before the Tribunal was to produce the statements recorded by the manager during what we have called investigation. This left the matters where they were and Das had never an opportunity of questioning the witnesses after knowing in full what they had stated against him. In these circumstances we are of opinion that the finding of the Tribunal that the enquiry in this case was not proper is correct and must stand.

We therefore dismiss the appeal. We should, however, like to make it clear that the order of the Tribunal fixing grant of compensation till the date of payment must be taken to be limited to the sum of Rs. 11,125, which has been deposited in this Court in pursuance of this Court's order of April 22, 1957 and Das will not be entitled to anything more, as further stay of payment was pursuant to the order of this Court. In the circumstances we are of opinion that the parties should bear their own costs of this Court.

Appeal dismissed.

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(and connected petition)

(B. P. SINHA, JAFER IMAM, J. L. KAPUR, A. K. SARKAR, SUBBA RAO AND M. HIDAYATULLAH, JJ.)

Constitution—Fundamental Rights—Restrictions on—Reasonableness, relevant considerations for judging—Enactment obliging sugar manufacturers to supply sugar for export at loss—Notification under another enactment increasing price of sugar for internal sale for recouping loss—Whether can be taken into consideration—Discrimination—Sugar Export Promotion Act, 1958 (30 of 1958), ss. 5, 6, 7, 8, and 9—Constitution of India, Arts. 14 and 19—Essential Commodities Act, 1955 (10 of 1955), s. 3—Sugar (Control) Order, 1955, cl. 5.

The petitioners challenged the constitutionality of the Sugar Export Promotion Act, 1958, which was enacted for the purpose of exporting sugar with a view to earning foreign exchange. The impugned Act imposed the following restrictions on the owners of

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factories producing sugar by the vacuum pan process: (i) it obliged them to deliver to the export agency specified by the Central Government the quota of sugar allocated to them; (ii) it made them suffer a loss on this delivery of sugar; and (iii) it exposed them to a penalty in case the delivery was short of the quota. By a notification issued under the Sugar (Control) Order, 1955, which was made under the Essential Commodities Act, 1955, the Central Government increased the price of sugar for internal sales by 50 nP. per maund to enable the owners to recoup the loss suffered by them by the delivery of the sugar for export. The petitioners contended that it was not permissible to take the notification issued under another statute into consideration and that the impugned Act offended Arts. 14 and 19(1)(f) and (g) of the Constitution.

Held, (per Sinha, Imam, Kapur, Subba Rao and Hidayatullah, JJ., Sarkar, J. dissenting) that the impugned Act was constitutionally valid.

Per Sinha, Imam, Kapur and Hidayatullah, JJ. The restrictions placed by the Act upon the fundamental rights of the petitioners under Arts. 19(1)(f) and (g) were not unreasonable as arrangements were made to save them from loss by increasing the price of sugar for internal sales, thus passing on the loss to the consumers in India. The reasonableness of the restriction and not of the law was to be determined, and if the restriction was under one law but countervailing advantages were created by another law passed as part of the same legislative plan, the Court must take that other law into account. The reasonableness of the restriction was to be judged at the time it was challenged and in the context of the circumstances then existing. The notification of the Central Government increasing the price of sugar to enable the recoupment of the loss occasioned by the export could be taken into consideration in judging the reasonableness of the restrictions.

State of Madras v. *V. G. Row* [1952] S.C.R. 597; *Virendra* v. *The State of Punjab*, [1958] S.C.R. 308; *Arunachalam Nadar* v. *State of Madras*, 1959 S.C.J. 297; *Attorney-General for Alberta* v. *Attorney-General for Canada*, (1939) A. C. 117; *Ladore* v. *Bennet*, (1939) A.C. 468 and *Pillai* v. *Mudanayake*, (1953) A. C. 514, relied on.

The foreign export served the national interest by stabilising the sugar market and stabilised national economy by earning foreign exchange. The loss, if any, was spread over many factories and was so small as not to amount to an unreasonable restriction.

The Act did not offend Art. 14 of the Constitution in selecting sugar produced by the vacuum pan process for export and in leaving out sugar produced by other methods and other commodities from the mischief of the Act. The Government was the best judge as to which commodities were most likely to earn

foreign exchange and the selection made was justifiable as a reasonable classification which was related to the object of the Act of earning foreign exchange.

Per Subba Rao, J. In testing the reasonableness of the restrictions imposed by the impugned Act it was not permissible to take into consideration the notification under the Sugar (Control) Order, 1955, increasing the price of Sugar for internal sales by 50 nP. per maund. The test of reasonableness of one Act could be made to depend upon the impact of another Act on it only when the earlier Act was made part of later Act or when both Acts were parts of the same legislative scheme or plan. To go beyond this would be to destroy the stability of legislation and to introduce an uncertain element. To go further and to depend upon a notification of a transitory nature issued under an unconnected Act would be to place the statute in a fluid state. The impugned Act and the Essential Commodities Act were enacted for different purposes.

State of Madras v. *V. G. Row* [1952] S.C.R. 597; *Attorney-General for Alberta* v. *Attorney-General for Canada* (1939) A. C. 117; *Ladore* v. *Bennet* (1939) A. C. 468 and *Pillai* v. *Mudanayake*, (1953) A. C. 514, distinguished.

The restrictions imposed by the impugned Act were not unreasonable as the Act served the national interest by earning foreign exchange for the State and building up foreign markets for the future prosperity of the sugar industry.

Per Sarkar, J. The impugned Act which made the petitioners suffer a loss on the sale of a part of their produce imposed unreasonable restrictions on their fundamental right to carry on their business and was invalid. Though in deciding the reasonableness of the restrictions imposed by the impugned Act all the prevailing conditions and circumstances had to be considered, the notification increasing the home price of sugar could not be taken into consideration. The impugned Act neither made it obligatory on, nor empowered the Government to take any steps to recoup the loss caused to the petitioners. The increase in the price depended solely on the arbitrary discretion or generosity or sense of fair play of the Government. It would be intolerable in any legal system that a statute should be legal when the Government chose to do a thing and illegal when it undid it and so on from time to time at the choice of the Government. Besides, there was nothing in the Essential Commodities Act or the Sugar (Control) Order which authorised the Government to increase the price for the sake of recouping to the manufacturers the loss caused to them by the impugned Act, and the validity of the notification increasing the home price of sugar was doubtful.

State of Madras v. *V. G. Row* [1952] S.C.R. 597, distinguished.

The impugned Act caused loss to the petitioners which was not negligible and thus imposed unreasonable restrictions on

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their right to carry on their business. The restrictions could not be justified on the ground that they resulted in stablising the sugar industry as the industry did not require any stabilisation. The export was not to be made out of the excess of production over internal consumption and in fact production in India had always been less than internal consumption.

ORIGINAL JURISDICTION : Petitions Nos. 9 and 14 of 1959.

Petitions under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

A. V. Viswanathv Sastri, and *G. C. Mathur*, for the petitioners in Petition No. 9 of 1959.

M. C. Setalvad, Attorney-General of India, B. Sen and *R. H. Dhebar*, for respondent No. 1 in both the petitions.

M .C. Setalvad, Attorney-General of India, B. Sen and *B. P. Maheshwari*, for respondent No. 2 in Petition No. 9 of 1959.

N. C. Chatterjee and *G. C. Mathur* for the petitioners in Petition No. 14 of 1959.

B. Sen and *B. P. Maheshwari*, for respondent No. 2 in Petition No. 14 of 1959.

1959. May 6. The judgment of B. P. Sinha, Jafar Imam, J. L. Kapur and M. Hidayatullah, JJ., was delivered by M. Hidayatullah, J. A. K. Sarkar, J., and K. Subba Rao, J., delivered separate judgments.

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HIDAYATULLAH J.—Writ Petition No. 9 of 1959 has been filed by the Lord Krishna Sugar Mills, Ltd., Saharanpur and Shri Sushil Kumar, a Director of the said Mills. It was heard along with Writ Petition No. 14 of 1959, which has been filed by Shiva Prasad Banarsidas Sugar Mills, Bijnor, through Seth Munnalal and also by him in his own name. These Mills are hereinafter referred to as the L. K. S. Mills and S. P. B. Mills, respectively. The petitions raise the same contentions, but in Writ Petition No. 14 of 1959, there is one more circumstance, which will be mentioned later. The petitions are directed against the Union of India and the Indian Sugar Mills Association (Export Agency Division) Calcutta. The petitioners challenge *inter alia*

the constitutionality of the Sugar Export Promotion Act, 1958 (30 of 1958), which shall hereafter be referred to as the Act. They question also the legality of certain orders passed by the second respondent purporting to be under the Act.

Before describing how this matter came before the Court, it is convenient to give the scheme of the Act and to set out some of its provisions. On June 27, 1958, the President promulgated the Sugar Export Promotion Ordinance, 1958, which was repealed by and re-enacted as the Act on September 16, 1958. The Ordinance was in the same terms as the Act, and it is not necessary to refer to the Ordinance separately, more so because by s. 14 of the Act which repealed the Ordinance, anything done or any action taken under the Ordinance is deemed to have been done or taken under the Act, and the Act itself is deemed to have commenced on the 27th day of June, 1958.

Both the Ordinance and the Act were passed to provide for the export of sugar in the public interest and for the levy and collection in certain circumstances of an additional duty of excise on sugar produced in India. To achieve this objective, the Act authorises the Central Government (as did the Ordinance previously) to specify an export agency to perform the functions mentioned in the Act, and the Central Government by a notification issued the same day, specified the Indian Sugar Mills Association (Export Agency Division) Calcutta, as the export agency.

The Act next provides that the Central Government may by notification in the Official Gazette, fix the quantity of sugar to be exported during any period taking into consideration :

(a) the quantity of sugar available in the country;

(b) the quantity of sugar required for consumption in the country ; and

(c) the necessity of exporting sugar with a view to earning foreign exchange in the public interest,

but, so as not to exceed 20 per cent. of the quantity to be produced in India in the season ending with the month of October falling within that year. The Central

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Government fixed 50,000 tons as the quantity to be exported up to December 31, 1958, later extended to January 31, 1959. This notification was also issued on June 27, 1958.

Section 5 of the Act enables the Central Government to apportion, by order in writing, the quantity to be exported among "owners" of factories, the word "factory" being confined to a factory where sugar is produced by the vacuum pan process. The term "owner" is defined to include transferees, and agents and managers under Industries (Development and Regulation) Act, 1951. The apportionment of the quantity of sugar to be exported is to be in proportion to the quantity of sugar produced or likely to be produced by the owners during the season referred to earlier. On the communication of the order to an owner, the quantity so apportioned is deemed to be the export quota for the factory of that owner.

Section 6 then provides that on demand by the export agency, every owner shall deliver to it from time to time, sugar produced in his factory in such quantities (not exceeding in the aggregate his export quota fixed for the factory or group of factories, as the case may be), of such grade, in such manner, within such time and at such place, as may be specified by the export agency in this behalf. If the sugar is delivered by an owner in accordance with the provisions of this section, he retains no rights in such sugar except his rights to receive payment therefor under s. 9 of the Act.

Section 7 provides for levy of additional excise duty on sugar despatched from the factory for consumption in India, if the owner of a factory does not fulfil the demands under s. 6. It provides:

"(1) Where sugar delivered by any owner falls short of the export quota fixed for it by any quantity (hereinafter referred to as the said quantity), there shall be levied and collected on so much of the sugar despatched from the factory for consumption in India as is equal to the said quantity, a duty of excise at the rate of seventeen rupees per maund.

(2) The duty of excise referred to in sub-section (1) shall be in addition to the duty of excise chargeable on sugar under any other law for the time being in force, and shall be paid by the owner to such authority as may be specified in the notice demanding the payment of duty and within such period not exceeding ninety days as may be specified in such notice.

(3) If any such owner does not pay the whole or any part of the duty payable by him within the period referred to in sub-section (2), he shall be liable to pay in respect of every period of thirty days or part thereof during which the default continues a penalty which may extend to ten per cent. of the duty outstanding from time to time, the penalty being adjudged in the same manner as the penalty to which a person is liable under the rules made under the Central Excises and Salt Act, 1944 (I of 1944), is adjudged."

By sub-s. (4) of this section, the provisions of the Central Excises and Salt Act, 1944 and the rules made thereunder are made applicable as far as may be, including those relating to refunds and exemptions from duty in relation to the duty mentioned in this section or any other sum due as a penalty.

Section 8 then deals with the export by the export agency of sugar delivered to it. The section also authorises the sale of such sugar within India under certain circumstances. The section may be reproduced in full here, as its terms will form the subject of consideration in the sequel.

8(1) "The export agency shall take all practical measures to export sugar delivered to it under this Act:

Provided that, if the export agency is of opinion that having regard to the quality of the sugar delivered to it by any owner, or to the expenses involved in transporting the sugar from one place to another, or to the delay likely to be involved in exporting it, or to the conditions prevailing in the markets for sugar, whether in or out of India, or to any other relevant circumstance, it is expedient so to do, the export agency may sell the whole or any part of the sugar in India

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and may, if it thinks fit, purchase such quantity of sugar as it may consider necessary for export at the appropriate time.

(2) For the purposes of sub-section (1), the export agency may itself sell sugar or permit the owner to sell the whole or any part of the export quota in his custody at a price approved by it on condition that the sale-proceeds are payable to it."

Section 9 deals with payments to owners who have delivered sugar for export. It provides as follows:

(1) "The export agency shall, at such time as it thinks fit, make to the owners who have delivered sugar to it under this Act, payments determined in accordance with the provisions hereinafter in this section contained.

(2) From the total sale-proceeds in respect of the quantity fixed for export under section 4 for any year, there shall be deducted the total expenditure incurred by the export agency in respect of the sugar, whether by way of administrative expenses or otherwise, and the balance shall be apportioned among the owners in proportion to the quantity of sugar delivered by them respectively during that year.

(3) In making any distribution under this section, the export agency shall make such adjustments as may be necessary having regard to the grade of sugar delivered by any owner, the adjustments being made on the basis of sugar of ISS-E-29 grade and with reference to the price differential schedule for different grades of sugar which the Central Government may, by notification in the Official Gazette, publish in this behalf.

(4) Notwithstanding anything contained in this section and subject to the rules which may be made in this behalf, the export agency may make on account payments to owners against documents of delivery of sugar furnished by them, and such payments shall be adjusted at the time of final payment."

In the remaining five sections, the Act provides for ancillary matters, the last (s. 14) incorporating the repeal of the Ordinance and savings. Section 10

reserves to the Central Government the power to give directions to the export agency, and s. 11 allows the Central Government to delegate, subject to conditions if any, its functions under the Act to an officer or authority specified by notification. It may be pointed out that the Chief Director, Directorate of Sugar and Vanaspati, Ministry of Food and Agriculture, was specified as such in a notification issued on June 27, 1958. Section 12 provides for protection of authorities, and s. 13 confers on the Central Government the power to make rules and includes a power to make a breach of any rule an offence punishable with fine extending to five thousand rupees. All such rules must be laid before Parliament, and may be modified by Parliament. No rules, however, have been made.

We next proceed to the facts of these two cases. By an order No. 6(53)/58-SC, dated June 27, 1958, the Chief Director, Directorate of Sugar and Vanaspati, fixed 461·05 and 412·04 tons of sugar as the quantities apportioned to the L. K. S. Mills and the S. P. B. Mills respectively. On July 17, 1958 the export agency wrote to the two owners informing them of the quotas and their equivalents in bags, intimating also that the supply would be required in Grade C-29, and/or Grade D-29 and/or Grade E-29. Inquiry was made as to the grades and quantities in stock with them. It was also stated in these letters that a further communication would be sent in due course giving detailed despatch/delivery/disposal instructions for the export quota. They were also informed that the Central Board of Revenue had issued detailed instructions to the Collectors of Central Excise, and that it had been agreed that the order of the Chief Director (Sugar) served on the owners with copy to the Central Excise Officer of the factory concerned would also be the release order from the Sugar Directorate.

Different replies were sent by the two petitioners. The L. K. S. Mills replied that they had only sugar of D-28 grade, while the S. P. B. Mills replied that they had E-29. On August 24, 1958, the export agency wrote to them that the export quota was diverted for internal sale. They were told that they were permitted to

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sell the "quota sugar" for internal consumption at the price of Rs. 36, per maund for Grade D-29, fixed by the Government. The export agency asked the two Mills to let it know by telegram the grade in which the export quota was available, so that documents could be sent to enable them to deliver sugar to their respective buyers. The export agency described the documents as follows:

"(1) A delivery order authorising the Central Excise Officer of your factory to deliver the quantity sold.

(2) This delivery order will be sent through the Punjab National Bank Ltd., attached to a demand draft drawn on you for the amount of the sale proceeds payable to us. Please pay this on presentation.

(3) The sale proceeds payable to us will be calculated as in the following examples:—

	Rs.
Sale price at Rs. 36 per maund D-29	...
Less Excise Duty to be paid by you	...
	...
Less 'on account' payment of Rs. 10 per maund	...
Amount for which draft will be drawn on you	...

After receiving the delivery order you will pay the Excise duty and deliver the sugar to the buyer.

"Grade differentials will be allowed as per the Government Notification GSR. 661 d/30th July fixing ex-factory prices.

The sale transaction will be as between you and your buyer and the Export Agency cannot take any responsibility.

We now await to hear by telegram the grade available. Please also say in your telegram to which branch of the Punjab National Bank we should send the documents."

The facts from here progress differently with these two petitioners, and they are stated separately. The L.K.S. Mills informed the export agency their inability to sell sugar at the controlled rate fixed by the Government by its notification of July 30, 1958, as the market was very weak, and there were no purchasers of sugar at the controlled rate even out of the releases made by the Government for free sales. The export agency reminded the L.K.S. Mills that the industry had agreed to finance the Export Agency Division by letting it have the sale-proceeds of sugar diverted for internal sale less Rs. 10 per maund as an "on account" payment. The export agency offered to show a concession to the L.K.S. Mills, and asked them to sell sugar in instalments of 1,500, 1,500 and 1,565 bags with a week's interval between each. It asked the L.K.S. Mills to co-operate and let the export agency send documents for 1,500 bags at Rs. 35·69 nP. per maund ex-factory. It appears that a mistake was made in putting down 1,000 bags, but the meaning was perfectly plain. The L.K.S. Mills, however, insisted that they were unable to sell sugar at the controlled rate, and that as they were in financial difficulties, it was not possible to honour the documents as suggested by the export agency.

The L. K. S. Mills proving obdurate, the export agency wrote on November 5, 1958, that it proposed to send documents for the full quota of 4,565 bags at Rs. 35·69 per maund. The L.K.S. Mills were requested to retire the documents immediately, as funds were needed urgently for purchase of additional quantities for export to replace the quota diverted for internal sale. It enquired the name of the bankers to whom the documents might be sent by the agency. The L.K.S. Mills, it appears, did not agree to any of the courses suggested, and the export agency wrote on November 27, 1958, that the L.K.S. Mills were requested to remit a sum of Rs. 1,88,216·63 nP. being the amount calculated at the rate of Rs. 35·69 nP. per maund in respect of the total sugar quota, less excise duty to be paid by the L.K.S. Mills and less "on account" payment of Rs. 10 per maund as indicated in the earlier letters.

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It also stated that unless the remittance was received by December 5, 1958, the permission to sell the quota sugar for internal consumption would be withdrawn. Subsequent to this too, the export agency wrote to the L. K. S. Mills saying that a demand draft for Rs. 61,845·57 nP. was being sent, to which was attached the delivery order addressed to the Central Excise Officer of the factory for releasing the first instalment of 1,500 bags. The L.K.S. Mills were asked to pay the excise duty and to clear the bags from bond and to intimate to the agency that they had done so. Similar documents were prepared for the other instalments and forwarded through the Bank. The L.K.S. Mills, however, did not agree to this, and the export agency thereafter on December 18, 1958, sent a telegram that unless the drafts were retired immediately, the quota sugar should be kept ready for despatch so that delivery might be taken by the export agency. The export agency also informed the L.K.S. Mills that otherwise the name of the Mills would be communicated to the Chief Director, Sugar, as a defaulter. The export agency also sent an order for delivery of the quota sugar, and required the L.K.S. Mills to depatch it by goods train, freight to pay, consigned to the export agency. It also intimated that the Mills should draw on the export agency for the amount of excise duty paid by the Mills *plus* "on account" payment at Rs. 10 per maund. Much was made of the error in describing the quota as of D-29, but in view of what had already been understood, it cannot be suggested that the L.K.S. Mills were in any way misled.

The L.K.S. Mills informed the export agency that their bank position did not allow them to honour the drafts, nor despatch the desired quantity of sugar at the rates mentioned by the agency. They also stated that they were not able to despatch more than 500 bags, as wagons over the Eastern Railway were limited. The export agency, however, did not agree. Finally, the export agency demanded remittance of the sum of Rs. 1,88,216·63 nP. by the 25th January, and gave the alternative to the L. K. S. Mills to despatch the sugar by that date according to the

despatch instructions communicated earlier. The L.K.S. Mills wired saying that the Banks were demanding interest and that the agency should instruct the Banks to forego interest. The export agency on January 29, 1959, wired as follows:

"Your tel. twentyninth without prejudice and to avoid serious complications we instructing bank waive interest. Regarding interest Committee will consider whose decision will be communicated in due course."

The petition (No. 9 of 1959) was, however, filed on January 27, 1959, that is to say, two days earlier.

The facts relating to the S.P.B. Mills are as follows: After the letter of August 24, 1958 was sent, nothing appears to have been heard by the export agency. On November 27, 1958, the export agency asked the S. P. B. Mills to remit to it by December 15, 1959, Rs. 1,69,524. 77 nP. being the amount calculated in the same way as for the L.K.S. Mills. On December 14, 1958, in continuation of this letter a despatch order for the entire quota was sent in the same terms as in the other case. In reply, the S.P.B. Mills pointed out that they were working the Mills as short-term lessees, having obtained the lease from the High Court of Allahabad on payment of Rs. 6,10,000 as lease money and Rs. 1,00,000 as security on August 6, 1956. They also pointed out that they were required to purchase additional machinery, stores etc., for a sum of Rs. 5 lakhs, and that a sum of Rs. 3,43,500 was spent in connection with the repairs to the factory and wages for the period during which the factory was re-started. They further pointed out that they had suffered a loss of Rs. 2,40,000 in the last season and another loss of Rs. 50,000 on account of the strike of cane-growers in March, 1958; that all their sugar stock was pledged with the Punjab National Bank, Bijnor, against an advance of 75 per cent. of the price; and that there were arrears of cess amounting to about Rs. 5,50,000 and that the lease money amounting to Rs. 6,10,000 for the next season was also due. They therefore, expressed their inability to send any sugar. They also stated that if they redeemed the pledged sugar even after paying the "on account" money to the Bank,

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the Bank would be receiving Rs. 15-2-0 per maund less than the controlled price of sugar. They further stated that it was not possible for them to sell sugar at the controlled price fixed by the Directorate and ended by saying that they were not in a position to despatch sugar, pointing out at the same time that the Act was unconstitutional and not binding on them.

The export agency, however, was not agreeable, and it asked the S.P.B. Mills either to deliver the export quota or pay the net sale-proceeds for the same, pointing out that the Mills ran the risk of liability for the additional excise duty of Rs. 17 per maund.

While matters stood at this stage and the S. P. B. Mills had neither paid the amount demanded nor agreed to despatch the sugar, a petition was filed in this Court and a temporary stay was obtained.

The questions that have been raised in these petitions are many, but they can be grouped under two heads, *viz.*, the *vires* of the legislation and the propriety of the action taken under it. The argument about the *vires* challenges the Act as a whole and also clause by clause. In regard to the *vires* of the Act, the petitioners draw attention to the statement of objects and reasons, incorporated in one of the affidavits in the case. According to them, the declared object of the Act is to earn foreign exchange. They contend that if foreign exchange is so urgently needed, there should have been uniform legislation compelling other sugar manufacturers, who do not manufacture by the vacuum pan process, also to export sugar. This argument is based on alleged discrimination and on Art. 14 of the Constitution. The petitioners further contend that manufacturers of commodities other than sugar are not compelled to export in a like manner, and thus there is further discrimination.

In our opinion, this argument is without substance. The power of Parliament to make laws in relation to foreign exchange is manifest. Entry No. 36 of the Union List specifically confers jurisdiction on Parliament to legislate in relation to foreign exchange. That Entry, if interpreted widely, would embrace within

itself not only laws relating to the control of foreign exchange but also to its acquisition to better the economic stability of the country. The need for foreign exchange to finance the various development schemes was, very properly, not disputed. It is thus plain that the object of the Act is in the public interest. If we are to exist as a progressive nation, it is very necessary that we carve out a place for ourselves in the International market. The beginning has to be made, and many a time, it is at a great loss. That the Central Government has selected the sugar industry for an export programme does not mean that it cannot make a classification of the commodities, bearing in mind which commodity will have an easy market abroad for the purpose of earning foreign exchange. During the Suez crisis, sugar was exported in large quantities from this country, and earned 12·4 crores as foreign exchange. There is nothing on the record to show that export of other commodities was not also undertaken, though it was pointed out in arguments that manganese ore was also exported in a similar manner to earn foreign exchange. It is quite obvious that the Central Government cannot order the export of all and sundry manufactured commodities from the country, without being assured of a market in foreign countries. Necessarily, the Government can only embark upon an export policy in relation to these products, for which there is an easy and readily available market abroad. For this reason also, sugar produced by the vacuum pan process may have been selected, because such sugar is perhaps in demand abroad and not sugar produced by any other process. It must be realised that goods manufactured in our country have to stand heavy competition from goods produced abroad, and even this export can only be made at great sacrifice, and is made only to earn foreign exchange, which would not, otherwise, be available.

In this view of the matter, it cannot be said that there is discrimination in so far as sugar manufacturers by the vacuum pan process are concerned. Government is the best judge as to which commodities are

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most likely to earn foreign exchange, and the selection thus made is justifiable as a reasonable classification which is related to the object of the Act, namely, the earning of foreign exchange.

The next contention is under Arts. 19(1)(f) and (g) and also 31 of the Constitution. The petitioners contend that the whole export programme in respect of sugar amounts to an infringement of their fundamental rights under Arts. 19(1) (f) and (g), and amounts also to a compulsory acquisition of their property without payment of compensation. The petitioners analyse the scheme of the Act, and state that it amounts to taking sugar from owners for sale abroad at such price as it may fetch, the owners being paid when such money is received, after deducting the expenses of the export agency and the cost of export. They state that the owners stand to lose, because, admittedly, sugar is going to be exported at a loss, and the loss is to fall on the owners of factories. They further state that if the necessity for foreign exchange was felt, the loss entailed in the earning of foreign exchange should be borne by Government or be distributed among all industries, or at least among all the sugar producers in the country. It is urged that the Act is an unreasonable restriction upon the fundamental rights to hold, acquire, and dispose of property and to carry on occupation, trade or business.

In reply, the learned Attorney-General on behalf of the Union as well as the Directorate of Sugar refers to the negotiations which took place between the Government and the sugar industry and the arrangements which were made to save owners of factories from the loss which is inevitable as a result of this export programme. We were taken through the various Control Orders which were passed by Government under the Essential Commodities Act about this time, fixing the price of sugar for internal consumption. In particular, reference is made to the Sugar (Control) Order, 1955, Notification No. G. S. R. 661/ ESS. Com/Sugar dated July 30, 1958. It is pointed out that by that Notification the price of sugar was increased by 50 nP. per maund on all internal sales

to enable the factories giving their export quota to recoup themselves for the loss, which might be entailed. It was anticipated that the loss would be recouped if there was an increase of 50 nP. per maund in the price of sugar for internal consumption and the export quota was fixed at 2½ per cent. of the total production of a factory for 1957-58. The loss, it was expected, would be more than set off by the excess price which the producers would be able to get for every 20 maunds sold for internal consumption. It is also pointed out that Government at that time did not wish to take over the work of export on itself and specified as the export agency, the Indian Sugar Mills Association, a body composed of 95 per cent. of the sugar mills in the country. The learned Attorney-General also points out that more than 95 per cent. of the mills have stood by this arrangement, and did either supply their quota of sugar or sold it in the internal market and made available the money for purchase of sugar for export. Only a few mills in the country resorted to these devices to get out of the commitment which the industry as a whole had entered into. The learned Attorney-General also contends that the petitioners had obtained favourable prices for sale of sugar in the country but were not willing to honour their other commitments which, after the agreement of the sugar industry, were given legislative form.

Learned counsel for the petitioners contends that the *vires* of the Act should be considered without reference to other circumstances such as the agreements, price adjustments and price control, as they have no bearing upon the resonableness of the legislation. In *State of Madras* v. *V. G. Row* (1), this Court laid down that in judging the resonableness of a restriction upon fundamental rights, the surrounding circumstances can be looked into. Patanjali Sastri, C.J., observed as follows:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned,

(1) [1952] S.C.R. 597, 607.

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and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

In *Virendra* v. *The State of Punjab* (1), S. R. Das, C.J., again reaffirmed this approach. See also *Arunachala Nadar* v. *State of Madras* (2).

It is, however, contended that though one can look at the surrounding circumstances, it is not open to the Court to examine other laws on the subject, unless those laws be incorporated by reference. In our opinion, this is a fallacious argument. The Court in judging the reasonableness of a law, will necessarily see, not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme. The reasonableness of the restriction and not of the law has to be found out, and if restriction is under one law but countervailing advantages are created by another law passed as part of the same legislative plan, the Court should not refuse to take that other law into account.

The existence of such other law is not difficult to establish. The Courts can take judicial notice of it. As was laid down by the Privy Council in *Attorney-General*

(1) [1958] S.C.R. 308, 318. (2) 1959 S.C.J. 297, 299-301.

for Alberta v. *Attorney-General for Canada* (1), the Courts in determining the effect of legislation, do take into account,

"any public general knowledge of which the Court would take judicial notice, and may in a proper case require to be informed by evidence as to what the effect of the legislation will be. Clearly, the Acts passed by the Provincial Legislature may be considered, for it is often impossible to determine the effect of the Act under examination without taking into account any other Act operating, or intended to operate, or recently operating in the Province."

No doubt, this was laid down in a case falling within ss. 91 and 92 of the British North America Act, but the general proposition is equally applicable where the effect of the legislation on those governed by it has to be measured. In the same connection, their Lordships looked into the historical background of legislation to find out the materials which were considered before the legislation was promoted in the legislature. See also *Ladore* v. *Bennett* (2). This Court also in *Arunachala Nadar* v. *State of Madras* (3), examined the 'historical background' and discovered the object of the Act, "from the circumstances under which it was passed."

That other contemporaneous legislation passed as part of a legislative plan can be examined was clearly laid down by the Privy Council in *Pillai* v. *Mudanayake* (4). In that case, the question was whether the Ceylon Citizenship Act (18 of 1948) and the Ceylon (Parliamentary Elections) Amendment Act (48 of 1949) were valid, or were *ultra vires* the Ceylon Parliament, being void under s. 29(2) of the Ceylon (Constitution and Independence) Order-in-Council, 1946 (as amended). Under the first two Acts, the Indian Tamils were denied as a community, the right of franchise unless they came within the terms of the first Act. They were thus subjected to disabilities and restrictions which were prohibited by

(1) (1939) A.C. 117, 130.
(2) (1939) A.C. 468, 477.
(3) 1959 S.C.J. 297, 299-301.
(4) (1953) A.C. 514.

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s. 29(2) of the Order-in-Council. During the course of arguments, their Lordships' attention was drawn to a later Act, intituled the Indian and Pakistani Residents (Citizenship) Act (3 of 1949), under which the Indian Tamils and others were entitled to get themselves registered as the citizens of Ceylon on proof of sufficient connection with Ceylon. It was argued by Mr. Pritt, Q.C., before the Privy Council that the later Act could not be read to justify the earlier Act, because if the impugned Citizenship Act were bad when it was passed, it could not be 'brought back to light' by the enactment of the subsequent Act. Their Lordships did not accept this argument and read the later Act with the previous. They observed :

"It was argued that sections 4 and 5 of the Citizenship Act made it impossible that the descendants, however remote, of a person who was unable to attain citizenship himself could ever be able to attain citizenship in Ceylon no matter how long they resided there, but their Lordships' attention was subsequently drawn to the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, by which an Indian Tamil could by an application obtain citizenship by registration and thus protect his descendants, provided he had a certain residental qualification. It was suggested on behalf of the appellant that this Act might itself be *ultra vires* as conferring a privilege upon Indian Tamils within s. 29(2)(c) of the Constitution Order-in Council, and that therefore it was inadmissible to rebut the inference that the legislature had intended by the Citizenship and Franchise Acts to make Indian Tamils liable to disabilities within the meaning of s. 29(2)(b), but their Lordships cannot accept this argument. If there was a legislative plan the plan must be looked at as a whole, and when so looked at it is evident, in their Lordships' opinion, that the legislature did not intend to prevent Indian Tamils from attaining citizenship provided that they were sufficiently connected with the island."

It is not necessary to speculate as to the remedies of the sugar dealers if the Sugar Control Order, or the notification were varied or abrogated in future. The

reasonableness of the restriction is to be judged today and in the context of the circumstances now existing.

It cannot but be accepted that the Government made adequate arrangements to recoup the sugar industry for the loss which it might suffer in giving the export quota. For that purpose, though the export quota was fixed at 2½ per cent. of the total quantity produced by a factory, the loss which was expected to be Rs. 10 per maund was spread over the remaining sugar to be sold in the country and was recouped at 50 nP. per maund. We are unable to accept the plea that the petitioners were not able to sell sugar at the controlled price, because the price was fixed too high. Learned counsel for the petitioners contend that by fixing a ceiling there is no guarantee that the commodity will be sold at the ceiling price and not at a lower rate. It is a well-known proposition that when commodities are controlled by fixation of price, the commodities sell only at the controlled price and not less. Economists have complained that the worst fault of price control is that the price does not fall below the controlled rate. There is nothing in the record of the case to show that the Mills were not able to sell their sugar at the controlled price.

We are satisfied that the object of the Act does not infringe the fundamental rights of the petitioners. To prevent any loss to the petitioners, countervailing additional prices were allowed on sales of sugar for internal consumption. The petitioners did not stand to lose ultimately. The quota was fixed at 2½ per cent. of their total production, and it is inconceivable that they are unable to sell sugar in the open home market. This suggestion of the petitioners that they are unable to sell sugar at the controlled price has not been substantiated by the production of a single document to show what they held in stock and what they had sold. The balance sheet produced by the S. P. B. Mills shows that they were able to sell more than a lakh of bags in eight months, as against the quantity of 4,079 bags for export.

It is obvious that the plea that the Mills are unable to sell sugar at the controlled price is a mere sham.

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Indeed, an examination of the correspondence in the first case clearly demonstrates that the Mills were devising one excuse or another to avoid the liability to supply the quota of sugar. First, they raised the contention that they did not have the requisite grade. Then they raised the contention that they could not sell sugar. Thereafter they asked for supply in instalments, and when instalments were fixed, they put forth the excuse of there being no wagons available. They next urged that the Bank was charging interest, and that interest should be waived before the documents would be retired. When interest was waived, they filed the petition in this Court. In these circumstances, in our opinion, there can be no ground for holding that there has been an infringement of the fundamental rights of the petitioners. The restriction was not unreasonable, because arrangement was made to save the owners of the factories from loss, and the loss entailed by the export of sugar was to be borne by the consumers in India and not by the producers.

There is one more circumstance which may be considered. The foreign export served the national interest by stabilising the sugar market so that the production of sugarcane may be maintained at a reasonable level. It also stabilised national economy by earning foreign exchange. The loss, if any, was comparatively small and was spread over many factories. Apart from the very real possibility of its being recouped by sales in the country, the loss itself was so small as not to amount to an unreasonable restriction.

The petitioners next challenge the Act in its parts to show that there is infringement of fundamental rights or, in the alternative, compulsory acquisition of their property without compensation. In this connection, ss. 5 to 9 are challenged. Section 5 only permits the Central Government to fix the quota leviable from different factories. If the object and purpose of the Act is valid and also is in the public interest, there being no disadvantage to the owners ultimately, s. 5 which fixes the quota for export from sugar produced by a factory cannot be challenged separately.

Section 6 makes it incumbent on the owner to supply that sugar on demand and further provides that after delivery of sugar, the owner retains no right except to receive payment therefor under s. 9. This section is criticised on the ground that delivery of goods and payment of the price should be concurrent conditions, that is to say, that the buyer should be ready and willing to pay the price in exchange for possession of the goods. If the Government was buying sugar, the provisions of s. 32 of the Indian Sale of Goods Act, which is apparently relied upon here, might have been invoked. The object and purpose of the Act is to export sugar and to divide the receipts less expenses, among the owners who supply sugar for export. The argument overlooks the scheme that export is made by a Central Agency for the industry as a whole, and the prices obtained abroad are payable, and they are less than those at which sugar of various grades sells within the country. The section does not suffer from any infirmity, if the object and purpose of the Act is, as has been found above, valid and constitutional. It must not be forgotten that during the time payment was due, the owners were getting an additional 50 nP. on every maund sold by them in the country. Deferred payment is not deprivation of property, nor an encroachment upon fundamental rights. The affidavits show that the entire quota of 50,000 tons has been exported, that it has earned Rs. 2·4 crores in foreign exchange, and that the exporters have been paid except for a small balance.

Section 7 is the penalty section. We heard considerable argument as to whether the section would apply to a case where no delivery was at all made, in view of the words:

"where sugar delivered by any owner falls short of the export quota."

No action has yet been taken against the Mills under the section; nor has any penalty been imposed. The question whether the section is *ultra vires* the legislature need not be considered here.

Section 8 deals with export of sugar or its sale by the owner or the export agency. It is stated that the

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section deals with sugar *delivered* to the export agency, and here there was no sugar delivered. The first sub-section deals with export, and the export agency can only export sugar delivered to it. The second sub-section authorises the export agency to sell the sugar for reasons given in the first sub-section. It also authorises the export agency to permit the owner to sell sugar in his custody. In the present cases, there was a demand for delivery of the sugar of the quota, and that has not been met. Whether the petitioners have exposed themselves to any penalty can only be considered when penalty is actually imposed on them.

The condition that the sale-proceeds are payable to the export agency is perfectly valid, regard being had to the scheme of the export and the advantage allowed on all sales in India. The owners having obtained that advantage cannot claim to keep the proceeds of such sales, by which the export policy is to be run. Out of the 50,000 tons, about half was sold in India, and with the sale-proceeds other sugar was bought and exported, and this would not be possible if the export agency were required to make a spot cash payment.

Section 9 provides how payments to owners are to be made. Since the export was by a non-profit-making agency composed of the sugar industry, it is obvious that the payments could not be made forthwith. As explained already, the owners received payment after the sale prices were received from abroad. Necessary deductions of expenses have to be made, and the proceeds are then distributed. No doubt, such payment is likely to be somewhat delayed but looking to the small quantity involved (i.e. not more than 20 per cent. under the Act and in actuality, only 2½ per cent.) it was not likely to make it very hard for the owners, who were in the meantime breaking this loss at the rate of 50 nP. for every maund of sugar sold in India. In our opinion, none of the sections considered here, even viewed separately, is *ultra vires*.

The petitioners did not challenge the action taken by the export agency as being contrary to the Act. No argument can be considered in view of the want of a plea to this effect in the two petitions. In the petition

by the S. P. B. Mills, the petitioner did not invite any decision on the correctness of the demand for the additional excise duty, because no such duty has, in fact, been demanded. The main contention of the Mills was that all sugar was pledged with banks. The pleadings on this part of the case are far from clear or sufficient. The only reference is to a letter, which is insufficient. However, in view of the fact that learned counsel reserved this point to be raised for exemption from payment of additional duty, we say nothing about it.

The result is that both the petitions fail, and are dismissed with costs.

Sarkar J.

SARKAR J.—I think these two applications should succeed. They raise the question whether the Sugar Export Promotion Act, 1958 is invalid as imposing an unreasonable restriction on the petitioners' right to carry on their trade.

Some of the petitioners are owners of factories manufacturing sugar by a process called the vacuum pan process and they carry on business as manufacturers of and dealers in sugar. For the purposes of this judgment these persons may be taken to be the petitioners. The principal respondent in these applications is the Government of India. The other respondent is the Indian Sugar Mills Association, an association of manufacturers of sugar by the vacuum pan process.

On June 27, 1958, the Government had promulgated an Ordinance. The impugned Act was passed on September 16, 1958 repealing the Ordinance and re-enacting its provisions and also providing that anything done under the Ordinance would be deemed to have been done under the Act as if it had come into force when the Ordinance had been promulgated.

As appears from its preamble, the Act was intended to provide for the export of sugar in public interest and it set up a machinery for that purpose. I will summarise here the main provisions of the Act. Section 3 empowers the Central Government to specify a company or other body corporate as the export agency to perform the functions of that agency under the Act.

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The respondent Indian Sugar Mills Association was specified as the export agency under this section. Section 4 authorises the Central Government to fix the quantity of sugar that may be exported during any period, but the quantity so fixed for a year is not to exceed twenty per cent. of the quantity of sugar produced in India upto the month of October in that year. Section 4 also provides that "in fixing such quantity the Central Government shall have regard to —(a) the quantity of sugar available in India, (b) the the quantity of sugar which, in its opinion, would be reasonably required for consumption in India, (c) the necessity for exporting sugar with a view to earning foreign exchange in the public interest." Section 5 requires the Central Government to apportion the quantity fixed under s. 4 among the owners of factories producing sugar by the vacuum pan process in proportion to the quantity produced or likely to be produced by them respectively, during the season. The quantity so apportioned to each factory is called its export quota. Section 6 provides that every owner of a factory shall, on demand by the export agency deliver to it sugar upto its export quota and on delivery "the owner shall retain no rights in respect of such sugar except his right to receive payment therefor under section 9." Section 7 makes provision for an additional excise duty being levied in certain circumstances on the quantity of sugar by which the sugar delivered by the owner of a factory falls short of its export quota. Section 8 states that the export agency shall export the sugar delivered to it, provided that in certain circumstances specified, the export agency may sell that sugar in India and may if it thinks fit purchase other sugar for export and for this purpose permit the owner to sell the whole or part of its export quota at a price approved, on condition that the sale proceeds are paid to it. The provisions of s. 9 are important and will be set out later. It is not necessary to refer to the other provisions of the Act.

Soon after the Ordinance had been promulgated the Government started taking action under it. By a notification dated June 27, 1958, 50,000 tons of sugar

was fixed under s. 4 as the total quantity for export for the period ending October 31, 1958. Export quotas were duly fixed for all factories including those of the petitioners. The petitioners were thereafter asked by the export agency to sell the sugar and pay the sale-proceeds to it. This they failed to do. It is said by the respondents that the petitioners were also asked to deliver the sugar and this also they failed to do. The petitioners set up various reasons justifying their failure to sell or deliver the requisite quantities of sugar. It is unnecessary to refer to these reasons for if the Act is invalid, as the petitioners contend the orders could not be made and no question would arise as to whether the petitioners had valid reasons for not carrying them out. It appears that the export agency felt that the petitioners were neither going to sell the sugar and pay the sale proceeds nor to deliver the sugar and it thereupon pointed out to the petitioners that they were by their conduct exposing themselves to the risk of having to pay the additional excise duty under s. 7. It was then that the present applications for appropriate writs restraining the respondents from taking steps under the Act were launched by the petitioners on the ground *inter alia* that the Act was invalid as it unreasonably restricted the petitioners' right to carry on their trade. I now proceed to examine the validity of this contention.

From the provisions of the Act earlier set out, it is quite clear that it requires the owner of a sugar factory to part with a portion of the produce of his factory in exchange for an amount to be fixed under the provisions of s. 9. The Act therefore restricts his freedom of trade; it takes away his right to trade with the whole of his merchandise in any manner he likes. The question is, is such restriction reasonable ?

It is necessary now to set out the terms of s. 9 of the Act which fixes the amount which a manufacturer of sugar in entitled to receive in respect of the sugar delivered by him. Only sub-ss. (1) and (2) of this section need be set out and they are as follows :

Section 9.—(1) The export agency shall, at such time as it thinks fit, make to the owners who have

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delivered sugar to it under this Act, payments determined in accordance with the provisions hereinafter in this section contained.

(2) From the total sale-proceeds in respect of the quantity fixed for export under section 4 for any year, there shall be deducted the total expenditure incurred by the export agency in respect of the sugar, whether by way of administrative expenses or otherwise, and the balance shall be appportioned among the owners in proportion to the quantity of sugar delivered by then respectively during that year.

The substance of the matter then is that an owner of a sugar factory gets in exchange for the sugar delivered by him under the Act, a proportionate share of the sale-proceeds less the expenses. He has no hand in deciding at what price the goods would be sold by the export agency. If they are sold for a very low price, he has no right to complain. Neither has he any power to control the expenses. The exchange value that a sugar manufacturer is entitled to get under the Act for sugar delivered by him, therefore, depends entirely on the export agency. Again, under sub-sec. (1) of s. 9, the export agency need pay the manufacturer only at such times as it thinks fit. It may be difficult to say that all these terms are reasonable.

However that may be, there is another aspect of the question which in my view decides it. It is quite plain that as things are, sugar can be sold abroad only at a loss. That clearly appears from the materials on the record and is not indeed disputed. I think it enough to refer to the Objects and Reasons of the Act and to a statement in the affidavit of Shri K. P. Jain, Chief Director, Directorate of Sugar, affirmed on February 13, 1959 and filed on behalf of the Government, to show that the Act contemplated that the export of sugar made under it would result in a loss. In the Objects & Reasons of the Act it is stated,

"With a view to earning foreign exchange it is necessary to promote export of sugar. The export of sugar, however, involves a loss, even if excise duty and cane cess are remitted."

In paragraph 22 of Shri Jain's said affidavit it is stated,

"I further say that ... the entire scheme envisaged in the Act depends on the pooling of the losses on export by all sugar factories in India, in proportion to their export quota."

We then get to this that on the respondents' own case the exports under the Act can be made only at a loss. The result therefore is that the Act compels the petitioners to part with a portion of their merchandise at a loss. Can the restrictions so put on the petitioners' trade by the Act then be said to be reasonable? I conceive it is impossible to do so. It is said that the Act was passed with a view to earn foreign exchange by export of sugar. Indeed so it appears from the Objects & Reasons of the Act earlier set out and the provisions of s. 4 earlier quoted. I will agree that earning of foreign exchange is essential for the country. But I do not see that that justifies the enactment of a legislation which imposes a loss on a sugar manufacturer. It is not as if foreign exchange could not be earned without inflicting loss on the manufacturers of sugar. That indeed is not the respondents' case. The loss might have been avoided if for example, the exports were made by the grant of a subsidy, a course in fact adopted by the Government in the year 1951-52. It has not been said that there was any difficulty in granting the subsidy for the exports under the Act. A reasonable restriction on a citizen's right to carry on his trade which alone is permitted by Art. 19(6) of the Constitution, must be, as Mahajan, J., said in *Chintaman Rao* v. *The State of Madhya Pradesh* (1), a restriction "which reason dictates", which "unless it strikes a proper balance between the freedom guaranteed in article 19(1)(g) and the social control permitted by clause (6) of article 19, must be held to be wanting in that quality." Here I do not find the balance struck nor the infliction of the loss a course which reason dictates. The loss which the restrictions imposed by the Act on the petitioners' trade caused to them, was by no means such as could only have been avoided by incurring a greater loss.

(1) [1950] S.C.R. 759, 763.

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I also think it clear that an object however laudable, cannot by itself and without more, make a restriction put on a citizen's right to carry on a trade for attaining that object, reasonable. A restriction on a person's right to carry on his trade does not become reasonable, simply because it had been imposed on him to achieve an object of great necessity and undoubted merit. The reasonableness has to be judged in all the circumstances of the case and the object to be attained is only one of such circumstances. This, in my view, is too clear to require elaboration.

It is not necessary for me to pursue the matter further for it is not the respondents' contention that the restrictions are reasonable notwithstanding that they cause loss. On the other hand, the contention of the respondents is for reasons to be presently stated that the Act really caused no loss and that being so the restrictions imposed by it cannot be said to be unreasonable. I proceed now to consider the respondents' reason for saying that the Act imposes no loss on the sugar manufacturers including the petitioners.

It is first said that though the exports result in a loss now, it may in future bring in profits. That hope is clearly only a pious hope. And what is more, it is not a hope which has even been expressed in the affidavits filed on behalf of the respondents. On the contrary, these affidavits make it perfectly plain that in the foreseeable future there is no hope of export of sugar being made at a profit. Indeed, it is said in these affidavits that the scheme of the Act is based on the pooling of the losses caused by the exports made under it. It is hardly necessary to point out that if the exports could be expected to produce a profit in in the near future, the coercive machinery of the Act for making the exports would be unnecessary. There is no basis whatever for saying that in some years the export may result in a profit. Indeed on the respondents' own affidavits it is not open to them to say that they hope that it may be possible in future to make a profit on export of sugar.

Then it is said that the export quota fixed for 1957-58 is only 2½ per cent. of the production of each

factory. The point sought to be made is that, therefore, the amount of the loss would be very small. Now 2½ per cent. of the production of the factory of the petitioners in Writ Petition No. 9 of 1959 is 12,533 maunds. It is stated by the respondents in the supplementary affidavit of Shri Jain affirmed on March 11, 1959, that on the export the loss will be in the region of Rs. 10 per maund. On this basis the loss to the petitioners in that petition would be Rs. 1,25,530. The loss to the petitioners in Writ Petition No. 14 of 1959 would be slightly less. I for myself would hesitate to say that losses in such amounts are negligible. The export quota for 1958-59 has been fixed at 5 per cent. of the production. Naturally, the loss would be much larger. The Government have the right under the Act to increase the quota upto 20 per cent. The loss if the quota is increased to the utmost would be formidable. In the cases of factories with larger production the losses would be much larger than the petitioners losses. And of course the reasonableness of the restrictions imposed by the Act has to be tested generally and without reference to any particular sugar manufacturer. I am also unable to agree to the proposition that the reasonableness of a restriction depends on the quantum of the loss it produces. Even a small loss may conceivably make a restriction causing it, unreasonable. The quantum of the loss cannot by itself decide the reasonableness of the restriction. Does reason dictate that a small loss shall be inflicted? Nothing that has been said in this case leads me to hold that.

It is then said that the loss caused by the Act was recouped by an order made by the Government increasing the home price of the sugar and therefore in fact the manufacturers suffered no loss. The process of recoupment was thus stated in paragraph 14 of the said main affidavit of Shri Jain:

"The incidence of loss on the first quota of 50,000 tons fixed by the Government was assessed and when the Central Government fixed the price of sugar for internal consumption under the provisions of the Essential Commodities Act and the Sugar (Control)

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Order, 1955, they gave adjustment in price by adding 50 nP. per maund in the ex-factory prices of sugar for internal sales."

It is said that the increase so made in the home price of sugar would completely wipe out the loss incurred on the export under the Act of 2½ per cent. of the produce of a factory. I will accept this as a correct estimate. I will also ignore the petitioners' contention that they had not been able to sell the sugar in the home market at the increased price.

The argument then is that though the impugned Act produces a loss, that loss can be ignored because the Government has taken steps under another Act to recoup the loss so occasioned. It is said that in the circumstances that prevail, namely, the increase in the home price, the restrictions imposed by the impugned Act cannot be said to be unreasonable, for on the whole they occasion no loss. This is indeed the principal contention of the respondents to establish that the restrictions are not unreasonable.

Now a reference to the Essential Commodities Act under which the home price was increased has to be made. It was passed in the year 1955. It was not intended to earn foreign exchange; indeed it had nothing to do with foreign exchange or with helping the sugar industry. Section 3 of this Act provides:

"*Section 3.* (1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide

.....

(c) for controlling the price at which any essential commodity may be bought or sold."

Sugar is an essential commodity within the meaning of that term in the Act. Under the powers conferred

by the section quoted above, on August 27, 1955, the Government passed an order called the Sugar (Control) Order, 1955. Clause 5 of that order provides that,

"(1) The Central Government may from time to time, by notification in the Official Gazette, fix the price or the maximum price at which any sugar may be sold.....Such price or maximum price shall be fixed with due regard to the price or minimum price fixed for sugar cane, manufacturing cost, taxes, reasonable margin of profit for producer and/or trade, and any incidental charges.

(2) Where the price or the maximum price has been so fixed no person shall sell or purchase ..... any sugar at a price in excess of that fixed under sub-clause (1)."

It was under this Order that the Government issued a Notification on July 30, 1958, enhancing the home price of sugar by 50 nP. per maund which it is said wipes out the loss caused by the impugned Act.

I will assume that the Notification increasing the price was issued with the object of recouping the loss caused by the impugned Act as stated in the affidavit of Shri Jain, though the Notification itself does not say so. The question then is, is the increase in the home price of sugar made by the Government by a Notification issued under the powers given to it by another Act which has the effect of wiping out the loss inflicted by the impugned Act, a circumstance which makes the restrictions imposed by the latter Act reasonable?

It is said that this is so; that in judging the reasonableness of the restriction imposed by one Act, it is permissible to consider an order made by the executive Government under another Act. We were referred to the observations of Patanjali Sastri, C. J., in *State of Madras* v. *V. G. Rao*(1). The learned Chief Justice there stated at p. 607:

"The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the

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imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

I respectfully agree with all that the learned Chief Justice said, but I am unable to see that this advances the present contention of the respondents. What is really relied upon is that portion of the learned Chief Justice's observation where he said that the prevailing conditions at the time should be taken in into account. Support is sought also from another observation of the learned Chief Justice at the same page which I have not quoted, to the effect that reasonableness has to be decided in all the circumstances of a given case. It is said that the prevailing conditions and the circumstances of the case would include the order increasing the home price of sugar made under the Essential Commodities Act. I am entirely unable to agree that such a thing was in the contemplation of the learned Chief Justice. The case before him was completely different. He was not considering the reasonableness of one Act by reference to an order made by the Government under another. The learned Chief Justice was considering whether a certain Act had placed unreasonable restrictions on the fundamental right to form associations. The Act had given the Government the right to declare an association an unlawful association on certain specified grounds. In holding the restrictions imposed by the Act unreasonable, the learned Chief Justice observed at p. 608, "The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights." I do not at all see that the respondents can derive any support for their present contention from anything that Patanjali Sastri, C.J., said.

I entirely agree that in deciding the reasonableness of the restrictions imposed by a statute, all the prevailing conditions and all the circumstances of the case

have to be considered. But I am wholly unable to see that the conditions or circumstances, which seem to me to mean the same thing, can include that which depends solely on the arbitrary discretion or generosity or the sense of fair play of another. That, in my view, is not permissible. That is not a reasonable test. It is not reasonable to say that the validity of a statute would depend on something which the executive Government may do or undo at any time. The statute imposing the restrictions does not give any right that the Government would do something to make the restrictions reasonable. How can such a restriction be reasonable? How can an Act which is *prima facie* unreasonable—and it is on that basis that the present argument arises—be held to be reasonable because of something to which it gives no right and the existence of which depends entirely on the choice of the executive Government? Is it to be said that the restrictions imposed by a statute are reasonable because the Government has, when the question cropped up, done something which makes the restrictions reasonable though it was not bound to do that and though it is free to undo that which it has done? To say that would be to say that the Act is valid because the Government has for the time being chosen to make it so. This seems to me to be against all known principles of law.

Furthermore, if the respondents' contention was right a statute would then be legal when the Government chooses to do a thing and illegal when it undoes it and so on from time to time at the choice of the Government. That would be intolerable in any legal system. It was said that this is unavoidable and may happen in many cases. The following illustration was given. Suppose in famine conditions a statute was passed controlling free sale of foodstuff. Assume that the prevailing conditions made the restrictions put on free sale reasonable. Later, normal conditions returned which made the control of sales of foodstuff unnecessary and therefore unreasonable. The Act would thereupon become invalid. But further suppose that after sometime the famine conditions returned. The

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validity of the Act would then be restored. Hence, it is said that there would be nothing unusual in the Act being valid and invalid from time to time. But it seems to me that this is no analogy. The famine conditions imagined do not depend on the choice of the Government. So, assuming that the appearance and disappearance of famine conditions from time to time made the Act once valid and again invalid—as to which I do not feel called upon to say anything now—that does not justify the adoption of a rule which would make the validity of an Act depend on the choice of the Government. If fluctuating validity is the result in one case, it does not follow that the same consequence would occur in another and a totally different case.

Again the validity of the Notification enhancing the home price seems to me to admit of grave doubt. I find nothing in the Essential Commodities Act nor naturally in the Sugar (Control) Order, 1955, which would authorise the Government to increase the price simply for the sake of recouping to the manufacturers the loss caused to them by the impugned Act. I have earlier set out the relevant provisions of the Essential Commodities Act. The power to fix the price of sugar given thereby can be exercised "for maintaining or increasing the supplies of any essential commodity or for securing their equitable distribution and availability at fair prices". That power cannot therefore be exercised for recouping loss caused to a manufacturer by another Act, the object of which is to earn foreign exchange. If it is said that the Notification was issued for the purposes mentioned in the Essential Commodities Act, it becomes at once apparent, that the price fixed under it has no relation to the impugned Act and may have to be altered irrespective of the latter Act. I find it impossible to say that a Notification fixing the price of sugar on different conditions can be taken into account in deciding the reasonableness of the impugned Act which is entirely unconnected with these considerations.

For all these reasons I am unable to agree that the Notification increasing the home price can be taken

into consideration in deciding the reasonableness of the restrictions imposed by the impugned Act. It follows that these restrictions do cause loss to the sugar manufacturers and there is nothing to show that the restrictions are even so reasonable.

Then it is said that the Indian Sugar Mills Association of which the petitioners are said to be members, wanted that arrangements for export of sugar abroad be made and it was for that reason that the impugned Act was passed. It was suggested that the Association agreed to the Act being passed. It is therefore contended that the restrictions imposed by the Act must be presumed to be reasonable and the petitioners cannot be heard to say that they are not. Now the request by or the agreement of the Association is of course not the request by or the agreement of the petitioners. The Association has no authority to bind the petitioners by any request or agreement. The fact that the petitioners were members of the Association if that were so, does not give the Association the authority. There is no evidence that the petitioners had assented to the Association making the request or the agreement. For all that is known the petitioners may have been against the Association making any request to the Government to take steps for export or agreeing to the passing of the Act. Therefore, it seems to me that the petitioners' rights are not affected by anything which the Association might have done.

I think it right also to say that there is no material on the record whatever to lead to the conclusion that the Association had agreed to the Act being passed in the form in which it stands. And of course it is only the Act with which we are concerned. It is true that the Association had suggested that the Government should take steps for export of sugar. That would appear from the minutes of various meetings annexed to the affidavits used on behalf of the Government. But there is nothing in these minutes nor anywhere else in the records which would indicate that the Association wanted that sugar should be exported though that might put the manufacturers to a loss. The position appears to have been this. In the year 1951-52 the

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sugar manufacturers were placed in a difficult position because of competition from khandsari and gur manufacturers, who could buy sugar cane for their manufactures at a low price in the open market, while the sugar manufacturers were compelled to buy cane at prices fixed by the Government which were high. So some of them, as appears from Annexure "A" to Shri Jain's said affidavit, made the following suggestions to the Government in March 1952 to give them relief:

"(a) The price of cane be reduced to Re. 1 per maund.

(b) The sugar manufactured from the lower priced cane be 'frozen' and kept as a national Reserve for Export or for such other purposes as the Government may consider desirable.

(c) To reduce the accumulation of stocks in the factories and to make room for further storage, and to liquidate the stocks into cash, serious efforts be made either from Government to Government or through trade channels to export out at least 2 lakh tons. Alternatively, the State Governments be asked to take delivery of the quantities from the factories and store them in their own godowns.

(d) If there is any 'profit' in the export of such quantities the same may be utilised either for giving a 'bonus' to the cane growers or in lowering the price of sugar for home consumption."

It is clear from the suggestions thus made by the manufacturers that they wanted the burden on them to be relieved and export at Government's cost. In that year the Government in fact permitted an export of 10,000 tons and gave a subsidy of Rs. 2 per maund to cover the loss on the export. Later in the same year the Government reduced the price at which the sugar manufacturers could purchase the cane.

In the years 1952-53 to 1955-56 India imported large quantities of sugar and did not export sugar at all. It also appears that during these years the consumption of sugar in India was much more than the production. Hence, obviously the need for the import. So clearly in these years the sugar manufacturers did not need to

export their sugar. The respondents do not say that during these years the sugar manufacturers had asked for arrangements for export being made. 1956-57 was the year of the Suez crisis. In this year a substantial quantity was exported and large profits could be made because price of sugar in some of the markets abroad had gone up due to the crisis caused by the Suez situation. The proposition then is that between 1952-53 and 1956-57 the industry was doing very well and had no need to ask for Government's intercession to enable it to export.

There is no evidence that in 1957-58 there was any over-production. The figures for this year in tons are production—19,75,000, consumption—20,14,000 and export—50,000, the figure for export being that fixed under the Act. It appears however that various representatives of the Government and the sugar manufacturers met and decided upon the idea of exporting sugar for earning foreign exchange in Government's interest and getting a foothold in the world market in the interests of the manufacfurers. It was realised that the export would result in a loss but the manufacturers agreed to export provided they were allowed to make up the loss from the internal market. For this purpose the suggestion made as appears from annexure "D" to the affidavit of Shri Jain, was as follows:

"The internal market will be left free as at present. However to provide an element of stability to the market releases for internal sale shall be regulated by Government of India in active consultation with the industry."

So what the trade had agreed to was that they would be prepared to export sugar provided they were left free to recoup from the internal sales the loss caused by the export. This is very different from agreeing to the Act which made no provision for recouping the loss from the internal sales. The sugar manufacturers did not approve of the Act, being content to depend on the Government's sense of fair play to relieve the hardship caused by it.

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There remains one other contention to deal with. It is said that the restrictions are reasonable since they result in stabilising the sugar industry. Apart from saying that the Act would stabilise the sugar industry, the affidavits used on behalf of the respondents do not show how that would be done or that there was any need for it. From what I have earlier stated it does not appear to me that the industry needed any stabilisation. The figures given earlier show that production has always been less than internal consumption, excepting for the year 1951-52. But it appears from one of the annexures to the affidavit of Shri Jain that even then the difficulty was only temporary. It is there stated :

"Again in 1952-53 it was decided to export upto 2 lakh tons. But only about 10,000 tons could be exported as in the meantime there was an appreciable rise in the sugar prices and the surplus stock was consumed in the home market."

The estimated figures for the year 1958-59 in tons appear to be as follows : production– 19,00,000 consumption—21,00,000, export—1,00,000. It would thus appear that the sugar industry in India has always been stable and did not require any export to make it stable.

What I think however puts the matter beyond doubt is s. 4 of the Act. Under that section, in fixing the total quantity of sugar to be exported in any season regard is to be had only to the quantity available in India, the quantity required for consumption in India and the necessity of earning foreign exchange. So in deciding the quantity to be exported no question of stabilising the industry or prices arises. Again, it is not out of the excess of the production over the internal consumption alone that the exports are to be made. In fact there has never really been any excess of production over consumption requirements. Indeed it is plain that if sufficient sugar were left to meet the home consumption, then the increased price would not help the industry to recoup the loss. If supplies were adequate to meet the demand the price cannot be forced up.

I therefore come to the conclusion that the Act which makes the petitioners suffer a loss on the sale of a part of their produce imposes a restriction on their right to carry on their business which cannot in the circumstances of this case be said to be reasonable and is therefore invalid.

I may also mention that the learned counsel for the petitioners had taken certain other objections to the validity of the Act but in the view that I have earlier indicated I do not consider it necessary to discuss the other objections.

I would allow the petitions with costs.

Subba Rao J.

SUBBA RAO J.—I have had the advantage of perusing the judgment prepared by my learned brother, Hidayatullah, J. I agree with his conclusion but would prefer to give my own reasons. The only justification for me to write a separate judgment is my inability to persuade myself to agree with one of the reasons given by Hidayatullah, J., for his conclusion. That reason involves a principle of far-reaching importance, namely, whether, in ascertaining the reasonableness of restrictions imposed by a statute on a fundamental right, it is permissible to rely upon a notification issued by Government in exercise of power conferred on it by another Act unconnected with the impugned one.

Before I embark upon the merits of the case it would be convenient at the outset to clear the ground by expressing my view on the said question. The facts of the case have been fully stated by my learned brother in his judgment, and I need not restate them except to notice a few relevant and material facts. The Essential Commodities Act, 1955 (Act 10 of 1955), was enacted for the purpose mentioned in the preamble to that Act. In exercise of the powers conferred by s. 3 of the said Act, the Central Government issued an order dated August 27, 1955, called the Sugar (Control) Order, 1955. Under r. 5 of the said order, the Central Government is empowered, *inter alia*, to fix the price or the maximum price at which any sugar may be sold or delivered, having regard to the price or minimum

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price fixed for sugar-cane, manufacturing cost, taxes, reasonable margin of profit for producer and/or trade, and any incidental charges. In exercise of powers conferred on the Central Government under s. 3 of the said Act and cl. 5 of the said order, the Central Government issued a notification dated July 30, 1958, fixing the ex-factory price for Indian sugar Standard (ISS) D-29 grade. A few days before the said order was issued i.e., on June 27, 1958, the Central Government promulgated an Ordinance called the Sugar Export Promotion Ordinance, and it was subsequently converted into an Act (30 of 1958), which received the assent of the President on September 16, 1958. It is said that the Central Government in fixing the price for sugar produced during the season 1957-58, in vacuum pan sugar factories situate in the areas specified in the order had taken into account the possible loss the exporters might incur by reason of the application of the provisions of the impugned Act. Shri K. P. Jain, Chief Director in the Directorate of Sugar & Vanaspati, Ministry of Food and Agriculture (Department of Food), in his affidavit says that the ex-factory price of sugar per maund fixed by the said order was made up of the following items:

Average cost of production including margin of profit.	Rs. 22·91
Excise duty.	Rs. 10·70
Cane cess.	Rs. 1·89
Loss on exports.	Rs. 0·50
Total	Rs. 36·00

It is explained therein that the factories are expected to realise actually on their internal sales Rs. 22·91 as their cost of production including margin of profit and Rs. 0·50 to cover losses of export which work out to approximately Rs. 10, per maund of sugar exported. For every one maund of sugar exported, the factories have for sale in the internal market 20 maunds of sugar, and on this, on account of the price fixed, they would realise 0·50 nP. per maund i.e., on 20 maunds Rs. 10, which covers the export loss. The effect of the

said order is that the possible loss to the sugar exporters is off-set by the fact that they can recoup their loss in their internal trade.

The learned Attorney-General sought to justify the restrictions imposed by the impugned Act on the ground, among others, that the Court should rely upon the said order in determining whether the restrictions imposed by the impugned Act are reasonable within the meaning of Art. 19 of the Constitution. In support of this contention, he relied upon the decision of this Court in *State of Madras* v. *V. G. Row* (1). That decision was concerned with the question whether s. 15(2)(b) of the Indian Criminal Law Amendment Act, 1908 (14 of 1908), as amended by the Indian Criminal Law Amendment (Madras) Act, 1950, was unconstitutional and void. It was contended in that case that the said provision fell within the limits of constitutionally permissible legislative abridgement of the fundamental right conferred on the citizens under Art. 19(1)(c) of the Constitution. The said limits are defined in cl. 4 of the said article whereunder:

"Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the States from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

In discussing the said question, Patanjali Sastri, C.J., observed at p. 607:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors

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and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

If I may say so with respect, this passage summarizes the law on the subject fully and precisely. What is reasonable in a particular set-up may be unreasonable in a society with a different background. The learned Counsel relying upon the words "prevailing conditions" and the subsequent words "in all the circumstances of a given case" contained in the above observation of Patanjali Sastri, C. J., contended that the said words were comprehensive enough to take in notifications issued by the Government, and, therefore, the said order of the Central Government fixing the rate would be one of the elements to be taken into consideration in testing the reasonableness of the impugned Act. I find it difficult to accept this argument. The learned Attorney-General has not been able to place before us any decision which went to the length of holding that such notifications could enter the judicial verdict. It is true that the prevailing conditions at the time the Act was made should be taken into consideration, for the effectiveness of a restriction imposed for a particular purpose depends upon the said conditions. In a society addicted to opium, the legislature has to make a law imposing severe restrictions on the right to consume the same. In a society where a particular vice is rampant, any restriction imposed to eradicate that vice has to be moulded in accordance with the needs of the time. During times of stress and strain, such as war or pestilence, greater restrictions may be imposed on a fundamental right to do business in

public interest. But the same restriction may be unreasonable in normal times. Even in normal times, the urgency of a social or economic reform, having regard to the sub-normal standards of human existence, may demand more stringent restrictions on fundamental rights than during times of prosperity. The learned Chief Justice, therefore, in his graphic description of the test of reasonableness, in my view, was not stating any thing more than the obvious, for the standard of reasonableness is inextricably conditioned by the state of society and the urgency for eradicating the evil sought to be remedied. But I am clear in my mind that the validity of an Act shall not be made to depend upon another Act unconnected with the impugned Act or power conferred thereunder, which might, if properly exercised, off-set the evil tendency or the vice of the impugned Act. If the validity of an Act is made to depend upon such a foundation, a super-structure will have been built on shifting sands. To do that is to destroy the stability of legislation and to introduce an uncertain element therein. If two or more Acts were parts of the same scheme or plan, to implement the same or common objective, or if the impugned Act, though it was not originally conceived at the time when the earlier Act was passed, was only an extension or a further step by legislature for implementing the object of the earlier Act or if the legislature by express reference incorporated in the impugned Act the provisions of the earlier Act, it would be permissible to rely upon the said provisions of the earlier Act, not because they formed part of the prevailing conditions but because either the earlier Act formed part of the impugned Act by reference or both of them formed part of the same legislative plan. The illustrations are not exhaustive, but they all fall under one or other of the following two categories: (i) an earlier Act is made part of a new Act; and (ii) both Acts are parts of a legislative scheme or plan where both of them were conceived at the inception but passed in stages, or conceived at different times on the basis of experience gained but passed in furtherance of the same scheme. In such cases, the test of

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reasonableness in regard to one Act may be made to depend upon the impact of the other on it. But to go beyond this is to destroy the stability of legislation and to introduce an uncertain element. To go further and to depend upon a notification of a transitory nature issued under an unconnected Act is to place the statute in a fluid state. In such a situation its validity would depend upon a statutory order of temporary duration; it would change colour with the changing attitudes of an authority empowered to issue the order. It would also mean that a Court will have to embark upon a roving search of all Acts and notifications which may, by design or accident, alleviate or mollify the evil consequences of an impugned Act. Such a result cannot be contemplated. The learned Attorney-General has not placed before us any decision in support of his broad proposition; but I find in the judgment of my learned brother, Hidayatullah, J., a few decisions which, it is said, go to the full length of supporting the argument of the learned Attorney-General. I have carefully perused the said decisions and I do not find anything said or implied therein to support the said contention. The decision in *Attorney-General for Alberta* v. *Attorney-General for Canada* (1) was concerned with a conflict between the jurisdictions of the Dominion and Provincial Legislatures under ss. 91 and 92 of the British North America Act, 1867, The Legislative Assembly of the Province of Alberta passed an Act respecting the taxation of banks and imposed thereunder on every corporation or joint stock company other than the Bank of Canada, incorporated for the purpose of doing banking or savings bank business in the Province, an annual tax, in addition to any tax payable under any other Act. Defaulters of payment of tax were to be visited with penalties, and the payment of either tax or penalty could be enforced by distress and sale of goods and chattels, or by action for civil debt. It was contended before the Privy Council that the proposed taxation was not in its true sense taxation in order to the raising

(1) (1939) A.C. 117.

of a revenue for Provincial purposes so as to be within the exclusive legislative competence of the Provincial Legislature, but was merely part of a legislative plan to prevent the operation within the Province of those banking institutions which had been called into existence and given the necessary powers there to conduct their business by the only proper authority, the Parliament of the Dominion, under s. 91 of the British North America Act, and the Bill was therefore *ultra vires* the Provincial Legislature. The Privy Council accepted the contention. For the purpose of ascertaining the true plan underlying the bill, the Judicial Committee compared the relative legislative lists, took judicial notice of other Acts and the object and purpose of the Act in question. Having regard to the said consideration, it came to the conclusion that it was a colourable legislation aimed at to prevent the operation within the province of the aforesaid banking institutions. When a statute is attacked on the ground that it is a colourable legislation, i.e., it assumed a form apparently falling within the legislative competence of the legislature but in effect and substance intended to reach institutions beyond its legislative competence, it is obvious that all the surrounding circumstances, including other acts operating in the Province, have to be scrutinized to unravel the fraud on power. This decision, in my view, cannot be invoked to serve the present purpose. Nor does the decision of the Judicial Committee in *Ladore* v. *Bennett* (1) carry the matter further. The question in that case was whether the Provincial legislation in question did not encroach upon the exclusive legislative power of the Dominion Parliament in relation to bankruptcy and insolvency, interest or private rights outside the Province. For ascertaining the pith and substance of the impugned statutes, the Judicial Committee relied upon the report of the Royal Commission appointed to enquire into municipal and other affairs of the four municipalities in question. At p. 477, it is observed:

"Their Lordships do not cite this report as evidence of the facts there found, but as indicating the

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materials which the Government of the Province had before them before promoting in the Legislature the statute now impugned."

This case does not, in my view, throw any light on question raised in the present case. The decision of the Privy Council in *Pillai* v. *Mudanayake*(1) is also not of much relevance to the present case. The constitutional validity of the citizenship Act, 1948, of Ceylon, was questioned in that case. It was contended therein that the main object of that Act was to prevent the Indian Tamils from obtaining citizenship of Ceylon and that the Act was part of a plan to effect indirectly something which the legislature had no power to achieve directly. The Judicial Committee pointed out, at p. 528:

"It must be shown affirmatively by the party challenging a statute which is upon its face *intra vires* that it was enacted as part of plan to effect indirectly something which the legislature had no power to achieve directly."

The Judicial Committee relied upon the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, by which an Indian Tamil would by an application obtain citizenship by registration and thus protect his descendants, provided he had a certain residential qualification. When objection was taken against the Court relying upon the said Act, their Lordships disallowed the objection with the following remarks, at p. 529:

"If there was a legislative plan the plan must be looked at as a whole, and when so looked at it is evident, in their Lordships, opinion, that the legislature did not intend to prevent Indian Tamils from attaining citizenship provided that they were sufficiently connected with the island."

In this case also the reliance on a subsequent Act was only to unravel the plan attributed to the Legislature of Ceylon to deprive the Indian Tamils of citizenship by passing the impugned Act. The said three decisions, therefore, are not, and cannot be, authorities for the proposition now contended. To unravel a plan

(1) (1953) A.C. 514.

of fraud on powers, it would be necessary to scrutinize all the documents, whether legislative or otherwise, which help to ascertain the truth. It may also be necessary to look into another Act to ascertain the pith and substance of an impugned Act. But the same principle cannot be invoked for ascertaining the reasonableness of legislative restrictions on fundamental rights.

Now coming to the facts of the present case, it is not suggested that the Essential Commodities Act, 1955, and the impugned Act form part of one scheme of legislation. Indeed the Essential Commodities Act was enacted to provide in the interest of the general public for control of production, supply and distribution of, and trade and commerce in, certain commodities. The provisions of the Act disclose that the object of the Act was to maintain or to increase supplies of essential commodities and to secure their equitable distribution and availability at fair prices. It was not one of its objects to stimulate foreign trade or to earn foreign exchange. It is said that the notification issued by the Central Government under s. 3 of that Act and r. 5 of the Order made thereunder was to off-set the loss expected to be incurred under the Ordinance, and therefore, the Act which supplanted the Ordinance, must be deemed to have been passed on the basis of that notification. To put it in other words, though the impugned Act does not confer any power or impose a duty on the Government to off-set the loss by fixing the rates of sugar, having regard to the expected loss, the mere fact that it could fix the rates under some other Act would make the Act good though otherwise bad. If this argument be accepted as correct, even if the notification was not issued, the existence of such a power under some other Act would be enough to validate the impugned Act, for, though the notification was not issued, it may be issued at a later stage. This argument, if accepted, would leave the impugned statute in a fluid state, its validity or otherwise depending upon the changing attitude of the authority concerned. I cannot, therefore, accept this contention.

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Let me now consider the reasonableness of the restrictions imposed by the Act, excluding the notification issued by the Government. It is enacted to provide for the export of sugar in public interest, and for the levy and collection, in certain circumstances, of an additional duty of excise on sugar produced in India. Section 4 enables the Central Government, by notification in the Official Gazette to fix from time to time the quantity of sugar which may be exported during any period, and, in fixing such quantity, the Central Government should have regard to the quantity of sugar available in India, the quantity of sugar which, in its opinion, would be reasonably required for consumption in India, and the necessity for exporting sugar with a view to earning foreign exchange in the public interest. In exercise of that power, the Central Government should not fix the quantity of sugar for export as to exceed in any year in the aggregate twenty per cent. of the quantity of sugar produced in India in the season ending with the month of October falling within that year. Under s. 5, the Central Government is empowered to apportion the quantity of sugar fixed from time to time for purposes of export under s. 4 among the owners in proportion to the quantity of sugar produced, or likely to be produced, by them respectively during the season referred to above. Section 6 enjoins on the owners of sugar factories to deliver to the export agency, appointed under the Act, the sugar produced in their factories in such quantities, of such grade, in such manner, within such time and at such place, as may be specified by the export agency in that behalf. When such delivery is made, the owner ceases to have any more right over the sugar except to receive payment therefor. Section 8 empowers the export agency, after taking delivery, to export the sugar or permit the owner to sell the whole or any part of the export quota in his custody at a price approved by it on condition that the sale-proceeds are payable to it. Section 9 directs the export agency to make payments to the owners, who had delivered sugar to it, in the manner prescribed by the section. Out of the total

sale-proceeds, the total expenditure incurred by the export agency in respect of the sugar exported should be deducted and the balance should be apportioned among the owners in proportion to the quantity of sugar delivered by them for export during the year. It also enables the export agency to make payments to owners on account against documents of delivery of sugar furnished by them, and to adjust such payments at the time of final payment. Section 10 confers power on the Central Government to give directions to the export agency in discharge of its functions under the Act. Section 7 deals with a situation when the sugar is not delivered, and it reads:

"S. 7(1): Where sugar delivered by any owner falls short of the export quota fixed for it by any quantity (hereinafter referred to as the said quantity), there shall be levied and collected on so much of the sugar despatched from the factory for consumption in India as is equal to the said quantity, a duty of excise at the rate of seventeen rupees per maund."

Sub-ss. 2, 3 and 4 provide for a machinery for imposing the penal duty and collecting the same from the defaulting owners of sugar. The scheme of the Act, therefore, is a self-contained one. The object is to provide for the export of sugar in the interest of public and that object is sought to be achieved by fixing the quota of sugar for export and distributing the same among the owners of factories, subject to the condition that in no case it should exceed twenty per cent. of the quantity of sugar produced in India in a particular season. The quantity is also fixed without detriment to the requirements for internal consumption. The apportionment of the quota among the various factories is objectively and impartially made. The quota delivered, or in case the owner is allowed to sell the sugar himself, the sugar purchased from the sale-proceeds, is exported, and the nett sale-proceeds are distributed among the owners in proportion to the quantity of sugar delivered by them for export. The Act enables the Government to make payments on account. The Government also retains an over-all

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control presumably to see that no injustice is done to the parties concerned. The short question is whether the said restrictions on the freedom of the petitioners to acquire, hold and dispose of property, and carry on trade or business, are reasonable within the meaning of clauses (5) and (6) of Art. 19 of the Constitution. The restrictions must have a reasonable relation to the object which the legislature seeks to achieve and must not go in excess of that object. What is the object of the legislature? The object of the legislature is to provide for the export of sugar in public interest. It cannot be, and indeed it is not, denied that at the time the Act was passed there was a sincere and serious national effort to industrialize our country with the avowed object of raising the economic standards of our people. One of the necessary conditions for industrializing our country is to start heavy industries, and that cannot be done unless the country earns foreign exchange to enable it to import plants for starting the same. It is also self-evident that it would be in the interests of sugar industry to build up a foreign market for that commodity. The object of the Act was, therefore, demonstrably to serve the national interest and the scheme evolved certainly had relation to the object sought to be achieved, for all the provisions of the Act were conceived in a genuine attempt to induce foreign export in sugar by co-operative effort. If so, the only objection to the restrictions imposed can be on the basis that the freedom was abridged or curtailed unduly or arbitrarily. But for the Act, the petitioners could have sold their sugar in the open market without exceeding the rates fixed under the Essential Commodities Act, 1955. The correspondence filed in the case, marked as annexures A, B and C, clearly demonstrates that both the industry as well as the State were equally interested to stimulate foreign trade and build up a foreign market. Under the scheme embodied in the Act, three restrictions are imposed on the owners of factories: (i) They must contribute to the stock for export, not exceeding twenty per cent. of the quantity produced in their factories; (ii) they are paid only their proportionate

share of the nett sale-proceeds realised in the foreign market; and (iii) a penal cess is imposed on those who make default in supplying the goods. When once it is conceded that the Act serves the national interest, I find it not possible to hold that the restrictions are unreasonable or excessive. The three restrictions are really the props of the scheme. If there was no statutory compulsion on the owners of factories to supply a reasonable fraction of the sugar produced in their factories, the export agency would not get the requisite quantity of sugar for export. If there was no provision imposing a penal cess on defaulters, there would be no sanction to compel them to deliver their quota of sugar. Though the final payment was deferred till the nett sale-proceeds were realised, they would be paid the price for the sugar supplied, at the rates fetched in the foreign market. It is common case that at present the export trade in sugar ends in loss; but it cannot be predicated that it will be a chronic feature and there will not come a time when the export trade in sugar will earn profits. It may be that a better scheme might have been evolved by the legislature or it might be more beneficial from the standpoint of owners of factories if the State purchased the exportable quantity for ready cash and exported the same on its own account. But it is not for this Court to evaluate the comparative merits of different schemes so long it is satisfied that the scheme actually evolved stands the test of reasonableness. The correspondence between the State and the industry shows that the industry as a whole co-operated with the State in evolving the scheme, which culminated in the passing of the Act. The State as well as the industry are equally interested to stimulate foreign trade and build up foreign market. To capture foreign market or to have a substantive share therein is not an easy task, as it depends upon many imponderables, namely, the availability of sugar, its demand, its comparative merits with the sugar produced in other markets, transport facilities, mutual agreement requirements, international affiliations etc. Initial loss must have to be borne to get a foothold and the clear

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objective will have to be pursued purposefully and tenaciously. To achieve the said objective, with the consent of the industry and on the basis of past experience, the Act was passed by the Parliament. The beneficial results flowing from the Act are significant. The State earns foreign exchange, and a foreign market is gradually built up for the future prosperity of the sugar industry.

In the affidavit filed on behalf of the respondents an attempt was made to support the Act on the ground that it was intended to serve a dual purpose of stablising the internal market and earn foreign exchange for the country. An attempt was also made to link the one with the other, but the learned Attorney-General did not pursue that line in his argument, and I have, therefore, considered the question only from the standpoint of the compelling need of the State to earn foreign exchange, and the long range aim of the industry to build up a foreign market. I therefore, hold that the restrictions imposed by the statute on the fundamental rights of the petitioners are not arbitrary, and are reasonable within the meaning of Art. 19 of the Constitution.

I agree with my learned brother, Hidayatullah, J., on the other questions raised in this case. In the result, the petitions are dismissed with costs.

ORDER.

In view of the opinion of the majority these petitions are dismissed with costs.