to fix the price. He observed "In the ultimate analysis the mechanics of price fixation has necessarily to be left to the judgment of the Executive and unless it is patent that there is hostiled discrimination against a class of operators, the processual basis of price fixation has to be accepted in the generality of cases as valid."

Referring to Shri Meenakshi Mills, the learned CJ. reaf- firmed the approval accorded to the statement in Secretary of Agriculture v. Central Reig Refining Company (supra) that Courts of Law could not be converted into tribunals for relief from the crudities and inequities of complicated experimental economic legislation. Panipat Sugar and Anakap- palle Society were again referred to and it was pointed out that those cases turned on the language of s. 3(3C) of the Essential Commodities Act. Premier Automobiles was consid- ered and it was affirmed that the judgment in that case could not be treated as precedent and could not afford any appreciable assistance in the decision of price fixation cases as it proceeded partly on agreement between the par- ties and partly on concessions made at the bar. Beg, CJ. who delivered a separate opinion for himself and for Desai, J. agreed that the judgment in Premier Automobiles was not to provide a precedent in price fixation case. He also reaf- firmed the proposition that price fixation was in the nature of a legislative measure and could not give rise to a com- plaint that natural justice was not observed. He indicated the indicia which led him to the conclusion that price fixation was a legislative measure. He observed:

> "We think that unless, by the terms of a 'particular statute, or order, price fixation is made a quasi-judicial function for speci- fied purposes or cases, it is really legisla- tive in character in the type of control order which is now before us because it satisfies the tests of legislation. A legislative meas- ure does not concern itself with the facts of an individual case. It is meant to lay down a general rule applicable to all persons or objects or transactions of a particular kind or class. In the case before us, the Control Order applies to sales of mustard oil anywhere in India by any dealer. Its validity does not depend on the observance of any procedure to be complied with or particular types of evi- dence to be taken on any specified matters as conditions precedent to its validity. The test of validity is constituted by the nexus shown between the order passed and the purposes for which it can be passed, or in other words by reasonableness judged by possible or probable consequences."

In New India Sugar Works v. State of Uttar Pradesh, [1981] 2 SCC 293 there was an indication though it was not expressly so stated that the question of observing natural justice did not arise in cases of price fixation. In Laxmi Khandsari v. State of Uttar Pradesh, [1981] 2 SCC 600 it was held that the Sugar Cane Control Order, 1966 was a legislative measure and therefore, rules of natural justice were not attracted. In Rameshchandra Kachardas Porwal v. State of Maharashtra, [1981] 2

SCC 722 it was observed that legislative activity did not invite natural justice and that making of a declara- tion that a certain place shall be a principal market yard for a market area under the relevant Agricultural Produce Markets Acts was an act legislative in character. The obser- vation of Magarry, J. in Bates v. Lord Hailsha, of St. Marylebone [1972] 1 WLR 1973 that the rules of natural justice do not run in the sphere of legislation, primary or delegated, was cited with approval and two well known text books writers Paul Kackson and Wades H.W.R. were also quot- ed. The former had said, "There is no doubt that a minister, or any other body, in making legislation, for example, by statutory instrument or by law, is not subject to the rules of natural justice--Bates v. Lord Hailsham of St. Marylebone (supra)--any more than is Parliament itself; Edinburgh and Dalkeith Rv. v. Wauchope per Lord Brougham, [1842] 8 CL & F 700, 720; British Railways Board v. Pickin, [1974] 1 All ER

609. The latter had said, "There is no right to be heard before the making of legislation, whether primary or dele- gated, unless it is provided by statutes." In Sarkari Sasta Anaj Vikreta Sangh v. State of Madhya Pradesh, [1981] 4 SCC 471; it was pointed out that the amendment of the Madhya Pradesh Food Stuffs Distribution Control Order was a legis- lative function and there was, therefore, no question of affording an opportunity to those who were to be affected by it.

In Welcom Hotel v. State of Andhra Pradesh, [1983] 4 SCC 575 the observations of Chandrachud, CJ. in Prag Ice and Oil Mills were quoted with approval in connection with the fixation of prices of food stuffs served in restaurants. In Tharoe Mal v. Puranchand, [1978] 1 SCC 102 one of the questions was regarding the nature of the hearing to be given before imposing municipal taxes under the Uttar Pra- desh Municipalities Act, 1916. It was held, " ..... the procedure for the imposition of the tax is legislative and not quasi-

judicial ..... The right to object, howev- er, seems to be given at the stage of propos- als of the tax only as a concession to re-

quirements of fairness even though the procedure is legisla- tive and not quasi-judicial."

We mentioned that the Panipat and the Anakapalle eases were distinguished in Shree Meenakshi, and Prag Ice. Pani- pat and Anakapalle were both cases where the question was regarding the price payable to a person who was required to sell to the Government a certain percentage of the quantity of sugar produced in his mill. The Order requiring him to sell the sugar to the Government was made under s. 3(2)(f) of the Essential Commodities Act under which the Central Government was enabled to make an order requiring any person engaged in the production of any essential commodity to sell the whole or specified part of the quantity produced by him to the Government or its nominee. It will straight-away be seen that an order under s. 3(2)(f) if a specific order directed to a particular individual for the purpose of enabling the Central Government to purchase a certain quan- tity of the commodity from the person holding it. It is an order for a compulsory sale. When such a compulsory sale is required to be made under s. 3(2)(f), the question naturally arises what is the price to be paid for the commodity pur- chased? Section 3(3C) provides for the ascertainment of the price. It provides that in calculating the amount to be paid for the commodity required to be sold regard is to be had to--(a) the minimum price, if any, fixed for sugarcane by the Central Government

under this section; (b) the manufac- turing cost of sugar; (c) the duty or tax, if any, paid or payable thereon; and (d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar. It is further prescribed that different prices may be determined, from time to time, for different areas or for different factories or for different kinds of sugar. It is to be noticed here that the payment to be made under s. 3(3C) is not necessarily the same as the controlled price which may be fixed under s. 3(2)(c) of the Act. Section 3(2)(c) of the Act, we have already seen, enables the Cen- tral Government to make an order controlling the price at which any essential commodity may be bought or sold, 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 in securing their equitable distribution and availability at fair prices. Section 3(3C) provides for the determination of the price to be paid to a person who has been directed by the Central Government by an Order made under s. 3(2)(c) to sell a certain quantity of an essential commodity to the Government or its nominee. While s. 3(2)(c) contemplates an Order of a general nature, s. 3(3C) contemplates a specific transaction. If the provisions of s. 3(2)(c) under which the price of an essential commo-

dity may be controlled are contrasted with s. 3(3C) under which payment is to be made for a commodity require to be sold by an individual to the Government, the distinction between a legislative act and a non-legislative act will at once become clear. The Order made under s. 3(2c), which is not in respect of a single transaction, nor directed to particular individual is clearly a legislative act, while an Order made under s. 3(3C) which is in respect of a particu- lar transaction of compulsory sale from a specific individu- al is a non-legislative act. The Order made under s. 3(2)(c) controlling the price of an essential commodity may itself prescribe the manner in which price is to be fixed but that will not make the fixation of price a non-legislative activ- ity, when the activity is not directed towards a single individual or transaction but is of a general nature, cover- ing all individuals and all transactions. The legislative character of the activity is not shed and an administrative or quasi-judicial character acquired merely because guide- lines prescribed by the statutory order have to be taken into account.

We may refer at this juncture to some illuminating passages from Schwrtz's book on 'Administrative Law'. He said:

> "If a particular function is termed "legisla- tive" or "rulemaking" rather than "judicial" or "adjudication," it may have substantial effects upon the parties concerned. If the function is treated as legislative in nature, there is no right to notice and hearing, unless a statute expressly requires them. If a hearing is held in accordance with a statutory requirement, it normally need not be a formal one, governed by the requirements discussed in Chapters 6 and 7. The characterization of an administrative act as legislative instead of judicial is thus of great significance."

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX X "As a federal court has recently pointed out, there is no "bright line" between rule-making and adjudication. The most famous pre-APA attempt to explain the difference between legislative and judicial functions

was made by Justice Holmes in Prentis v. Atlantic Coast Line Co. "A judicial inquiry," said he, "investigates, declares and enforces liabili- ties as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power." The key factor in the Holmes analysis is time: a rule prescribes future patterns of conduct; a decision determines liabilities upon the basis of present or past facts."

"The element of applicability has been empha- sized by others as the key in differentiating legislative from judicial functions. According to Chief Justice Burger, "Rulemaking is nor- mally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class." An adjudication, on the other hand, applies to specific individuals or situations. Rulemaking affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely affected; adjudication operates conceretly upon individuals in their individual X X capacity."

> We may now turn our attention to the two Drugs (Prices Control) Order of 1970 and 1979, both of which were made by the Central Govern- ment in exercise of its powers under s. 3 of the Essential Commodities Act.
>
> The Drugs (Prices Control) Order, 1970 defined 'Bulk Drugs' as follows: "Bulk drugs" means "any unprecessed phamaceu- tical, chemical, biological and plant product or medicinal gas conforming to pharmacopocial or other standards accepted which is used as such or after being processed into formula- tions and includes an essential bulk drug."

Bulk drugs were divided into essential bulk drugs which were included in the schedule and bulk drugs which were not so included. In the case of essential bulk drugs, paragraph 4 of the order enabled the Central Government to fix the maximum price at which such essential bulk drugs should be sold. In the case of bulk drugs, which were not included in the schedule, a manufacturer was entitled to continue to market the product at the same price at which he was market- ing the products at the time of the commencement of the order. He was required to report this price to the Central Government within two weeks of the commencement of the order and was further prohibited from increasing the price without obtaining the approval of the Central Government.

A Committee on Drugs and Pharmaceutical Industry, popu- larly known as the Hathi Committee was appointed by the Government of India to enquire into the various facets, of the Drug Industry in India. One of the terms of reference was 'to examine the measures taken so far to reduce prices of drugs for the consumer, and to recommend such further measures as may be necessary to rationalise the prices of basic drugs and formulations.' The Hathi Committee noticed that 'in a country like India where general poverty and the wide disparities in levels of income between different sections existed' it was particularly important to emphasise 'the social utility of the industry and the urgent need for extending as rapidly as possible certain minimum facilities in terms of preventive and curative medicines to the large mass of people both urban and rural'. It was said, "The concern about drug prices, therefore, really arises from the fact that many of them are

essential to the health and welfare of the community; and that there is no justification for the drug industry charging prices and having a production pattern which is based not upon the needs of the community but on aggres- sive marketing tactices and created demand." The Government of India accepted the report of the Hathi Committee and announced in Parlia- ment the 'Statement on Drug Policy' pursuant to which the Drugs (Prices Control) Order, 1970 was repealed and the Drugs (Prices Con- trol) Order, 1979 was made. Paragraph 44 of the Statement on Drug Policy in 1978 dealt with 'pricing policy' and it may be usefully extracted here. It was as follows:-

"The Hathi Committee had recommended that a return post tax between 12 to 14% on equity that is paid up capital plus reserves, may be adopted as the basis for price fixation, depending on the importance and complexity of the bulk drug. In the case of formulations, the Hathi Committee felt that the principle of selectivity could be introduced in terms of

(a) the size of the units, (b) selection of items; and (c) controlling the prices only of market leaders, in particular, of products for which price control is contemplated. The Hathi Committee considered that units (other than MRTP units) having only turnover of less than Rs.1 crore may be exempted from price control. Alternatively, all formulations (other than those marketed under generic names) which have an annual sale in the coun- try in excess of Rs.15 lakhs (inclusive of excise duty) may be subjected to price con- trol, irrespective of whether or not the total annual turnover of the unit is in excess of Rs.1 crore. The ceiling price will be deter- mined taking into account the production costs and a reasonable return for the units which are the market leaders. Yet another variant of a selectivity, according to the Hathi Commit- tee, would be to identify product groups which individually are important and which collec- tively constitute the bulk of the output of the industry. In respect of each item of this list, it would be possible to identify the leading producers who account for about 60% of the sales between them. On the basis of cost analysis in respect of those units, maximum prices may be prescribed and all other units may be free to fix their prices within this ceiling. On balance, the Hathi Committee was of the view that this particular variant selectivity may be administratively simpler." The Drugs (Prices Control) Order, 1979 was made pursuant to this Statement of Policy. Paragraph 2(a) of the Drugs (Prices Control) Order, 1979 defines 'bulk drug' to mean "any substance including pharmaceutical, chemical, biological or plant product or medicinal gas conforming to pharmacological or other stand- ards accepted under the Drugs and Cosmetics Act, 1940, which is used as such or as in ingredient in any formulations." "Formulation" is defined as follows:-

"Formulation means a medicine processed out of, or containing one or more bulk drugs or drugs, with or without the use of any pharma- ceutical aids for internal or external use for, or in the diagnosis, treatment, mitiga- tion or prevention of disease in human beings or animals, but shall not include--

(i) any bona fide Ayurvedic (including Sidha) or Unani (Tibb) Systems of medicine;

(ii) any medicine included in the Hom-

oeopathic system of medicine;

(iii) any substance to which the provi-

sions of the Drugs and Cosmetics Act, 1940 (XXIII of 1940), do not apply"

The expressions "free reserve", "leader price", "net-worth", "now bulk drug", "pooled price," "pre-tax return", "retention price" are defined in the following manner: ""Free reserve" means a reserve created by appropriation of profits, but does not include reserves provided for contingent liability, disputed claims, goodwill, revaluation, and other similar reserves".

"'leader price' means a price fixed by the Government for formulations specified in Category I, Category II or Category III of the Third Schedule in accordance with the provi- sions of paras. 10 and 11, keeping in view the cost of or efficiency, or both, of major manufacturers of such formulations."

"'net-worth' means the share capital of a company plus free reserve, if any."

"'new bulk drug' means a bulk drug manufac- tured within the country, for the first time after the commencement of this Order."

"'Pooled price' in relation to a bulk drug, means the price fixed under para 7."

"'pre-tax return' means profits before payment of incometax and sur-tax and includes such other expenses as do not form part of the cost of formulations."

"'retention price' in relation to a bulk drug means the price fixed under paras 4 and 7 for individual manufacturers, or importers, or distributors, or such bulk drugs."

The distinction between an essential bulk drug included in the schedule and a bulk drug not so included in the sched- ule, which was made in 1970 Drugs (Prices Control) Order was abandoned in the 1979 Order. Bulk drugs were, however, broadly divided into indigenously manufactured bulk drugs, imported bulk drugs and hulk drugs which were both manufactured indigenously as also imported. Paragraph 3 of the 1979 Order enables the Government, with a view to regulating the equitable distribution of any indigenously manufactured bulk drug specified in the first or the second schedule and making it available at a fair price and after making such enquiry as it deems fit, to fix from time to time by notification in the official gazette, the maximum price at which the bulk drug shall be sold. Clause (2) of Paragraph 3 provides that while so fixing the price of a bulk drug, the Government may take into account the average cost of production of such bulk drug manufac- tured by an efficient manufacturer and allow a reasonable return on net worth. By way of an explanation efficient manufacturer is defined to mean "a manufacturer-(i) Whose production of such bulk drug in relation to the total pro- duction of such bulk drug in the country is large, or (ii) who employs efficient technology in the production of such bulk drug." We have already noticed that 'net worth' is defined to mean 'the share capital of a company plus free reserve, if any'. "Free reserve" itself is separately de- fined. It is then prescribed by clause (3)--

> "No person shall sell a bulk drug at a price exceeding the price notified under sub-para- graph 1, plus local taxes, if any payable: provided that until the price of bulk drug is so notified, the price of such bulk drug shall be the price which prevailed immediately before the commencement of this order and the manufacture of such bulk drug at a price exceeding the price which prevailed as afore- said."

This means that until the maximum sale price of an indige- nously manufactured bulk drug is fixed under paragraph 3 of the 1979 Order, the price fixed under paragraph 4 of the 1970 order or the price permitted under paragraph 5 of the 1970 order was to be maximum sale price. Paragraph 3(4)(a) requires a manufacturer commencing production of the bulk drug specified in the First or Second Schedule, the price of which has already been notified by the Government, not to sell the bulk drug at a price exceeding the notified price. Paragraph 3(4)(b) provides that where the price of a bulk drug has not been notified by the Government, the manufac- turer shall, within 14 days of the commencement of the the production of such bulk drug, make an application to the Government in Form I and intimate the Government the price at which he intends to sell the bulk drug and the Government may, after making such an enquiry as it thinks fit, by order, fix a provisional price at which such bulk drug shall be sold. Paragraph 4 of the 1979 order provides that notwith- standing anything contained in paragraph 3, the Government may, if it considers necessary or expedient so to do for increasing the production of an indigenously manufactured bulk drug specified in the first or second schedule, by order, fix--

> "(a) a retention price of such bulk drug,
>
> (b) a common sale price for such bulk drug taking into account the weighted average of the retention price fixed under clause
>
> (a)."

Paragraph 4 is thus in the nature of an exception to para- graph 3. It is meant to provide a fillip to individual manufacturers of bulk drugs whose production it is necessary to increase. Retention price, by its very definition per- tains to individual manufacturers. Common sale price, we take it, is the price at which manufacturers whose reten- tions are fixed may sell the bulk drug despite the maximum sale price fixed under paragraph 3.

Paragraph 5 deals with the power of the Government to fix maximum sale price of new bulk drugs. Paragraph 6 ena- bles the Government to fix the maximum sale price of import- ed bulk.drugs specified in First and Second Schedules. Paragraph 7 deals with the power of the Government to fix retention price and pooled price for the sale of bulk drugs specified in the First and Second Schedules which are both indigenously manufactured and imported. Paragraph 9 empowers the Government to direct manufacturers of bulk drugs to sell bulk drugs to manufacturers of formulations. Paragraph 10 prescribes a formula for calculating the retail price of formulations. The formula is:

> "R.P. = (M.C.+C.C.+P.M.+P.C.) x (1+MU)+ E.D.

"R.P." means retail price.

"M.C." means material cost and includes the cost of drugs and other pharmaceutical aids used including overages, if any, and process loss thereon in accordance with such norms as may be specified by the Government from time to time by notification in the official Gazette in this behalf. "C.C.'? means conversion cost worked out in accordance with such norms as may be specified by the Government from time to time by notifi- cation in the official Gazettee in this be- half.

"P.M." means the cost of packing material including process loss thereon worked out in accordance with such norms as may be specified by the Government from time to time by notifi- cation in the official Gazette in this behalf. "P.C." means packing charges worked out in accordance with such norms as may be specified by the Government from time to time by notifi- cation in the official Gazette in this behalf. "M.U." means make-up referred to in para. 11. "E.D." means excise duty."

Paragraph 11 explains what 'Mark-up' means. Paragraph 12 empowers the Government to fix leader prices of formulations of categories I and II specified in the third schedule. Paragraph 13 empowers the Government to fix retail price of formulations specified in category III of third schedule. Paragraph 14 contains some general provisions regarding- prices of formulations. Paragraph 15 empowers the Government to revise prices of formulations.

Paragraph 16 provides that where any manufacturer, importer or distributor of any bulk drug or formulation fails to furnish information as required under the order within the time specified therein, the Government may, on the basis of such information as may be available with it, by order, fix a price in respect of such bulk drug or formu- lation as the case may be. Paragraph 17 requires the Govern- ment to maintain the Drugs Prices Equalization Account to which shall be credited, by the manufacturer, among other items, "the excess of the common selling price or, as the case may be, pooled price over his reten- tion price."

It is provided that the amount credited to the Drugs Prices Equaliza-

tion Account shall be spent for paying to the manufacturer, "the shortfall between his retention price and the common selling price or as the case may be, the pooled price."

Paragraph 27 enables any person aggrieved by any notifi- cation or order under paragraphs 3, 4, 5, 6, 7, 9, 12, 13, 14, 15 or 16 to apply to the Government for a review of the notification or order within fifteen days of the date of the publication of the notification in the official Gazette, or, as the case may be, the receipt of the order by him. Bulk drugs constituting categories I and II are enumer- ated in the First Schedule. Bulk drugs constituting category III are enumerated in the Second Schedule. Formulations constituting categories I, II and III are enumerated in the Third Schedule. The Fourth Schedule prescribes the various forms referred to in the different paragraphs of the Drugs (Prices Control) Order. Form No. 1 which is referred to in paragraphs 3(4), 5 and 8(1) is titled "Form of application for fixation or revision of prices of bulk drug". The sever- al columns of the Form provide

for various particulars to be furnished and item 18 requires the applicant to furnish ,"the cost of production of the bulk drug as per proforma (attached) duly certified by a practising Cost/Chartered Accountant". The 'proforma' requires particulars of cost- data, such as, raw materials, utilities, conversion cost, total cost of production, interest on borrowings, minimum bonus, packing, selling expenses, transport charges, transit insurance charges, total cost of sales, selling price, existing price or notional or declared prices, etc. to be furnished. A note at the end of the proforma requires the exclusion from cost certain items of expenses, such as, bonus in excess of statutory minimum, bad debts and provi- sions, donations and charities, loss/gain on sale of assets, brokerage and commission, expenses not recognised by income tax authorities and adjustments relating to previous years. Shri G. Ramaswamy, learned Additional Solicitor General on behalf of the Union of India, submitted that the fixation of maximum price under paragraph 3 of the Drugs (Prices Control) Order was a legislative activity and, therefore, not subject to any principle of natural justice. He urged that relevant information was required to be furnished and was indeed furnished by all the manufacturers in the pre- scribed form as required by paragraph 3(4) of the Drugs (Prices Control) Order. This information obtained from the various manufacturers was taken into account and a report was then obtained from the Bureau of Industrial Costs and Prices, a high-powered expert body specially constituted to undertake the study of industrial cost struc-

tures and pricing problems and to advise the Government. It was only thereafter that notifications fixing the prices were issued. He further submitted that paragraph 27 of the Central Order gave a remedy to the manufacturers to seek a review of the order fixing the maximum price under paragraph

3. The review contemplated by paragraph 27 in so far as it related to the notification under paragraph 3, it was sub- mitted by the learned Additional Solicitor General, did not partake the character of a judicial or quasi-judicial pro- ceeding. He urged that the manufacturers had invoked the remedy by way of review, but before the applications for review could be dealt with, they rushed to the court with the writ petitions out of which the appeal and the special leave petitions arise. He urged that the Government had always been ready and wilting to give a proper hearing to the parties and in fact gave them a heating in connection with their review applications. The grievance of the manu- facturers in the writ petitions that they were not furnished the details of the basis of the price fixation was not correct since full information was furnished at the time of the hearing of the review applications when the matter underwent thorough and detailed discussion between the parties and the Government as well as the Bureau of Indus- trial Costs and Prices.

The submission of Shri Anil Diwan, learned counsel for the respondents was that unlike other price control legisla- tions, the Drugs (Prices Control) Order ,was designed to induce better production by providing for a fair return to the manufacturer. Reference was made to the Hathi Committee report which had recommended a return of 12 to 14% post tax return on equity, that is, paid up capital plus reserves and the 'Statement on Drug Policy' which mentioned that ceiling prices may be determined by taking into account production costs and a reasonable return. Great emphasis was laid on the second clause of paragraph 3 of the 1979 Order which provides that in fixing the price of a bulk drug, the Gov- ernment may take into account the average cost of production of such bulk drug manufactured by an efficient manufacturer and allow a reasonable return on networth. It was

submitted that the provision for an enquiry preceding the determina- tion of the price of a bulk drug, the prescription in para- graph 3 clause 2 that the average cost of production of the drug manufactured by an efficient manufacturer should be taken into account and that a reasonable return on networth should be allowed and the provision for a review of the order determining the price, established that price-fixation under the Drugs (Prices Control) Order 2979 was a quasi-judicial activity obliging the observance of the rules of natural justice. The suggestion of the learned counsel was that the nature of the review under paragraph 27 was so apparently quasi-judicial and that the need to know the reasons for the order sought to be reviewed was so real if the manufacturer was effectively to exercise his right to seek the quasijudicial remedy of review, that by necessary implication it became obvious that the Order fixing the maximum price must be considered to be quasi- judicial and not legislative in character. The provision for enquiry in the first clause of paragraph 3 and the prescrip- tion of the matters to be taken into account in the second clause of paragraph 3 further strengthened the implication, according to the learned counsel. It was contended that in any case, whatever be the nature of the enquiry and the order contemplated by paragraph 3, the review for which provision made by paragraph 27 was certainly of a quasi- judicial character and, therefore, it was necessary that the manufacturers should be informed of the basis for the fixa- tion of the price and furnished with details of the same in order that they may truly and effectively avail themselves of the remedy of review. If that was not done, the remedy would become illusory. It was argued with reference to various facts and figures that the price had been fixed in an arbitrary manner and the Government was not willing to disclose the basis on which the prices were fixed on the pretext that it may involve disclosure of matters of confi- dential nature. It was stated that the applications of the manufacturers for review of the notifications fixing the prices had not been disposed of for years though time was really of the very essence of the matter. The prices of formulations were dependent on the prices of drugs and it was not right that prices of formulations should have been fixed even before the applications for review against the notifications fixing the price of bulk drugs were disposed of. It was suggested that the delay in disposing of the review applications had the effect of rendering the original notifications fixing the prices unreal and out of date and liable to be struck down on that ground alone. We are unable to agree with the submissions of the learned counsel for the respondents either with regard to the applicability of the principles of natural justice or with regard to the nature and the scope of the enquiry and review contemplated by paragraphs 3 and 27 while making our preliminary observations, we pointed out that price fixation is essentially a legislative activity though in rare circum- stances, as in the case of a compulsory sale to the Govern- ment or its nominee, it may assume the character 'of an administrative or quasijudicial activity. Nothing in the scheme of the Drugs (Prices Control) Order induces us to hold that price fixation under the Drugs (Prices Control) Order is not a legislative activity, but a quasi-judicial activity which would attract the observance of the princi- ples of natural justice.

Nor is there anything in the scheme or the provisions of the Drugs (Prices Control) Order which otherwise contemplates the observance of any principle of natural justice or kin- dred rule, the non-observance of which would give rise to a cause of action to a suitor. What the order does contemplate however is 'such enquiry' by the Government 'as it thinks fit'. A provision for 'such enquiry' as it thinks fit' by a subordinate legislating body, we have explained earlier, is generally an enabling provision to facilitate the subordi- nate legislating body to obtain relevant information from any source and it is not intended to vest any right in any body other than the subordinate

legislating body. In the present case, the enquiry contemplated by paragraph 3 of Drugs (Prices Control) Order is to be made for the purposes of fixing the maximum price at which a bulk drug may be sold, with a view to regulating its equitable distribution and making it available at a fair price. The primary object of the enquiry is to secure the bulk drug at a fair price for the benefit of the ultimate consumer an object designed to fulfil the mandate of Art. 39(b) of the Constitution. It is primarily from the consumer public's point of view that the Government is expected to make its enquiry. The need of the consumer public is to be ascertained and making the drug available to them at a fair price is what it is all about. The enquiry is to be made from that angle and directed towards that end. So, information may be gathered from whatever source considered desirable by the Government. The enquiry, obviously is not to be confined to obtaining infor- mation from the manufacturers only and indeed must go be- yond. However, the interests of the manufacturers are not to be ignored. In fixing the price of a bulk drug, the Govern- ment is expressly required by the Order to take into account the average cost of production of such bulk drug manufac- tured by 'an efficient manufacturer' and allow a reasonable return on 'net worth'. For this purpose too, the Government may gather information from any source including the manu- facturers. Here again the enquiry by the Government need not be restricted to 'an efficient manufacturer' or some manu- facturers; nor need it be extended to all manufacturers. What is necessary is that the average cost of production by 'an efficient manufacturer' must be ascertained and a rea- sonable return allowed on 'net worth'. Such enquiry as it thinks fit is an enquiry in which information is sought from whatever source considered necessary by the enquiring body and is different from an enquiry in which an opportunity is required to be given to persons likely to be affected. The former is an enquiry leading to a legislative activity while the latter is an enquiry which ends in an administrative or quasi-judicial decision. The enquiry contemplated by para- graph 3 of the Drug (Prices Control) Order is an enquiry of the former charac-

ter. The legislative activity being a subordinate or dele- gated legislative activity, it must necessarily comply with the statutory conditions if any, no more and no less, and no implications of natural justice can be read into it unless it is a statutory condition. Notwithstanding that the price fixation is a legislative activity, the subordinate legisla- tion had taken care here to provide for a review. The review provided by paragraph 27 of the order is akin to a post decisional hearing which is sometimes afforded after the making of some administrative orders, but not truly so. It is a curious amalgam of a hearing which occasionally precedes a subordinate legislative activity such as the fixing of municipal rates etc. that we mentioned earlier and a post-decision hearing after the making of an administra- tive or quasi-judicial order. It is a hearing which follows a subordinate legislative activity intended to provide an opportunity to affected persons such as the manufacturers, the industry and the consumer public to bring to the notice of the subordinate legislating body the difficulties or problems experienced or likely to be experienced by them consequent on the price fixation, whereupon the Government may make appropriate orders. Any decision taken by the Government cannot be confined to the individual manufacturer seeking review but must necessarily affect all manufacturers of the bulk drug as well as the consumer public. Since the maximum price of a bulk drug is required by paragraph 3 to be notified any fresh decision taken in the proceeding for review by way of modification of the maximum price has to be made by a fresh notification fixing the new maximum price of the bulk drug. In other words, the review if it is fruitful must result in fresh subordinate legislative activity. The true nature of the review provided by paragraph 27 in so far as it

relates to the fixation of maximum price of bulk drugs under paragraph 3 leader price and prices of formulations under paragraphs 12 and 13 is hard to define. It is diffi- cult to give it a label and to fit it into a pigeon-hole, legislative, administrative or quasi-judicial. Nor is it desirable to seek analogies and look to distant cousins for guidance. From the scheme of the Control Order and the context and content of paragraph 27, the Review in so far as it concerns the orders under paragraph 3, 12 and 13 appears to be in the nature of a legislative review of legislation, or more precisely a review of subordinate legislation by a subordinate legislating body at the instance of an aggrieved person. Once we have ascertained the nature and character of the review, the further question regarding the scope and extent of the review is not very difficult to answer. The reviewing authority has the fullest freedom and discretion to prescribe its own procedure and con-

sider the matter brought before it so long as it does not travel beyond the parameters prescribed by paragraph 3 in the case of a review against an order under paragraph 3 and the respective other paragraphs in the case of other orders. But whatever procedure is adopted, it must be a procedure tuned to the situation. Manufacturers of any bulk drug are either one or a few in number and generally they may be presumed to be well informed persons, well able to take care of themselves, who have the assistance of Accountants, Advocates and experts to advise and espouse their cause. In the context of the Drug industry with which we are concerned and in regard to which the Control Order is made we must proceed on the basis that the manufacturers of bulk drugs are generally persons who know all that is to be known about the price fixed by the Government. From the legislative nature of the activity of the Government, it is clear that the Government is under no obligation to make any disclosure of any information received and considered by it in making the order but in order to render effective the right to seek a review given to an aggrieved person we think that the Government, if so requested by the aggrieved manufacturer is under an obligation to disclose any relevant information which may reasonably be disclosed pertaining to 'the average cost of production of the bulk drug manufactured by an efficient manufacturer' and 'the reasonable return on net worth'. For example, the manufacturer may require the Gov- ernment to give information regarding the particulars de- tailed in Form No. 1 of the Fourth Schedule which have been taken into account and those which have been excluded. The manufacturer may also require to be informed the elements which were taken into account and those which were excluded in assessing the 'free reserves' entering into the calcula- tion of 'net worth'. These particulars which he may seek from the Government are mentioned by us only by way of illustration. He may seek any other relevant information which the Government shall not unreasonably deny. That we think is the nature and scope of the review contemplated by Paragraph 27 in relation to orders made under Paragraphs 3, 12 and 13.

On the question of the scope of a Review, the learned counsel for the respondents invited our attention to Vrajlal Manilal & Co. v. Union of India & Anr., [1964] 7 SCR 97; Shivaji Nathubhai v. Union of India & Ors., [1960] 2 SCR 775; Maneka Gandhi, [1978] 2 SCR 621; Swadeshi Cotton Mills, [1981] 2 SCR 533; and Liberty Oil Mills., [1984] 3 SCR 676. We are afraid none of these cases is of any assistance to the correspondence since the court was not concerned in any of those cases with a review of subordinate legislation by the subordinate legislating body.

In Vrajlal Manilal & Co. v. Union of India & Anr. (supra) the court held that the Union of India when dispos- ing of an application for review under Rule 59 of the Mines Concession Rules functioned as a quasi-judicial authority and was bound to observe the principles of natural justice. The decision rendered without disclosing the report of the State Government and without affording reasonable opportuni- ty to the appellants to present their case was contrary to natural justice was therefore, void. In ShivaIi Nathubhai v. Union of India & Ors., (supra) it was decided by the court that the power of review granted to the Central Government under Rule 54 of the Mineral Concession Rules required the authority to act judicially and its decision would be a quasi-judicial act and the fact that Rule 54 gave power to the Central Government to pass such order as it may deem 'just and proper' did not negative the duty to act judicial- ly. In Maneka Gandhi's case where Bhagwati, J. while ex- pounding on natural justice pointed out that in appropriate cases where a pre-decisional hearing was impossible, there must atleast be a post-decisional hearing so as to meet the requirement of the rule audi alteram partem. In Swadeshi Cotton Mills, it was observed that in cases where owing to the compulsion of the fact situation or the necessity of taking speedy action, no pre-decisional hearing is given but the action is followed soon by a full post-decisional hear- ing to the person affected, there is in reality no exclusion of the audi alteram partem rule. It is no adaptation of the rule to meet the situational urgency. In Liberty Oil Mills v. Union of India, (supra) the question arose whether clause 8B of the Import Control Order which empowered the Central Government or the Chief Controller to keep in abeyance applications for licences or allotment of imported goods where any investigation is pending into an imported goods where any investigation is pending into an allegation men- tioned in clause 8 excluded the application of the princi- ples of natural justice. The court pointed out that it would be impermissible to interpret a statutory instrument to exclude natural justice unless the language of the instru- ment left no option to the court. As we said, these cases have no application to a review of subordinate legislation by the subordinate legislating body at the instance of a party.

We mentioned that the price fixed by the Government may be questioned on the ground that the considerations stipu- lated by the order as relevant were not taken into account. It may also be questioned on any ground on which a subordi- nate legislation may be questioned, such as, being contrary to constitutional or other statutory provisions. It may be questioned on the ground of a denial of the right guaranteed by Art. 14 if it is arbitrary, that is, if either the guidelines prescribed for the determination are arbitrary or if, even though the guidelines are not arbitrary, the guidelines are worked in an arbitrary fashion. There is no question before us that paragraph 3 prescribes any arbitrary guideline. It was, however, submitted that the guidelines were not adhered to and that facts and figures were arbitrarily assumed. We do not propose to delve into the question whether there has been any such arbitrary assumption of facts and figures. We think that if there is any grievance on that score, the proper thing for the manufacturers to do is bring it to the notice of the Government in their applications for review. The learned counsel argued that they were unable to bring these facts to the notice of the Government as they were not furnished the basis on which the prices were fixed. On the other hand, it has been pointed out in the counter-affida- vits filed on behalf of the Government that all necessary and required information was furnished in the course of the hearing of the review applications and. there was no justi- fication for the grievance that particulars were not fur- nished. We are satisfied that the procedure followed by the Government in furnishing the requisite particulars at the time of the hearing of the review applications is sufficient compliance with the demands of fair play in the case of the class of persons claiming to be affected

by the fixation of maximum price under the Drugs (Prices Control) Order. As already stated by us, manufacturers of bulk drugs who claim to be affected by the Drugs (prices Control) Order, belong to a class of persons who are well and fully informed of every intricate detail and particular which is required to be taken into account in determining the price. In most cases, they are the sale manufacturers of the bulk drug and even if they are not the sole manufacturers, they belong to the very select few who manufacture the bulk drug. It is impossible to conceive that they cannot sit across the table and discuss item by item with the reviewing authority unless they are furnished in advance full details and particulars. The affidavits filed on behalf of the Union of India show that the procedure which is adopted in hearing the review applications is to discuss across the table the various items that have been taken into account. We do not consider that there is anything unfair in the procedure adopted by the Government. If necessary it is always open to the manu- facturers to seek a short adjournment of the hearing of the review application to enable them to muster more facts and figures on their side. Indeed we find that the hearing given to the manufacturers is often protected. As we said we do not propose to examine this ques-

tion as we do not want to constitute ourselves into a court of appeal over the Government in the matter of price fixa- tion.

The learned counsel argued that there were several patent errors which came to light during the course of the hearing in the High Court. He said that obsolete quantita- tive usages had been taken into consideration, proximate cost data had been ignored and the data relating to the year ending November, 1976 had been adopted as the basis. It was submitted that there were errors in totalling, errors in the calculation of prices of utilities, errors in the calcula- tion of net-worth and many other similar errors. As we pointed out earlier, these are all matters which should legitimately be raised in the review application, if there is any substance in them. These are not matters for investi- gation in a petition under Art. 226 of the Constitution or under Art. 32 of the Constitution. Despite the pressing invitation of Shri Diwan to go into facts and figures and his elaborate submissions based on facts and figures, we have carefully and studiously refrained from making any reference to such facts and figures as we consider it out- side our province to do so and we do not want to set any precedent as was supposed to have been done in Premier Automobiles though it was not so done and, therefore, needed explanation in later cases.

One of the submissions of Shri Diwan was that in calcu- lating "net-worth" the cost of new works in progress and the amount invested outside the business were excluded from 'free reserves' and that such exclusion could not be justi- fied on any known principle of accountancy. We think that the question has to be decided with reference to the defini- tion of 'free reserve' in paragraph 2(g) of the Control Order and not on any assumed principle of accountancy. This is also a question which may be raised before the Government in the review application. Referring to the 'proforma' attached to Form No. 1 of the Fourth Schedule in which are set out several items which have to be taken into account in assessing the cost of production, the learned counsel at- tacks the notes at the end of Item No. 14 which mentions the various items of expenses to be excluded in ascertaining the cost. The notes is as follows:-

"Notes:-(i) Items of expenses to be excluded from costs--

a) Bonus in excess of statutory minimum.

(b) Bad debts and provisions.

(c) Donations and charities.

(d) Loss/Gain on sale of assets.

(e) Brokerage and commission.

(f) Expenses not recognized by Income-tax authorities (salary/prequisities, advertisements, etc.).

(g) Adjustments relating to previous years."

In particular, he argued that Item (a) 'bonus in excess of statutory minimum' should not have been excluded so also items of expenditure coming under the other heads (b) to (g) which had been allowed by Income-tax authorities as legiti- mate expenses. His submission was that where bonus in excess of statutory minimum was payable under the provisions of the Bonus Act there was no option left to the manufacturer not to pay the excess bonus. Similarly where expenses have been legitimately incurred and allowed by Income-tax authorities, there was no justification for excluding those items of expenditure from the cost. We do not agree with the submis- sion. It was open to the subordinate legislating body to prescribe and adopt its own mode of ascertaining the cost of production and the items to be included and excluded in so doing. The subordinate legislating body was under no obliga- tion to adopt the method adopted by the Income-tax authori- ties in allowing expenses for the purpose of ascertaining income and assessing it. There may be many items of business expenditure which may be allowed by Income-tax authorities as legitimate expenses but which can never enter the cost of production. So long as the method prescribed and adopted by the subordinate legislating body is not arbitrary and op- posed to the principal statutory provisions, it cannot be legitimately questioned. Another submission of the learned counsel relating to the norms for conversion costs, packing charges and process loss of raw materials and packing mate- rials required to the notified for the purpose of calculat- ing retail prices of formulations. The argument, for exam- ple, was that there should be a more scientific formula in regard to conversion cost and not, as was done, so many rupees and paise per thousand capsules or one litre of liquid. We do not agree with the submission. It is open to the subordinate legislating authority to adopt a rough and ready but otherwise not unreasonable formula rather than a needlessly intricate so-called scientific formula. We are unable to say that the subordinate legislating authority acted unreasonably in prescribing the norms in the manner it has done.

While on the question on formulations, we would like to refer to the "Oration" of Dr. N.H. Antia at the 24th Annual Convocation of the National Academy of Medical Sciences where he posed the question:

> "Why do we produce 60,000 formulations of drugs worth Rs.2,500 crores which reach only 20% of the population when WHO recommends only 258 drugs and Rs.750 crores worth would suf- fice for all our people if used in an ethical manner?"

A general submission of the learned counsel was that the price of formulations should not have been prescribed until the review application filed by the manufacturer in regard to the patent bulk drugs was disposed of. He submitted that the price of a formulation was dependant on the price of the bulk drug and it was, therefore, not right to fix the price of formulation when the price of bulk drug was in question in the review application and there was a prospect of the price of the bulk drug being increased. We do not see any force in the submission. We think that it is the necessary duty of the Government to proceed to fix the retail price of a formulation as soon as the price of the parent bulk drug is fixed. Price fixation of a formulation is no doubt de- pendant on the price of the bulk drug, but it is not to await the result of a review application which in the end may turn out to be entirely without substance. If a review application is allowed and the price of the bulk drug is raised and if in the meanwhile, the formulation had been ordered to be sold at a low price, it may result in consid- erable loss to the manufacturer. But on the other hand, if the review application turns out to be entirely without substance and has to be rejected and if in the meanwhile the formulation is allowed to be sold at a higher price, the consumer public suffers. Thus, the ups and downs of commerce are inevitable and it is not possible to devise a fool proof system to take care of every possible defect and objection. It is certainly not a matter at which the court could take a hand. All that the court may do is to direct the Government to dispose of the review application expeditiously according to a time-bound programme. All that the Government may do is to dispose of the review application with the utmost expedi- tion. But as we perceive the public interest, it is neces- sary that the price of formulation should be fixed close on the heels of the fixation of bulk drug price. Another submission of Shri Diwan was that there was considerable delay in the disposal of the review applica- tions by the Govern-

ment and that even now no orders had been passed in several cases. Accordingly to the learned counsel, the very delay in the disposal of review applications was sufficient to viti- ate the entire proceeding and scheme of price fixation. According to the learned counsel, the price of a bulk drug is dependant on many variable factors which keep changing very fast. If time is allowed to lapse whatever price is fixed, it soon becomes out of date. If review applications are not disposed of expeditiously the notifications fixing the prices must be struck down as having become obsolete. It is difficult to agree with these propositions. It is true that the price of a bulk drug is dependent on innumerable variables. But it does not follow that the notification fixing the maximum price must necessarily be struck down as obsolete by the mere passage of time. We agree that applica- tions for review must be dealt with expeditiously and when- ever they are not so dealt with, the aggrieved person may seek a mandamus from the court to direct the Government to deal with the review application within a time framework. We notice that in all these matters, the High Court granted stay of implementation of the notifications fixing the maximum prices of bulk drugs and the retail prices of formulations. We think that in matter of this nature, where prices of essential commodities are fixed in order to main- tain or increase supply of the commodities or for securing the equitable distribution and availability at fair prices of the commodity, it is not right that the court should make any interim order staying the implementation of the notifi- cation fixing the prices. We

consider that such orders are against the public interest and ought not to be made by a court unless the court is satisfied that no public interest is going to be served. In the present case, on ex-parte interim order was made on April 20, 1981 in the following terms:

> "In the meanwhile on the petitioners' giving an undertakings to maintain prices both for bulk and formulation, as were prevailing prior to the impugned notification we stay implemen- tation of the impugned bulk drug prices as well as formulation prices."

Thereafter on November 25, 1981, a further order was made to the following effect:

> "After hearing learned counsel and with their consent, and arrangement has been worked out as on interim measure. We, there- fore, confirm till further orders the interim order made by us on April 20, 1981. The terms of the said order, that is on the undertaking given on behalf of the petitioners to maintain status quo on the prices prevail- ing prior to the issue of the impugned notifi- cation, the petitioners, through their counsel further given an undertaking to this court that, in case the petition is dismissed and the rule is discharged, the petitioners shall within eight weeks of the dismissal of the petition by this court, deposit in this court the difference in the prices of the formula- tions in question for being ..... equaliza- tion account. The petitioners, through their counsel further given an undertaking that in this court the petitioners would not contend or challenge the said amount if deposited, is not liable to be deposited under any law whatsoever. It is made clear that the under- taking is without prejudice to the petition- ers' right to take appropriate directions from the Supreme Court if so advised in this re- gard."

No doubt the order as made on November 25, 1981 has the manufacturers On terms, but the consumer public has been left high and dry. Their interests have in no way been taken care of. In matters of fixation of price, it is the interest of the consumer public that must come first and any interim order must take care of that interest. It was argued by the learned counsel that the undertaking given by the parties lapsed with the disposal of the writ petition by the High Court and that it could no longer be enforced. We do not agree with this submission. Apart from the fact that an appeal is ordinarily considered to be a continuation of the original proceeding, in the present case, we notice that further orders of the Supreme Court were also in contempla- tion and such further orders could only be if appeals were preferred to the Supreme Court. We do not think that there was any doubt in anyone's mind that the matter would be taken up in appeal to the Supreme Court whichever way the writ petitions were decided. We are of the view that the undertakings given by the parties in the present cases were intended to and do continue to subsist.

On the conclusions arrived at by us we have no doubt that the appeal must be allowed and the writ petition in the High Court dismissed. However, we think that it is necessary to give a direction to the Government to dispose of the review applications after giving a notice of hearing to the manufacturer. The hearing may be given within two months from today and the review application disposed of within two weeks after the conclusion of the hearing. Any information sought by the

manufacturer may be given to him at the hearing in terms of what we have said in the judgment. The Union of India is entitled to the costs of the appeal and the writ petition in the High Court.

It appears that although several writ petitions filed by different manufacturers were disposed of by the High Court by a common judgment, the Union of India filed an appeal within the prescribed period of limitation against one of the manufacturers, Cynamide India Limited only. This was apparently done under some misapprehension that it would be enough if a single appeal was filed. Later when it was realized that separate appeals were necessary, the Union of India filed petitions for special leave to appeal against the other manufacturers also. As these petitions were filed beyond the prescribed period of limitation, petitions for condoning the delay in filing the petitions for special leave to appeal had to be and were filed. These applications are strenuously opposed by the manufacturers who contend the ordinary rule which is enforced in cases of delay namely that everyday's delay must be properly explained should also be rigorously enforced against the Government. It is con- tended that the Government is a well verse litigant as compared with private litigants and even if there is justi- fication of adopting a liberal approach in condoning delay in the case of private litigants there was no need to adopt such approach in the case of the Government. In cases like the present where parties have acted on the assumption that no appeals had been filed against them and have proceeded to arrange their affairs accordingly it would be unjust to condone the delay in filing the appeals at the instance of the Government. Though we see considerable force in the submission of Shri Diwan, we think that the circumstances of the instant cases do justify the exercise of our discretion to condone the delay. Two important features have weighed with us in condoning the delay. One is that all the writ petitions were disposed of by a common judgment and an appeal had been filed in the principal case. The other is that it is a 'matter of serious concern to the public inter- est. We, therefore, condone the delay, grant special leave in all the petitions for special leave and direct the ap- peals to be listed for hearing on May 1, 1987.

P.S.S. Appeal allowed.