good reasons for passing the committing order. In fact that was a case on the facts and circumstances of which the commitment order was not found to be justified and the reference made by the Additional Sessions Judge was accepted by Chief Justice Shadi Lal by accepting the reasons given in the reference order. Similarly, the Single Bench decision of this Court in *Gurmukh Singh's case* (*supra*), is a decision on the facts and circumstances of that case. It is clear from the reference order in that case that the learned Sessions Judge, who made the reference found that no good reasons had been given by the Magistrate to pass an order of commitment. Moreover, the said case was a case under the provisions of the Old Code. As I have already observed, the commitment proceedings under the Old Code were quite different than the ones contained in the New Code.

(7) For the reasons recorded above, the reference made by the learned Additional Sessions Judge, Karnal is declined. The learned Additional Sessions Judge is directed to proceed with the decision of this case and the cross-case forthwith. The parties have been directed through their counsel to appear before the learned Additional Sessions Judge, Karnal, on 22nd December, 1978.

H. S. B.

Before P. C. Jain and J. M. Tandon, JJ.

JAGMOHAN LAL VERMA—*Petitioner.*

versus

TEXTILE COMMISSIONER and others—*Respondents.*

Civil Writ Petition No. 2498 *of* 1973.

December 15, 1978.

Essential Commodities Act (X *of* 1955)—*Section* 3—*Woollen Textile* (*Production and Distribution*) *Control Order*, 1962—*Clauses* 2(*d*), (*f*) *and* 3—*Central Excise Rules* 1944—*Rule* 174—*Constitution of India* 1950—*Articles* 14 *and* 19(1) (*g*)—*Installation of unauthorised cotton converted spindles capable of manufacturing worsted yarn*—*Press note laying down conditions for providing regularisation of unauthorised worsted spindles*—*Unauthorised cotton converted*

spindles—Whether entitled to regularisation under the press note—Clause 3(1) *of the Control Order and Second proviso to rule* 174—*Whether ultra vires Articles* 14 *and* 19(1) (*g*).

Held, that it is abundantly clear that clause 3(1) of the Woollen Textile (Production and Distribution) Control Order, 1962 is not restricted to original worsted spindles only. The Order is silent about the original worsted spindles or converted cotton spindles capable of manufacturing worsted yarn. As the order deals with the woollen textiles, the word 'spindle' under sub-clause (1) of clause 3 would obviously mean one capable of manufacturing woollen yarn including worsted yarn. It is, thus evident that this sub-clause would also cover converted cotton spindles capable of producing worsted yarn. The Textile Commissioner is, therefore, competent to give permission under sub-clause (1) of clause 3 of the Order for any spindles worked by power manufacturing woollen worsted yarn irrespective whether it is an original worsted spindle or a converted cotton spindle capable of manufacturing worsted yarn. The press note which starts with a repetition of the provision contained in sub-clause (1) of clause 3 of the Order is at par with it which is applicable to both original worsted spindles and converted cotton spindles manufacturing worsted yarn. It will thus be reasonable to infer that the converted cotton spindles with a gill box were as well intended to be covered by the press note because they produce worsted yarn. The Textile Commissioner therefore, could not decline to regularise the unauthorised converted cotton spindles manufacturing worsted yarn on the ground *per se* that they were not original worsted spindles. (paras 12 and 15)

Held, that if an absolute, unguided and uncontrolled power is conferred on the executive authority, the possibility of its exercise in an arbitrary manner resulting in discrimination cannot be ruled out. The order under sub-clause (1) of clause 3 of the Control Order has been issued under section 3 of the Essential Commodities Act 1955 but the preamble to the Act as well as section 3 thereof do not lay down sufficient guidelines for the exercise of power by the Textile Commissioner under the impugned sub-clause. The Textile Commissioner who is competent to exercise powers under the impugned sub-clause is undoubtedly an officer of high rank but powers of the Textile Commissioner can be vested in a hierarchy of other officers ex-officio and any officer of any rank can be given the power of the Textile Commissioner. The mere fact that there is a provision for an appeal against the order of the Textile Commissioner under sub-clause (1) of clause 3 would not make any difference as it would not be a sufficient check on the exercise of the authority under clause 3. As such sub-clause (1) of clause 3 of the Control Order is violative of and *ultra vires* of Articles 14 and 19(1) (g) of the Constitution of

India 1950 as it gives unguided and absolute powers to the Textile Commissioner. (Paras 25 to 28)

Held, that the Second proviso to rule 174 of the Central Excise Rules 1944 tends to rely on the power exercisable by the Textile Commissioner under sub-clause (1) of clause 3 of the Control Order. As such this proviso is linked with sub-clause (1) of clause 3 of the Order and cannot be separated from it. This apart, the impugned proviso if independent of sub-clause (1) of clause 3 of the Order is also violative of Articles 14 and 19 (1) (g) of the Constitution and liable to be set aside for want of guide-lines like sub-clause (1) of clause 3 of the Order. (Para 29)

Case Referred by Hon'ble Mr. Justice M. R. Sharma, on 27th February, 1974 to a larger Bench for decision of an important question of law involved in the Case. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain & Hon'ble Mr. Justice J. M. Tandon, finally decided the case on 15th of December, 1978.

Petition Under Articles 226/227 of the Constitution of India praying that the records of the case be sent for and:

(a) *The order of respondent No. 1 dated the 13th of March, 1973, Annexure 'D' to the petition be set aside and the said respondent be directed to regularise the 2212 spindles for worsted woollen yarn in accordance with Press Note Annexure 'B'.*

(b) *Restrain respondent No. 3 from giving effect to Annexure 'G' dated the 23rd July, 1973 by revoking the licence; and*

(c) *grant any other relief to which the petitioner be entitled on the facts and circumstances of the case.*

It is further prayed that pending the decision of the petition the respondent No. 3 be restrained from revoking the L. 4 licence.

Bhagirath Dass, Advocate,

S. K. Hiraji & B. K. Gupta, Advocates with him, *for the petitioners.*

Kuldip Singh, Bar-at-law

J. L. Gupta, Advocate, *for the respondents.*

J. M. Tandon, J.

(1) This order will dispose of a bunch of 39 writ petitions (C.W.P. Nos. 3605 and 3606 of 1972, 2039, 2231, 2498, 2499, 2555, 2556, 2724, 2877, 6131, 6436, 6440, 6791 and 6835 of 1973, 862, 743, 1784, 1897, 2019,

3880 and 4380 of 1974, 763, 1609, 1957, 5381, 6320, 6321, 6631, 6633, 7269, 7270, 7312 and 7537 of 1975, 304, 5539, 7395, 7595 and 8387 of 1976) which involve similar points of law.

2. The facts of C.W. No. 2498 of 1973, may be stated for highlighting the points in issue in all the writ petitions.

3. The petitioner, who is the sole proprietor of M/s. Captain Woollen Mills, started production of woollen worsted yarn with effect from July 1, 1968, and for that purpose installed 2212 spindles with gill box, intersecting gill box and other necessary components. The worsted yarn is an excisable article. A license is required for its manufacture under rule 174 of the Central Excise Rules, 1944 (hereinafter referred to as the Rules). The petitioner applied for such a license and obtained it on May 28, 1968. The petitioner held the license till March 31, 1973, and paid excise duty on the worsted yarn produced by him.

4. The Woollen Textile (Production and Distribution) Control Order, 1962 (hereinafter referred to as the Order), prohibits the acquisition or installation or sale or disposal otherwise and change of location of any spindle worked by power and its use for manufacturing worsted yarn without the prior permission in writing of the Textile Commissioner. It is so provided in clause 3 of the order. The petitioner did not take the requisite permission of the Textile Commissioner for installation and use of the spindles for manufacturing worsted yarn which is included in the definition of "woollen yarn", as given in clause 2(f) of the Order. Many other parties had similarly installed unauthorised spindles and worked them. The license under rule 174 of the Rules continued to be issued in respect of unauthorised spindles because nothing was contained in it debarring the proprietors thereof from seeking it. The second proviso to rule 174 of the Rules was amended in 1971 providing that no license for the manufacture of woollen yarn (including worsted yarn) shall be granted unless the party held the written permission of the Textile Commissioner for installation and working of the spindles. The Textile Commissioner issued a Press Note on February 17, 1971 (copy annexure 'B'), inviting the parties who had installed unauthorised worsted yarn spindles to apply for regularisation before March 15, 1971, and offering to regularise them subject to some conditions mentioned therein. The petitioner applied for regularisation of his

unauthorised spindles within the stipulated period. A departmental study team inspected the Establishment of the petitioner in the middle of July, 1971. The petitioner was informed,—*vide* communication dated March 13, 1973, that the benefit of regularisation offered under the Press Note could not be extended to him as the spindles installed were cotton converted whereas the Press Note provided for the regularisation of unauthorised worsted spindles. In other words, according to the authorities, the unauthorised converted cotton spindles manufacturing worsted yarn did not qualify as unauthorised worsted spindles for regularisation in terms of the Press Note. The petitioner has challenged the decision of the Textile Commissioner declining to regularise his spindles on the ground that the Press Note made no distinction between the worsted yarn spindles and the converted cotton spindles capable of manufacturing worsted yarn. He has also challenged the *vires* of clause 3 of the Order wherein prior written permission of the Textile Commissioner for installation and working of worsted yarn spindles is necessary and of the second proviso to rule 174 of the Rules which debars the owners of unauthorised spindles from seeking a licence thereunder. The petitioner has consequently prayed for an appropriate writ setting aside the order of the Textile Commissioner dated 13th March, 1973 (copy annexure 'D'), declining to regularise his unauthorised spindles and further to direct him to regularise them in accordance with the Press Note (copy annexure 'B'). He has further prayed that the Excise authorities be restrained from revoking his L4 license issued to him under rule 174 of the Rules on the ground of non-regularisation of the unauthorised spindles.

(5) All the writ-petitioners had similarly installed unauthorised converted cotton spindles capable of manufacturing worsted yarn and except the petitioners in CWP No. 743 and 4380 of 1974 applied for regularisation in pursuance of the Press Note (annexure 'B'). The Textile Commissioner refused their prayers on the sole ground that the unauthorised spindles installed by them were converted cotton spindles and not original worsted yarn spindles.

(6) The writ petitions were placed before a learned Single Judge, who,—*vide* order dated February 27, 1974, referred them to a Division Bench because an important point about the *vires* of clause 3 of the Order likely to arise in a large number of cases is involved. It is under these circumstances that the writ petitions have come up before us.

(7) The respondents, in their written statements, denied that the petitioners are entitled to the benefit of regularisation of spindles under the Press Note because they are converted cotton spindles being used for manufacturing worsted yarn and are not original worsted spindles. According to them, clause 3 of the Order and the second proviso to rule 174 of the Rules are not *ultra vires*.

(8) The points that arise for consideration are:—

1. Are the petitioners entitled to the regularisation of their unauthorised converted cotton spindles in terms of Press Note annexure 'B'?
2. Is clause 3 of the Order *ultra vires* Articles 14 and 19(1)(g) of the Constitution?
3. Is the second proviso to rule 174 of the Rules *ultra vires* the Central Excises and Salt Act, 1944 and Articles 14 and 19(1)(g) of the Constitution?

(9) The petitioner in C.W.P. Nos. 3605 and 3606 of 1972, 2039, 2231, 2498, 2499, 2555, 2556, 2724, 2877, 3436, 3440, 3791 and 3835 of 1973, 362 and 1784 of 1974, 763, 1609, 1957, 6320, 6321, 6631, 7269, 7270 and 7312 of 1975 have not challenged the *vires* of rule 174 of the Rules This legal point was allowed to be argued because it has been raised in other connected writ petitions which are being disposed of by this order. The petitioners in C.W.P. Nos. 743 and 4380 of 1974 did not apply for regularisation under the Press Note and they have only challenged the *vires* of clause 3 of the Order and the second proviso to rule 174 of the Rules.

(10) The Press Note annexure 'B' is directly linked with clause 3 of the Order. It would, therefore, be necessary to examine clause 3 of the Order in detail for proper appreciation of the implications of the Press Note. Clause 3(1) contains the provision relevant for the purpose of these petitions and it reads:

> "3 (1). No person shall, except with the prior permission in writing of the Textile Commissioner, acquire or instal or sell or otherwise dispose of or change the location of any spindle worked by power and use it for the purpose of manufacturing woollen yarn."

(11) The manufacturers of the spindles make cotton spindles for manufacturing cotton yarn and worsted spindles for manufacturing worsted woollen yarn. The specifications and components of cotton spindles and those of worsted spindles are different. The cotton spindles can be suitably modified for producing woollen worsted yarn. A gill box is an essential component of worsted spindles and it is not required in a cotton spindle. Chambers's Encyclopaedia, Volume XIII, gives the details of spinning processes at page 94. The relevant para dealing with worsted reads:

> "Worsted.—(as wool), 2, formation of 'top' or sliver by preparing, combing and top finishing, 3, drawing by gills and spindle drawboxes or by porcupine drawboxes; 4, flayer, ring or cap spinning (for long wools) or worsted mule (for short wools)."

The other para which deals with cotton reads:

> "Cotton.—1. bale breaking, mixing and opening (scutching), 2, carding and combing 3, drawing and passage through speed frames-slubbing, intermediate and roving 4, spinning on mules or ring frame."

It is clear that a gill which is a component of the spindle is required in the spindle for making woollen worsted yarn and not in the spindle for making cotton yarn. The learned counsel for the respondents has contended that a gill is not essential even in a worsted spindle and it can be substituted by a porcupine drawbox and it is so stated in Chambers's Encyclopaedia, under the heading "worsted". It is not so. According to Chambers's Encyclopaedia, a gill and a spindle drawbox is a must in a worsted spindle and a porcupine drawbox is a substitute for spindle drawbox and not a gill. A comparative study of the worsted spinning and cotton spinning given in volumes 23 and 6, respectively, of Encyclopaedia Britannica also confirms this inference.

(12) Under sub-cluase (1) of clause 3 of the Order, prior permission in writing of the Textile Commissioner is necessary for acquiring, installing, or selling or otherwise disposing of any spindle worked by power and also for working the spindle for manufacturing woollen yarn including worsted yarn. The contravention of this provision is punishable under section 7 of the Essential Commodities

Act. Can the Textile Commissioner give permission under sub-clause (1) of clause 3 of the Order to converted cotton spindles manufacturing worsted yarn? The reply to this query will substantially help in understanding the implication of the Press Note, annexure 'B'. Mr Kuldip Singh, the learned counsel for the respondents, at one stage during arguments did try to take the rigid stand that the Textile Commissioner under sub-clause (1) of clause 3 of the Order could give permission only with respect to the original worsted spindles and that he had no competency to give such permission for converted cotton spindles producing worsted yarn. He, however, modified his stand (and rightly so) by adding that the Textile Commissioner could probably give permission under sub-clause (1) of clause 3 of the Order for converted cotton spindles as well if he was satisfied that they were capable of manufacturing woollen worsted yarn. It is abundantly clear that clause 3(1) of the Order is not restricted to original worsted spindles only. The order is silent about the original worsted spindles or converted cotton spindles capable of manufacturing worsted yarn. As the order deals with woollen textiles, the word 'spindle' under sub-clause (1) of clause (3) would obviously mean one capable of manufacturing wollen yarn including worsted yarn. It is thus evident that this sub-clause would also cover converted cotton spindles capable of producing worsted yarn. The Textile Commissioner is, therefore, competent to give permission under sub-clause (1) of clause 3 of the Order for any spindle worked by power manufacturing woollen worsted yarn irrespective whether it is an original worsted spindle or a converted cotton spindle capable of manufacturing worsted yarn.

(13) The petitioners installed power spindles for manufacturing worsted yarn without the requisite permission of the Textile Commissioner in contravention of sub-clause (1) of clause 3 of the Order. The installation of the spindles and their working was unauthorised. Worsted yarn is an excisable article and its manufacture is covered by rule 174 of the Rules under which it is necessary to obtain a license for its manufacture. The Central Government (Central Excise) substituted the second proviso to rule 174 of the Rules,—*vide* Notification No. G.S.R. 918 dated June 5, 1971, which reads:

> "Provided further that no licence for the manufacture of cotton fabrics, or rayon or artificial silk fabrics, or woollen yarn, or woollen fabrics, or silk fabrics shall be granted to an applicant unless he holds the written permission of the

Textile Commissioner for installation and working of spindles or powerlooms or both for the manufacture of such cotton fabrics, or rayon or artificial silk fabrics, or woollen yarn, or woollen fabrics or silk fabrics, as the case may be."

The Central Government further amended the second proviso,—*vide* Notification No. G.S.R. 2297, dated August 30, 1975, and this proviso after amendment reads as under:—

"Provided further that no licence for the manufacture of cotton fabrics, or rayon or artificial silk fabrics, or woollen yarn (including wool blended yarn) or woollen fabrics or silk fabrics shall be granted to an applicant or renewed unless he holds the written permission of the Textile Commissioner for installation and working of spindles (worsted, woollen or shoddy) or powerlooms or both for the manufacture of such cotton fabrics or rayon or artificial silk fabrics, or woollen yarn, or woollen fabrics or silk fabrics. as the case may be."

The second proviso as amended in 1971 related to the 'grant' of a license whereas,—*vide* amendment made in 1975, 'renewal' of the license was also added therein. The amendment in 1975, was obviously made to include or clarify that the holding of a written permission of the Textile Commissioner was necessary both for grant and renewal of a license under rule 174 of the Rules. The second proviso as amended,—*vide* Notification dated 5th of June, 1971, was likely to create difficulty for the parties like the petitioners who had installed unauthorised spindles. The Textile Commissioner issued the Press Note, annexure 'B', on February 17, 1971, probably to alleviate such impending difficulty. This Press Note reads:

PRESS NOTE

UNAUTHORISED WORSTED SPINDLES

1. Installation of worsted spindles is regulated by clause 3(1) of the Woollen Textiles (Production and Distribution) Control Order, 1962. No person can acquire or instal or sell or otherwise dispose of any spindles utilised for the

manufacture of worsted yarn without the prior permission in writing of the Textile Commissioner.

2. The installation of worsted spindles without obtaining a permit from the Textile Commissioner is a contravention of clause 8(1) of the above Control Order and the question of prosecution of the owners of such spindles under the Essential Commodities Act, 1965, has been under the consideration of the Government. Government of India after careful consideration have decided that a lenient view may be taken by regularising the unauthorised worsted spindles through the issue of formal permits from the Textile Commissioner subject to certain conditions referred to below.

3. Accordingly, the following decisions have been taken:

(i) All unauthorised worsted spindles which have been acquired, installed and worked on or before the 17th February, 1971, and operating with valid L4 licence from the Central Excise authorities and have paid excise duty on the worsted tariff, will be regularised by the issue of the permits by the Textile Commissioner on application made to him in the prescribed form provided the spindles have Gill boxes for back processing. A copy of the prescribed form may be abtained either from the Regional Offices of the Textile Commissioner or from the office of the Textile Commissioner, Bombay.

(ii) The applicant shall have to satisfy the Textile Commissioner about the actual installation and physical working of the spindles and Gill boxes.

(iii) The last date for receiving applications in the office of the Textile Commissioner, Bombay, is 15th March, 1971.

(iv) No application for the sale of worsted spindles so regularised shall be entertained for a period of two years from the date of issue of the permit by the Textile Commissioner.

(v) The regularised worsted spindles will not be entitled to a quota of imported raw wool as a matter of right.

4. The application in the prescribed form shall be accompanied by the following documentary evidence in original:

(i) The Central Excise Licence in Form L-4.

(ii) Evidence regarding production and sale of worsted products.

(iii) Evidence regarding the payment of excise duty on worsted yarn.

(iv) Evidence regarding the actual number and installation and physical working of the worsted spindles and Gill boxes as on 17th February, 1971.

5. No unauthorised installation of worsted spindles will be condoned in future."

The petitioners, except those in C.W.P. Nos. 743 and 4380 of 1974, applied for regularisation of their unauthorised spindles under the Press Note within the stipulated period. A study team visited the factories and ultimately the Textile Commissioner informed the petitioners that they did not qualify for regularisation in terms of the Press Note. Communication dated March 13, 1973, (copy annexure 'D') sent to the petitioner in C.W. 2498 of 1973, informing him about the decision declining regularisation of the unauthorised spindles reads as under:—

"Sub: Regularisation of unauthorised worsted spindles as per Press-note dated 17th February, 1971.

Ref. Your application dated 26th February, 1971.

Gentlemen,

After carrying out an on the spot inspection of your unit in the above connection, it was observed that you are holding 2212 cotton spindles converted to manufacture worsted yarn. Since the Press-note referred to above was for regularisation of unauthorised worsted spindles only, the spindles converted from cotton do not qualify for regularisation. Your application, therefore, stands rejected."

The Textile Commissioner has declined the regularisation of unauthorised spindles on the sole ground that the spindles sought to be regularised are converted cotton spindles manufacturing worsted yarn and the Press Note did not apply to such spindles. The point for consideration, therefore, is whether, the Press Note

applied exclusively to original worsted spindles or it applied to converted cotton spindles manufacturing worsted yarn as well. The learned counsel for the petitioners have argued that the Press Note like sub-clause (1) of clause (3) of the Order was applicable to all spindles capable of spinning worsted yarn irrespective whether the spindle was original worsted spindle or it was converted cotton spindle. The learned counsel for the respondents has argued to the contrary adding that the Textile Commissioner had decided to extend the facility of regularisation to original worsted spindles only.

(14) The Press Note starts with a repetition of the provision contained in sub-clause (1) of clause 3 of the Order that no person can acquire or instal or sell or otherwise dispose of any spindle utilised for the manufacture of worsted yarn without the prior permission in writing of the Textile Commissioner. Such spindles have been termed as worsted spindles. The term "worsted spindle" is nowhere defined. This term has been coined in the Press Note for the spindles which worked by power and are used for the manufacture of worsted yarn. It is, therefore, clear that the term "worsted spindle" used in the Press Note is synonymous with the term "spindle" used in sub-clause (1) of clause 3 of the Order.

(15) It is specifically stated in para 3(i) of the Press Note that it shall apply to such spindles which have gill boxes for back processing. It means that the spindles without gill boxes shall be outside the purview of the Press Note and the owners thereof will have no right to apply for their regularisation. It has been held earlier that a gill box is not an essential component of the cotton spindle but it is so of a worsted spindle. The manufacturers of spindles would, therefore, necessarily provide a gill box in an original worsted spindle. If the intention of the Press Note was to make it applicable to original worsted spindles only then why a specific condition was laid that the spindles must have a gill box for becoming eligible for regularisation. This condition brings the Press Note at par with sub-clause (i) of clause 3 of the Order which is applicable to both original worsted spindles and converted cotton spindles manufacturing worsted yarn. It will thus be reasonable to infer that the converted cotton spindles with a gill box were as well intended to be covered by the Press Note because they could produce worsted yarn. It is further stated in para 3(ii) of the Press Note that the applicant shall have to satisfy the

Textile Commissioner about the actual installation and physical working of the spindles and gill boxes and under para 4 that, evidence shall have to be produced regarding the actual number and installation and physical working of the worsted spindles and gill boxes as on 17th February, 1971. The text and tenor of the Press Note supports the inference that it was not intended to exclude the converted cotton spindles with a gill box for regularisation. The Textile Commissioner, therefore, could not decline to regularise the unauthorised converted cotton spindles manufacturing worsted yarn of the petitioners on the ground *per se* that they were not original worsted spindles.

(16) The learned counsel for the respondent has cited *Collector of Customs Madras* v. *K. Ganga Setty,* (1) wherein it was held that it is primarily for the Import Control authorities to determine the head or entry in tariff schedule under which any particular commodity fell. If in doing so, these authorities adopted a construction which no reasonable person could adopt, that is, if the construction is perverse, then it is a case in which the Court is competent to interfere. It was further held that if there were two constructions which an entry could reasonably bear, and one of them which was in favour of Revenue was adopted, the Court has no jurisdiction to interfere merely because the other interpretation favourable to the subject appeals to the Court as the better one to adopt. Another authority cited is *Delhi Cloth and General Mills Co. Ltd.* v. *R. R. Gupta and others* (2), wherein it was held that since two equally tenable views are possible, the one taken by the expert will prevail with the High Court under Article 226 and with the Supreme Court under Article 32. These authorities have been pressed to canvass that since the Textile experts declined to apply the Press Note to converted cotton spindles, the High Court should not impose its own opinion to the contrary. In our view these authorities bring no advantage to the respondents. It has been found that under sub-clause (1) of clause 3 of the Order, the Textile Commissioner could not decline permission on the ground *per se* that the spindles were not originally manufactured worsted spindles. The regularisation of unauthorised converted cotton spindles manufacturing worsted yarn was clearly envisaged in the Press Note.

(1) A.I.R. 1963 S.C. 1319.
(2) (1976) 3 S.C.C. 444.

The view taken by the Textile authorities to the contrary against the petitioners that the Press Note did not apply to the converted cotton spindles manufacturing worsted yarn is not only wrong but outright perverse. The ratio of *Collector of Customs* v. *K. Ganga Setty* (*supra*), therefore, will apply and the Court will thus, be competent to interfere. In view of the fact that the Press Note does not admit two equally tenable views, the rule laid down in *Delhi Cloth and General Mill's case* (*supra*), will not apply.

(17) The learned counsel for the respondents has laid stress on annexure 'I' wherein technical implications of the difference between "worsted spindles" and "cotton converted spindles" are detailed. The author of this technical opinion is not known. In para No. 2 of this opinion, it is mentioned that a gill box is a part of worsted spindle. Paras Nos. 4, 5 and 6 of this annexure, which have been pressed by the learned counsel for the respondents, reads:

> "4. When applications had been called for from unauthorised owners of worsted spindles for regularisation, it is only the original worsted ring frames which were meant specifically for the purpose of spinning worsted yarn that was intended to be regularised. When we say 'cotton converted spindles', we mean the spinning frames original intended for spinning cotton yarn and sold as such, but which were subsequently modified for spinning of woollen yarn or worsted yarn. Therefore, to ensure that the raw material is put into proper use, it was considered desirable that only worsted ring frames were entitled for regularisation. The intention of the Government was to regularise those spindles which can only work on worsted raw-material. This was because, the merino wool is imported and it is always in short supply due to shortage of foreign exchange availability. Therefore, there is no point in regularising a spindle which can conveniently and economically work on cotton as the same had been designed and manufactured for that purpose.
>
> 5. It is to be stated that since basic purpose of the machines is introduction of twist into a strand of fibres, it might be possible with certain modifications to utilise one frame for getting yarn from strands of fibres for which this particular frame was not originally meant for, at the time of

manufacturing of the frame. But these modifications cannot be considered technically successful since original frames are designed for efficient production of yarn from a particular fibre. While converting one spinning frame to another type of spinning frame, still they can be called only 'converted frames' to do a particular job which they were not originally meant to do.

6. It is well known fact that the raw wool is a costly fibre and the Government's intention is to ensure that this costly fibre is utilised in the most efficient manner for better realisation otherwise it would mean a direct waste of foreign exchange spent."

(18) The learned counsel for the respondents has urged that there is no point in regularising a spindle which can conveniently and economically work on cotton as the same had been designed and manufactured for that purpose and the modifications made in a cotton converted spindle cannot be considered technically successful and further the Government intends to utilise costly raw wool in a most efficient manner for better realisation by laying emphasis on the regularisation of original worsted spindles and to do it otherwise would mean direct waste of foreign exchange spent in the import of raw wool. We find no merit in this contention. In view of our finding above, the expert opinion annexure 'I' is completely out of tune and misplaced. After having given out in the Press Note a decision to regularise unauthorised converted cotton spindles manufacturing worsted yarn, the Textile Commissioner cannot be allowed to turn round and say that the Press Note was not intended to apply to such spindles or that it will not be economical and convenient to use them for the manufacture of worsted yarn. And the alleged misutilisation of the imported material is irrelevant for an added reason that it is specifically provided in para 3(v) of the Press Note that the regularised worsted spindles will not be entitled to a quota of imported raw wool as a matter of right.

(19) The Textile Commissioner laid conditions in the Press Note, annexure 'B', for regularisation of unauthorised worsted spindles. He could decline the regularisation of converted cotton

spindles if such prescribed conditions were not complied with but not on the ground *per se* that the converted cotton spindles manufacturing worsted yarn are not original worsted spindles.

(20) In view of the discussion above, point No. 1 is replied in the affirmative, in favour of the petitioners.

(21) The learned counsel for the petitioners have argued that the impugned sub-clause (1) of clause 3 of the Order does not lay down guidelines for the exercise of power by the Textile Commissioner thereunder and, therefore, is violative of the Fundamental Rights guaranteed under Articles 14 and 19(1)(g) of the Constitution. The learned counsel for the respondents has canvassed that the Order has been issued under section 3 of the Essential Commodities Act. The preamble to the Act as also section 3 thereof, lay down sufficient guidelines for exercise of power by the Textile Commissioner under the impugned sub-clause. It has further been argued that the power under the impugned sub-clause is exercisable by the Textile Commissioner who is a high-ranking officer exercising jurisdiction throughout India and an appeal against his decision lies with the Government of India. The impugned sub-clause, therefore, cannot be treated as violative of Articles 14 and 19(1)(g) of the Constitution.

(22) The impugned sub-clause itself does not lay down guidelines for the exercise of discretion by the Textile Commissioner. The authority under this sub-clause is not exclusively exercisable by the Textile Commissioner appointed by the Central Government who may be a high-ranking officer. The "Textile Commissioner" competent to exercise power under the Order is defined in clause 2(d) thereof and it reads:

> "2(d) 'Textile Commissioner' means the Textile Commissioner appointed by the Central Government and includes an Additional or a Joint or a Deputy Textile Commissioner, the Industrial Advisor and *ex officio* Joint Textile Commissioner, the Controller of Woollen Textiles appointed by the Central Government, and any other officer whom the Central Government or the Textile Commissioner with the previous sanction of the Central Government,

may authorise to exercise all or any of the powers of the Textile Commissioner under this Order;"

The 'Textile Commissioner' competent to exercise discretion under the impugned sub-clause includes a hierarchy of other officers *ex officio* and any officer of any rank can be given the powers of the Textile Commissioner. It is understood that the Textile Commissioner appointed by the Central Government cannot possibly deal with all cases at his own level.

(23) In *Narendra Kumar and others* v. *The Union of India and others,* (3), it was held that when the restrictions reach the stage of prohibition, special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court. *In the State of Punjab and another* v. *Khan Chand,* (4), the East Punjab Movable Property (Requisitioning) Act (15 of 1947) was under scrutiny. It was held that it conferred arbitrary powers for requistioning of moveable property upon the authorities and no guidelines whatsoever had been prescribed for the exercise of the powers of requisitioning. The total absence of guidelines for the exercise of powers requisitioning of movable property vitiates section 2 of the Act. Arbitrariness and the power to discriminate are writ large on the face of the provision of the Act and it, therefore, fell within the mischief which Article 14 of the Constitution designed to prevent. In *Mohan Industries and others* v. *Deputy Director of Industries and Commerce and others* (5), clause (5) of the Paraffin Wax (Supply, Distribution and Price Fixation) Order, 1972, was struck down being violative of Article 14 because it conferred unguided and absolute power of allotment in an executive officer without requiring him to give reasons for grant or refusal of allotment and also without subjecting his order to an appeal.

(24) The consistent ratio of the various authorities is that where an absolute, unguided and uncontrolled power is conferred

(3) A.I.R. 1960 S.C. 430.

(4) A.I.R. 1974 S.C. 543.

(5) A.I.R. 1973 Kerala 59.

on an executive authority, the possibility of its exercise in an arbitrary manner resulting in discrimination cannot be ruled out, which would render it unconstitutional. The learned counsel for the respondents has argued that the guidelines for the exercise of power under the impugned sub-clause are contained in the preamble to and section 3 of the Essential Commodities Act. The preamble to and section 3 of the Essential Commodities Act may serve as a guideline for the executive for issuing orders under section 3 but it is difficult to hold that they will be complete guidelines for the exercise of power by the Textile Commissioner under the impugned sub-clause as well to save its confrontation with Articles 14 and 19(1)(g) of the Constitution. It may be added with advantage that guidelines are provided in clause 4 of the Order relating to the fixation of price and in various other Orders like the Textile (Production by Powerlooms) Control Order, 1956, the Cotton Textiles (Control) Order, 1948, the Jute Textile (Control) Order, 1956, and the Vegetable Oil Products Control Order, 1947. If the argument of the learned counsel for the respondents were to prevail there was hardly any necessity of prescribing guidelines for exercise of power under any clause of any Order. We are, therefore, unable to agree with the learned counsel for the respondents that the preamble to and section 3 of the Essential Commodities Act will operate as guidelines for the Textile Commissioner for exercise of power under the impugned sub-clause.

(25) The learned counsel for the respondents has argued that in view of the fact that the order of the Textile Commissioner under the impugned sub-clause can be challenged in appeal before the Government of India, the power exercisable by him cannot be treated as arbitrary and violative of the Fundamental Rights guaranteed in the Constitution. In support of this contention, he has placed reliance on *Ch. Tika Ramji and others, etc.* v. *The State of Uttar Pradesh and others* (6). The ratio of this authority is not applicable to the facts of the present cases. In the Supreme Court authority, the constitutional validity of the authority conferred upon the Cane Commissioner under the U.P. Sugarcane

(6) 1956 S.C.R. 393.

(Regulation of Supply and Purchase) Act, 1941, was challenged being violative of Article 14 of the Constitution. The authority of the Cane Commissioner was contained in section 15 of that Act and 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 29(2) of the Act laid down the factors which were 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. It was in this background that the Supreme Court held that the contention that the impugned Act infringed the Fundamental Right guaranteed under Article 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 section 15 of the impugned Act were well-defined and the Act and the Rules framed thereunder gave a cane grower or a Canegrowers' Co-operative Society or the occupier of a factory the right of appeal to the State Government against an order passed by him and it was a sufficient safeguard against the arbitrary exercise of those powers. In the present cases, no guidelines are prescribed for the exercise of power under the impugned sub-clause. The provision of an appeal against the order of the Textile Commissioner under the impugned sub-clause alone would not bring the present case at par with *Ch. Tika Ramji's case* (supra). The respondents, therefore, cannot press this Supreme Court authority to their advantage.

(26) Another point argued by the learned counsel for the respondents is that the authority competent to exercise power under the impugned sub-clause is the Textile Commissioner who is a high-ranking officer exercising jurisdiction throughout India and, therefore, it cannot be struck down as unconstitutional for want of guidelines. Reliance has been placed on *Chinta Lingam and others* v. *The Govt. of India and others* (7), wherein it was held that where the power under the orders issued under section 3 of the Essential Commodities Act is exercisable by high-ranking officers, its abuse by such officers cannot be easily assumed. This authority is again not applicable to the facts of the present cases because the power under the impugned sub-clause is exercisable by the Textile

(7) A.I.R. 1971 S.C. 474.

Commissioner as also by hierarchy of other officers mentioned in the definition of Textile Commissioner given in the order. The powers of the Textile Commissioner can be conferred on any person by the Central Government or the Textile Commissioner with the approval of the Central Government. The learned counsel, therefore, cannot validly press this contention to save the impugned sub-clause from being violative of the Fundamental Rights guaranteed in the Constitution.

(27) It has been argued by the learned counsel for the respondents that the impugned sub-clause involves technical expertise which may not admit being circumscribed by guidelines. We are uanble to appreciate the merit of this contention. The impugned sub-clause gives absolute and arbitrary power to the Textile Commissioner to grant or decline permission in the matter of acquiring, installing, sale or change of location of spindles worked by power and their use for the manufacture of woollen yarn. It is difficult to visualise that no guidelines can be prescribed for the exercise of such power. It is not enjoined upon him to record reasons in support of his decision. In the absence of guidelines a permissible non-speaking order by the Textile Commissioner would hardly make the appeal an effective check on his arbitrariness and power to discriminate violative of Article 14 of the Constitution.

(28) The learned counsel for the respondents has urged that an arbitrary order passed by the Textile Commissioner under the impugned sub-clause may be liable to be struck down but the apprehension that such arbitrary orders may be passed by him would not make the sub-clause unconstitutional because some discretion shall be exercised by the Textile Commissioner even in the presence of guidelines. The contention is again without merit. While examining the constitutional validity if the impugned sub-clause, the real test is the potential power of the Textile Commissioner to pass an arbitrary and discriminatory order. It would be wrong to hold that merely because an arbitrary order if passed can be struck down, the Court cannot look into the constitutional validity of the impugned sub-clause itself. In our view, the impugned sub-clause is violative of and *ultra vires* Articles 14 and 19(1)(g) of the Constitution because it gives unguided and absolute power to the Textile Commissioner. Point No. 2 is replied in the affirmative and again in favour of the petitioners.

(29) That brings us to the last point relating to the *vires* of the second proviso to rule 174 of the Rules. The learned counsel for the petitioners has contended that this proviso is linked with sub-clause (1) of clause 3 of the Order and in the event of the latter being held unconstitutional, the former shall stand rendered out of context and inoperative because it is not expected to operate in vacuum. The learned counsel for the respondents conceded during arguments (and rightly) that if the impugned proviso is taken to have been based on sub-clause (1) of clause 3 of the Order, the former would be rendered ineffective in the event of the latter being held unconstitutional. He has, however, urged that the assumption raised is fallacious and the impugned proviso is not essentially linked with sub-clause (1) of clause 3 of the Order. The argument proceeds that the Rules have been framed under section 37 of the Central Excises and Salt Act and under clause (v) of sub-section (2) thereof, rules can be framed for regulating the production of any excisable goods if it is essential for the proper levy and collection of the duties under the Act. The impugned proviso relates to the production of worsted yarn which is an excisable article. It could be and was in fact made under the Central Excises and Salt Act and independently of sub-clause (1) of clause 3 of the Order. It shall, therefore, continue to be valid even if sub-clause (1) of clause 3 of the Order is held unconstitutional. We find no force in this contention. Clause (v) of sub-section (2) of section 37 of the Central Excises and Salt Act, relates to the regulation of production and further to the extent essential for the proper levy and collection of the duties whereas the impugned proviso deals with the holding of written permission of the Textile Commissioner for installation, working and change of location of worsted spindles. It is evident that the impugned proviso tends to rely on the power exercisable by the Textile Commissioner under sub-clause (1) of clause 3 of the Order. This apart the impugned proviso if independent of sub-clause (1) of clause 3 of the Order, is also violative of Articles 14 and 19(1)(g) of the Constitution and liable to be struck down for want of guidelines like sub-clause (1) of clause 3 of the Order. Point No. 3 is decided accordingly in favour of the petitioners.

(30) In the result, we set aside the impugned order of the Textile Commissioner declining to regularise the unauthorised converted cotton spindles of the petitioners in all the petitions except

C.W.P. Nos. 743 and 4380 of 1974. We further strike down sub-clause (1) of Clause 3 of the Order being violative of Articles 14 and 19(1)(g) of the Constitution as a result of which the second proviso to rule 174 of the Rules shall stand rendered inoperative. All the writ petitions are consequently accepted with no order as to costs.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., P. C. Jain and K. S. Tiwana, JJ.

AMRITSAR IMPROVEMENT TRUST, AMRITSAR,—*Petitioner.*

versus

ISHRI DEVI,—*Respondent.*

Civil Revision No. 904 *of* 1978.

March 8, 1979.

Code of Civil Procedure (V of 1908)—Order 18 Rule 3-A—Party desiring to appear as his own witness subsequent to his other witnesses—Permission of the Court—Whether must be obtained before the commencement of his evidence—Such permission—Whether can be taken later.

Held, that a bare reference to the language of Rule 3-A of Order 18 of the Code of Civil Procedure 1908 would make it manifest that the Legislature has undoubtedly laid down the rule that a party appearing as his own witness must so appear before any other witness on his behalf has been examined. However, in equally express terms one exception to the said rule has also been provided by the Legislature itself. This is that with the permission of the Court a party for sufficient cause may be allowed to appear even at a stage subsequent to the examination of one or all of his witnesses. The rule requiring a party to step into the witness-box first is, therefore, not an inflexible one and can be relaxed with the permission of the Court. The language of the statute does not in any way prescribe the precise time at which the permission to appear later is to be secured. It does not say that this must necessarily be in the very first instance before any witness has been examined on his behalf. The statute is, therefore, silent as to the stage at which the permission is to be