1956

Lawrence Joachim Joseph D'Souza v. *The State of Bombay*

Jagannadhadas J.

grounds on which the detention is based and the nature of activities imputed therein to the appellant. It is unnecessary, therefore, to deal in this case with a theoretical contention as to whether or not article 22(6) of the Constitution overrides the constitutional right to be furnished particulars under article 22(5) to the extent of denying *all* particulars and leaving the grounds absolutely vague.

All the contentions raised before us fail and this appeal is dismissed.

CH. TIKA RAMJI & OTHERS, ETC.

v.

THE STATE OF UTTAR PRADESH & OTHERS.

1956

April 24

[S. R. DAS, C.J., BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and JAFER IMAM JJ.]

Sugarcane, Regulation of Supply and Purchase of—Act passed by State Legislature and notifications issued thereunder by the State Government—Constitutional validity—If repugnant to Parliamentary Acts and notifications made thereunder—If violative of fundamental rights—Parliament's power of repeal—Delegation of such power, if permissible—U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (U.P. Act XXIV of 1953), ss. 15, 16—U.P. Sugarcane Regulation of Supply and Purchase Order, 1954—Industries (Development and Regulation) Act, 1951 (Act LXV of 1951) as amended by Act XXVI of 1953, ss. 18-G, 15, 16—Essential Commodities Act, 1955 (Act X of 1955), s. 16(1)(b)—Sugarcane Control Order, 1955, cl. 7(1)—Constitution of India, Arts. 14, 19(1)(c), (f) and (g), 31, 301, 304, 254.

The petitioners challenged the constitutional validity of the U.P. Sugarcane (Regulation of Supply and Purchase) Act of 1953, and two notifications issued by the State Government on September 27, 1954 and November 9, 1955, the former under sub-sec. 1(a) read with sub-sec. 2(b) of s. 16 of the impugned Act providing that where not less than three-fourths of the canegrowers within the area of operation of a Canegrowers' Co-operative Society were members thereof, the occupier of the factory to which that area is assigned should not purchase or enter into an agreement to purchase cane except through that society and the latter under s. 15 of the Act assigning to different sugarcane factories specified cane-purchasing centres for supply to them of sugarcane for the crushing season of 1955-56. They contended that the impugned Act was *ultra vires* the

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

State Legislature, the subject-matter of legislation being within the exclusive jurisdiction of Parliament, and repugnant to Act LXV of 1951 and Act X of 1955 passed by Parliament and that ss. 15 and 16(1)(a) and (2)(b) and the two notifications infringed their fundamental rights under Arts. 14, 19(1)(c), (f) and (g) and 31 and violated the provisions of Art. 301 of the Constitution.

Held, (1) that the impugned Act and the notifications issued thereunder were *intra vires* the State Legislature, did not infringe any fundamental rights of the petitioners nor violated the provisions of Art. 301 of the Constitution and the petitions must be dismissed;

(2) that the Central Acts in respect of sugar and sugarcane and the notifications thereunder having been enacted and made by the Central Government in exercise of concurrent jurisdiction under Entry 33 of List III of the Seventh Schedule to the Constitution as amended by the Constitution (Third Amendment) Act of 1954; the State Legislature was not deprived of its jurisdiction thereunder and no question of legislative incompetence of the U.P. Legislature or its trespassing upon the exclusive jurisdiction of the centre in enacting the impugned Act could arise;

(3) that the provisions of the impugned Act compared to those of the Central Acts clearly showed that the impugned Act was solely concerned with the regulation of the supply and purchase of sugarcane and in no way trenched upon the exclusive jurisdiction of the Centre with regard to sugar and the U.P. Legislature was, therefore, quite competent to enact it;

(4) that no question of repugnancy under Art. 254 of the Constitution could arise where Parliamentary Legislation and State Legislation occupied different fields and dealt with separate and distinct matters even though of a cognate and allied character, and that where, as in the present case, there was no inconsistency in the actual terms of the acts enacted by Parliament and the State Legislature, the test of repugnancy would be whether Parliament and the State Legislature, in legislating under an entry in the Concurrent List, exercised their powers over the same subject-matter or whether the laws enacted by Parliament were intended to be exhaustive so as to cover the entire field;

(5) that the provisions of s. 18-G of Act LXV of 1951 did not cover sugarcane nor indicate the intention of the Parliament to cover the entire field of such legislation; the expression "any article or class of articles relatable to any scheduled industry" used in ss. 18-G, 15 and 16 of the Act did not refer to raw materials but only to finished products of the scheduled industries the supply and distribution of which s. 18-G was intended to regulate, its whole object being the equitable distribution and availability of manufactured articles at fair prices and not to invest the Central Government with the power to legislate in regard to sugarcane;

(6) that even assuming that sugarcane was such an article and fell within the purview of s. 18-G of the Act, no order having been issued by the Central Government thereunder, no question of repugnancy could arise, as repugnancy must exist as a fact and not as a mere possibility and the existence of such an order would be an essential pre-requisite for it;

(7) that as the provisions of Act X of 1955, and those of the impugned Act and the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, made thereunder, relating to sugarcane were mutually exclusive and did not impinge upon each other and the one legislature did not trench upon the field of the other, the Centre remaining silent where the State spoke and the State remaining silent where the Centre spoke, there could be no inconsistency between them and no provision of the impugned Act and the Rules made thereunder was invalidated by any of the provisions of Act LXV of 1951 as amended by Act XXVI of 1953 or Act X of 1955 and the Sugarcane Control Order, 1955, issued thereunder;

Clyde Engineering Company, Limited v. *Cowburn* ([1926] 37 C.L.R. 466), *Ex Parte McLean* ([1930] 43 C.L.R. 472), *Stock Motor Plough Ltd.* v. *Forsyth* ([1932] 48 C.L.R. 128), *G.P. Stewart* v. *B.K. Roy Chaudhury* (A.I.R. 1939 Cal. 628) and *Shyamakant Lal* v. *Rambhajan Singh* ([1939] F.C.R. 188), referred to.

(8) that the power of repeal conferred on Parliament by the proviso to Art. 254(2) of the Constitution was a limited power and could be exercised only by enacting a law relating to the matter dealt with by the state law and the state law must be one of the kind indicated in the body of Art. 254(2) itself, and as the impugned Act did not fall within that category the proviso did not apply and the impugned Act, the notifications made thereunder and the U. P. Sugarcane Regulation of Supply and Purchase Order, 1954, stood unrepealed by s. 16(1)(b) of Act X of 1955 and cl. 7(1) of the Sugarcane Control Order, 1955 made thereunder;

Zaverbhai Amaidas v. *The State of Bombay* ([1955] 1 S.C.R. 799), referred to.

(9) that the power of repeal conferred by the proviso to Art. 254(2) could be exercised by Parliament alone and could not be delegated to an executive authority and, consequently, the Central Government acquired no power of repeal under cl. 7 of the Sugarcane Control Order, 1955;

(10) that the contention that the impugned Act infringed the fundamental right guaranteed by Art. 14 inasmuch as very wide powers were given to the Cane Commissioner which could be used in a discriminatory manner was without any foundation since his powers under s. 15 of the impugned Act were well defined and the Act and Rules framed thereunder gave the canegrowers or a Canegrowers' Co-operative Society or the occupier of a factory the right to appeal to the State Government against any order passed by him

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

and thus provided a sufficient safeguard against any arbitrary exercise of those powers;

(11) that equally unfounded was the contention that the impugned Act and the notification dated September 27, 1954, violated the fundamental right guaranteed by Art. 19(1)(c) of the Constitution. Although the right to form an association was a fundamental right, it did not necessarily follow that its negative, i.e. the right not to form an association must also be so, as all rights which an Indian citizen had were not fundamental rights. No canegrower was compelled to become a member of the Canegrowers' Co-operative Society or prevented from resigning therefrom or selling his crops elsewhere and, consequently, the impugned Act and the notification did not violate his fundamental right;

(12) that the powers given to the Cane Commissioner by s. 15 of the impugned Act to declare reserved or assigned areas were well-defined and controlled by higher authorities and by no means absolute and unguided and were not, therefore, hit by Art. 19(1)(f) and (g) and the notification dated November 9, 1955, could not, therefore, be impugned on that ground;

(13) that the restriction imposed by the notification dated September 27, 1954, on canegrowers in regard to sale of sugarcane to occupiers of factories in areas where the membership of the Canegrowers' Co-operative Society was not less than 75 per cent. of the total number of canegrowers was a reasonable restriction in the public interest, designed for the benefit of a large majority of canegrowers, and as such came within the protection of Art. 19(6) and did not violate Art. 19(1)(f) and (g) of the Constitution;

(14) that the impugned notifications, being *intra vires* the State Legislature, could not also be challenged under Art. 31 as none of the petitioners was deprived of his property, if any, save by authority of law.

Messrs Dwarka Prasad Laxmi Narain v. *The State of Uttar Pradesh and two others* ([1954] S.C.R. 803), referred to.

(15) Nor could it be contended that the impugned Act and the notifications contravened the provisions of Art. 301 of the Constitution in view of the provision of Art. 304(b) which made it permissible for the State Legislature to impose reasonable restrictions in the public interest.

Commonwealth of Australia v. *Bank of New South Wales* ([1950] A.C. 235) and *Hughes and Vale Proprietary Ltd.* v. *State of New South Wales and others* ([1955] A.C. 241), referred to.

ORIGINAL JURISDICTION: Petitions Nos. 585, 599, 611, 622, 625, 565, 576 of 1954 and 48, 58, 415, 416 of 1955 and 10, 16, 37, 39 and 47 of 1956.

Under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

G. S. Pathak, *Rameshwar Nath* and *K. R. Chowdhry*, for petitioners in Petitions Nos. 10, 37 and 47 of 1956.

J. N. Bannerji and *V. S. Sawhney*, for petitioners in Petition No. 622 of 1954.

S. P. Sinha and *K. R. Chowdhry*, for petitioners in Petition No. 585 of 1954.

B. B. Tawakley and *K. P. Gupta*, for petitioners in Petitions Nos. 565 and 576 of 1954.

K. R. Chowdhry, for petitioners in Petitions Nos. 599 and 611 of 1954 and 58, 415 and 416 of 1955 and 16 and 39 of 1956.

R. Patnaik and *K. R. Chowdhry*, for petitioners in Petition No. 48 of 1955.

R. Patnaik, for petitioners in Petition No. 625 of 1954.

K. L. Misra, *Advocate-General*, *U.P.*, *K. B. Asthana* and *C. P. Lal*, for the State of U.P. and the Cane Commissioner, U.P. in all the Petitions.

C. K. Daphtary, *Solicitor-General of India*, and *Jagdish Chandra*, for the Cane-Growers' Co-operative Development Unions in Petitions Nos. 585 and 625 of 1954 and 10 and 47 of 1956.

Jagdish Chandra, for the Cane-Growers' Co-operative Development Unions in rest of the petitions except Petition No. 37 of 1956.

D. N. Mukerji, *for Daurala Sugar Mills* (respondent No. 4) in Petitions Nos. 611 of 1954, 58, 415 and 416 of 1955.

O. N. Srivastava, for Punjab Sugar Mills in Petitions Nos. 48 of 1955 and 47 of 1956.

A. S. Chawla, for respondent No. 3 in Petition No. 10 of 1956.

Ganpat Rai for respondent No. 9 in Petition No. 10 of 1956.

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

1956. April 24. The Judgment of the Court was delivered by

BHAGWATI J.—These Petitions under article 32 of the Constitution impugn the validity of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (U.P. Act XXIV of 1953) hereinafter called the impugned Act and the notifications dated 27th September, 1954 and 9th November, 1955 issued by the U. P. Government thereunder.

The petitioners are sugarcane growers in the several villages of the Districts of Meerut, Kheri, Gorakhpur and Deoria in the State of U.P. numbering 4,724 in the aggregate. Associated with them are the President, the Vice-Presidents and the Secretary of an association which is styled "the Ganna Utpadak Sangh" which is a rival body to the Co-operative Development Unions established and recognised under the impugned Act. The notification dated 27th September, 1954, issued in exercise of the powers conferred by sub-section 1(a) read with sub-section 2(b) of section 16 of the impugned Act ordered that where not less than 3/4 of the cane growers of the area of operation of a Cane Growers Co-operative Society are members of the Society, the occupier of the factory for which the area is assigned shall not purchase or enter into agreement to purchase cane grown by a cane grower except through such Cane Growers Co-operative Society. The notification dated 9th November, 1955 was issued in exercise of the powers conferred by section 15 of the impugned Act and reserved or assigned to the sugar factories mentioned in column 2 of the Schedule annexed thereto the cane purchasing centres (with the authorities attached to them) specified against them in column 3 for the purpose of supply of sugarcane during the crushing season 1955-56 subject to the conditions and explanations given therein. The former relates to the agency of supply of sugarcane to the factories and the latter relates to the creation of zones for particular factories. All the Petitions except Nos. 10 of 1956 and 37 of 1956 impugn the former notification

but the grounds of attack against both are common. The impugned Act is challenged as *ultra vires* the powers of the State Legislature, the subject-matter of the Act being within the exclusive field of Parliament and also as being repugnant to Act LXV of 1951 and Act X of 1955 passed by Parliament, and section 15 and section 16(1)(a) and 2(b) and the notifications issued thereunder are challenged as unconstitutional inasmuch as they infringe the fundamental rights guaranteed under article 14, article 19(1)(c), (f) and (g) and article 31 besides being in violation of article 301 of the Constitution. All these Petitions involve common questions of law and may be disposed of by one judgment.

A short history of the legislation enacted by the Centre as well as the Province of U.P. in regard to sugar and sugarcane will be helpful for the determination of the questions arising in these Petitions. On 8th April, 1932, the Central Legislature passed the Sugar Industry (Protection) Act, 1932 (Act XIII of 1932) to provide for the fostering and development of Sugar Industry in India in pursuance of the policy of discriminating protection of industries with due regard to the well being of the community. As a result of the protection thus granted to the sugar industry, the number of sugar factories which was 31 prior thereto registered a rapid rise and by 1938 they were 139 in number. There was also a large expansion in the cultivation of sugarcane and millions of cultivators in the Province of U.P. took to growing sugarcane. In order to protect their interests and for the purpose of assuring to them a fair price for their produce, the Central Legislature enacted on 1st May, 1934 the Sugarcane Act, 1934 (Act XV of 1934) to regulate the price at which sugarcane intended to be used in the manufacture of sugar might be purchased by or for factories. Sugarcane was grown in various Provinces and the declaration of controlled areas and the fixing of minimum price for the purchase of sugarcane intended for use in any factory in any controlled area was of necessity left to the Provincial Governments and the Provincial

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

Bhagwati J.

Governments were also empowered to make rules for the purpose of carrying into effect the objects of the Act including, in particular, the organisation of growers of sugarcane into Co-operative Societies for the sale of sugarcane to factories.

With the coming into operation of the Government of India Act, 1935, there was a distribution of legislative powers between the Dominion Legislature and the Provincial Legislatures and agriculture (Entry No. 20), trade and commerce within the Province (Entry No. 27) and production, supply and distribution of goods, development of industries subject to the provision in List I with respect to development of certain industries under Dominion control (Entry No. 29) were included in List II, the Provincial Legislative List. The relevant provision in List I was contained in Entry No. 34: "Development of industries where development under Dominion control is declared to be in the public interest". As a result of this distribution of legislative powers, the entire subject-matter of Act XV of 1934 fell within the Provincial Legislative List. It was felt that Act XV of 1934 was not sufficiently comprehensive for dealing with the problems of the sugar industry and it was found necessary to replace it by a new measure which would provide for the better organisation of cane supplies to sugar factories. The Governments of U.P. and Bihar, therefore, decided in consultation with each other to introduce legislation on similar lines for both the Provinces which together accounted for nearly 85 per cent. of production of sugar in India. The U.P. Legislature accordingly enacted on 10th February, 1938 the U.P. Sugar Factories Control Act, 1938 (U.P. Act I of 1938) to provide for the licensing of the sugar factories and for regulating the supply of sugarcane intended for use in such factories and the price at which it may be purchased and for other incidental matters. This Act provided for (a) the licensing of sugar factories, (b) the regulation of the supply of sugarcane to factories, (c) the minimum price for sugarcane, (d) the establishment of Sugar Control Board and Advisory Committee, and (e) a

tax on the sale of sugarcane intended for use in factories, and repealed Act XV of 1934. This Act was to remain in force initially until 30th June, 1947 but the period was extended to 30th June, 1950 by U.P. Act XIII of 1947 and to 30th June, 1952 by U.P. Act XXI of 1950.

The Second World War intervened and an emergency was proclaimed by the Governor-General under section 102 of the Government of India Act, 1935. The Dominion Legislature acquired the power to make laws for the Provinces with respect to any of the matters enumerated in the Provincial Legislative List. The result was in effect to make the Provincial Legislative List also a Concurrent Legislative List for the operation of the Dominion Legislature but if any provision of a Provincial law was repugnant to any provision of the Dominion law made in exercise of that power, the Dominion law was to prevail and the Provincial law was to be void to the extent of the repugnancy. The proclamation of emergency was to operate until revoked by a subsequent proclamation and laws made by the Dominion Legislature as above were to have effect until the expiration of a period of six months after the proclamation had ceased to operate. The Defence of India Act and the Rules made thereunder occupied the field, sugar was made a controlled commodity in the year 1942 and its production and distribution as well as the fixation of sugar prices were regulated by the Sugar Controller thereafter. The proclamation of emergency was revoked on 1st April, 1946 and the laws made by the Dominion Legislature in the field of the Provincial Legislative List were to cease to have effect after 30th September, 1946. On 26th March, 1946, the British Parliament enacted the India (Central Government and Legislature) Act, 1946 (9 & 10 Geo. 6, Chapter 39). Section 2(1)(a) provided that notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the period mentioned in section 4 of the Act have power to make laws with respect to the following matters:

"(a) trade and commerce (whether or not within

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

Bhagwati J.

a Province) in, and the production, supply and distribution of, cotton and woollen textiles, paper (including newsprint), foodstuffs (including edible oil seeds and oils), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica;....."

The period provided in section 4 was the period of one year beginning with the date on which the proclamation of emergency ceased to operate or, if the Governor-General by a public notification directed, a period of 2 years beginning with that date. There was a proviso to that section that if and so often as a resolution approving the extension of the said period was passed by both Houses of Parliament, the same period shall be extended for a further period of 12 months from the date on which it would otherwise expire but it was not to continue in any case for more than 5 years from the date on which the proclamation of emergency ceased to operate.

Acting under the power reserved to it under section 2(1)(a) aforesaid, the Central Legislature enacted on 19th November, 1946, the Essential Supplies (Temporary Powers) Act, 1946 (Act XXIV of 1946) to provide for the continuance during the limited period of powers to control production, supply and distribution of, and trade and commerce in, certain commodities. Section 1(3) of the Act provided that it shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946. In the absence of a notification by the Governor-General, the Act remained operative until 31st March, 1947 only. The Governor-General, however, issued a notification on 3rd March, 1947 continuing its force for a period of two years from the date of the cessation of emergency. By virtue of this notification, the Act would have remained in force till 31st March, 1948. On 18th July, 1947, the Indian Independence Act was passed and India became a Dominion on 15th August, 1947. Under section 9 read with section 19(4) of the Indian Independence Act, 1947, the Governor-General passed an order on 14th August, 1947 which substituted the

words "Dominion Legislature" for "Both Houses of Parliament" in the proviso to section 4 of India (Central Government and Legislature) Act, 1946 and also introduced a new section 4(a) by way of adaptation providing that the powers of the Dominion Legislature shall be exercised by the Constituent Assembly. On 25th February, 1948, the Constituent Assembly passed its first Resolution extending the operation of the Act for one year up to 31st March, 1949. On 3rd March, 1949, a second Resolution was passed by the Assembly extending the life of the Act by one year more up to 31st March, 1950. With the advent of our Constitution on 26th January, 1950, Parliament was invested under article 369 with power for a period of 5 years from the commencement of the Constitution to make laws with respect to the following matters as if they were enumerated in the Concurrent List:

"(a) trade and commerce within a State in, and the production, supply and distribution of,.....foodstuffs (including edible oil seeds and oil),....."

The life of the Act was accordingly extended from time to time up to 26th January 1955 by Acts passed by Parliament.

Act XXIV of 1946 defined an essential commodity to mean any of the following classes of commodities:

"(1) Foodstuffs,....."

Food crops were defined as including crops of sugarcane.

Section 3 of the Act empowered the Central Government, so far as it appeared to it to be necessary or expedient for maintaining or increasing the supply of any essential commodity or for securing its equitable distribution and availability at fair prices to provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. On 7th October, 1950, the Central Government, in exercise of the powers conferred upon it by section 3 of the Act, promulgated the Sugar and Gur Control Order, 1950, *inter alia* empowering it to prohibit or to restrict the export of sugarcane from any area, to direct that no gur or sugar shall be

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

manufactured from sugarcane except under and in accordance with the conditions specified in the licence issued in this behalf and to prohibit or to restrict the despatch of gur or sugar from any State or any area therein. Power was also given to fix minimum price of sugarcane and no person was to sell or agree to sell sugarcane to a producer and no producer was to purchase or agree to purchase sugarcane at a price lower than that notified thereunder. This power of fixing the price of sugarcane was exercised by the Central Government from time to time by issuing notifications fixing the minimum prices to be paid by the producers of sugar by vacuum pan process or their agents for sugarcane purchased by them during the 1950-51 crushing season in various States including U.P.

On 31st October, 1951, Parliament enacted the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951) to provide for the development and regulation of certain industries. By section 2 of the Act it was declared that it was expedient in the public interest that the Union should take under its control the industries specified in the First Schedule which included in item 8 thereof the industry engaged in the manufacture or production of sugar.

The Province of Bihar which, along with U.P. contributed to nearly 85 per cent. of production of sugar in India had also on its Statute Book the Bihar Sugar Factories Control Act VII of 1937. On 10th April, 1938, a joint meeting of the U.P. and the Bihar Sugar Control Boards was held at which it was resolved that a Committee be appointed to enquire into the working of the sugarcane rules and labour conditions prevailing in the sugar factories in the two Provinces. The Governments of the U.P. and Bihar accepted this recommendation of the Sugar Control Boards and accordingly appointed the Khaitan Committee, (1) to examine the working of the sugarcane rules, (2) to look into the complaints of malpractices received from time to time in connection with the supply of sugarcane to the sugar factories, (3) to enquire into the labour conditions of the sugar factories, and (4) to suggest remedial measures for the shortcomings as

noted in (1), (2) and (3) above. Shibban Lal Saxena, the present President of the Ganna Utpadak Sangh and one of the petitioners before us was also a member of that Committee. That Committee submitted its Report in 1940 recommending *inter alia* abolition of the dual system of supply and creation of a strong co-operative organisation of the sugarcane growers themselves as also creation of a zonal system. The Indian Tariff Board had also, in the meanwhile, made its Report on the sugar industry in the year 1938 commending the advantages of a zonal system. There was further the report of the U. P. Sugar Industry Enquiry Committee, 1951 called the Swaminathan Committee, which also recommended the abolition of dual agencies of cane supplies to factories and commended the desirability of employing the agency of the Co-operative Societies for the purpose. It also recommended that the U. P. Act I of 1938 should be amended in order to make this regulation possible. Act LXV of 1951 was brought into force with effect from 8th May, 1952. In view of the same, certain provisions of U. P. Act I of 1938 became inoperative. The U.P. Legislature, therefore, passed on 29th June, 1952 the U. P. Sugar Factories Control (Amendment) Act, 1952, deleting those provisions and putting the amended Act permanently on the Statute Book. The U. P. Act I of 1938, as thus amended, continued in force till, as a result of the prior enactment of Act LXV of 1951 and the report of the Indian Tariff Board on the Sugar Industry as well as the reports of the Khaitan Committee and the Swaminathan Committee mentioned above, the U. P. Legislature enacted the impugned Act. The object of the enactment was stated to be as follows: "With the promulgation of the Industries (Development and Regulation) Act, 1951 with effect from 8th May, 1952, the regulation of the sugar industry has become exclusively a Central subject. The State Governments are now only concerned with the supply of sugarcane to the sugar factories. The Bill is being introduced in order to provide for a rational distribution of sugarcane to factories, for its development on organised

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

scientific lines, to protect the interests of the cane growers and of the industry and to put the new Act permanently on the Statute Book" (Vide Statement of objects and reasons published in the U. P. Gazette Extraordinary dated 15th July, 1953). This is the impugned Act the vires of which is challenged in these Petitions. In exercise of the rule-making power conferred by section 28 of the Act, the U.P. Government made the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954. The U.P. Government also, in exercise of the powers conferred by section 16 of the Act, promulgated the U.P. Sugarcane Supply and Purchase Order, 1954, which came into effect from 19th September, 1954. All these related to the supply and purchase of sugarcane in U.P.

Act LXV of 1951 was amended by Act XXVI of 1953 which, by adding Chapter III(b), invested the Central Government *inter alia* with power so far as it appeared to it necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry to provide by notified order for regulation of supply and distribution thereof and trade and commerce therein.

On 1st April, 1955, Parliament enacted the Essential Commodities Act, 1955 (Act X of 1955) to provide in the interests of the general public for the control of production, supply and distribution of, and trade and commerce in, certain commodities. The essential commodity there was defined to mean any of the following classes of commodities:

"(v) foodstuffs, including edible oilseeds and oils;

.....

(xi) any other class of commodity which the Central Government may, by notified order declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution;"

Foodcrops were defined as inclusive of crops of sugar-

cane. Section 3(1) empowered the Central Government, if it was of the opinion that it was necessary or expedient to do so for maintaining or increasing the supply of any essential commodity or for securing its equitable distribution and availability at fair prices, to provide by order for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Section 3(2) (b) *inter alia* provided for the making of such an order for bringing under cultivation any waste or arable land whether appurtenant to a building or not, for the growing thereon of foodcrops generally or of specified foodcrops. Section 16 of the Act repealed (a) the Essential Commodities Ordinance, 1955, and (b) any other law in force in any State immediately before the commencement of the Act in so far as such law controlled or authorised the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

In exercise of the powers conferred by section 3 of the Act, the Central Government promulgated on 27th August, 1955 the Sugar Control Order, 1955 and the Sugarcane Control Order, 1955. The latter empowered the Central Government, after consultation with such authorities, bodies or associations as it may deem fit by notification in the official Gazette from time to time, to fix the price of sugarcane and direct payment thereof and also to regulate the movement of sugarcane. The power to regulate the movement of sugarcane comprised the power to prohibit or restrict or otherwise regulate the export of sugarcane from any area for supply to different factories and the power to direct that no gur (jaggery) or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in a licence issued in this behalf. Clause 7 of this order provided that the Sugar and Gur Control Order, 1950, published by the Government of India in the Ministry of Food and Agriculture, S.R.O. 735 dated 7th October, 1950, and any order made by a State Government or other authority regulating or prohibiting the production, supply and distribution of sugarcane and trade or

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

commerce therein were thereby repealed except as respect to things done or omitted to be done under any such order before the commencement of the order.

These are the respective Acts and Notifications passed by the Centre as well as the State of U. P. in regard to sugar and sugarcane.

Learned counsel for the petitioners urged before us:

(1) that the State of U. P. had no power to enact the impugned Act as the Act is with respect to the subject of industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest within the meaning of Entry 52 of List I and is, therefore, within the exclusive province of Parliament. The impugned Act is, therefore, *ultra vires* the powers of the State Legislature and is a colourable exercise of legislative power by the State;

(2) the impugned Act is repugnant to Act LXV of 1951 and Act X of 1955 and in the event of the Court holding that the impugned Act was within the legislative competence of the State Legislature, it is void by reason of such repugnancy;

(3) the impugned Act stands repealed to the extent that it has been repealed by section 16 of Act X of 1955 and by clause 7 of the Sugarcane Control Order, 1955, made in exercise of the powers conferred by section 3 of Act X of 1955;

(4) the impugned Act infringes the fundamental right guaranteed by article 14 inasmuch as very wide powers are given to the Cane Commissioner which can be used in a discriminatory manner;

(5) the impugned Act and the notification dated 27th September, 1954, violate the fundamental right guaranteed under article 19(1)(c) in that the Co-operative Societies are not voluntary organisations but a cane grower is compelled to become a member of the Society before he can sell his sugarcane to a factory;

(6) the impugned Act and the notifications infringe the fundamental right guaranteed by article 19(1)(f) and (g) and article 31 of the Constitution;

(7) the impugned Act is void in that it confers

very wide powers on executive officials and is a piece of delegated legislation; and

(8) the impugned Act is destructive of the freedom of trade and commerce and thus is violative of article 301 of the Constitution.

Re. (1): This contention relates to the legislative competence of the U.P. State Legislature to enact the impugned Act. It was contended that, even though the impugned Act purported to legislate in regard to sugarcane required for use in sugar factories, it was, in pith and substance, and in its true nature and effect legislation in regard to sugar industry which had been declared by Act LXV of 1951 to be an industry the control of which by the Union was expedient in the public interest and was, therefore, within the exclusive province of Parliament under Entry 52 of List I. The word 'industry', it was contended, was a word of very wide import and included not only the process of manufacture or production but also all things which were necessarily incidental to it, viz., the raw materials for the industry as also the products of that industry and would, therefore, include within its connotation the production, supply and distribution of raw materials for that industry which meant sugarcane in relation to sugar industry. It was also contended that in so far as the impugned Act purported to legislate in regard to sugarcane which was a necessary ingredient in the production of sugar it was a colourable exercise of legislative power by the State, ostensibly operating in its own field within Entry 27 of List II but really trespassing upon the field of Entry 52 of List I.

It was contended on behalf of the State on the other hand that, after the advent of war and the proclamation of emergency under section 102 of the Government of India Act, 1935 and by the combined operation of the India (Central Government and Legislature) Act, 1946 and article 369 of the Constitution taken along with the resolutions of the Houses of Parliament extending the life of Act XXIV of 1946 up to 26th January, 1955 and the Third Constitution Amendment Act of 1954 amending Entry 33 of List

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

III, the Central Legislature was operating all along on what became in effect the Concurrent field even in regard to sugarcane, that the investing of the Central Government with power to legislate in this sphere of the Provincial List did not deprive the Provincial Legislature of such power and that both the Central Legislature as well as the State Legislatures had legislative competence to legislate in regard to these fields which were for the purpose of legislative competence translated into Concurrent fields and that, therefore, the U.P. State Legislature was competent to enact the impugned Act which would be valid within its own sphere except for repugnancy with any of the provisions of the Central Legislature covering the same field.

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 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 was 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 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. If the matters had stood there, the sugar industry being a controlled industry, legislation in regard to the same would have been in the exclusive province of Parliament and production, supply and distribution of the product of sugar industry,

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

viz., sugar as a finished product would have been within Entry 33 of List III. Sugarcane would certainly not have been comprised within Entry 33 of List III as it was not the product of sugar industry which was a controlled industry. It was only after the amendment of Entry 33 of List III by the Constitution Third Amendment Act, 1954 that foodstuffs including edible oilseeds and oils came to be included within that List and it was possible to legislate in regard to sugarcane, having recourse to Entry 33 of List III. Save for that, sugarcane, being goods, fell directly within Entry 27 of List II and was within the exclusive jurisdiction of the State Legislatures. Production, supply and distribution of sugarcane being thus within the exclusive sphere of the State Legislatures, the U. P. State Legislature would be, without anything more, competent to legislate in regard to the same and the impugned Act would be *intra vires* the State Legislature.

The argument, however, was that the word 'industry' was a word of wide import and should be construed as including not only the process of manufacture or production but also activities antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry. The process of acquiring raw materials was an integral part of the industrial process and was, therefore, included in the connotation of the word 'industry' and when the Central Legislature was invested with the power to legislate in regard to sugar industry which was a controlled industry by Entry 52 of List I, that legislative power included also the power to legislate in regard to the raw material of the sugar industry, that is sugarcane, and the production, supply and distribution of sugarcane was, by reason of its being the necessary ingredient in the process of manufacture or production of sugar, within the legislative competence of the Central Legislature. Each entry in the Lists which is a category or head of the subject-matter of legislation must be construed not in a narrow or restricted sense but as widely as possible so as to extend to all ancillary

or subsidiary matters which can fairly and reasonably be said to be comprehended in it (Vide *The United Provinces* v. *Mst. Atiqa Begum and Others*(1), *Thakur Jagannath Baksh Singh* v. *The United Provinces*(2), and *Megh Raj and Another* v. *Allah Rakhia and Others*(3)), and the topic 'industries' should, therefore, be construed to include the raw materials which are the necessary ingredients thereof and which form an integral part of the industrial process.

Our attention was drawn in this connection to the definition of 'industry' in section 2(j) of the Industrial Disputes Act, 1947 (Act XIV of 1947):

" "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen"

and also to the wide construction which was put upon the term 'industry' in the *Australian Insurance Staffs' Federation* v. *The Accident Underwriters' Association and Others*(4) where it was construed to include "all forms of employment in which large number of persons are employed, the sudden cessation of whose work might prejudicially affect the orderly conduct of the ordinary operations of civil life". A similarly wide interpretation was put on the word 'industry' by our Court in *D. N. Banerji* v. *P. R. Mukherjee and Others*(5) where the dispute was between a Municipality and its employees. These interpretations of the term 'industry', however, do not help us because in defining the word 'industry' in the Industrial Disputes Act, 1947, as also in putting the wide construction on the term 'industry' in [1923] 33 C.L.R. 517, as well as 1953 S.C.R. 302, they were concerned mainly with the question whether an industrial dispute arose between employers and employees. Whether a particular concern came within the definition of an 'employer' was determined with respect to the criterion ultimately adopted

(1) [1940] F.C.R. 110, 134. (2) [1946] F C R. 111, 119.
(3) [1947] F.C.R. 77. (4) [1923] 33 C.L.R. 517.
(5) [1953] S.C R 302.

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

Bhagwati J.

which was that the sudden cessation of such work might prejudicially affect the orderly conduct of the ordinary operations of civil life and the withdrawal of service would be detrimental to the industrial system of the community and might result in its dislocation. What we are concerned with here is not the wide construction to be put on the term 'industry' as such but whether the raw materials of an industry which form an integral part of the process are within the topic of 'industry' which forms the subject-matter of Item 52 of List I as ancillary or subsidiary matters which can fairly or reasonably be said to be comprehended in that topic and whether the Central Legislature while legislating upon sugar industry could, acting within the sphere of Entry 52 of List I, as well legislate upon sugarcane.

If both the Central Legislature and the Provincial Legislatures were entitled to legislate in regard to this subject of production, supply and distribution of sugarcane, there would arise no question of legislative competence of the Provincial Legislature in the matter of having enacted the impugned Act. The conflict, if any, arose by reason of the interpretation which was sought to be put on the two Entries, Entry 52 of List I and Entry 27 of List II put in juxtaposition with each other. It was suggested that Item 52 of List I comprised not only legislation in regard to sugar industry but also in regard to sugarcane which was an essential ingredient of the industrial process of the manufacture or production of sugar and was, therefore, ancillary to it and was covered within the topic. If legislation with regard to sugarcane thus came within the exclusive province of the Central Legislature, the Provincial Legislature was not entitled to legislate upon the same by having resort to Entry 27 of List II and the impugned Act was, therefore, *ultra vires* the Provincial Legislature. There was an apparent conflict between the legislative powers of the Centre and of the Provinces in this respect which conflict could not have been intended and, therefore, a reconciliation was to be attempted by reading the two provisions together and by inter-

preting and where necessary modifying the language of one by that of the other. Reliance was placed on the observations of the Judicial Committee in *The Citizens Insurance Company of Canada* v. *William Parsons*(1):

"In these cases it is the duty of the Courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result, the two sections must be read together, and the language of one interpreted, and, where necessary, modified, by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers which they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown, to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand".

and also at page 113:

"It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province....."

These observations were quoted with approval by Gwyer, C. J. in *Re: The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (Central Provinces and Berar Act No. XIV of 1938)*(2) and it was further held that the general power ought not to be construed as to make a nullity of a particular power conferred by the same Act and operating in the same field. The same duty of reconciling apparently conflicting provisions was reiterated in

(1) [1881] L R. 7 A.C. 96, 108. (2) [1939] F.C.R. 18, 39.

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

Governor-General in Council v. *The Province of Madras*(1):

"But it appears to them that it is right first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it, and equally giving to the language of the Provincial Legislative List a meaning which it can properly bear".

Reliance was also placed on the observations of Gwyer, C. J. quoted in *Subrahmanyan Chettiar* v. *Muthuswami Goundan*(2):

"As interpreted by the Judicial Committee, the British North America Act presents an exact analogy to the India Act, even to the overriding provisions in section 100(1) of the latter: "The rule of construction is that general language in the heads of section 92 yields to particular expressions in section 91, where the latter are unambiguous": per Lord Haldane in *Great West Saddlery Co.* v. *The King*(3). The principles laid down by the Judicial Committee in a long series of decisions for the interpretation of the two sections of the British North America Act may therefore be accepted as a guide for the interpretation of similar provisions in the Government of India Act."

and it was contended that Entry 27 of List II should be construed in a general manner as applying to production, supply and distribution of goods in general and Entry 52 of List I should be construed as comprehending within its scope ancillary matters in relation to the controlled industries thus excluding production, supply and distribution of goods which would be thus comprised within it as ancillary matters from the sphere of Entry 27 of List II. If this construction was adopted it would avoid the apparent conflict between the two Entries and would reconcile the powers of the Provincial Legislatures with those of the Central Legislature. It was, therefore, contended that the Legislation in regard to sugarcane

(1) [1945] F.C R. 179, 191. (2) [1940] F.C.R. 188, 201.
(3) [1921] 2 A.C. 91, 116.

should be considered as ancillary to the legislation in regard to sugar industry which is a controlled industry and comprised within Entry 52 of List I and should be excluded from Entry 27 of List II which should be read as covering only those categories which did not fall within Entry 52 of List I even though on a wide construction of the words "production, supply and distribution of goods" they would be capable of covering the same. If this construction was put upon these two Entries, it would follow that the subject-matter of the impugned Act was within the exclusive jurisdiction of Parliament being comprised in Entry 52 of List I and was *ultra vires* the U.P. State Legislature. The answer of the State of U.P. was two-fold: (1) after the advent of the Second World War and all throughout up to 1955 when Act X of 1955 was enacted by Parliament, the Centre was operating upon the Concurrent field of legislation and that whatever legislation in regard to sugarcane was enacted by the Centre as part of its legislative activities in regard to sugar was not under Entry 52 of List I but was in exercise of its legislative powers under Concurrent jurisdiction, and (2) that the impugned Act merely confined itself to legislation in regard to sugarcane and did not purport to legislate in regard to sugar which was exclusively dealt with by the Centre. There was, therefore, no trespass upon the exclusive jurisdiction of the Centre and the impugned Act was within the legislative competence of the State Legislature.

As has been noted above, the entire subject-matter of Act XV of 1934 came within the Provincial Legislative List on a distribution of legislative powers effected under the Government of India Act, 1935 and the U.P. Legislature enacted the U.P. Act I of 1938 covering the same field and repealing Act XV of 1934. Entry 27 of List II related to production, supply and distribution of goods and development of industries except in regard to controlled industries, and, in so far as in 1938 sugar was not a controlled industry, the U.P. Legislature enacted provisions for the licensing of the sugar factories and for regulating the price and supply of sugarcane intended for use in

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

such factories. With the advent of War and the proclamation of emergency under section 102 of the Government of India Act, 1935, the Centre was invested with the power to make laws for the Provinces with respect to any of the matters enumerated in the Provincial Legislative List and the Central Legislature as well as the Provincial Legislatures were thus enabled to enact measures exercising concurrent jurisdiction in regard to the topics enumerated in the Provincial Legislative List. The emergency was about to come to an end on the 1st April, 1946 and the British Parliament, therefore, on 26th March, 1946, passed the India (Central Government and Legislature) Act, 1946, under which, notwithstanding anything in the Government of India Act, 1935, the Central Legislature was, for the period specified in section 4 thereof, invested with the powers to make laws with respect to (a) trade and commerce in, and the production, supply and distribution of,..... foodstuffs, edible oilseeds and oils.....and this provision in effect continued the power which had been vested in the Central Legislature during the emergency under section 102 of the Government of India Act, 1935. The period mentioned in section 4 of this Act was extended from time to time up to 31st March, 1950. It was in pursuance of these powers that the Central Legislature enacted Act XXIV of 1946 on 16th November, 1946. The essential commodities therein comprised *inter alia* foodstuffs which would include sugar as well as sugarcane and both sugar and sugarcane, therefore, came within the jurisdiction of the Centre. Act XXIV of 1946 was continued in force up to 31st March, 1950 under the terms of section 4 of India (Central Government and Legislature) Act, 1946 by the notification of the Governor-General and the resolutions passed by both the Houses of Parliament but before the expiration of this extended period the Constitution was inaugurated and under article 369 Parliament was invested with the power to make laws *inter alia* with respect to trade and commerce within a State and production, supply and distribution of.....foodstuffs, edible oilseeds

and oils as if they were enumerated in the concurrent list and it was by virtue of this power that Act XXIV of 1946 was extended up to 26th January, 1955 by diverse pieces of legislation enacted by Parliament. Sugar and sugarcane thus continued within the jurisdiction of the Centre right up to 26th January, 1955. When Entry 33 of List III was amended by the Constitution Third Amendment Act, 1954, foodstuffs including edible oilseeds and oils were included therein and both Parliament and the State Legislatures acquired concurrent jurisdiction to legislate over sugar and sugarcane. Trade and commerce in, and production, supply and distribution of, sugar and sugarcane thus could be dealt with by Parliament as well as by the State Legislatures and it was in exercise of this jurisdiction that Parliament enacted Act X of 1955. The list of essential commodities defined in section 2 of the Act comprised foodstuffs, including edible oilseeds and oils, cattlefodder, raw cotton and cotton-seed and raw jute which were items (b), (c), (d) and (e) in Entry 33 of List III and the products of the controlled industries, coal, textiles, iron and steel, paper, petroleum and petroleum products and any other class of commodity which the Central Government may by notification or order declare to be an essential commodity for the purposes of the Act being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 of List III of the Seventh Schedule to the Constitution, which were amongst the products of the controlled industries specified in the First Schedule to Act LXV of 1951. It follows that Act X of 1955 was enacted by Parliament in exercise of the legislative powers conferred upon it by Entry 33 of List III and was an exercise of concurrent jurisdiction.

It is clear, therefore, that all the Acts and the notifications issued thereunder by the Centre in regard to sugar and sugarcane were enacted in exercise of the concurrent jurisdiction. The exercise of such concurrent jurisdiction would not deprive the Provincial Legislatures of similar powers which they had under the Provincial Legislative List and there would, there-

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

fore, be no question of legislative incompetence qua the Provincial Legislatures in regard to similar pieces of legislation enacted by the latter. The Provincial Legislatures as well as the Central Legislature would be competent to enact such pieces of legislation and no question of legislative competence would arise. It also follows as a necessary corollary that, even though sugar industry was a controlled industry, none of these Acts enacted by the Centre was in exercise of its jurisdiction under Entry 52 of List I. Industry in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List II. 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. Even so, the Centre as well as the Provincial Legislatures had concurrent jurisdiction in regard to the same. In no event could the legislation in regard to sugar and sugarcane be thus included within Entry 52 of List I. The pith and substance argument also cannot be imported here for the simple reason that, when both the Centre as well as the State Legislatures were operating in the concurrent field,

there was no question of any trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List I, the only question which survived being whether, putting both the pieces of legislation enacted by the Centre and the State Legislature together, there was any repugnancy, a contention which will be dealt with hereafter.

A more effective answer is furnished by comparison of the terms of the U.P. Act I of 1938 with those of the impugned Act. Whereas the U.P. Act I of 1938 covered both sugarcane and sugar within its compass, the impugned Act was confined only to sugarcane, thus relegating sugar to the exclusive jurisdiction of the Centre thereby eliminating all argument with regard to the encroachment by the U.P. State Legislature on the field occupied by the Centre. The U.P. Act I of 1938 provided for the establishment of a Sugar Control Board, the Sugar Commissioner, the Sugar Commission and the Cane Commissioner. The impugned Act provided for the establishment of a Sugarcane Board. The Sugar Commissioner was named as such but his functions under rules 106 and 107 were confined to getting information which would lead to the regulation of the supply and purchase of sugarcane required for use in sugar factories and had nothing to do with the production or the disposal of sugar produced in the factories. The Sugar Commission was not provided for but the Cane Commissioner was the authority invested with all the powers in regard to the supply and purchase of sugarcane. The Inspectors appointed under the U.P. Act I of 1938 had no doubt powers to examine records maintained at the factories showing the amount of sugarcane purchased and crushed but they were there with a view to check the production or manufacture of sugar whereas the Inspectors appointed under the impugned Act were, by rule 20, to confine their activities to the regulation of the supply and purchase of sugarcane without having anything to do with the further process of the manufacture or production of sugar. Chapter 3 of U.P. Act I of 1938, dealing with the construction and extension of sugar factories, licens-

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

Bhagwati J.

ing of factories for crushing sugarcane, fixing of the price of sugar, etc., was deleted from the impugned Act. The power of licensing new industrial undertakings was thereafter exercised by the Centre under Act LXV of 1951 as amended by Act XXVI of 1953, vide sections 11(a), 12 and 13, and the power of fixation of price of sugar was exercised by the Centre under section 3 of Act XXIV of 1946 by issuing the Sugar Control Order, 1950. Even the power reserved to the State Government to fix minimum prices of sugarcane under Chapter V of U.P. Act I of 1938 was deleted from the impugned Act the same being exercised by the Centre under clause 3 of Sugar and Gur Control Order, 1950, issued by it in exercise of the powers conferred under section 3 of Act XXIV of 1946. The prices fixed by the Centre were adopted by the State Government and the only thing which the State Government required under rule 94 was that the occupier of a factory or the purchasing agent should cause to be put up at each purchasing centre a notice showing the minimum price of cane fixed by the Government meaning thereby the Centre. The State Government also incorporated these prices which were notified by the Centre from time to time in the forms of the agreements which were to be entered between the cane growers, the cane growers co-operative societies, the factories and their purchasing agents for the supply and purchase of sugarcane as provided in the U.P. Sugarcane Supply and Purchase Order, 1954. The only provision which was retained by the State Government in the impugned Act for the protection of the sugarcane growers was that contained in section 17 which provided for the payment of price of sugarcane by the occupier of a factory to the sugarcane growers. It could be recovered from such occupier as if it were an arrear of land revenue. This comparison goes to show that the impugned Act merely confined itself to the regulation of the supply and purchase of sugarcane required for use in sugar factories and did not concern itself at all with the controlling or licensing of the sugar factories, with the production or manufacture of sugar or with the

trade and commerce in, and the production, supply and distribution of, sugar. If that was so, there was no question whatever of its trenching upon the jurisdiction of the Centre in regard to sugar industry which was a controlled industry within Entry 52 of List I and the U.P. Legislature had jurisdiction to enact the law with regard to sugarcane and had legislative competence to enact the impugned Act.

Re. (2): It was next contended that the provisions of the impugned Act were repugnant to the provisions of Act LXV of 1951 and Act X of 1955 which were enacted by Parliament and, therefore, the law made by Parliament should prevail and the impugned Act should, to the extent of the repugnancy, be void. Before dealing with this contention it is necessary to clear the ground by defining the exact connotation of the term "repugnancy". Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field because, if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise. So far as our Constitution is concerned, repugnancy is dealt with in article 254 which provides:

"254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State specified in Part A or Part B of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State".

We are concerned here with the repugnancy, if any, arising by reason of both Parliament and the State Legislature having operated in the same field in respect of a matter enumerated in the Concurrent List, i.e., foodstuffs comprised in Entry 33 of List III and we are, therefore, not called upon to express any opinion on the controversy which was raised in regard to the exact scope and extent of article 254(1) in regard to "a law made by Parliament which Parliament is competent to enact", as to whether the legislative power of Parliament therein refers to List I, List III and the residuary power of legislation vested in Parliament under article 248 or is confined merely to the matters enumerated in the Concurrent List (Vide A.I.R. 1942 Cal. 587 contra, Per Sulaiman, J. in 1940 F.C.R. 185 at p. 226).

Nicholas in his Australian Constitution, 2nd ed., p. 303, refers to three tests of inconsistency or repugnancy:—

(1) There may be inconsistency in the actual terms of the competing statutes *(R.* v. *Brisbane Licensing Court*, [1920] 28 C.L.R. 23).

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code *(Clyde Engineering Co. Ltd.* v. *Cowburn*, [1926] 37 C.L.R. 466).

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter *(Victoria* v. *Commonwealth*, [1937] 58 C.L.R. 618; *Wenn*

v. *Attorney-General (Vict.)*, [1948] 77 C.L.R. 84).

Isaacs, J. in *Clyde Engineering Company, Limited* v. *Cowburn*(1) laid down one test of inconsistency as conclusive: "If, however, a competent legislature expressly or implicitly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field".

Dixon, J. elaborated this theme in *Ex parte McLean*(2):

"When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes, and section 109 applies. That this is so is settled, at least when the sanctions they impose are diverse. But the reason is that, by prescribing the rule to be observed, the Federal statute shows an intention to cover the subject matter and provide what the law upon it shall be. If it appeared that the Federal law was intended to be supplementary to or cumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties. The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter".

To the same effect are the observations of Evatt, J. in *Stock Motor Plough Ltd.* v. *Forsyth*(3):

"It is now established, therefore, that State and Federal laws may be inconsistent, although obedience to both laws is possible. There may even be incon-

(1) [1926] 37 C.L.R. 466, 489. (2) [1930] 43 C.L.R. 472, 483.
(3) [1932] 48 C.L.R. 128, 147.

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

sistency although each law imposes the very same duty of obedience. These conclusions have, in the main, been reached, by ascribing "inconsistency" to a State law, not because the Federal law directly invalidates or conflicts with it, but because the Federal law is said to "cover the field". This is a very ambiguous phrase, because subject matters of legislation bear little resemblance to geographical areas. It is no more than a cliche for expressing the fact that, by reason of the subject matter dealt with, and the method of dealing with it, and the nature and multiplicity of the regulations prescribed, the Federal authority has adopted a plan or scheme which will be hindered and obstructed if any additional regulations whatever are prescribed upon the subject by any other authority; if, in other words, the subject is either touched or trenched upon by State authority".

The Calcutta High Court in *G. P. Stewart* v. *B. K. Roy Chaudhury*(1) had occasion to consider the meaning of repugnancy and B. N. Rau, J. who delivered the judgment of the Court observed at page 632:

"It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test: there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say, "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time". Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified".

The learned Judge then discussed the various auth-

(1) A.I.R. 1939 Cal. 628.

orities which laid down the test of repugnancy in Australia, Canada, and England and concluded at page 634:

"The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Isaacs, J. in the Australian 44 hour case (37 C.L.R. 466) if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law".

Sulaiman, J. in *Shyamakant Lal* v. *Rambhajan Singh*(1) thus laid down the principle of construction in regard to repugnancy:

"When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. *Further, repugnancy must exist in fact, and not depend merely on a possibility.* Their Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not and may never be in force: *(Attorney-General for Ontario* v. *Attorney-General for the Dominion)*(2)".

In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act. The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subject-matter or whether the laws enacted

(1) [1939] F.C.R. 188, 212. (2) [1896] A.C. 348, 369-70.

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

by Parliament were intended to be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to cover the whole field. It would be necessary, therefore, to compare the provisions of Act LXV of 1951 as amended by Act XXVI of 1953, Act X of 1955 and the Sugar Control Order, 1955 issued thereunder with those of the impugned Act and U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 passed thereunder.

Act LXV of 1951 was an Act to provide for the development and regulation of certain industries the control of which by the Union was declared by the Act to be expedient in the public interest and it embraced the various industries mentioned in the First Schedule to the Act. The industry engaged in the manufacture or production of sugar was one of such industries and under the Act the Union acquired control over the same. The Act provided for the establishment and constitution of a Central Advisory Council for the purposes of advising it on matters concerning the development and regulation of the scheduled industries. It also provided for the establishment and constitution of Development Councils for any scheduled industry or group of scheduled industries. It further provided for the regulation of scheduled industries by registration of existing industrial undertakings and licensing of new industrial undertakings and causing investigations to be made in the scheduled industries or industrial undertakings. These provisions were evidently intended to control the scheduled industries and if the sugar industry was one of the scheduled industries the control thereof involved the development and regulation of the sugar industry and the registration and the licensing as also investigation into the affairs of the undertakings which were engaged in the production or manufacture of sugar. It did not involve the regulation of the supply and purchase of sugarcane which, though it formed an integral part of the process of manufacture of sugar, was merely the raw material for the industry and as such not within the purview of the Act. If the Act had remained as originally enacted the

provisions of the Act would not have been in any manner whatever repugnant to the provisions of U.P. Act I of 1938 because both the Acts covered different fields. Act XXVI of 1953, however, introduced certain amendments in the Act the relevant amendment for our purpose being section 18-G which provided as follows:—

"18-G. *Power to control supply, distribution, price, etc., of certain articles.*—

(1) The Central Government, so far as it appears to it necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.

.....

Explanation.—In this section, the expression 'article or class of articles' relatable to any scheduled industry includes any article or class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry".

Sugar industry being one of the scheduled industries, it was contended for the petitioners that sugarcane was an article relatable to the sugar industry and was, therefore, within the scope of section 18-G and the Central Government was thus authorised by notified order to provide for regulating the supply and distribution thereof and trade and commerce therein. If that was so, it was next contended, the field of legislation in regard to sugarcane was covered by this provision of the Act and was taken away from the jurisdiction of the State Legislatures, the avowed intention being to cover the whole field of such legislation. It was, however, urged on behalf of the State of U. P. that articles relatable to scheduled industry comprised only those finished products which were of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry and did not comprise the raw materials for

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

the scheduled industry. Reliance was placed in support of this contention on the terms of the explanation to section 18-G as also to sections 15 and 16 of the Act where the same words "any article or class of articles relatable to that industry" were used. In our opinion, the contention of the State is sound. The structure of the whole Act LXV of 1951 related to the development and regulation of the scheduled industries and all the provisions which were contained in the Act including those which were introduced therein by Act XXVI of 1953 were designed for effectuating that purpose. It is significant to note that, even in section 18-G, the regulation which was intended was that of the supply and distribution of the article or class of articles relatable to the scheduled industry and the production of those articles was not sought to be regulated at all. The raw materials would certainly be essential ingredients in the process of manufacture or production of the articles in the scheduled industry but would not be of the same nature or description as the article or class of articles manufactured or produced therein. The whole object of enactment of section 18-G was to secure the equitable distribution and availability at fair prices of such articles which by relation thereof to the article or class of articles manufactured or produced in the scheduled industry would affect such manufacture or production or the supply and distribution thereof or trade and commerce therein. Not only were the article or class of articles relatable to the scheduled industry which were themselves manufactured or produced in this country sought to be controlled in this manner but also the articles or class of articles imported into India which were of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry, so that all these articles whether indigenous or imported would be controlled by the Central Government by regulating the supply and distribution thereof and trade and commerce therein with a view to develop and regulate and thus control the scheduled industries in the public interest. Sec-

tion 15 of the Act provided that where the Central Government was of the opinion that, in respect of any scheduled industry or industrial undertaking there had been or was likely to be a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertakings for which, having regard to the economic conditions prevailing, there was no justification, it may make or cause to be made full and complete investigations into the circumstances of the case. If, after making or causing to be made any such investigations, the Central Government was satisfied that action under section 16 was desirable it was to issue such directions to the industrial undertakings concerned as may be appropriate for regulating production of any article or class of articles of any industrial undertakings or fixing the standard of production, requiring the industrial undertakings to take such steps as are considered necessary to stimulate the development of the industry to which the undertakings relate, prohibiting the industrial undertakings from resorting to any act or practice which may reduce its production capacity and economic value and controlling the prices and regulating the distribution of any article or class of articles which has been the subject-matter of investigation. If any article or class of articles relatable to that industry could thus be the subject-matter of investigation and if appropriate directions in the manner indicated in section 16 could be given in relation thereto, it is obvious that it would not be within the province of the scheduled industry or industrial undertakings to take such steps in regard to the controlling of the prices or regulating the distribution of these articles or class of articles unless they were within the sphere of the scheduled industries or industrial undertakings. Raw materials for the manufacture or production of the article or class of articles in the scheduled industry would certainly not be within this sphere and they would not be able to control the prices or regulate the distribution thereof within the meaning of section 16.

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

These articles or class of articles relatable to the scheduled industry, therefore, were finished products and not raw materials for the manufacture or production of the articles or class of articles in the scheduled industry. They were finished products of a cognate character which would be manufactured or produced in the very process of manufacture or production in the course of carrying on that scheduled industry. The raw materials would certainly not be included within this category and sugarcane which is the raw material for the manufacture or production of sugar could, therefore, not be included in the category of the articles or class of articles relatable to the sugar industry. Section 18-G, therefore, did not cover the field of sugarcane and the Central Government was not empowered by the introduction of section 18-G by Act XXVI of 1953 to legislate in regard to sugarcane. The field of sugarcane was not covered by Act LXV of 1951 as amended by Act XXVI of 1953 and the legislative powers of the Provincial Legislatures in regard to sugarcane were not affected by it in any manner whatever. If the two fields were different and the Central legislation did not intend at all to cover that field, the field was clear for the operation of State legislation and there was no repugnancy at all between Act LXV of 1951 and the impugned Act. Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of section 18-G of Act LXV of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as has been noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under section 18-G being issued by the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise.

Act X of 1955 included within the definition of essential commodity food stuffs which we have seen above would include sugar as well as sugarcane. This

Act was enacted by Parliament in exercise of the concurrent legislative power under Entry 33 of List III as amended by the Constitution Third Amendment Act, 1954. Foodcrops were there defined as including crops of sugarcane and section 3(1) gave the Central Government powers to control the production, supply and distribution of essential commodities and trade and commerce therein for maintaining or increasing the supplies thereof or for securing their equitable distribution and availability at fair prices. Section 3(2)(b) empowered the Central Government to provide *inter alia* for bringing under cultivation any waste or arable land whether appurtenant to a building or not for growing thereon of foodcrops generally or specified foodcrops and section 3(2)(c) gave the Central Government power for controlling the price at which any essential commodity may be bought or sold. These provisions would certainly bring within the scope of Central legislation the regulation of the production of sugarcane as also the controlling of the price at which sugarcane may be bought or sold, and in addition to the Sugar Control Order, 1955 which was issued by the Central Government on 27th August, 1955, it also issued the Sugarcane Control Order, 1955, on the same date investing it with the power to fix the price of sugarcane and direct payment thereof as also the power to regulate the movement of sugarcane.

Parliament was well within its powers in legislating in regard to sugarcane and the Central Government was also well within its powers in issuing the Sugarcane Control Order, 1955 in the manner it did because all this was in exercise of the concurrent power of legislation under Entry 33 of List III. That, however, did not affect the legislative competence of the U. P. State Legislature to enact the law in regard to sugarcane and the only question which remained to be considered was whether there was any repugnancy between the provisions of the Central legislation and the U. P. State legislation in this behalf. As we have noted above, the U. P. State Government did not at all provide for the fixation of minimum

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

prices for sugarcane nor did it provide for the regulation of movement of sugarcane as was done by the Central Government in clauses (3) and (4) of the Sugarcane Control Order, 1955. The impugned Act did not make any provision for the same and the only provision in regard to the price of sugarcane which was to be found in the U. P. Sugarcane Rules, 1954, was contained in Rule 94 which provided that a notice of suitable size in clear bold lines showing the minimum price of cane fixed by the Government and the rates at which the cane is being purchased by the centre was to be put up by an occupier of a factory or the purchasing agent as the case may be at each purchasing centre. The price of cane fixed by Government here only meant the price fixed by the appropriate Government which would be the Central Government, under clause 3 of the Sugarcane Control Order, 1955, because in fact the U. P. State Government never fixed the price of sugarcane to be purchased by the factories. Even the provisions in behalf of the agreements contained in clauses 3 and 4 of the U. P. Sugarcane Regulation of Supply and Purchase Order, 1954, provided that the price was to be the minimum price to be notified by the Government subject to such deductions, if any, as may be notified by the Government from time to time meaning thereby the Central Government, the State Government not having made any provision in that behalf at any time whatever. The provisions thus made by the Sugarcane Control Order, 1955, did not find their place either in the impugned Act or the Rules made thereunder or the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, and the provision contained in section 17 of the impugned Act in regard to the payment of sugarcane price and recovery thereof as if it was an arrear of land revenue did not find its place in the Sugarcane Control Order, 1955. These provisions, therefore, were mutually exclusive and did not impinge upon each other there being thus no trenching upon the field of one Legislature by the other. Our attention was drawn to the several provisions contained in the

Sugarcane Control Order, 1955 and the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 and the agreements annexed thereto and it was pointed out that they differed in material particulars, the provisions of the latter being more stringent than those of the former. It is not necessary to refer to these provisions in any detail. Suffice it to say that none of these provisions do overlap, the Centre being silent with regard to some of the provisions which have been enacted by the State and the State being silent with regard to some of the provisions which have been enacted by the Centre. There is no repugnancy whatever between these provisions and the impugned Act and the Rules framed thereunder as also the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 do not trench upon the field covered by Act X of 1955. There being no repugnancy at all, therefore, no question arises of the operation of article 254(2) of the Constitution and no provision of the impugned Act and the Rules made thereunder is invalidated by any provision contained in Act LXV of 1951 as amended by Act XXVI of 1953 or Act X of 1955 and the Sugarcane Control Order, 1955 issued thereunder.

Re. (3): It was then contended that the impugned Act stands repealed to the extent that it has been repealed by section 16 of Act X of 1955 and clause 7 of the Sugarcane Control Order, 1955 made in exercise of the powers conferred by section 3 of Act X of 1955.

Section 16 of Act X of 1955 reads as under:

"16. (1) The following laws are hereby repealed:—

(a) the Essential Commodities Ordinance, 1955;

(b) any other law in force in any State immediately before the commencement of this Act in so far as such law controls or authorises the control of the production, supply and distribution of, and trade and commerce in, any essential commodity".

It is submitted that the impugned Act was "any other law" in force in the State of U.P. immediately before the commencement of Act X of 1955 and stood repealed in so far as it controlled or authorised the

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

Bhagwati J.

control of production, supply and distribution of, and trade and commerce in, sugarcane which was comprised within foodstuffs an essential commodity under Act X of 1955. Clause 7 of the Sugarcane Control Order, 1955 made in exercise of the powers conferred by section 3 of the Act provided:

"7. (1) The Sugar and Gur Control Order, 1950, published with the Government of India in the Ministry of Food and Agriculture S.R.O. No. 735, dated the 7th October, 1950, and any order made by a State Government or other authority regulating or prohibiting the production, supply and distribution of sugarcane and trade or commerce therein are hereby repealed, except as respect things done or omitted to be done under any such order before the commencement of this order".

It is submitted that the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, made by the U.P. Government in exercise of the powers conferred by section 16 of the impugned Act is repealed in so far as it regulates or prohibits the production, supply and distribution of sugarcane or trade and commerce therein. These are provisions for the express repeal of the impugned Act and the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, and if the contention of the petitioners in this behalf were accepted it would have the effect of nullifying the provisions of the impugned Act and also the impugned notifications which have been issued in exercise of the powers conferred by sections 15 and 16 of the Act.

As regards section 16 of Act X of 1955, the validity and effect thereof depends upon the construction to be put on article 254(2) and the proviso thereto. Article 254(2) deals with repugnancy between the provisions of a law made by the State Legislature and those of an earlier law made by Parliament or an existing law with respect to one of the matters enumerated in the Concurrent List and provides that the law so made by the State Legislature shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State. A

proviso, however, has been attached thereto which says that "nothing in article 254(2) shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the State Legislature". Ordinarily Parliament would not have the power to repeal a law passed by the State Legislature even though it be a law with respect to one of the matters enumerated in the Concurrent List. Section 107 of the Government of India Act, 1935 did not contain any such power. As was observed by this Court in *Zaverbhai Amaidas* v. *The State of Bombay*(1), this provision contained in article 254(2) "is in substance, a reproduction of section 107 (2) of the Government of India Act, 1935, the concluding portion whereof being incorporated in a proviso with further additions. Discussing the nature of the power of the Dominion Legislature, Canada, in relation to that of the Provincial Legislature, in a situation similar to that under section 107(2) of the Government of India Act, it was observed by Lord Watson in *Attorney-General for Ontario* v. *Attorney-General for the Dominion*(2), that though a law enacted by the Parliament of Canada and within its competence would override Provincial legislation covering the same field, the Dominion Parliament had no authority conferred upon it under the Constitution to enact a statute repealing directly any Provincial statute. That would appear to have been the position under section 107(2) of the Government of India Act with reference to the subjects mentioned in the Concurrent List. Now, by the proviso to article 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not under section 107(2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can, acting under the proviso to article 254(2), repeal a State law".

(1) [1955] 1 S.C.R. 799, 806.

(2) [1896] A.C. 348.

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

It is argued for the State of U.P. that, under the proviso to article 254(2), the power to repeal a law passed by the State Legislature is incidental to enacting a law relating to the same matter as is dealt with in the State legislation, and that a statute which merely repeals a law passed by the State Legislature without enacting substantive provisions on the subject would not be within the proviso, as it could not have been the intention of the Constitution that in a topic within the concurrent sphere of legislation there should be a vacuum. There is considerable force in this contention, and there is much to be said for the view that a repeal *simpliciter* is not within the proviso. But it is unnecessary to base our decision on this point, as the petitioners must, in our opinion, fail on another ground. While the proviso to article 254(2) does confer on Parliament a power to repeal a law passed by the State Legislature, that power is, under the terms of the proviso, subject to certain limitations. It is limited to enacting a law with respect to the same matter adding to, amending, varying or repealing a "law so made by the State Legislature". The law referred to here is the law mentioned in the body of article 254(2). It is a law made by the State Legislature with reference to a matter in the Concurrent List containing provisions repugnant to an earlier law made by Parliament and with the consent of the President. It is only such a law that could be altered, amended or repealed under the proviso. The impugned Act is not a law relating to any matter, which is the subject of an earlier legislation by Parliament. It is a substantive law covering a field not occupied by Parliament, and no question of its containing any provisions inconsistent with a law enacted by Parliament could therefore arise. To such a law, the proviso has no application and section 16 (1)(b) of Act X of 1955 and clause 7(1) of the Sugarcane Control Order, 1955 must, in this view, be held to be invalid.

There is also a further objection to which clause 7 (1) of the Sugarcane Control Order, 1955 is open. The

power of repeal, if any, was vested in Parliament and Parliament alone could exercise it by enacting an appropriate provision in regard thereto. Parliament could not delegate this power of repeal to any executive authority. Such delegation, if made, would be void and the Central Government had no power, therefore, to repeal any order made by the State Government in exercise of the powers conferred upon it by section 16 of the impugned Act. The U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, could not, therefore, be validly repealed by the Central Government as was purported to be done by clause (7) of the Sugarcane Control Order, 1955, and that repeal was of no effect with the result that the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 stood unaffected thereby. The result, therefore, is that there was no repeal of the impugned Act or the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 by section 16 of Act X of 1955 or by clause (7) of the Sugarcane Control Order, 1955 as contended by the petitioners.

Re. (4): It is pointed out that the Cane Commissioner declares the reserved or assigned areas for the factories and also transfers particular areas from one factory to another. He is also in sole charge and management of Cane Growers Co-operative Societies. It is contended that the powers thus conferred upon him are so wide that they are capable of being exercised in a discriminatory manner and therefore the impugned Act infringes the fundamental right guaranteed by article 14 of the Constitution.

Section 15 of the Act provides:—

"15. (1) Without prejudice to any order made under clause (d) of sub-section (2) of section 16 the Cane Commissioner may, after consulting the Factory and Canegrowers Co-operative Society in the manner to be prescribed—

(a) reserve any area (hereinafter called the reserved area), and

(b) assign any area (hereinafter called an assigned area),

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

for the purpose of the supply of cane to a factory in accordance with the provisions of section 16 during a particular crushing season and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.

(2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory, as may be determined by the Cane Commissioner.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under sub-section (1)".

Rule 22 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954, made by the U.P. Government in exercise of the rule-making power conferred by section 28 (2) of the Act however lays down the factors which are to be taken into consideration by the Cane Commissioner in reserving an area for or assigning an area to a factory or determining the quantity of cane to be purchased from an area by a factory:

(a) the distance of the area from the factory,

(b) facilities for transport of cane from the area,

(c) the quality of cane supplied from the area to the factory in previous years,

(d) previous reservation and assignment orders,

(e) the quantity of cane to be crushed in the factory,

(f) the arrangements made by the factory in previous years for payment of cess, cane price and commission, and

(g) the views of the Canegrowers' Co-operative Society of the area.

Chapter 11 of the Rules provides for the management of the Canegrowers' Co-operative Societies by the Cane Commissioner and their supervision by him.

Rule 63 of that chapter however provides:—

"*Rule 63.*—An appeal against an order of the Cane Commissioner under the provisions of this Chapter shall lie to the State Government within one month of the date of the communication of the order to the Society or management concerned".

It will be thus seen that the powers given to the Cane Commissioner under section 15 are well defined and have got to be exercised within the limits prescribed after consulting the factories and the Canegrowers' Co-operative Societies (Vide section 15(1)) and any order made by the Cane Commissioner thereunder is liable to an appeal to the State Government at the instance of the party aggrieved (Vide section 15(4)). The same is the position in regard to the orders made by the Cane Commissioner in the course of his management and supervision of the Canegrowers' Co-operative Societies and any order made by him in regard thereto is subject to appeal to the State Government at the instance of the party aggrieved (Vide Rule 63). If this is the position, it cannot be urged that wide powers are conferred on the Cane Commissioner which can be used by him in a discriminatory manner so as to violate the fundamental right guaranteed under article 14. Any cane grower or a Canegrowers' Co-operative Society or the occupier of a factory can, if aggrieved, take an appeal to the State Government against any order passed by the Cane Commissioner and such provision is a sufficient safeguard provided in the Act and the Rules against any arbitrary exercise of those powers by the Cane Commissioner and takes them out of the ban of article 14.

Re. (5): It is next contended that the impugned Act and the notification dated 27th September, 1954 violate the fundamental right guaranteed under article 19(1)(c) which is the right to form associations or unions. It is urged that the Cane Growers Co-

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

operative Societies are not voluntary organisations but a cane grower is compelled to become a member of the Society before he can sell his sugarcane to a factory. The right to form associations or unions is a positive right but in the positive right it is urged there is necessarily implied the negative aspect which means that a citizen has the right not to form associations or unions and cannot be compelled to become a member of an association or a union or a Cane-growers' Co-operative Society before he can sell his goods to the owner of a factory. Reliance is placed in support of this contention on the following passage in the judgment of the Madras High Court in *Indian Metal and Metallurgical Corporation* v. *Industrial Tribunal, Madras and Another*(1):—

"In this case, however, we are concerned with a much narrower question, namely, whether an award made by the Industrial Tribunal appointed under the Industrial Disputes Act and published by the Government in accordance with the provisions of the Act can direct the management of an industry to continue to carry on any business against their will. If a citizen has got a right to carry on business, we think it follows that, he must be at liberty not to carry it on if he so chooses. A person can no more be compelled to carry on a business than a person can be compelled to acquire or hold property.....Mr. Bhashyam was really unable to convince us how any one can be compelled to carry on a business against his will and yet be said to enjoy a right to carry on a business".

The following passage from Strong on 'American Constitutional Law', page 774, taken from the judgment of Mr. Justice Murphy in *West Virginia State Board* v. *Barnette*(2) is also relied upon:—

"The freedom of thought and of religion as guaranteed by the Constitution against State action includes both the right to speak freely and the right to refrain from speaking at all, except in so far as essential operations of government may require it for the

(1) A.I.R. 1953 Mad. 98, 101. (2) 319 U.S 624, 645.

preservation of an orderly society,—as in the case of compulsion to give evidence in court".

It is urged that, if the right to carry on business carries with it by necessary implication a right not to carry on business, if the right to speak freely carries with it by necessary implication the right to refrain from speaking at all, the right to form associations or unions also carries with it by necessary implication the right not to form associations or unions. In the first place, assuming that the right to form an association implies a right not to form an association, it does not follow that the negative right must also be regarded as a fundamental right. The citizens of India have many rights which have not been given the sanctity of fundamental rights and there is nothing absurd or uncommon if the positive right alone is made a fundamental right. The whole fallacy in the argument urged on behalf of the petitioners lies in this that it ignores that there is no compulsion at all on any cane grower to become a member of the Canegrowers' Co-operative Society. The very definition of a cane grower given in the impugned Act talks of "a person who cultivates cane either by himself or by members of his family or by hired labour and who is not a member of the Canegrowers' Co-operative Society". The Sugarcane Board is to consist of *inter alia* 15 members to be appointed by the State Government of whom 5 are to be the representatives of canegrowers and the Canegrowers' Co-operative Societies. The occupier of a factory has to maintain a register of all such canegrowers and Canegrowers' Co-operative Societies as shall sell cane to that factory. The payment of commission on purchase of cane is to be made by the occupier of a factory in both cases, whether the purchase is made through a Canegrowers' Co-operative Society or the purchase is made direct from the canegrowers. The U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, made in exercise of the powers conferred by section 16 of the impugned Act also talks of cane growers as well as Canegrowers' Co-operative Societies and in

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

the case of reserved areas both the cane growers and the Canegrowers' Co-operative Societies are entitled within 14 days of the issue of an order reserving an area for a factory to offer to supply cane grown in the reserved area to the occupier of the factory and Form B in Appendix II of that Order provides the form of agreement between the cane grower and the occupier of a factory. The cane grower as well as the Canegrowers' Co-operative Society are both within the ken of the impugned Act and it cannot be urged that the object of the Act is to promote Canegrowers' Co-operative Societies to the prejudice of the cane grower himself. The Canegrowers' Co-operative Societies are to be fostered if at all for furthering the interests of the cane growers and there is no conflict between the interests of the cane growers on the one hand and those of the Canegrowers' Co-operative Societies on the other. Both are equally catered for by the impugned Act but it is only when the State Government feels that there are circumstances justifying the issue of an order under which the cane grown by a cane grower shall not be purchased except through a Canegrowers' Co-operative Society, the State Government, in exercise of the power reserved under section 16(2)(b) would issue an order accordingly. The impugned notification dated 27th September, 1954 specifies the circumstances under which such a prohibitory order can be made. If the membership of a particular Canegrowers' Co-operative Society is not less than 75 per cent. of the total number of cane growers within the particular area, then and then only it is considered expedient and desirable that all the cane purchased by an occupier of a factory from that area should be purchased only through the agency of the particular Canegrowers' Co-operative Society. It is with a view to eliminate unhealthy competition between the cane growers on the one hand and the Canegrowers' Co-operative Societies on the other and also to prevent malpractices indulged in by the occupier of a factory for the purpose of breaking up the Canegrowers'

Co-operative Society that such a provision is made and a notification issued prohibiting the occupier of a factory from making any purchases from the area except through the Canegrowers' Co-operative Society. It is a reasonable provision made for the benefit of the large number of persons forming the members of the Canegrowers' Co-operative Society and cannot be impugned as in any manner violative of any fundamental right of the petitioners.

There is also another fallacy in their argument and it lies in ignoring that no canegrower is prevented from resigning his membership of a Canegrowers' Co-operative Society. These are voluntary organisations which a canegrower is entitled to join or not at his choice. If he has once joined it he is also entitled to resign his membership at his choice and the only obstacle to his right of resignation, as has been laid down in the bye-laws of the Society, is the fact of his being indebted to the Society, or the fact of his being a surety for debt due by another member of the Society. Until these debts are discharged and also until the crushing season during which the Canegrowers' Co-operative Society has entered into an agreement with the occupier of a factory is over, a member of a Society cannot resign his membership. These restrictions do not fetter his right to resign his membership of the Society. If he became a member of the Society he is bound by the bye-laws of the Society and can only resign his membership after fulfilling all the conditions which are laid down in the bye-laws of the Society.

The cane grower, moreover, is not prevented absolutely from selling his sugarcane. The only person to whom he cannot sell his sugarcane is the owner of a factory but that does not prevent him from selling his sugarcane to any other person or for any other purpose, e.g. the manufacture or production of gur or rab or khandsari or any variety of product other than sugar. There may be of course difficulties in the matter of his being able to sell the same in

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

that manner but that does not mean that there is an absolute restriction on his power of disposal of his goods unless and until he becomes a member of a Canegrowers' Co-operative Society. He is at perfect liberty not to become a member of a Canegrowers' Co-operative Society if he chooses not to do so and no power on earth can compel him to become such a member. Just as he is not bound to become a member of a Canegrowers' Co-operative Society he is equally not bound to offer his sugarcane for sale to the occupier of a factory even if he happens to be a canegrower within the area reserved for that factory. His freedom in that behalf is absolutely unrestricted and we do not see how it can be urged that the provisions of the impugned Act and the notification dated 27th September, 1954 are violative of his fundamental right under article 19(1)(c) of the Constitution.

Re. (*6*): It is further contended that the impugned Act and the notifications infringe the fundamental right guaranteed under article 19(1)(f) and (g) and article 31 of the Constitution. We may refer in this context to the following passage from the judgment of this Court delivered by Mukherjea, J. (as he then was) in *Messrs Dwarka Prasad Laxmi Narain* v. *The State of Uttar Pradesh and two others*(1):—

"Nobody can dispute that for ensuring equitable distribution of commodities considered essential to the community and their availability at fair prices, it is quite a reasonable thing to regulate sale of these commodities through licensed vendors to whom quotas are allotted in specified quantities and who are not permitted to sell them beyond the prices that are fixed by the controlling authorities. The power of granting or withholding licenses or of fixing the prices of the goods would necessarily have to be vested in certain public officers or bodies and they would certainly have to be left with some amount of discretion in these matters. So far no exception can be taken; but the mischief arises when the power con-

(1) [1954] S.C.R. 803, 811.

ferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority. A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable. As has been held by this court in *Chintaman* v. *The State of Madhya Pradesh*, the phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under article 19(1)(g) and the social control permitted by clause (6) of article 19, it must be held to be wanting in reasonableness".

The power which is given to the Cane Commissioner under section 15 of the Act for declaring reserved or assigned areas is well defined and guided by the considerations set out in Rule 22 of Chapter 6 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 and is further conditioned that he has to consult the factory and the Canegrowers' Co-operative Society, and his orders made thereunder are subject to an appeal to the State Government at the instance of the party aggrieved. This cannot by any means be treated as an uncontrolled or an unfettered power without recourse to any higher authority in the event of his going wrong. The power is not absolute nor is it unguided and, therefore, does not fall within the mischief of article 19(1)(f) and (g) and the notification dated 9th November, 1955 cannot be impugned on that ground. The same is the position with regard to notification dated 27th September, 1954. The restriction which is imposed upon the cane growers in regard to sales of their sugarcane to the occupiers of factories in areas where the membership of the

1956

Ch. Tika Ramji and others, etc. v. The State of Uttar Pradesh and others

Bhagwati J.

Canegrowers' Co-operative Society is not less than 75 per cent. of the total cane growers within the area is a reasonable restriction in the public interest designed for safeguarding the interests of the large majority of growers of sugarcane in the area and works for the greatest good of the greatest number. That being so, it comes well within the protection of article 19(6) and the impugned notification cannot be challenged as violative of the fundamental right guaranteed under article 19(1)(f) and (g). If these impugned notifications are, therefore, *intra vires* the State Legislature, they cannot be challenged also under article 31 as none of the petitioners is being deprived of his property, if any, save by authority of law.

Re. (7): It is next contended that the impugned Act is void in that it confers very wide powers on the executive officials and is a piece of delegated legislation. Our attention has not been drawn to any provisions of the impugned Act which would amount to a delegation of legislative power to any officials of the State Government. The only provisions alleged to contain such delegation of legislative power are those contained in section 15 and section 16(1)(b) read with section 16(2)(b) of the impugned Act which we have dealt with above. They are certainly no piece of delegated legislation and the *vires* of the impugned Act is not affected thereby.

Re. (8): It is lastly contended that the impugned Act is destructive of freedom of trade and commerce and is thus violative of article 301 of the Constitution. Article 301 of the Constitution does not occur in Part III which deals with fundamental rights but it is urged that if a law was enacted in violation of the provisions of article 301 it will be no law at all and will certainly not avail the State Government. In effect this is an argument in furtherance of the contention in regard to article 19(1)(f) and (g) dealt with above but we shall deal with it separately as it has been urged as an independent ground of attack

against the constitutionality of the impugned Act and the notifications issued thereunder. It is urged that the impugned notifications are violative of the freedom of trade, commerce and intercourse embodied in article 301 of the Constitution. The petitioners are not free to sell their sugarcane to anybody other than the occupier of a factory or even to him except through the agency of a Canegrowers' Co-operative Society and are not at all entitled to sell their sugarcane to anyone outside the State. Assuming this is so, the short answer to this contention is furnished by the provisions of article 304 of the Constitution which provide:

"304. Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a) .....

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:.....".

We may also refer in this context to the following passage from the judgment of their Lordships of the Privy Council in *Commonwealth of Australia* v. *Bank of New South Wales*(1) which was quoted with approval in the later Privy Council decision in *Hughes and Vale Proprietary Ltd.* v. *State of New South Wales and Others*(2):—

"Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free".

We have already stated in the earlier part of this judgment that the restrictions imposed by the alleged notifications are reasonable restrictions imposed on

(1) [1950] A.C. 235, 311. (2) [1955] A.C. 241.

1956

Ch. Tika Ramji and others, etc.
v.
The State of Uttar Pradesh and others

Bhagwati J.

the petitioners in the public interest. We are, therefore, of opinion that this contention also is of no avail to the petitioners.

The result, therefore, is that the impugned Act and the notifications dated 27th September, 1954 and 9th November, 1955 issued thereunder were *intra vires* the State Legislature and are binding on the petitioners.

The Petitions must, therefore, stand dismissed. In regard to costs we feel that the proper order for costs should be that Petitions Nos. 625 of 1954, 48 of 1955 and 47 of 1956 in which the President, the Vice-President and the Secretary respectively of the Ganna Utpadak Sangh are amongst the petitioners and Petition No. 37 of 1956 in which Saraya Sugar Factory is the petitioner will stand dismissed with costs, one set between all the petitions and between all the Respondents in those petitions. The parties in the rest of the Petitions will bear and pay their own respective costs of those Petitions.