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these words it did so knowing fully well that it had no power to legislate regarding agricultural lands excepting for the purposes of devolution. Section 22 does not provide for devolution of agricultural lands. It merely gives a sort of right of pre-emption. In fact, as already pointed out, entry No. 6 in List III, clearly takes out agricultural lands from the ambit of the concurrent list. Agricultural land is specifically dealt with in entry No. 18 of List II. The only exception being in the case of devolution. Therefore, it must be held that section 22 does not embrace agricultural lands.

(9) The last argument of Mr. Roop Chand, the learned counsel for the respondent, was that section 22 is *ultra vires* the Constitution as the Central Legislature had no right to pass such a law regarding agricultural lands. This argument cannot be accepted because it cannot be presumed that the Legislature was passing law regarding matters which it had no power to pass particularly when with regard to immovable property other than agricultural land, it has the power to enact such a law. This view finds support from the decision of the Federal Court in re *Hindu Women's Rights to Property Act*, (1), wherein in a similar situation their Lordships of the Federal Court refused to strike down the provisions of the Hindu Women's Rights to Property Act, 1937, on the precise arguments.

(10) For the reasons recorded above, we allow this appeal, set aside the judgment and decree of the learned lower Appellate Court and restore that of the learned trial Court though on totally different grounds. In the circumstances of the case, there will be no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

M/S. JAGDISH PARSHAD BABU RAM, ETC.—Petitioners.

versus

THE STATE OF HARYANA ETC.—Respondents.

Civil Writ No. 164 of 1970.

April 20, 1970.

Constitution of India (1950)—Articles 19 and 226—Government solely importing raw material for use of industries in the country—Industrial

(1) A.I.R. 1941 F.C. 72.

Accession No. 57237
Date 31.7.73
C.14

manufacturing concerns—Whether have a right to claim equitable distribution of the raw material—Such right—Whether can be enforced by means of a writ petition—Determination of entitlement of eligible manufacturing units—Whether a quasi-judicial function—Director of Industries—Whether to frame a scheme for distribution of imported raw material.

Held, that when the Government takes upon itself the sole responsibility of importing raw material for use in the industries of the country, it becomes its duty to distribute that raw material amongst the manufacturing concerns on a fair and equitable basis and the manufacturing units get the right of claiming their share therein. If they are denied their due share, it affects their fundamental right under Articles 14 and 19(1)(g) of the Constitution of which they are entitled to complain by way of writ petition under Article 226 of the Constitution.

Held, that the function of the Director of Industries in ascertaining and determining the entitlement of each eligible manufacturing unit for the quota of imported raw material is a quasi-judicial function as the respective claims of the parties have to be determined by an objective test on the basis of a scheme of distribution of the quota. A quasi-judicial tribunal must function on a fair and equitable basis and comply with the principles of natural justice of hearing the persons affected and to decide the matter in a judicial manner giving reasons for the decision. If these principles are borne in mind, it will be easy for the various claimants to understand why their claims have been rejected in part or *in toto* while their rival claimants have been allowed the quota to which they are held entitled. It will also enable the higher authorities or the Courts to decide whether the scheme, according to which the controlled commodities are to be distributed amongst the eligible concerns, has been administered with an even hand and an equal eye. It is the duty of the Director of Industries to frame a scheme of distribution keeping in view the various directives issued by the Government of India or other appropriate authorities from time to time on the point, so as to ensure fair and equitable distribution of raw materials.

(Para 6)

Petition under Article 226 of the Constitution of India praying that an appropriate writ order or direction be issued to respondents Nos. 1 and 2 calling upon them to transmit the files of the case relating to the distribution of the imported raw wool for Worsted Yarn quota to the shawls/Lohie/Chaddar Industry at Panipat including the minutes of the meeting held on 25th July, 1969 and 16th September, 1969, at which the entire distribution policy was settled, with a view to enable this Hon'ble Court to scrutinize the legality and validity of the allotments made on 13th October, 1969 and 5th January, 1970 with a view to quash the same so as to grant appropriate relief to the petitioners and further praying that pending the disposal of this writ petition, Respondents 1 and 2 be ordered not to release and distribute the quotas already fixed by them in favour of respondents 3 to 16.

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D. N. AWASTHY AND AVINASH CHANDER JAIN, ADVOCATES, for the petitioners.

MANI SABRAT JAIN, ADVOCATE, FOR ADVOCATE-GENERAL (H), for Respondents 1 & 2.

C. L. LAKHANPAL AND I. S. VIMAL, ADVOCATES, for Respondents 4 to 10, 12 and 16.

KULDIP SINGH, ADVOCATE for Respondent 11.

JUDGMENT.

B. R. TULI, J.—The petitioners are five firms engaged in the business of manufacturing shawls, *lohies* and *chaddars* from indigenous wool at Panipat. Respondents 3 to 16 are similar manufacturing concerns carrying on business at Panipat. The grievance of the petitioners is that the quota of imported raw wool received by the State of Haryana from the State Trading Corporation Limited, through the Textile Commissioner, Government of India, for the period from April to September, 1968, worth rupees two lacs has been distributed amongst 24 manufacturers on an arbitrary basis. The allegation has been denied by respondents 1 and 2 in the written statement wherein it has been emphasised that the distribution was made on the basis of consumption of indigenous wool by the manufacturing units on a certain criteria laid down by the Government.

(2) The undisputed facts culled from the pleadings of the parties and the documents brought on the record are that the import of raw wool from Australia and other wool-producing countries is restricted by the Central Government in view of the foreign exchange involved. No trader or manufacturer can import wool from foreign countries direct. The import is done by the State Trading Corporation of India Limited on an all-India basis. The distribution of raw wool is thereafter taken in hand by the Textile Commissioner at Bombay who makes allotments of quota for each State, and within the State, the various manufacturing units or private parties are given their respective quota as recommended by the Director of Industries. For the period from April to September, 1968, the Textile Commissioner allotted raw wool worth about rupees two lacs to the State of Haryana for distribution

to the units engaged in the manufacture of woollen products including shawls, etc. In June, 1969, the Director of Industries distribution, protested against the same with the result that the facturers. The other manufacturers, on coming to know of that distribution, protested against the same with the result that the said distribution was cancelled. There are about 40 manufacturing units which can be considered eligible for a share in the distribution of the quota, and on July 25, 1969, a meeting was held in the office of the Joint Director of Industries, Haryana State, at Chandigarh, and was attended by the Assistant Director (Textiles), Shri N. Goswami, the District Industries Officer, Panipat, Shri S. S. Anand, and 11 manufacturers besides the Joint Director himself. Two of them, Shri Amar Nath and Shri Lashkari Mal, represented the Panipat Woollen and Shoddy Textile Handloom Manufacturers' Association, Panipat, and the small scale woollen Textile Units' Association, Panipat, respectively. These associations were neither registered nor recognised by the Industries Department. They were, however, requested to get themselves registered and recognised by the Department of Industries without any further delay. The proceedings of that meeting show that it was noted that there was no shawl industry in Panipat manufacturing shawls from worsted yarn and it was felt that the quota of imported raw wool for the shawl industry should not be lost and this quota should be distributed amongst the manufacturers of shawls, *lohies* and *chaddars* out of indigenous wool. Certain tentative decisions were taken to the effect that, (i) only those units/parties should be considered which were basically registered as Small Scale Units with the department up to 1968-69 (1st April, 1968, to 31st March, 1969), (ii) only those units should be considered for the quota which manufactured *lohies* or shawls or *chaddars* out of 100 per cent indigenous wool, and (iii) the period of 1968-69 should be taken as the basis for deciding the units registration, etc., for eligibility. No unanimity could be reached with regard to the basis of distribution. Three proposals were mooted, namely, (i) that the quota should be equally distributed amongst all the eligible manufacturing units on a trial basis, (ii) the quota should be distributed on actual consumption basis, and (iii) the quota should be distributed on capacity basis. Later on the same day, 12 manufacturers sent a letter to the Director of Industries, Haryana, stating that both the associations mentioned above had unanimously resolved that the distribution and allotment of the quota should be made on equal basis to all units registered with the District Industries Officer, Panipat, as Small

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Scale Units which were engaged in the manufacture of the items for which the quota was meant irrespective of their actual consumption or capacity. On August 1, 1969, the District Industries Officer, Panipat, addressed a memorandum to Shri Amar Nath, President of the Panipat Woollen and Shoddy Textile Handloom Manufacturers' Association, Panipat, reading as under :—

“It has been decided by the Director of Industries, Haryana, to review the recommendations regarding the distribution of the quota for raw wool for the shawls, *lohies* and *chaddars* industries. You are requested to please send the required information in respect of your units, members, keeping in view the following points :— ,

- (i) Only those units, who are registered with this department as a Small Scale Unit up to 1968-69 (1st April, 1968 to 31st March, 1969) for *lohies*, shawls and *chaddars* would be considered for the allotment of quota. As such they are requested to furnish their registration number and date.
- (ii) Only those parties, who are engaged in the manufacture of shawls, *lohies* and *chaddars* out of 100 per cent indigenous wool would be considered for the allotment of quota. As such they are requested to furnish their consumption of raw wool for the manufacture of shawls, *lohies* and *chaddars* industries for the last three years (year wise) for the years 1966-67—68-69. duly supported by excise duty bills. The above information should reach this office by 4th of August, 1969, positively, otherwise the responsibility for non-allotment of quota to any genuine party would rest on your end.”

(3) It has been stated that the various manufacturing units supplied the information required but no further communication was received till another meeting was held with the manufacturers' representatives on September 16, 1969. The decisions taken at that meeting have not been brought on the record. However, on October 13, 1969, the imported raw wool worth Rs. 1,84,000 was distributed amongst 24 manufacturers, a list of whom was sent to the State Trading Corporation of India with a copy to the District

Industries Officer, Panipat, with a request to keep a strict watch on the utilisation of the raw material by the parties to which it was allotted. All the petitioners were ignored and they made various representations. Another manufacturer, Messrs Swatantra Bharat Woollen Mills, Panipat (respondent 16), which was also ignored in the allotment of any share in the quota of imported raw wool, filed a petition under Article 226 of the Constitution in this Court (C.W. 3191 of 1969), which was admitted in December, 1969. Thereafter on January 5, 1970, further allotments were made as under :—

	Rs.
(1) M/s Girnar Woollen Mills, Panipat, (petitioner No. 4) ..	300
(2) M/s. Gargi Industry, Panipat ..	950
(3) M/s. Smarat Woollen Mills, Panipat (petitioner No. 5) ...	500
(4) M/s. Swatantra Bharat Woollen Mills, Panipat (respondent No. 16) ..	14,050
(5) M/s. Surindra Handloom Industries, Panipat ..	200
Total	16,000

It is stated in the written statement that these allotments were made on the same basis as were made earlier on October 13, 1969, as the cases of these manufacturers were under consideration then.

(4) The letter, dated August 1, 1969, quoted *in extenso* above, shows in unequivocal terms that it had been decided by the Director of Industries to distribute the quota of raw wool amongst the manufacturing units which were registered as Small Scale Industries with the Department of Industries up to 1968-69, on the basis of their consumption of indigenous wool during the last three years for which information was sought from the manufacturing units. It has been alleged by the petitioners that about half of the allottees had not got themselves registered as Small Scale Industries and were, therefore, not eligible for the allotment of the quota. From this fact it has been asserted that the act of allotment by the Director of Industries smacked of favouritism. In the return, it has been explained that the condition as to registration as Small Scale Industries was waived in order to

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benefit the maximum number of units. It has also been disputed by the petitioners that the distribution of the quota was made on the basis of actual consumption by the allottees. Instances have been given in the petition and the replication to controvert the claim of respondents 1 and 2 that the distribution had been made on consumption basis.

(5) The first point for determination by this Court is whether the petitioners and other manufacturers have a right to claim an equitable share in the distribution of the raw wool which can be enforced by means of a writ petition. In my opinion, when the Government takes upon itself the sole responsibility of importing raw material for use in the industries of the country, it becomes its duty to distribute that raw material amongst the manufacturing concerns on a fair and equitable basis and the manufacturing units get the right of claiming their share therein. If they are denied their due share, it affects their fundamental right under Articles 14 and 19(1)(g) of the Constitution of which they are entitled to complain. It will be rewarding to refer to the following observations of their Lordships of the Supreme Court in *A. K. Kraipak and others v. Union of India and others* (1):—

“The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in

(1) A.I.R. 1970 S.C. 150.

essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. * * * * *

* * * * * With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, Courts are gradually evolving the principles to be observed while exercising such powers. In matters like these public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power."

(6) In the light of the above principles, for ensuring fair and equitable distribution of the imported raw wool, the Government must frame a scheme so that the manufacturers entitled to share in that distribution may know the conditions that they have to fulfil before applying for their share of the quota. In spite of the fact that the views of the trade were ascertained by the officers of the Directorate of Industries in the present case, no scheme for distribution of the imported raw wool was framed. Whatever criteria had been decided upon for making the distribution of the raw wool had been given a go-by by waiving the condition as to registration of the manufacturing units as Small Scale Industries. The basis of the distribution is stated to be the actual consumption of the manufacturing units concerned but it has not been stated how the extent of that consumption was determined, that is, whether the consumption of only one year was taken into consideration or of more than one year and whether all the manufacturing units were called upon to furnish the required information. No reasons have been stated why some of the manufacturing units were left out of distribution and whether they were given reasonable opportunity to furnish the required information or to get themselves registered or whether all the unregistered units were also considered. It can justifiably be said that the

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function of the Director of Industries in ascertaining and determining the entitlement of each eligible manufacturing unit is a quasi-judicial function as the respective claims of the parties have to be determined by an objective test on the basis of a scheme for distribution of the quota. It has become well-established by now by the pronouncements of the highest judicial authority in the land that a quasi-judicial tribunal must function on a fair and equitable basis and comply with the principles of natural justice of hearing the persons affected and to decide the matter in a judicial manner giving reasons for the decision. If these principles are borne in mind, it will be easy for the various claimants to understand why their claims have been rejected in part or *in toto* while their rival claimants have been allowed the quota to which they are held entitled. It will also enable the higher authorities or the Courts to decide whether the scheme, according to which the controlled commodities are to be distributed amongst the eligible concerns, has been administered with an even hand and an equal eye. Having gauged the opinion of the trade, it was the duty of the Director of Industries to frame a scheme of distribution keeping in view the various directives issued by the Government of India or other appropriate authorities from time to time on the point. The petitioners have filed a copy of the letter issued by the Director of Industries, Punjab, to Messrs Bharat Woollen Mills, G.T. Road, Chheharta, on February 6, 1961, dealing with the subject—“Registration of Small Scale Units in the State”. From this letter, it is clear that the Government of India, in the Ministry of Commerce and Industry, had decided that all Small Scale Units using iron, steel, non-ferrous metals, *imported raw materials* and components, should get themselves registered with the State Directorate of Industries before March 31, 1961. The prescribed application forms were available from the District Industries Officer and the Government of India had also issued an advertisement to this effect in the “Tribune” dated January 26, 1961, at page 12. The addressee of the letter was advised to get itself registered immediately, failing which the department would not be able to consider its case for any assistance by way of procurement of raw materials in future. Shri N. Goswamy, Deputy Director of Industries, Haryana, filed an affidavit, dated March 11, 1970, by way of rejoinder to the replication filed by the petitioners and with this affidavit he has filed a copy of the letter, dated February 20, 1969, issued by the Textile Commissioner, Government of India, Bombay,

to the Joint Director of Industries, Government of Haryana, Chandigarh, on the subject of "Allotment of quota for worsted yarn for shawl industry". This letter reads as under :—

"With reference to above, I am to inform you that it has been decided to allocate raw wool valued at rupees two lacs to your State for April—September, 1968, period. You are requested to distribute it to only such handloom weavers who are engaged in the manufacture of shawl cloth on handlooms. You have to ensure that there is no sale of raw material or yarn. The yarn would need to be spun from any authorised worsted spinner. I am enclosing herewith a list of such authorised worsted spinning units. You may now approach the State Trading Corporation of India Limited, New Delhi, whom necessary instructions are being given."

From this letter, it is clear that it was not intended that only those units which were registered as Small Scale Industries should be allowed a share of the imported raw wool. This quota was meant to be distributed amongst the handloom weavers engaged in shawl industry. It was, therefore, open to the Director of Industries, to waive the condition with regard to the registration as Small Scale Industries, but then the scheme should have been framed on such a basis that every manufacturer answering to the description of handloom weavers in shawl industry could take benefit of the distribution of imported raw wool. The distribution made by the Director of Industries on October 13, 1969, and January 5, 1970, was, therefore, not in accordance with any scheme framed by the Director of Industries and can be said to have been arbitrary. I, however, in the circumstances of this case, do not wish to interfere with that distribution in view of the directions that I proceed to issue to respondents 1 and 2. The directions are that in future the distribution of the quota of imported raw wool, allotted to the State of Haryana, will be made amongst the eligible manufacturers in pursuance of a scheme of distribution to be prepared by the Director of Industries and publicised at least a month before the proposed date of distribution by a public notice or by individual notices. The eligible manufacturers will be called upon to furnish the required information in accordance with the scheme that is prepared. Their entitlement to the quota falling to their shares will be determined after hearing them and if there is any dispute,

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the reasons for the decision will also be recorded. While making the future distributions, the allotments made to the 29 manufacturers on October 13, 1969, and January 5, 1970, will be taken into consideration and necessary adjustments will be made so that the manufacturers, who have been left out or have been allotted less quota than their entitlement, will be compensated in the future distributions at the expense of those manufacturers who have already been allotted the quota in excess of their entitlement. In effect, the scheme of distribution, when framed, shall be deemed to have come into force before October 13, 1969, and all distributions of raw wool shall be deemed to have been made under that scheme and adjustments made accordingly. During the course of arguments, I put this suggestion to the counsel for the parties and they have generally agreed with the same.

(7) The result is that the allotment of imported raw wool made to various manufacturers on October 13, 1969, and January 5, 1970, is not interfered with and respondents 1 and 2 are directed to carry out the above directions before making any future distribution of the quota of raw wool allotted to the State of Haryana. The writ petition is accordingly disposed of with no order as to costs.

N. K. S.

REVISIONAL CIVIL

Before A. D. Koshal, J.

MANGE RAM AND OTHERS,—Petitioners.

versus

JYOTI PARSHAD AND OTHERS,—Respondents.

Civil Revision No. 1054 of 1969.

April 20, 1969.

Court Fees Act (VII of 1870)—Section 7(iv)(c)—Relief in the plaint—When can be deemed to be 'consequential'—Manager of a joint Hindu family selling family property in his individual capacity and accepting position of a tenant under the vendee—Vendee obtaining order of eviction against the Manager—Other members of the family bringing a suit for injunction against eviction, ignoring the sale—Such suit whether maintainable.