

G.T.N. TEXTILES LTD. AND ANR. ETC. ETC.

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v.

ASSISTANT DIRECTORS, R.O.T. COMMR.
AND ORS. ETC. ETC.

MARCH 17, 1993

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[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

Essential Commodities Act, 1955:

Section 3—Textile Control Order, 1986—Clause 16 and notification issued thereunder—Textile commissioner prescribing manner of packing—Constitutional validity of.

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Constitution of India, 1950 :

Articles 14 and 19(1)(g)—Textile (Control) Order, 1986—Clause 16 and notification issued thereunder—Textile Commissioner prescribing mode of packing yarn—Whether violative of.

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Different varieties of cotton yarn were manufactured by the appellant-Mills. Packing of the yarn was done in two forms, viz. cone form which was used in powerloom and hosiery industry and hank form which was exclusively consumed by the handloom industry. For the cone form of packing the ring frame cops were fed to the winding machines and for the hank form of packing the cops were fed to the reeling machines. The appellants were packing the yarn in cone form only. Since they had not installed the reeling machines, they could not pack the yarn in hank form.

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In exercise of powers under S.3 of the Essential Commodities Act, 1955, Textile (Control) Order, 1986 was issued by the Government. Clause 16 of the said order gave power to the Textile Commissioner to issue directions providing the manner of packing of yarn in hanks, cones or in any other form and in such proportion as he deemed necessary or expedient. It also laid down the complete guidelines for exercise of the powers by the Textile Commissioner. Exercising his powers under clause 16 of the 1986 Order, the Textile Commissioner issued a notification on 29.3.90, which was amended on 11.5.90 and 17.5.90. According to the Notification every producer of yarn should pack in hank form at least 50%

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A of the total yarn packed by him during each half-yearly period for civil consumption.

B The appellants challenged the constitutional validity of clause 16 of the Textile (Control) Order, 1986 and the Notification issued thereunder, by filing Writ Petitions before the High Court. The Writ Petitions were dismissed and the appellant-Mills preferred the present appeals.

C The appellants contended that an identical notification dated 29.6.1979 issued under the Textile (Control) Order, 1948 was struck down by the High Court and the said judgment having been upheld by this Court, the respondents were bound by the same and the Textile Commissioner had no authority to issue a fresh notification in similar terms; and that the appellants could not be compelled to manufacture something for which the appellants have not installed necessary machinery and other super-structure. It was further contended that the Notification was violative of Articles 14 and 19(1)(g) of the Constitution of India.

D Dismissing the appeals, this Court,

E HELD: 1. The present notification under challenge has been issued under Clause 16(1) of the Textile (Control) Order, 1986. Unlike Clause 21(5) of the 1948 Order, proviso to Clause 16(1) of the 1986 Order provides complete guidelines to the Textile Commissioner to issue the directions envisaged thereunder. [409G-H]

Sri Rani Lakshmi G.S. & W. Mills Pvt. Ltd. & Others v. Textile Commissioner, Bombay & Ors., AIR 1986 Madras 66, distinguished.

F 2. In order to make available sufficient quantity of hank yarn at reasonable price and also for the sustenance of Handloom workers engaged in the largest cottage industry in India, it became necessary to reserve hank yarn for Handloom sector by making it obligatory on the part of the manufacturers of yarn to pack a certain percentage of their production packet for civil consumption in the form of hanks. Thus the notification has been issued in the interest of the general public and also for the larger interest of the textile industry, and is not violative of Art. 19(1)(g) of the Constitution of India. [411B-C]

H 3. Having accepted the condition regarding packing of yarn in hank form, while taking the licence, under clause 4 of the Industrial Licence, the

appellants cannot now turn round and say that they are not bound by the same. [411F] A

4. There is no violation of Art. 14 of the Constitution since the notification has been made applicable uniformly to all the producers of yarn. The appellants are required to pack yarn in hank form in the proportion as provided in the notification keeping in view the total yarn packed by the mill concerned. In any case the grievance of the appellants has been substantially mitigated by the press note dated May 11, 1990 issued by the Textile Commissioner, reinstating the erstwhile relaxation getting yarn obligation fulfilled by transfer of surplus yarn packing of another producer, and allowing a producer to get hank yarn reeled through another producer having extra relying capacity. [411G-H; 412A] B C

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1334-43 of 1993.

From the Judgments and Orders dated 29.10.1991 of the Andhra Pradesh High Court in W.P. Nos. 9133, 8920, 8074, 7932 and 11119/90, 8113/91 (dt. 31.10.91), 8201/90, 8987/91 (dt. 30.10.91), 9165 & 7656 of 1990. D

K.K. Venugopal, C.S. Vaidyanathan, Vijayanarayana and Ms. Vijayalakshmi Menon for the Appellants. E

K. Swamy and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted in all the petitions. F

The appellants-petitioners challenged the constitutional validity of Clause 16 of the Textile (Control) Order, 1986 [the 1986 Order] and the notification, issued thereunder, dated March 29, 1990 as amended on May 11, 1990 and May 17, 1990 (the notification) by the Textile Commissioner, before the Andhra Pradesh High Court by way of writ petitions under Article 226 of the Constitution of India. The High Court by its judgment dated October 29, 1991 dismissed the writ petitions. These appeals by way of special leave are against the judgment of the High Court G

- The appellants are the Spinning and Weaving Mills in the State of Andhra Pradesh. The cotton yarn manufactured by the mills is of different H

- A varieties. It is classified on the basis of counts. Yarn with 1 to 40 counts is coarse, 40 to 60 medium, between 60 and 100 fine and anything above 100 counts is described as very fine. There are two methods of packing the yarn. One is the cone form packing which is used in power-loom and hosiery industry. The other is hank form packing which is exclusively consumed by the handloom industry. Spinning and packing are the two stages of manufacturing yarn. Raw-cotton has to pass through the process of blow-room, carding, drawing, simplex and finally the ring frame to complete the process of spinning. The process of packing starts thereafter. For the cone form packing the ring frame cops are fed to the winding machines and for the hank form packing the cops are fed to the reeling machines. According to the appellants they are packing the yarn in cone form. They have not installed the reeling machines and as such it is not possible for them to pack the yarn in hank form.

- The 1986 Order was issued by the Government of India in exercise of its powers under section 3 of the Essential Commodities Act, 1955. Clause 16 of the 1986 Order is as under :-

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

- E (a) the clauses or specifications of cloth or yarn which each manufacturer or class of manufacturers or manufacturers generally shall or shall not manufacture;
- F (b) the maximum or minimum quantities of cloth or yarn which such manufacture or class of manufacturers or manufacturers generally shall manufacture during such period as may be specified in the Order;
- G (c) the maximum price ex-factory, wholesale or retail at which any class or specification of cloth or yarn may be sold; or
- (d) the principles on which and the manner in which such maximum prices may be determined by a manufacturer; and
- H (e) the manner of packing of yarn in hanks, cones or in

any other form and in such proportion as he may consider necessary or expedient:

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

(i) the demand for cloth or yarn;

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(ii) the needs of the general public;

(iii) the special requirements of the industry for such cloth or yarn;

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(iv) the capacity of the manufacturer or class of manufacturers or manufacturers generally, to manufacture or pack different descriptions or specifications of cloth or yarn; and

(v) the necessity to make available to the general public cloth of mass consumption.

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

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

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

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A In exercise of the powers under Clause 16 of the 1986 Order the Textile Commissioner issued the notification. The operative part of the notification is re-produced hereunder :-

B "2. Every producer of yarn shall pack yarn for civil consumption in hank form in each half-yearly period commencing from April-September, 1990, period and in every subsequent half yearly period in proportion of not less than fifty percent of total yarn packed by him during each half-yearly period for civil consumption:

C Provided that not less than eighty percent of the yarn required to be packed in hank form shall be of counts 40s and below in regard to category 1 at Annexure-I to this Notification :

D Provided further that the obligation to pack hank yarn pertaining to a particular half-yearly period can be fulfilled before the end of the month succeeding such period to which the obligation pertains."

E At this stage we may briefly notice the earlier litigation which ended with the judgment of the Madras High Court in *Sri Rani Lakshmi G.S. & W. Mills Pvt. Ltd. & Others v. Textile Commissioner, Bombay & Ors.*, AIR 1986 Madras 66. In *Rani Lakshmi Mills'* case the constitutional validity of Clause 21(5) of the cotton textile (Control) Order, 1948 [1948 Order] and the notification dated June 29, 1979 issued thereunder were challenged. The said Notification was in similar terms as the notification before us in these

F appeals. Clause 21(5) of the 1948 Order was as under :-

G "(5) The Textile Commissioner may, by General or Special Order, direct any manufacturer or class of manufacturers to pack yarn in hanks, cones or in any other form and in such proportion as he may consider necessary or expedient: and thereupon such manufacturers or class of manufacturers shall be bound to comply with such directions".

H It was argued before the Madras High Court that Clause 21(5) of the 1948 Order did not provide any guidelines for the exercise of power by the

Textile Commissioner and as such was arbitrary and violative of Article 14 of the Constitution of India. The High Court accepted the argument and struck down Clause 21(5) of the 1948 Order on the following reasoning :- A

"A bare reading of the provision of clause 21(5) would therefore, show that the proviso under that clause gives completely uncontrolled and uncanalized power which can only be described as an arbitrary power depending upon what he considers is necessary or expedient." B

Special leave petitions 12569-92/84 against the judgment of the Madras High Court were dismissed by this Court on February 21, 1991. C

Because of the judgment of the Madras High Court in *Rani Lakshmi Mills* case the 1948 Order was repealed and the 1986 Order was promulgated. Clause 16(1) of the 1986 Order gives power to the Textile Commissioner to issue directions providing the manner of packing of yarn in hanks, cones or in any other form and in such proportion as he may consider necessary or expedient. Proviso to Clause 16(1) lays down complete guidelines for the exercise of power by the Textile Commissioner. D

Relying upon *Rani Lakshmi Mills'* case the learned counsel for the appellants have contended that identical notification having been struck down by the Madras High Court and the judgment upheld by this Court, the respondents are bound by the same and the Textile Commissioner had no authority to issue fresh notification in similar terms. In any case according to the learned counsel the impugned notification is liable to be struck down on the same grounds. We do not agree with the learned counsel. The notification struck down by the Madras High Court was issued under Clause 21(5) of the 1948 Order. The High Court held Clause 21(5) of the 1948 Order unconstitutional and as a consequence struck down the notification dated June 29, 1979. The present notification has been issued under Clause 16(1) of the 1986 Order. Unlike Clause 21(5) of the 1948 Order proviso to Clause 16(1) of the 1986 Order provides complete guidelines to the Textile Commissioner to issue the directions envisaged thereunder. As such the ground of attack which was available to the petitioners before the Madras High Court is not available to the appellants before us. We, therefore, reject the contention based on the judgment of the Madras High Court in *Rani Lakshmi Mills'* case. E
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A Mr. Venogopal and Mr. Vaidyanathan learned counsel for the appellants have then contended that the appellants do not manufacture hank yarn. The contention is that the respondents cannot compel the appellants to manufacture something for which the appellants have not installed the necessary machinery and other superstructure. The notification according to the learned counsel infracts their fundamental right under Article B 19(1)(g) of the Constitution of India. We see no force in the contention. The Textile Industry in this country is the second largest industry, next to agriculture, providing employment to millions of people. This industry is accounting for 20% of the total industrial output. The appellant-mills are part of the textile industry in the State of Andhra Pradesh. The respondents, in their written statement before the High Court, have elaborately explained the spinning and the packing processes undertaken by the appellant-mills. According to the respondents it is not correct that the appellants are being forced to manufacture something which they are not manufacturing already. The five stages of spinning (blow room, carding, drawing, simplex and ring frame) are common and only thereafter the ring frame cops are either packed in hank form or in cone form. The respondents have given cogent reasons for issuing the impugned notification. We may briefly state the same.

E The textile industry consists of three sectors namely, Mill- Sector, Powerloom Sector and Handloom Sector. The primary product in the industry is yarn. It is produced only by the Mill-sector. The Powerloom and Handloom Sectors manufacture fabrics and they depend upon the Mill-Sector for yarn. The yarn is packed in two forms namely, cone form and hank form. The cone form is consumed entirely by the Powerloom Sector and the hank form by the Handloom Sector. The handloom industry is the largest cottage industry in India. Nearly one third of the country's requirement of cloth is met by this Sector. As per the National Handloom Census, F 1987-88 there were 3.9 million handlooms spread all over the country out of which three million were engaged in production of cotton cloth. The Handloom-Sector provided direct employment to 8.4 million during 1988-89 and indirect employment to millions of people. The production target for Handloom Sector for the Seventh Plan was 4600 million mts. In order to achieve the said production target a minimum of 460 million kgs. of hank G was required. The employment generated in the three sectors during the year 1988 was 84.22, 50.95 and 11.81 lakh persons in Handloom Sector, H Powerloom Sector and Mill-Sector respectively. The production of cloth

for Handloom Sector during the Eighth Plan has been targeted at 7000 million mts. out of which cotton cloth is 5610 million mts. In order to achieve this target 561 million kgs. of hank yarn is required. Against the said requirement only 355 million kgs. of cotton yarn is being packed in hank form. According to the respondents there is a big gap between the demand and supply. This causes scarcity of yarn in the market and results in spiralling of prices. It further results in unemployment in Handloom Sector. In order to make available sufficient quality of hank yarn at reasonable prices and also for the sustenance of Handloom workers, it became necessary to reserve hank yarn for Handloom Sector by making it obligatory on the part of the manufacturers of yarn to pack a certain percentage of their production packet for civil consumption in the form of hanks.

We are satisfied that impugned notification has been issued in the interest of the general public and also for the larger interest of the textile industry.

It is not disputed that under Clause 4 of the Industrial Licence granted to the appellants one of the conditions is as under :-

"the packing of yarn in hank form and count wise production shall be in accordance with the policy in force and the directions issued by the Textile Commissioner in this regard from time to time."

The appellants, having accepted the above condition while taking the licence, cannot now turn round and say that they are not bound by the same.

Mr. Vaidhyanathan further contended that under the impugned notification unequals have been treated as equals. According to him different mills have installed different machinery and have different equipments. The contention is that the impugned notification is violative of Article 14 as it has been made uniformly applicable to mills which do not have the same capacity to produce hank yarn. We see no force in the contention. The impugned notification has been made applicable uniformly to all the producers of yarn. The appellants are required to pack yarn in hank form in the proportion as provided in the notification keeping in view the total yarn packed by the mill concerned. In any case the grievance of

A the appellants has been substantially mitigated by the press note dated May 11, 1990 issued by the Textile Commissioner, Bombay. The relevant part is re-produced hereunder :-

B "2. The Government have now reinstated the erstwhile relaxation of getting hank yarn obligation fulfilled by transfer of surplus hank yarn packing of another producer. Secondly, the Government have also allowed a producer to get Hank yarn reeled through another producer having extra reeling capacity with the permission of the Central Excise Authorities and with the arrangements through the State Handloom Corporations and Apex Handloom Cooperative Organisations in the areas having concentration of handloom weavers."

C We, see no ground to interfere with the judgment of the High Court. We, therefore, dismiss the appeals with costs. We assess the costs as Rs. 5000 to be paid by each of the appellants.

D G.N.

Appeals dismissed.