

PETITIONER:
PARVEJ AKTAR AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 05/02/1993

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
SHARMA, L.M. (CJ)
VENKATACHALA N. (J)

CITATION:
1993 SCR (1) 803 1993 SCC (2) 221
JT 1993 (1) 453 1993 SCALE (1) 456

ACT:
Handlooms (Reservation of Articles for Production) Act, 1985:
Sections 3 and 4-Order reserving certain articles for exclusive production by handlooms-Constitutional validity of-Whether in conflict with clause 20 of Cotton Textile (Control) Order, 1948.
Constitution of India, 1950:
Articles 14, 19(1)(g), 39(b) & (c), 43-Order u/s. 3(1) of the Handlooms (Reservation of Articles for Production) Act, 1985-Reserving of certain articles for exclusive production by handlooms-Whether amounts to protective discrimination-Whether creates unreasonable restriction on power-loom industry-Whether in the nature of creating monopoly-Directive Principles of State Policy-Giving effect to.

HEADNOTE:
In the present Writ Petition and the transferred cases, the constitutional validity of Handlooms (Reservation of Articles for production) Act, 1985 and the order dated 4th August, 1986 issued under S3(1) of the Act, directing that certain articles/class of articles to be exclusively reserved for production by handlooms, has been challenged on the ground of violation of Articles 14 and 19(1)(g) of the Constitution of India.

On behalf of the petitioners, it was contended that total reservation of certain items of textiles in favour of handlooms would have the effect of creating a monopoly, the total prohibition of manufacture of certain clothes by the powerloom sector violated Article 19(1)(g) of the Constitution; that the periodic review provided under Section 3(5) of the Act has not taken place at all; that the restrictions did not serve any public Interest; and that the Act and the Cotton Textile (Control) Order, 1948 could not operate in the same field and so the orders dated 4.8.86 issued under the Act were ultra vires.

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On behalf of the Respondents it was contended that the Act was entirely different from the Cotton Textiles (Control) Order 1948 Issued under the Essential Commodities Act, and as such there was absolutely no repugnance. It was also

contended that an Expert Committee was constituted to go into handloom, powerloom and textile mill industries, and based on this Committee's report, textile policy statements were issued and the Act therefore was a product of overall assessment to protect handloom industry which was sinking in spite of the various concessions.

Dismissing the matters, this Court,

HELD : 1. It is incorrect to state that the powerloom sector has come to be affected. Originally, the holders of four powerlooms were exempt. But these powerloom owners diverted their products to larger powerloom owners. Once those textiles enter the market there was no possibility of finding out whether they had been manufactured by the owners of four powerlooms. Therefore, it became necessary to impose this prohibition. When the Act advances a directive principle contained under Article 39(b) and (c), it cannot be called unreasonable. [811D-E]

2. The Cotton Textile Control Order 1948 issued under the Essential Commodities Act deals with the production while the Handlooms (Reservation of Articles for Production) Act, 1985 is an Act which deals entirely with handloom. The order issued under Section 3 of the Act is only for protection and development of handloom industry. There is no question of both the Cotton Textile Control Order and the Order under challenge operating in the same field. In view of the non-obstante clause in S.3(1) of the Act, the subject of handlooms textiles was taken out of the purview of Industries (Development and Regulation) Act, 1951 and a separate Act has been passed. Merely because clause 20 of the Cotton Textile Control Order confers an enabling power that does not mean that an order issued under the Essential Commodities Act will prevail. The objects of the Act and the Essential Commodities Act under which the Cotton Textile (Control) order is issued are different. Therefore, the order under Section 3(1) of the Act does not run counter to clause 20 of Cotton Textile Control Order. [816H, 822F, 824D]

Ch. Tika Ramji v. State of Uttar Pradesh, [1956] SCR 393 and Harishankar Bagla v. The State of Madhya Pradesh, [1955] SCR 380 at 391, relied on.

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3. There is no question of monopoly created in favour of handloom industry. Certain kinds of textiles are reserved to the handloom industry. Still there are number of items available for powerloom owners which they can manufacture. The items of textiles generally manufactured in the mill and powerloom sectors have been left out from reserved items. Only those items which have traditionally been manufactured on handlooms have been reserved for this sector. Recently when the powerloom started producing the items which were traditionally being manufactured on handlooms, that caused a serious inroad into the handloom industry. The result was an unequal competition for the handloom sector. Handloom industry is the biggest cottage industry in the country and is next only to agricultural sector in providing rural employment. The protection has been given by the Government to handloom weavers because the livelihood of handloom weavers is threatened due to the production of all types of items and varieties by the powerloom industry. It is common knowledge that the handloom weavers are economically very poor and will have no alternative employment in the rural areas unless protected through reservation of varieties for them. Therefore, the restrictions on the powerloom industry are not only reasonable but also fully justified. Moreover, the protection given to the handloom industry is in

furtherance of the objectives laid down in the directive principles. Even if these restrictions result in the total exclusion of the powerloom sector, such restrictions are reasonable. [824G-H, 826E, F, G, 827A]

Orient Weaving Mills v. Union of India, AIR 1963 SC 98 and Narendra Kumar v. Union of India, [1960] 2 SCR 375, relied on.

Rustom Cavasjee Cooper v. Union of India, [1970] 3 SCR 530, distinguished.

State of Rajasthan v. Mohan Lal Vyas, [1971] 3 SCC 705; Municipal Committee v. Haji Ismail, AIR 1967 Punjab 32; Maniram Budha Chamar v. Pamalal Motiram Chamar, AIR 1962 Madhya Pradesh 275; Mohd. Hanif Quareshi v. State of Bihar, [1959] SCR 629; State of Madras v. V.G. Row, [1952] SCR 597; Virendra v. State of Punjab, [1958] SCR 308; Mohd. Faruk v. State of Madhya Pradesh, [1970] 1 SCR 156 and Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai [1986] 2 SCR 700, referred to.

4. Article 14 requires that all persons subject to a legislation must
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be treated alike. Equals must be treated alike, in like circumstances and conditions. Undoubtedly, the handloom sector forms a distinguishable class separate from powerloom sector or mills sector. The reservation of certain articles for exclusive production in the handloom sector has the objective of protecting the handloom sector against unequal and powerful competition by the mechanised powerloom/mills sector. At the same time, it is also necessary to ensure continued production coupled with sustained employment to the handloom weavers largely concentrated in the rural areas. This is also in accord with the Government's declared policy of supporting handloom sector due to its large employment potential. Thus the classification has a rational nexus with the objective of the Act.

[829G,H; 830AB]

5. The handlooms are operated manually, the number of persons employed is many times more than powerloom for production of similar quantities of cloth. The reservation of articles for handlooms does not pose any serious threat to powerlooms. It has been proved by the fact that even though the handlooms reservation orders have been on the statute book since 1950, the powerlooms have continued to proliferate and there is no reason to believe that any of these looms are likely to be closed due to the Reservation Order. The powerloom owners are only required to diversify their line of production so that they do not produce cloth reserved for handlooms. Since the Government policy has always been to create more employment particularly in rural areas, it will be unthinkable to imagine the social problems that will be created if the employment of millions of handloom weavers is taken away by allowing powerlooms to produce all items without any reservation. [829B-E]

6. Sub-section (1) of Section 3 of the Act states that the order specifying the articles for exclusive production of handloom could be issued for the protection and development of handloom industry from time to time. Therefore, the reservation is not for all time to come. It could be revised periodically. At least once a year there could be a meeting of the Advisory Committee. [830CE]

7. The interest of the powerloom sector has been taken into account and powerlooms were represented albeit indirectly on the Advisory Committee. The sub-committees formed by the Advisory Committee had visited many places in the country and discussed the matter with officers of the

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State Governments and met persons representing different textile sectors. Apart from the reports removed from the sub-committees, the representations received by the Government from various textile Interests were duly considered by the Advisory Committee before making their recommendations. It is, therefore, incorrect to say that proper opportunity was not provided to the petitioners for making representations. Moreover, representatives from powerloom sector, mills sector and powerloom silk sector have been specifically included in the Advisory Committee. It cannot therefore be said that no opportunity was afforded to powerloom sector and that under Section 3 of the Act regard was had only to the handloom industry while under clause 20 of the Cotton Textile Control Order an over all view of all the industries could be taken. [831B-E]

JUDGMENT:

CIVIL EXTRAORDINARY JURISDICTION : Writ Petition (Civil) No. 1526 of 1987.

(Under Article 32 of the Constitution of India).

D.P. Gupta, Solicitor General Altaf Ahmed, Additional Solicitor General, M.N. Krishnamani, V. Shekhar, Ms. A. Subhashini K. Swamy, R. Jagannath Goulay, Ms. Malini Poduval R. Mohan, R.F. Nariman, P.H. Parekh, Sahu, MA. Firoz, Sudarsh Menon, M.K.D. Namboodri A Subba Rao, Ranjit Kumar, R.N. Keshwani Hirendra Krishna Dutt, Mrs. Nandini Gore, Mrs. M. Karanjawala, Ms. Sushma Suri, Anil Kumar Sangal and B. Krishna Prasad for the Appearing Parties.

The Judgment of the Court was delivered by MOHAN, J. The writ petition and the transferred cases challenge the validity of Handlooms (Reservation of Articles for Production) Act, 1985 (22 of 1985) (hereinafter referred to as the Act) and the order bearing No. DCP/BNP/1(2) 1986 dated 4th August, 1986 issued under sub-section (1) of Section 3 of the Act. This Act is to provide for reservation of certain articles for exclusive production by handlooms and for matters connected therewith. On 31st of March, 1986, the Act came into force. Section 4 of the Act provides for constitution of an Advisory Committee to make recommendations to the Central Government to determine the of any article or class of articles that may be reserved for exclusive production by handlooms. On 2nd June, 1986, in exercise of the powers conferred under Section 4 of the Act, the Central Government constituted an Ad-

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visory Committee. The said Advisory Committee submitted its recommendations. After considering those recommendations the impugned order dated 4th of August, 1986 was issued directing, certain articles/class of articles to be exclusively reserved for production by handlooms. It is this order which is attacked on the following grounds in all these cases.

The Act and the impugned order are violative of Articles 14 and 19(1)(g) of the Constitution.

Accordingly to Mr. M.N. Krishnamani, learned counsel for the petitioners total reservation of certain items of textiles in favour of handloom would have the effect of creating a monopoly. This Court in State of Rajasthan v. Mohan Lal Vyas, [1971] 3 SCC 705 has categorically laid down that no monopoly can be created in favour of an individual. Similar views have been expressed by the High Courts as seen from Municipal Committee v. Haji Ismail, AIR 1967 Punjab 32 and

Maniram Budha Chamar v. Pamalal Motiram Chamar, AIR 1962 Madhya Pradesh 275.

Equally, when there is a total prohibition of manufacture of these clothes by the powerloom sector, that again, violates Article 19(1)(g) of the Constitution. In support of his submission, the learned counsel relies on Rustom Cavasjee Cooper v. Union of India [1970] 3 SCR 530 and also Narendra Kumar v. Union of India, [1960] 2 SCR 375.

The next argument of the learned counsel is that though under Rule 3(5) the Advisory Committee is to meet once a year, that has not taken place at all. The idea of such a provision is that there must be a periodic review which review has not taken place at all.

The restrictions in this case if, are to be justified, it should be in public interest. Here, no public interest is subserved. On the contrary, when the powerloom goods are available at a lower rate to the detriment of powerloom manufacturers, the restrictions have come to be imposed. This submission is sought to be fortified by relying on Mohd. Hanif Quareishi v. State of Bihar, [1959] SCR 629 and State of Madras v. V. G. Row, [1952] SCR 597 at 607.

Mr. R.F. Nariman, learned counsel appearing for Textile Mills from Gujarat in Transferred Cases Nos. 111-117 of 1988 would argue as under:

The Cotton Textile (Control) Order 1948 dated 2nd August, 1948

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and the impugned Act cannot operate in the same field. Section 6 of the Essential Commodities Act, 1955 contains a non-obstante clause. Clause 20 of the Cotton Textile (Control) Order, 1948 confers power on the Commissioner to reserve just as the Notification issued under the Handlooms Act. Therefore, these orders will prevail as against the impugned order because Section 3 of the Act says 'notwithstanding Industrial Development Regulation Act'. The Cotton Textile Commissioner while issuing orders under clause 20 is enable to augment production of handloom industry. Therefore, this order cannot operate against the same.

Under Section 3 of the Act, the authority only looks at the handloom industry while under clause 20 the Cotton Textile Commissioner must have regard to the over all textile industry. Hence, the Notification under Section 3 is ultra vires of clause 20.

The subjective satisfaction of this Advisory Committee constituted under Section 4 alone is taken into consideration without regard to the petitioner's representation. This is bad in law in view of V.G. Row's case (supra). The same view was reiterated in Virendra v. State of Punjab, [1958] SCR 308.

By the impugned order there is a serious dislocation of powerloom industry and substantive rights guaranteed under Article 19(1)(g) of the Constitution have been violated by Sections 3, 4, 5, and 18 of the Act. Such restrictions amounting to prohibition have been struck down, by this Court in Mohd Faruk v. State of Madhya Pradesh, [1970] 1 SCR 156 and Municipal Corporation of the City of Ahmedabad v. fan Mohammed Usmanbhai [1986] 2 SCR 700.

If the restrictions are unreasonable, certainly the Court will refuse to uphold the same.

Mr. Altaf Ahmad, learned Additional Solicitor General appearing for the respondent, Union of India, meeting these arguments, states as follows.

The Cotton Textile (Control) Order, 1948 is traceable to List III Entry 33 of 7th Schedule of the Constitution.

While the impugned Act is covered by List II Entries 24 and 27 this is supplementary to the Industrial Development and Regulation Act, 1951 which is traceable to List I Entry 810

52 of the 7th Schedule. Under the Industrial Development and Regulation Act Section 2 talks of declaration. Section 3(h) states as to what is meant by Schedule. Section 3(i) states 'Schedule' means a Schedule to this Act. Item 23 of 1st Schedule deals with textiles including those dyed, printed or otherwise processed. Handloom industry is taken out of the purview of Industrial Development and Regulation Act and a separate enactment, namely, Handlooms (Reservation of Articles for production) Act, 1985 (22 of 1985), the impugned Act, has been made. Cotton Textile (Control) Order, 1948 deals with finished products. That is why it is traceable to Entry 33 of List III of 7th Schedule which deals with production. Therefore, the impugned Act is entirely different from the Cotton Textile (Control) Order, 1948 which is an order issued under the Essential Commodities Act. There is absolutely no repugnance.

In a similar situation dealing with Sugarcane Control Order this Court explained the position vis-a-vis Industrial (Development and Regulation) Act, 1951 in Ch. Tika Ramji v. State of Uttar Pradesh, [1956] SCR 393. The ratio of that judgment will apply here.

The Handloom Act only gives effect to the directive principles under Article 39(b) and (c) of the Constitution. In such a case, this Court has always upheld such restrictions. As to the reasonableness, of these restrictions, the learned counsel would strongly rely on the counter affidavit and particularly, the report of the High-powered Study Team under the Chairmanship of Mr. B. Shivaraman, which has been quoted therein. If public interest warrants, restrictions could include prohibitions as well. The case in point is Narendra Kumar v. Union of India, [1960] 2 SCR 375.

Mr. Dipankar P. Gupta, learned Solicitor General supplementing the argument submits that the Government studied the over all problem of textile industry for a number of years. In 1964, the powerloom inquiry was constituted. In 1974, a high power Study Team constituted under the Chairmanship of Mr. B. Sivaraman, the then Member, Planning Commission made the following observation in respect of effect of powerlooms and the employment in the handlooms sector in their report:

"Every new powerloom itself put out of action six handlooms in the country. A handloom actually is a family industry and not an individual's field alone. When National Policy is to support the expansion of the rural industry

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of handloom in order to give more employment in the rural sector, we shall be working at cross purpose in encouraging at the same time powerlooms to displace a large number of handlooms.'

Then, a Study Group was constituted in 1981. An Expert Committee was constituted to go into handloom, powerloom and textile mill industries. Based on this, from time to time, textile policy statements were issued. In the year 1981 and 1985, it is found that next only to agricultural sector, handloom sector provides major rural employment. Therefore, the impugned Act is a product of over all assessment to protect a handloom industry which was sinking

in spite of the various concessions. It is incorrect to state that the powerloom sector has come to be affected. Originally, the holders of four powerlooms were exempt. But these powerloom owners diverted their products to larger powerloom owners. Once those textiles enter the market there was not possibility of finding out whether they had been manufactured by the owners of four powerlooms.

Therefore, it became necessary to impose this prohibition. When the Act advances a directive principle contained under Article 39(b) and (c), it cannot be called unreasonable.

We shall first examine the background leading to the passing of the impugned enactment.

On 8.1.63, the Government of India appointed a committee, called "The Powerloom Enquiry Committee" under the Chairmanship of Shri Ashok Mehta. This Committee submitted its report to the Government of India on 5.6.1964. Amongst others, the Committee recommended that the production of coloured sarees should be reserved exclusively for handloom sector. In a reference to reservation, the committee has said:-

"Even with the phased programmes of introduction of powerlooms in the handloom sector, the handloom sector would continue to play a prominent role for some decades. It will be necessary therefore, to ensure that this Sector is given assistance by a further Reservation of field of

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production."

The said Study Team under the Chairmanship of Mr. B. Sivar an inter alia made the following recommendation:

"It will be noticed that three items are reserved exclusively for the handlooms and powerlooms units having up to 4 powerlooms. Any breach of these orders is punishable under the Essential Commodities Act. In actual practice, however, the orders are honoured more in breach than in compliance and there is very little of prosecution under the Essential Commodities Act. The most glaring example of such breach is the production of coloured cotton sarees by the powerlooms of Maharashtra. Litigation of various nature is entered into by the powerloom sector to delay the process of law. As a result, even the little punitive action that is attempted becomes infructuous. There is also the inherent difficulty of dealing with the eight items which are also open to powerloom units with four looms and less. Once the goods leave a powerloom it becomes very difficult to establish whether they were produced in a unit with more than four powerlooms or in a smaller unit. As a result, the protection supposed to have been given to the handloom sector by reserving certain items of production for the sector has been substantially only on paper and the powerloom sector has been producing the reserved items whenever it has found it profitable to do so. The team recommends that the eight items which are also open powerloom units with four looms and less shall be reserved exclusively for the handloom sector.'

The Government of India appointed a Study Group on 'Reservation of Handlooms' on 12th August 1980 under the Chairmanship of Textile Commissioner who has given the following recommendations in respect of certain articles for exclusive production by handlooms:

"It may be true that owing to the dispersed nature of the industry, the much needed orientation of production to market needs is very much wanting in the handloom sector.

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Yet more important is the inherent technological disadvantage of the handloom sector and the unequal competition that it has to face from the mill and powerloom sector on this account.'

It is a matter of common knowledge that the bulk of the handlooms in the country produce 'break and butter item' such as gray dhoties, sarees, towels and plain household fabrics. It is these looms which have suffered on account of the growing competition from the powerlooms. It is in this context that the reservation of certain items of handlooms acquires importance.

In order to obviate the possibility of further litigations, the Study Group feels that it would be advisable to have a separate legislation for the handloom sector.

The Expert Committee observed in April 1985 thus:

"The vast growth of powerlooms has been due to certain advantages which they have enjoyed vis-a-vis the composite mills. These are low wages, low fiscal levies on yarn, absence of levy on gray fabrics which are the only products of the powerlooms, whole-sale evasion of protective labour legislation, low overheads, low requirements of working capital and flexibility in changing the product-mix to suit market demands, etc. As against this, it must be recognised that there are also certain advantages with the composite mills. For instance, the yarn costs to the powerlooms are about 8% higher than for the composite mills

The composite mills also have the advantage of much higher level of technological capabilities and marketing strength with reputed brand names established in the market and better quality control. On balance, however, the advantage was distinctly with the powerlooms so far as the production of cotton fabrics is concerned. That this advantage has put the composite mills in some difficulty cannot be gainsaid. In any policy calculated to restore health to the textile industry, it would be necessary to approximately equalise the advantages and disadvantages of these two sectors and the Committee has attempted to do this through its

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recommendations."

It is also relevant to note that the 7th Five Year Plan stresses the necessity for reservation of articles of the handloom sector. The relevant extract of which is given below:

"For the purpose of policies, the powerlooms in the organised mill sector and the unorganised powerloom sector shall be treated

at par and allowed to compete on the basis of their inherent strength and capabilities. Effective measure, however, would be evolved to prevent encroachment of the powerloom sector on items reserved for handlooms. During the VIIth Plan emphasis would be laid on cooperativisation and development of handlooms through Central State level corporations, modernisation of looms and provision of technological inputs, ensure adequate availability of yarn and other raw materials, increase the production of mixed and blended fabrics on handloom, design support to improve the competitiveness of the product so as to eliminate the cost of handicap of handloom vis-a-vis powerlooms, improve marketing and infrastructure support and strengthen the 'data base. Reservation would continue under "Handlooms (Reservation of Articles for Production) Act, 1985". The provision of this Act would be enforced and the machinery for this purpose suitably strengthened. New Spindle age would be installed in cooperative sector to the extent possible. To improve the welfare of the handloom weavers, a contributory thrift fund scheme and watershed-cum-housing scheme would be taken up in the Seventh Plan".

Due to the recommendations of the various Committees under the textile policy statements announced by the Government from time to time, the reservation of certain articles for production of handloom had continued from 1.6.1950 under the Cotton Textiles (Control) Order, 1948 issued under Section 3 of the Essential Commodities Act, 1955. However, experience showed that these orders were challenged in course of law, from time to time. The thrust of the argument on behalf of the powerloom was that they had given higher production and the powerloom cloth was

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cheaper than handloom fabric. Therefore, it was contended that the Notification issued under the Essential Commodities Act which, in effect, seeks to prohibit production was not in consonance with the Essential Commodities Act. It was further urged that the Notification provides for exemption from compliance of reservation order if sufficient reason was adduced by the producer. It was claimed by the powerloom owners that they were not afforded such an opportunity to adduce evidence. To overcome such difficulties, Government of India promulgated the Handlooms (Reservation of Articles of Production) Act, 1985. It is necessary to set out the statement of objects and reasons of this Act which runs as follows:

"STATEMENT OF OBJECTS AND REASONS

The handloom industry is characterised by sizeable unemployment and underemployment which are due to factors like lack of organisation of weavers, inadequate availability of inputs, including working capital and absence of a regular and reliable marketing system, which can observe the entire production. Of all these the lack of adequate marketing system is one single factor which comes in the way of proper development of handlooms. Although a number of developmental measures have been undertaken towards

improvement of the industry yet due to marketing difficulties production in the Handloom sector continues to suffer. The inherent technological constraints suffered by the handloom sector put a disadvantage when the sector is forced to compete with mill and powerloom sectors in the open market. It is in this context that reservation of certain items for exclusive production by handloom acquires importance. The policy of reservation of certain items for exclusive production by handloom has been adopted since 1950. First under the Cotton Textiles (Control) Order 1948 and later under the provisions of the Essential Commodities Act, 1955. This policy has helped the handloom sector to a considerable extent. However, during the last few years, these reservation orders issued under the Essential Commodities Act

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had been challenged in various courts of law. Though their validity had been upheld it is considered desirable to have a separate legislation so as to obviate the possibility of further litigation which may seriously affect the implementation of the reservation orders. A study group appointed by the Government to go into this question has also suggested that it would be desirable to have a separate legislation. It has been decided to accept this recommendation. The Bill apart from enabling the Central Government to reserve by notified order certain articles or class of articles for exclusive production by handlooms after taking into consideration the recommendations of an Advisory Committee constituted under the provisions of the Bill, provides for prohibition of manufacture of such articles of class of articles by powerloom or the other sectorism penalties for the contravention of the provisions of the order and other matters necessary for implementing the provisions of the Bill also provides for giving an exemption to certain articles covered by the order if the Central Government considers it necessary so to do for the purposes of the Handloom industry.

V.P. Singh

New Delhi

The 22nd August, 1984."

With this background, we will examine the provisions of the Act in juxtaposition to the Industrial Development and Regulation Act and Cotton Textile Control Order.

The Cotton Textile Control Order is an order issued under the Essential Commodities Act. The object of the Essential Commodities Act is to provide, in the interest of general public, for the control of the production, supply and distribution, and trade and commerce in certain commodities.

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Sub-section (1) of section 3 states as follows:

"Notwithstanding anything contained in the Industries (Development and Regulation) Act, 1951, the Central Government may, if it is satisfied, after considering the recommendations made to it by the Advisory Committee, that it is necessary so to do for the protection and development of the handloom industry, by order published in the Official Gazette, direct, from time to time, that any article or class of articles shall, on and from such date as may be specified in the order (hereinafter referred to as the date of reservation), be reserved for exclusive production by handlooms." (Emphasis supplied)

This Act is traceable to Entry 33 of List III of the 7th Schedule of the Constitution. It runs as follows:

"Trade and commerce in, and the production, supply and distribution of,

- (a) the products of any industry where the control of such industry by the union is declared by Parliament by law to the expedient in the public interest, and imported goods of the same kind as such products;
- (b) foodstuffs, including edible oilseeds and oils;
- (c) cattle fodder, including oilcakes and other concentrates;
- (d) raw cotton, whether ginned or unginned, and cotton seed; and
- (e) raw jute."

Industrial Development and Regulation Act, 1951 is an Act which brings under central control the development and regulation of number of industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India import. The planning of future development on sound and balanced lines is sought to be secured by licensing of all new undertakings by the Central

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Government. The Act is traceable to List I Entry 52 which reads as under:

"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

Section 2 of the said Act reads:

'Declaration as to expediency of control by the Union.-

It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule.'

Section 3 is the definition section. In clause (h) it defines "Schedule" meaning a Schedule to this Act, while "schedule industry" is defined under clause (i) meaning any of the industries specified in the First Schedule.

Item 23 of First Schedule is defined as under-

"23. TEXTILES (INCLUDING THOSE DYED, PRINTED OR OTHERWISE PROCESSED):

- 1. made wholly or in part of cotton, including cotton yarn, hosiery and rope;
- 2. made wholly or in part of jute, including jute twine and rope;
- 3. made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets;
- 4. made wholly or in part of silk including

silk yarn and hosiery-,

5. made wholly or in part of synthetic, artificial (man made fibres, including yarn and hosiery of such fibres.'

The impugned Act is traceable to Items 24 and 27 of II of the 7th Schedule of the Constitution which run as under:

"24. Industries subject to the provisions of (Entries 7 and 52) of List I."

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"27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III."

Therefore, handloom industry has been taken out of Industrial Development and Regulation Act and a separate enactment has been made.

In the light of the foregoing provisions, we shall examine the question whether Cotton Textile Control Order and the impugned Act can operate in the same field. Section 6 of the Essential Commodities Act states:

'Effect of orders inconsistent with other enactments:

Any order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

In view of the non-obstante clause it is argued that the Cotton Textile Control Order will prevail over the impugned Act.

We do not think this argument is correct because the Cotton Textile Control Order deals with finished products which is one of the Items mentioned in Entry 33 of List III of the 7th Schedule of the Constitution and the object of an order issued under Section 3 of the Essential Commodities Act has already been seen.

Clause 20 of the Cotton Textile Control Order enables the Commissioner to issue directions just as the present order.

When section subsection (1) of Section 3 of the impugned Act says 'Notwithstanding anything contained in the Industries (Development and Regulation) Act, 1951" it means it has an overriding effect. That was the reason why subject of handloom-textile was taken out of the purview of the First Schedule of Industries (Development and Regulation) Act, 1951 and a separate Act had come to be passed. Merely because clause 20 of the Cotton Textile Control Order confers an enabling power that does not mean that an order issued under the Essential Commodities Act will prevail.

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In this connection, reliance is placed by Mr. Nariman, learned counsel, on Harishankar Bagla v. The State of Madhya Pradesh, [1955] SCR 380 at 391 which runs as follows:

"Section 6 of the Act cited above declares that an order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act. In other words it declares that if there is any repugnancy in an order made under section 3 with the provisions of any other enactment, then notwithstanding that inconsistency the provisions of the Order will prevail in preference to the provisions of other laws which are thus inconsistent with

the provisions of the Order."

In dealing with the validity of Sugarcane Control Order,, 1955 this Court observed in Ch. Tika Ramji's case (supra) as follows:

"The relevant Entries in the respective Lists of the Seventh Schedule to the Constitution are as follows:

List I, Entry 52: Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

List II, Entry 24: Industries subject to the provisions of entry 52 of List I.

Entry 27: Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

List III, Entry 33: As it stood prior to its amendment:-

Trade and commerce in and production, supply and distribution of, the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.

Entry 33 as amended by the Constitution Third Amendment Act, 1954: Trade and commerce in, and the

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production, supply and distribution of,

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton- seed; and

(e) raw jute.

Production, supply and distribution of goods was no doubt within the exclusive sphere of the State Legislature but it was subject to the provisions of Entry 33 of List III which gave concurrent powers of legislation to the Union as well as the States in the matter of trade and commerce in, and the production, supply and distribution of, the products of industries where the control of such industries by the Union was declared by Parliament by law to be expedient in the public interest. The controlled industries were relegated to Entry 52 of List I which was the exclusive province of Parliament leaving the other industries within Entry 24 of List II which the exclusive province of the State Legislature. The products of industries which were comprised in Entry 24 of List II were dealt with by the State Legislatures which had under Entry 27 of that List power to legislate in regard to the production, supply and distribution of goods, goods according to the definition contained in article 366 (12) including all raw materials, commodities and

articles. When, however it came to the products of the controlled industries comprised in Entry 52 of List I, trade and commerce in, and production, supply and distribution of, these goods became the subject-matter of Entry 33 of List III and both

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Parliament and the State Legislatures had jurisdiction to legislate in regard thereto. The amendment of Entry 33 of List III by the Constitution Third Amendment Act, 1954, only enlarged the scope of that Entry without in any manner whatever detracting from the legislative competence of Parliament and the State Legislatures to legislate in regard to the same."

At page 420 it was held:

"The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 of List III. This being the position, it cannot be said that the legislation which was enacted by the Centre in regard to sugar and sugarcane could fall within Entry 52 of List I. Before sugar industry became a controlled industry, both sugar and sugarcane fell within Entry 27 of List II but, after a declaration was made by Parliament in 1951 by Act LXV of 1951, Sugar industry became a controlled industry and the product of that industry viz., sugar was comprised in Entry 33 of List III taking it out of Entry 27 of List II."

Therefore, where the Cotton Textile Control Order deals with the productions while the impugned Act is an Act which deals entirely with handloom. The order issued under Section 3 of the Act is only for protection and development of handloom industry. There is not question of both the Cotton Textile Control Order and the impugned Order operating in the same field.

Hence, this argument is rejected.

The next argument is that clause 20 of the Cotton Textile Control Order enables the Textile Commissioner to have an over all view while under Section 3 of the impugned Act regard is to be had only to the handloom industry

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we may now extract clause 20 of the Cotton Textiles (Control) Order, 1948 which runs as follows:

"20. (1) The Textile Commissioner may, from time to time, issue directions in writing to any manufacturer or class of manufacturers, or manufacturers generally regarding

(a) the classes or specifications of cloth or yarn which each manufacturer or class of manufacturers, or manufacturers generally shall or shall not manufacture, or

(b) the maximum or minimum quantities thereof which such manufacturer, or class of manufacturers generally shall manufacture

during such period as may be specified in the order.

Provided that in issuing the direction under this sub-clause the Textile Commissioner shall have regard to:

- (i) the demand for cloth or yam; and
- (ii) the needs of the general public;
- (iii) the special requirements of the industry for such cloth or yam;
- (iv) the capacity of the manufacturer or class of manufacturer or manufacturers generally, to manufacture different descriptions or specifications of cloths or yam; and
- (v) the necessity to make available to the general public cloth of mass consumption.

(2) While issuing any direction under sub-clause (1) the Textile Commissioner may also provide that such direction shall be with reference to the quantity of cloth or yam packed by the manufacturer, or class of manufacturers; or manufacturers generally during the period referred to in that sub-clause.

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(3) Every manufacturer, or class of manufacturers generally, to whom a direction has been issued shall comply with the direction.

(4) Where, on an application made by any manufacturer or class of manufacturers or otherwise, the Textile Commissioner is satisfied that any direction issued by him under this clause undue hardship or difficulty to any such manufacturer or class of manufacturers he may, by order and for reasons to be recorded in writing, direct that the directions shall not apply, or shall apply subject to such modifications as may be specified in the order, to such manufacturer or class of manufacturers."

As already seen, the objects of these two orders are different. Therefore, the order under Section 3(1) of the impugned Act (quoted above) does not run counter to clause 20 of Cotton Textile Control Order.

Accordingly, this argument is rejected.

Now we will examine, the question whether the Act and the order are violative of Article 19(1)(g) of the Constitution? According to Mr. Krishnamani, learned counsel, if there is a total reservation so as to create a monopoly that would be bad in law. He relies on decision in State of Rajasthan v. Mohan Lal Vyas, [1971] 3 SCC 705 at 707. It was held thus:

"A monopoly right cannot be conferred on a citizen under the Constitution nor can it be justified under the Constitution."

This argument, in our opinion, proceeds on a Misconception. There is no question of monopoly created in favour of handloom industry. Certain kinds of textiles are reserved to the handloom industry. Still "here are number of items available for powerloom owners, which they manufacture. The items of textiles generally manufactured in the mill and powerloom sectors have been left out from reserved items. Only those items which have traditionally been manufactured

on handlooms have been reserved for this sector. As a matter of fact, the reservation orders in favour of handloom have been on the statute book since 1950. But this has not
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deterred the growth of powerloom sector in the last three decades. Recently when the powerloom started producing the items which were traditionally being manufactured on handlooms, that caused a serious inroad into the handloom industry. The result was an unequal competition for the handloom sector. If, as rightly pointed out in the counter affidavit of the Union of India, handloom industry is the biggest cottage industry in the country and is next only to agricultural sector in providing rural employment, certainly, the accusation that the impugned order had created a monopoly in favour of handloom industry is totally baseless. In this connection, the estimates of 1977-78 6th Lok Sabha in its report on powerloom industry made the following observations and it is worthwhile to extract them:

"It has, however, to be ensured that this growth of powerloom industry should not be at the cost of handloom industry otherwise it will lead to greater rural unemployment and problem of large scale migration of rural population to the industrial areas in search of employment. The Committee, therefore, feels that the growth of the powerloom industry should be regulated in such a way that it does not harm the interests of the handloom industry. It would be ensured that powerloom industry does not become a 'benami' of the mill sector but is really developed by the conversion of handlooms into powerloom by the handloom weavers themselves. The Committee, therefore, recommend that stringent measures may be taken to ensure that powerloom sector observe the reservations made by the handloom sector and stringent action should be taken for any violation of these orders. Simultaneously, the powerloom sector should be encouraged to produce those varieties of cloth which are not being produced by the handloom sector. The Committee have already in Part I of their report, recommended the formulation of an integrated textile policy assigning role to the various sectors. The Committee hope that while defining the role of the powerloom sector, the above factors will be kept in view by the Government."

Thus, it will be clear that the reservation orders are for the continued
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A. employment of the handloom industry and are in the larger public interest.

Even factually, the allegation of monopoly is incorrect. The stand in the counter affidavit is as follows:

"It is submitted that the items which are generally manufactured in the powerloom sector have not been reserved for handloom sector at the cost of powerlooms or mill sector. The total production of textile sector at the end of Sixth Plan (1984-85) was 11,956 million mts. of which the share of handlooms was 3514. At the end of Seventh Plan (1989-90) the total production in textile is estimated at 14500 ml. mts. of which the share of handlooms will

be only 4600. These estimated targets indicate that there is sufficient scope for all the sectors including the unorganised powerloom sector to grow during the Seventh Five Year Plan. The differences between the handloom and powerlooms have been defined in the Act itself. The basic difference being that the handlooms are manually operated while the powerlooms are run with the motive force of power.'

The protection has been given by the Government to handloom weavers because the livelihood of handloom weavers is threatened due to the production of all types of items and varieties by the powerloom industry. It is common knowledge that the handloom weavers are economically very poor and will have no alternative employment in the rural areas unless protected through reservation of varieties for them. So poor is the weaver that he could well say in the words of Karl Marx

"Half a century on my back and still a pauper.

Therefore, the contention that there is a total prohibition, is untenable and the case relied on by Mr. Krishnamani, learned counsel, namely, *Rustom Cavasjee Cooper v. Union of India*, [1970] 3 SCR 530 has no relevance.

No doubt, there are restrictions under the impugned order but the question would be whether they are reasonable. The Act, as seen above, has come to be enacted for the protection of the interests of the handloom

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weavers, mostly concentrated in rural areas. They are pitted against powerful sector, namely, the miffs and the powerloom. As such, they face unequal competition. The restrictions are not only reasonable but also fully justified. Further, the objectives sought to be achieved by way of these reservations should derive support from Article 43 of the Constitution which reads follows:

"43. Living wage, etc., for workers The State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.'

The said article ordains that the State shall endeavour to promote cottage industries on individual or cooperative basis in rural areas. It is a welcome measure. We can usefully refer to *Orient Weaving Mills v. Union of India*, AIR 1963 SC 98 at 103:

'The Directive Principles of the Constitution, contained in Part IV, lay down the policies and objectives to be achieved, for promoting the welfare of the people. In the context of the present controversy, the following words of Art. 43 are particularly apposite:

promote cottage industries on an individual or co-operative basis in rural areas.'

It has rightly been pointed out in affidavit filed on behalf of the respondents 1-4 that the exemption granted by the impugned notifications is meant primarily for the protection of petty producers of cotton

fabrics not owning more than four power looms, from unreasonable competition by big producers, like the petitioner Company. The State, has, therefore, made a valid classification between goods produced 'in big establishments and similar goods

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produced by small powerloom weavers in the mofussil who are usually ignorant, illiterate and poor and suffer from handicaps to which big establishments like the petitioner Company are not subject."

Equally, Article 46 inter alia requires the State to promote with special care the educational and economical interests of the weaker sections of the people. Therefore, these restrictions can easily be sustained as reasonable since it is in furtherance of the objectives laid down in the directive principles.

In view of what we have stated above, even if, these restrictions result in the total exclusion of the powerloom sector that could be upheld as reasonable. In Narendra Kumar's case (supra) at page 376 it was held thus:

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

On the point of violation of Article 14, a reasonable classification is permissible under the equality clause. Of course, the classification made should be based on intelligible differentia. Further, there should be a nexus in such differentia with the objects sought to be achieved by the particular law. Article 14 requires that all persons subject to a legislation must be treated alike. In other words, equals must be treated alike, in like circumstances and conditions. Undoubtedly, the handloom sector forms a distinguishable class separated from powerloom sector or mills sector. The reservation of certain articles for exclusive production in the handloom sector has the objective of protecting the handloom sector against unequal and powerful competition by the mechanised powerloom/mills sector. At

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the same time, it is also necessary to ensure continued production coupled with sustained employment to the handloom weavers, largely concentrated in the rural areas. This is also in accord with the Government's declared policy of supporting handloom sector due to its large employment potential. The classification, hence, has a rational nexus with the objective of the Act.

The handlooms are operated manually, the number of persons employed is many times more than powerloom for production of

similar quantities of cloth. The reservation of articles for handlooms does not pose any serious threat to powerlooms. It has been proved by the fact that even though the handlooms reservation orders have been on the statute book since 1950, the powerlooms have continued to proliferate and there is no reason to believe that any of these looms are likely to be closed due to the Reservation Order. The powerloom owners are only required to diversify their line of production so that they do not produce cloth reserved for handlooms. As already pointed out the reservation for handlooms has continued since 1950 for the protection of rural handloom artisans and their continued employment in the industry. Since the Government policy has always been to create more employment particularly in rural areas, it will be unthinkable to imagine the social problems that will be created if the employment of millions of handloom weavers is taken away by allowing powerlooms to produce all items without any reservation. Handlooms and handicrafts are the only traditional cottage industries which provide maximum employment in the rural country-side. Hence, we reject this point as well.

It has already been noted from the observations of the high-powered Study Team under the Chairmanship of Mr. B Sivaraman as to how every new powerloom will put out of action six handlooms in the country. A handloom actually is a family industry and not an individual's field alone.

This means the families of the poor weavers are ruined by encouraging powerloom. It may be that the cost of production in the powerlooms sector is less but if it is the object of the Government to encourage handloom for continued employment of handloom weavers in rural areas, certainly, nothing worthwhile can be said against the impugned reservation. Besides, even under the Notification issued by the Textile Commissioner on 15.4.77 many of the items stated as being produced by the petitioner

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were reserved for the, handloom sector. These items are sarees with borders, lungies, chaddars, bed sheets, bed covers, counter panes, low read pick cloth table clothes, napkins, duster, towels and cotton crepe fabrics. If violating this order, the petitioner has been manufacturing these items which are specifically reserved for handlooms, it cannot be, allowed to continue to indulge in such violation any further. Thus, we reject the argument complaining of violation of Article 14 of the Constitution. Sub-section (1) of Section 3 of the impugned Act states that the order specifying the articles for exclusive production of handloom could be issued for the protection and development of handloom industry from time to time. Therefore, the reservation is not for all time to come. It could be revised periodically. It is with this object in view, Rule 3(5) of the Handlooms (Reservation of Articles for Production) Rule, 1986 states as follows:

"3(5): The Advisory Committee may meet at such places and at such times as may be determined by the Chairman:
Provided that the Advisory Committee shall meet at least once a year to review the list of reserved articles."

Therefore, at least once in a year there could be a meeting of the Advisory Committee. From the counter affidavit it is clear that in order to have a deeper study of the problems relating to reservation of production by handloom three sub-committees were constituted:

(i) cotton and art silk fabrics,

(ii) pure silk fabrics; and
(iii) woollen and tribal fabrics.

In order to gain first-hand knowledge of the production of these fabrics the sub-committees made field visits. While touring different centres the sub-committees invariably involved local government representatives.

It is averred in the counter affidavit that the sub-committee on silk visited powerloom weaving centres in Bangalore and Varanasi, while the

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sub-committee on wool during their visits to a number of places, including Panipat, Ludhiana, Kulu, Imphal and Srinagar had occasion to study the problems of the woollen powerloom industry along with those of the handloom industry. The Advisory Committee on cotton met the representatives of powerlooms, who placed their views before the sub-committee during its sittings at Madras and Bangalore. Thus, it will be amply clear from what has been stated above that the interest of the powerloom sector has been taken into account and powerlooms were represented albeit indirectly on the Advisory Committee.

Moreover, the sub-committees formed by the earlier Advisory Committee had visited many a places in the country and discussed the matter with officers of the State Governments and met persons representing different textile sectors. Apart from the reports received from the sub-committees, the representations received by the Government from various textile interests were duly considered by the Advisory Committee before making their recommendations. It is, therefore, incorrect to say that proper opportunity was not provided to the petitioners for making representations.

It is important to note that in the Advisory Committee the representatives from powerloom sector, mills sector and powerloom silk sector have been specifically included. Therefore, it is meaningless to state that no opportunity was afforded to powerloom sector and that under Section 3 of the impugned Act regard is had only to the handloom industry while under clause 20 an over all view of all the industries could be taken.

In view of the foregoing on, we dismiss the writ petition and the connected cases.

G.N. Petition dismissed.

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