LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

RAM LUBHAYA KAPUR, ETC.,—*Petitioner.*

versus

THE UNION OF INDIA, ETC.,—*Respondents*

Letters Patent Appeal No. 832 of 1970

September 4, 1972.

Constitution of India (1950)—*Articles* 14 *and* 19—*Government solely responsible for importing and distributing raw material—Press Note issued by the Government for distribution of such material to the industrial units on the basis of their establishment during a particular period—Whether violates Articles* 14 *and* 19, *Constitution of India—Fixation of the basic period—Whether arbitrary and discriminatory.*

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. Where the Government issues a Press Note fixing a basic period during which the imported raw material is to be distributed on the basis of the establishment of the industrial units during that period, the fixation of such period is most arbitrary and extraneous to the purpose of importing raw material for the industry as a whole. There is no rational or intelligible differentia why the industrial units established prior to the basic period or thereafter are excluded. The import of the material is made for the industry as a whole and not for any particular units of that industry. The Press Note making only a limited class of industrial units using the raw material eligible for allotment of the imported raw material is *ex facie* discriminatory and imposes unreasonable restrictions upon the rights of the industrial units other than those which existed beyond the basic period. Exclusion of all persons interested in the trade, who had established themselves prior or later than the basic period, is arbitrary. It has no direct relation to the object of proper utilisation of imported raw material by the various units of the industry. No doubt, a further classification within a class can be made but there must be rational and intelligible differentia between the persons included in the smaller class and those excluded therefrom. The date of establishment of an industrial unit is not a sufficient differentia for the purposes of reasonable classification. Hence a Press Note fixing a basic period of the establishment of industrial units for the allocation of the imported raw material is violative of Articles 14 and 19(1) (g) of the Constitution of India.

Letters Patent Appeal under Clause X of the Letters Patent of the Punjab & Haryana High Court, against the judgment of Hon'ble

Mr. Justice D. S. Tewatia, dated 25th November, 1970, in Civil Writ No. 2721 *of* 1970.

Bhagirath Dass, Senior Advocate with S. K. Hirajee, and B. K. Jhingan, Advocate.

J. S Wasu, Advocate-General (Punjab) with S. K. Syal, Advocate for Respondents Nos. 1, 3 and 4.

A. L. Bahri, Advocate, *for Respondent No.*. 2.

H. L. Sibal, Senior Advocate with S. C. Sibal and R. K. Chhibbar, Advocates. *for Respondents No.* 5 & 6.

JUDGMENT

TULI, J.—This appeal under clause 10 of the Letters Patent is directed against the judgment of a learned Single Judge, dated November 25, 1970, dismissing the appellants' Civil Writ No. 2721 of 1970.

(2) Appellant No. 1 is the sole proprietor of New Pearl Textile Industries, Kashmir Road, Amritsar, who installed mine handlooms in the beginning of 1968 and started production as from April 13, 1968. Appellants No. 2 and 3 are partnership firms which installed eight and twelve handlooms and started productoin and manufacture of woollen shoddy blankets as from April 13, 1968, and April 1, 1968, respectively. The appellants are registered as small scale industrial units in the decentralised sector with the Director of Small Scale Industries at Amritsar after due verification as working uniits actually engaged in the production of shoddy woollen blankets and goods. The raw material to produce the shoddy blankets consists of the yarn spun from imported shoddy wool and woollen rags and the indigenous wool. The shoddy wool and woollen rags are now imported from foreign countries by the State Trading Corporation alone as a result of the policy of canalisation announced by the Government of India on November 25, 1967. Prior thereto, the said material was imported by the spinning mills only which, after turning shoddy wool and woollen rags into yarn, used to distribute the same to the actual users. The appellants have set out in detail the history of the import of the shoddy wool and woollen rags in their writ petition with which we are now concerned.

(3) On February 17, 1968, the Government of India issued a letter to the Director of Industries of each State, copies of which were

endorsed to the Regional Textile Commissioner, the State Trading Corporation, and the Secretary, Handlooms Shoddy Weavers and Processors Association, Amritsar (respondent 5), to collect the requisite data to enable the Government of India to decide about the quantum of shoddy wool and woollen rags to be allocated to each particular unit falling in the basic period from October, 1959, to September, 1963. Since the collection of the data took time, respondent 5 made a representation to the Minister for Foreign Trade, Government of India, New Delhi, on March 19, 1970, that the basic period should be altered to include the period from October, 1959, to September, 1967. in order to enable all small scale units, who had established themselves with hard labour after the year 1963 to the date of the announcement of the new shoddy policy, to share in the quota of imported shoddy wool and woollen rags so that they should not be uprooted and thrown out of the trade. A request was made that—

> "In the interest of the small scale handloom shoddy weaving industry in the decentralised sector at large, all units who had established themselves after 1959 till the date of the announcement of the Government policy and are continuously using shoddy on handlooms before the announcement of the Government policy as referred to above should be covered under this policy and the best year of their consumption as per the accounting period should be taken as the basis for fixing up their entitlement."

On July 8, 1970, the Government of India, Ministry of Foreign Trade, issued the following Press Note :—

> "It has been decided by the Government of India in the Ministry of Foreign Trade that allocations of shoddy raw material will be made to the woollen shoddy handloom units on the basis of past consumption of shoddy yarn by them during certain basic period. The basic period fixed for this purpose is from October, 1959, to September, 1967. Shoddy handlooms, whether in the organised or in the decentralised sector, have a choice to select any one year (October to September) of their best performance during the period October, 1959, to September, 1967, for allocation of raw material on the basis of consumption of shoddy yarn in that year. The above benefits shall be admissible to

those handloom units which were in operation during the years preceding September, 1967, but not to those units which were in operation during 1963 or 1964 but were not working effectively during the subsequent years.

The handloom shoddy units are, therefore, requested to furnish their records regarding consumption of woollen shoddy yarn (with documentary evidence) to the concerned Regional Offices of the Textile Commissioner at Bombay, Calcutta, Kanpur, Amritsar, Ahmedabad and Coimbatore, within one month from the date of issue of this Press Note."

From the Press Note it is abundantly clear that all small scale industrial units, like the appellants, which were established after September, 1967, were deprived of the quota of the imported shoddy wool and woollen rags. This Press Note is stated to be for the licensing year 1970-71, that is, from April 1, 1970, to March 31, 1971. The appellants filed C.W. 2721 of 1970, challenging the validity of the said Press Note and their exclusion from the allotment of the quota out of the imported shoddy wool and woollen rags on various grounds.

(4) The respondents to the writ petition were the Union of India (respondent 1), the State Trading Corporation of India Limited (respondent 2), the Textile Commissioner, Minister of Foreign Trade Government of India (respondent 3), the Deputy Director, Regional Office of the Textile Commissioner, Amritsar (respondent 4), the Handlooms Shoddy Weavers and Processors Association (respondent 5) and the Director of Handlooms in the office of Director of Industries, Punjab, Chandigarh (respondent 6). They are the respondents to this appeal also.

(5) Separate written statements were filed on behalf of respondents 1, 3 and 4, respondent 2 and respondent 5. Respondent 6 did not file any written statement. By these written statements the claims of the appellants were denied.

(6) The Government of India, Ministry of Foreign Trade, issues two books every year, known as Red Book and Blue Book. The Red Book contains the guide-lines and the essential features of Import Trade Control policy while the Blue Book is a Handbook of Rules and procedures regarding Import Trade control. The import policy of every year from April to March

succeeding is generally determined by what is contained in these two books. It is, therefore, necessary to refer to the various provisions of these two books in order to decide whether the appellants have any right to share in the quota of shoddy wool and wollen rags for the year 1970-71 for which the writ petition was filed. The relevant paras in the Red Books for the year 1970-71 are noticed below :—

Para 39 defines new units as—

> "those to which no import licences for raw materials, component and spares have been issued for the licensing periods April, 1968—March, 1969 and April, 1969—March, 1970 and which have either had the requisite machinery installed or have made firm arrangements for machinery and premises and power supply, where necessary. If a unit has obtained an allotment of imported raw materials or components through S.T.C. or M.M.T.C. or any other recognised agency, or it has obtained import licences for raw materials and components under the import policy for registered exporters for any of the two licensing periods referred to, it will be treated as an existing unit."

Item 47 in Part A of section III, prescribing for the import of shoddy wool and woollen yarn reads as under :—

'Sr. No. and part of the ITC Schedule	Description	Canalising anegcy	System of licensing
1	2	3	4
*	*	*	*
*	*	*	*
47	Wool raw and wool tops including wool waste, shoddy wool and woollen rags	STC	To be released to actual users on the recommendation of sponsoring authorities
*	*	*	* "

Para 51 deals with canalisation of imports and it is not necessary to set it out. Suffice it to say that for the import of shoddy wool and woollen rags the canalising agency is the State Trading Corporation of India Limited (respondent 2). Para 54 deals with the manner of allotment of imported materials and reads as under :—

"54. In respect of items listed in section III, allotments of imported materials to actual users will be made in the following manner :—

(i) by release orders to be issued on applications made to the licensing authorities concerned, or

(ii) by release orders to be issued on applications made to the sponsoring authorities concerned, or

(iii) by direct allotments to be made by the canalising agency concerned.

The manner of allotment has been indicated against each item in section III. The detailed procedure for submission of applications for allotments of these items is given in Chapter IV of the Import Trade Control Hand Book of Rules and Procedure, 1970."

The relevant paragraphs of the Blue Book are—

Para 69(1) defines "actual users (industrial)" as "those who require raw materials, components, accessories, machinery and spare parts for their own use in an industrial manufacturing process". Para 69(2) sets out the categories of actual users which are three in number, viz.,—

"(i) scheduled industries borne on the registers of the Directorate General of Technical Development,

(ii) scheduled industries not borne on the registers of the Directorate General of Technical Development and non-scheduled industries other than small scale industries, and

(iii) small scale industries."

Para 78 deals with the small scale industries and is in the following terms :—

'78(1) Small scale industries will include all industrial units with a capital investment of not more than Rs. 7.50 lakhs irrespective of the number of persons employed. Capital investment for the purpose of this definition will mean investment in plant and machinery only. When calculating the value of plant and machinery, the original price paid by the owner, irrespective of weather the plant and machinery are new or second-hand, will be taken into account.

(2) In the case of ancillary units engaged in industries listed in Appendix 17, the capital investment limit of Rs. 7.50 lakhs referred to in sub-para (1) of this paragraph has been relaxed and raised up to Rs. 10 lakhs. Therefore, such units having fixed assets upto Rs. 10 lakhs instead of 7.50 lakhs, will also be covered by the definition of small scale industries. Amongst these industries, an ancillary unit will be the unit which produces parts, components, sub-assemblies and tooling for supply against known or anticipated demand of one or more large units manufacturing/assembling complete products, and which is not subsidiary of or controller by any large unit in regard to the negotiation of contracts for supply of its goods to any large units. This shall not, however, preclude an ancillary units from entering into an agreement with a large unit giving it the first option to take the former's output. The units which are set up primarily for the replacement market will also fall within the scope of this criteria. Units manufacturing tools, jigs and fixtures will also be recognised as ancillary units.

(3) The procedure for the submission of import application for raw materials, components and spares, applicable to small scale units, will also apply to such of the non-S.S.I. units as are looked after by State Directors of Industries, State Drugs Controllers, State Directors of Fisheries or Executive Director, Food and Nutrition Board, Government of India, Krishi Bhavan, New Delhi. The flat rate

of application fees prescribed for small scale units will not, however, apply to such units."

Sub-paras (3) and (4) of para 82 prescribe the procedure for issuing release orders by licensing authorities and sponsoring authorities to the actual users and read as under :—

"82. (3) The procedure to be followed in respect of items for which release orders will be issued by licensing authorities to the actual users concerned will be as indicated below :—

(a) The actual user should submit his import application in the prescribed form and manner to the licensing authority concerned through the sponsoring authority concerned. Units which are required to make their applications for licences direct to the licensing authorities concernned under the iimport policy in force should not route their applications through the sponsoring authorities concerned. Applications should be supported by treasury challan showing payment of application fee and other documents as are required in terms of the import pilicy in force.

(b) The import application should be a consolidated application covering all the requirements of raw materials and components in the case of priority industries and raw materials, components and spares in the case of units engaged in industries other than priority industries, pertaining to the end-product (including the related end-products) to which the application pertains. In respect of the canalised items applied for in the said application, the applicant should indicate the item-wise value within the overall value applied for, unless the item, in question, is licensable on restricted basis in which case the value limit will be determined by the sponsiring authority/licensing authority in terms of policy in force.

(c) Where an application is to be made through the sponsoring authority, the said authority will forward the same to the licensing authority concerned with its recommendation in the normal course. In respect of items

licensable to actual users on restricted basis, the sponsoring authority will indicate the value limit against each item within the overall value recommended. The licensing authority will consider the applications on merits in terms of the import policy in force. In respect of canalised items, instead of issuing a direct licence to the applicant, the licensing authority will issue release order in favour of the applicant on the canalising agency concerned in the proforma appearing in Appendix 34.

(d) Where an application is to be made direct to the licensing authority concerned the licensing authority will consider the application on merits in terms of the import policy in force. In respect of canalised items, instead of issuing a direct licence to the applicant, the licensing authority will issue release order in favour of the applicant on the canalising agency concerned, in the proforma appearing in Appendix 34.

(e) The original release order will be sent to the applicant and a copy thereof will be sent by the licensing authority to the canalising agency. For purposes of verification, the licensing authority will also send confirmatory statements every week to the canalising agencies indicating particulars of the release orders issued during the week. In every case, a copy of the letter with which the release order is sent to the applicant, will be forwarded by the licensing authority to the sponsoring authority concerned.

(f) The release order will be valid for a specified period during which the allottee will be required to draw supplies from the canalising agency in accordance with the procedure for allotment/distribution prescribed by such agency.

82(4) The procedure to be followed in respect of items for which release orders will be issued by sponsoring authorities to the actual users concerned will be as indicated below:—

(a) The actual user should submit his application for allotment in respect of canalised items to the sponsoring

authority concerned, in the prescribed form and manner. The application should not include any non-canalised items. No application fee is required to be paid by the applicant for such application.

(b) If the application is in respect of more than one canalised item, the applicant should indicate the value limit in respect of each item within the total value, unless the item in question is licensable on restricted basis to actual users in which case the value limit will be determined by sponsoring authority in terms of the import policy in force.

(c) The sponsoring authority will issue release order(s) on the canalising agency in favour of the applicant. The original release order will be sent to the applicant by the sponsoring authority and a copy thereof to the canalising agency concerned. For purposes of verification, the sponsoring authority will send every week confirmatory statements to the canalising agencies indicating particulars of the release orders issued during the week.

(d) The release order will be issued in the proforma as given in Appendix 34. It will be valid for a specified period during which the allottee will be required to draw supplies from the canalising agency in accordance with the procedure for allotment/distribution prescribed by such agency."

Sub-para (5) of para 82 enumerates the circumstances in which an application for a licence can be refused by the authorities concerned and reads as under :—

"82(5) In order to discourage new industries for the manufacture of items for which adequate capacity exists in the country, and to ensure rational growth, the sponsoring authority will not recommend a licence or an application from a new unit for the import of materials required for the manufacture of an end-product, which is banned in terms of the policy in force, from time to time."

Para 97(1) deals with the procedure for the allotment of imported goods canalised through public sector agencies and reads as under:—

"97(1) In respect of goods the import of which is canalised through a public sector agency for meeting the requirements of actual users, the allotments of imported materials to actual users will be made in the following manner—

(i) by release orders to be issued on applications made to the licensing authorities concerned, or

(ii) by release orders to be issued on applications made to the sponsoring authorities concerned, or

(iii) by direct allotments to be made by the canalising agency concerned."

(7) In the light of the provisions of the two books mentioned above, the learned counsel for the appellants has vehemently argued that respondent 1 has no power to arbitrarily fix the basic period as October, 1959, to September, 1967, for the purposes of allotment of the imported shoddy wool and woollen rags so as to discriminate between the industrial units which had established themselves thereafter. It is stressed that by July 8, 1970, when the impugned Press Note was issued, the Government of India had not yet collected the information or the data with regard to the requirements of the small-scale industrial units requiring imported shoddy wool and woollen rags for their manufacturing business and, therefore, it cannot be urged that the import of that material for the year 1970-71 was going to be made only for those small scale industrial units which had established themselves before September, 1967. The import of that material was being made for the industry as a whole and not for any particular units of that industry. The industry consists of all the small-scale industrial unit engaged in the manufacture of woollen blankets or cloth in which the yarn obtained from shoddy wool and woollen rags is used. Reference in this connection is made to a letter dated January 24, 1970 (copy annexure 'C' to the writ petition) issued by the Deputy Director, Incharge of the Regional Office of the Textile Commissioner, Ministry of Foreign

Trade, Government of India, at Amritsar, to petitioner No. 1 directing him to produce the following records for the period October, 1959, to September, 1969, for verification by February 7, 1970 :—

(1) Purchase records of raw-material year-wise

(2) Production records, viz. Production Registers, Wages Registers, Attendance Registers, Invoices of the processors and clearance records of the Central Excise.

(3) Sales Records.

(4) Balance sheet of income-tax assessment showing the goods account; purchase and sale."

It was further stated in the letter that if petitioner 1 failed to produce the said records, it would be presumed that he had no valid claim or past consumption of shoddy yarn. In reply to this letter, the records were produced on February 3, 1970, which were duly examined by the officers of the Department. It is thus emphasised that the Government did not intend to exclude the appellants from a share in the distribution of the imported shoddy wool and woollen rags for the licensing year 1970-71.

(8) Before considering the submission of the learned counsel, it is necessary to analyse the Press Note dated July 8, 1970, to find out the small-scale industrial units which were to be allowed the quota of the imported shoddy wool and woollen rags. The allocation of shoddy raw material was to be made to the woollen shoddy handloom units on the basis of past consumption of shoddy yarn by them during the basic period from October, 1959, to September, 1967, which means only those woollen shoddy handloom units which had established themselves before October, 1959, and were continuing thereafter. Such units could choose any one year (October to September) of their best performance during the period October, 1959, to September, 1967, for allocation of raw material on the basis of consumption of shoddy yarn in that year. It is, therefore, wrong to suggest that all woollen shoddy handloom units, which had established themselves before September, 1967, were eligible for the allocation of shoddy raw material even if they had established themselves between October, 1959 and September, 1967. The language of the Press Note does not bear that interpretation and thus the representation made by respondent 5 in March, 1970, had not been accepted

by the Government of India *in toto.* In this view of the matter, we are of the opinion that the selection of the woollen shoddy handloom units on the basis of their establishment prior to October, 1959, is most arbitrary and extraneous to the purpose of importing raw material for the industry as a whole. Such an arbitrary classification of woollen shoddy handloom units on the basis of the date of their establishment violates Article 14 of the Constitution of India, particularly when no rational or in telligible differentia has been shown why the woollen shoddy handloom units established prior to October, 1959, were selected and all such units established thereafter were excluded. This is not a case in which import licence or export licence has to be granted but this is a case in which the imported raw material has to be distributed amongst the various units constituting the industry. To such a case the observations made by me in *Messers Jagdish Parshad Babu Ram and others* v. *The State of Haryana and others* (1), (para 5) aptly apply, namely—

> "………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."

In order to distribute such raw material equitably, a scheme for distribution has to be prepared according to which all the units of the industry should be allotted their due share. It has to be remembered that the import of shoddy raw material is for a non-priority industry and is not the case of the respondents that only old established industrial units can make a proper use of this material and not the newly established units. The imported shoddy raw material is used along with the indigenous wool for the manufacture of woollen blankets and tweeds etc., on handlooms requiring no specialised skill. The handloom units do not depend entirely on the imported raw material. It is only a part of the raw material used by them. The handlooms are not meant

(1) 1970 P.L.R. 784.

only for the manufacture of woollen blankets and other cloths from shoddy wool but cloth woven from other yarns like cotton, purely woollen or mixed yarn like terrycot, terrywool, silk, staple etc., can be manufactured on these handlooms. The industry as a whole or any unit thereof does not, therefore, entirely depend on the imported raw material and there is no question of the economy of the country suffering if only some units are allowed the quota out of the imported shoddy raw material to the exclusion of others. It has been stated at the bar by the learned counsel for respondent 5 that for the licensing year 1970-71 the members of the association have been allowed only 39 per cent of the consumption for the best year in the basic period which clearly shows that the members of the association also have to find raw material in substantial quantities from the indigenous markets in order to keep their handlooms working. If the imported material is shared amongst all the industrial units working in the year or years preceding the licensing period, it will not affect the economy of the country on which great stress has been laid. The learned counsel has placed great reliance on the observations of their Lordships of the Supreme Court in *Daya* v. *Joint Chief Controller of Imports and Exports and another* (2), which was a case relating to the export of certain manganese ore. The appellant in that case applied for the grant of a licence to enable him to export certain mangnese ore which he had won from his mines, without reference to the notifications which were impugned in that case. Their Lordships held that section 3 of the Imports and Exports Control Act, 1947, was a valid piece of legislation and clause 6(h) of the Exports Control Order was within the rule-making power of the Central Government under section 3 of the said Act and was constitutional. Clause 6(h) permitted "canalising" or the "channelling" of exports through selected agencies and their Lordships expressed the opinion that the sub-clause did no more than making provision for the classification into groups etc., which was but one of the modes which the "control" under section 3 of the said Act might assume. Under the impugned notification the export trading in manganese ore was confined to three groups of persons engaged in the trade, viz., (a) established shippers, (b) mine-owner exporters and (c) the State Trading Corporation, the former two being allotted quotas based upon the exports effected by them during certain basic years. The necessary result of that notification was that the "new-comers" were eliminated from the export trade

(2) A.I.R. 1962 S.C. 1796.

of manganese ore. One of the complaints of the appellants was that the basic years fixed in the policy statement were arbitrary. But, their Lordships observed that—

> "the fixation of any year must be so, and if the Government fixed as a basic year, a period three years before the announcement of the policy, that is, took into account performance within a period of three years before that date, we do not see any unreasonableness or arbitrariness about it." ...

Their Lordships set out the reasons which had impelled the Union of India to prefer the State Trading Corporation as a principal agency for canalising the export trade in manganese ore. The relevant observations on which reliance has been placed by the learned counsel are contained in paras 16 and 17 of the report but those observations are not applicable to the facts of the present case. As I have pointed out above, the case before us, does not relate to the grant of licence for making exports nor for making imports but the matter concerns the equitable distribution of imported material for a particular industry amongst its various units. To this case, in our opinion, the observations of their Lordships in *Rasbihari Panda etc.*, v. *State of Orissa* (3), apply. In that case, the State of Orissa, in order to regulate the trade in Kendu leaves, issued the Orissa Kendu Leaves (Control and Distribution) Order, 1949, providing for the issue of licences to persons trading in Kendu leaves. That Order was replaced by another Order issued in 1960 which, however, did not make any substantial changes in the principal provisions of the 1949 Order. Thereafter, the State Legislature enacted the Orissa Kendu Leaves (Control of Trade) Act 28 of 1961. Section 3 of the Act provides that no person other than (a) the Government; (b) an officer of Government authorised in that behalf; (c) an agent in respect of the unit in which the leaves have grown shall purchase or transport Kendu leaves. By section 4 it was enacted that the Government shall, after consultation with the Advisory Committee, fix the price at which Kendu leaves shall be purchased by any officer or agent from growers of Kendu leaves during any year. By section 8 the Government was authorised to

(3) A.I.R. 1969 S.C. 1081.

appoint agents for different units to purchase Kendu leaves. Section 10 provides that :

> "Kendu leaves purchased by Government or by their officers or agents under this Act shall be sold or otherwise dispose of in such manner as Government may direct."

The Government of Orissa appointed agents to purchase Kendu leaves and to trade therein. A grower of Kendu leaves moved a petition in the Supreme Court contending that the principal provisions of the Act infringed his Fundamental Rights under Article 19(1) (f) and (g) and Article 14 of the Constitution. The Supreme Court held in *Akadasi Padhan* v. *The State of Orissa* (4), that the Orissa Kendu (Control of Trade) Act, 1961, was a valid piece of legislation and creation of a State monopoly in Kendu leaves was protected by Article 19(6) of the Constitution but the State Government was not competent to implement the provisions of the Act through the agents appointed under the agreements for which a provision had been made under rule 75 framed under that Act. Threafter, certain changes were made in the machinery for implementation of the monopoly by the Government of Orissa. In 1968, the Government of Orissa framed a scheme under which the Government offered to those licensees who, in their view, had worked satisfactorily in the previous year and had paid the amounts due from them regularly to continue their licences with the added provision that the agents with whom they had been working in 1967 would also work during 1968. Rasbihari Panda moved a petition under Article 226 of the Constitution in the Orissa High Court on January 24, 1968, challenging the action of the Government. The High Court expressed the view that the State having assumed monopoly of trading in Kendu leaves was alone entitled to purchase the Kendu leaves from the primary producers and was by section 10 authorised to dispose of the leaves "in such manner as the Government may direct". Section 10, in the view of the High Court, placed no restriction on the manner in which the Government may sell Kendu leaves, and the only question which the Court had to consider was whether in adopting the new scheme of offering to enter into advance purchase contracts by private negotiations for selling Kendu leaves in 1968, the Government had acted *bona fide*.

(4) 1963 Supp. 2 S.C.R. 691.

The opinion of the High Court was that there was nothing on record to show lack of *bona fides* on the parts of the State Government in adopting the manner it did. The petition of Rasbihari was thus dismissed. On appeal to the Supreme Court, their Lordships observed as under:—

> "Section 10 of the Act is a counterpart of section 3 and authorises the Government to sell or otherwise dispose of Kendu leaves in such manner as the Government may direct. If the monoply of purchasing Kendu leaves by section 3 is valid, insofar as it is intended to be administered only for the benefit of the State, the sale or disposal of Kendu leaves by the Government must also be in the public interest and not to serve the private interests of any person or class of persons. It is true that it is for the Government, having regard to all the circumstances, to act as a prudent businessman would, and to sell or otherwise dispose of Kendu leaves purchased under the monopoly acquired under section 3, but the profit resulting from the sale must be for the public benefit and not for private gain.
>
> Section 10 leaves the method of sale or disposal of Kendu leaves to the Government as they think fit. The action of the Government if conceived and executed in the interest of the general public is not open to judicial scrutiny. but it is not given to the Government thereby to create a monopoly in favour of third parties from their own monopoly.
>
> Validity of the schemes adopted by the Government of Orissa for sale of Kendu leaves must be adjudged in the light of Article 19(1) (g) and Article 14. Instead of inviting tenders the Government offered to certain old contractors the option to purchase Kendu leaves for the year 1968 on terms mentioned therein. The reason suggested by the Government that these offers were made because the purchasers had carried out their obligations in the previous year to the satisfaction of the Government is not of any significance. From the affidavit filed by the State Government it appears that the prices fetched at public

auctions before and after January, 1968 were much higher than the prices at which Kendu leaves were offered to the old contractors. The Government realised that the scheme of offering to enter into contracts with the old licensees and to renew their terms was open to grave objection, since it sought arbitrarily to exclude many persons interested in the trade. The Government then decided to invite offers for advance purchases of Kendu leaves but restricted the invitation to those individuals who had carried out the contracts in the previous year without default and to the satisfaction of the Government. By the new scheme instead of the Government making an offer, the existing contractors were given the exclusive right to make offers to purchase Kendu leaves. But insofar as the right to make tenders for the purchase of Kendu leaves was restricted to those persons who had obtained contracts in the previous year the scheme was open to the same objection. The right to make offers being open to a limited class of persons it effectively shut out all other persons carrying on trade in Kendu leaves and also new entrants into that business. It was *ex facie* discriminatory, and imposed unreasonable restrictions upon the right of persons other than existing contractors to carry on business. In our view, both the schemes evolved by the Government were violative of the fundamental right of the petitioners under Article 19(1) (g) and Article 14 because the schemes gave rise to a monopoly in the trade in Kendu leaves to certain traders, and singled out other traders for the discriminatory treatment.

The classification based on the circumstances that certain existing contractors had carried out their obligations in the previous year regularly and the satisfaction of the Government is not based on any real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved i.e., effective execution of the monopoly in the public interest. Exclusion of all persons interested in the trade, who were not in the previous year licensees is *ex facie* arbitrary: it had no direct relation to the object of preventing exploitation of pluckers and growers of Kendu leaves, nor had it any just or reasonable

relation to the securing of the full benefit from the trade, to the State."

On the parity of reasonsing it can be said that the impugned press Note makes only a limited class of industrial units using shoddy raw material eligible for allotment of the imported shoddy wool and woollen rags which is *ex facie* discriminatory and imposes unreasonble restrictions upon the rights of industrial units other than those which existed between October, 1959, and September, 1967. Exclusion of all persons interested in the trade, who had established themselves later than the basic period stated in the Press Note, is *ex facie,* arbitrary: it has no direct relation to the object of proper utilisation of imported shoddy raw material by the various units of the industry. There is no doubt that a further classification within a class can be made but there must be rational and intelligible differentia between the persons included in the smaller class and those excluded therefrom. The date of establishment of an industrial unit is not a sufficient differentia for the purposes of reasonable classification. In the present case, the only basis on which the appellants were not allowed to share the imported raw material was that they had not established themselves before September, 1967. Their consumption of shoddy yarn till September, 1969, had been scrutinised by the officers of the Department and they could be allotted the quota falling to their share on the basis of their consumption of shoddy raw material during the year preceding the licensing year. To exclude all industrial units established after October, 1959, is most unreasonable and arbitrary as the monopoly has been created in favour of those industrial units who had existed between October, 1959, and September, 1967, which cannot be permitted. If the interpretation of the Press Note, as is contended for by the respondents, that all handloom units established before September, 1967, were eligible for the allotment of the quota irrespective of the fact that they had established themselves before October, 1959, or thereafter, is to be accepted, even then there is no reasonable differentia on the basis of which the industrial units like those of the appellants could be deprived of that quota merely because they had established themselves after September, 1967. On the true interpretation of the Press Note, however, only those industrial units are eligible for the quota which had existed right from October, 1959, to September, 1967, and if units other than those have been made eligible, it is not in accordance with the language of that Press Note and on that basis an invidious distinction has

been made between the units established during the period from October, 1959, to September, 1967, and those established thereafter like the appellants which cannot be justified as this classification is most arbitrary.

(9) The learned counsel for respondent 5 also drew our attention to the decision of their Lordships of the Supreme Court in *The Deputy Assistant Iron and Steel Controller, Madras and another v. L. Manickchand Proprietor, Katralla Metal Corporation, Madras* (5), which, however, related to the grant of import licences. The relevant observations, on which reliance is placed, are to be found in para 11 of the report reading as under :—

> "Now, it has to be borne in mind that in the present stage of our industrial development imports requiring foreign exchange have necessarily to be appropriately controlled and regulated. Possible abuses of import quota have also to be effectively checked and this inevitably requires proper scrutiny of the various applications for import licence. In granting licences for imports, the authority concerned has to keep in view various factors which may have impact on imports of other items of relatively greater priority in the larger interest of the overall economy of the country which has to be the supreme consideration, and an applicant has no absolute vested right to an import licence in terms of the policy in force at the time of his application because from the very nature of things at the time of granting the licence the authority concerned may often be in a better position to have a clearer over-all picture of the various factors having an important impact on the final decision on the allotment of import quota to the various applicants. Shri Singhvi's suggestion that the respondent's concern may have to close down if the import licence is not granted according to 1968-69 policy is difficult to accept in view of the assertion in the Writ Petition claiming turnover of 8 to 10 lacs by purchasing raw material from local markets."

No help can be derived from these observations in the present case for the reason that the case before their Lordship related to the import licence while the present case relates to the distribution of

(5) A.I.R. 1972 S.C. 935.

imported shoddy raw material amongst the various units of the industry for whom it is imported. The various factors mentioned by their Lordships do not come into play but the last sentence of the observations definitely goes against the assertion of the respondents that if more units of the industry are made to share the imported shoddy raw material, it will affect the economy and the working of the existing units covered by the impugned Press Note. I have already pointed out that the industrial handlooms working on the shoddy yarn do not entirely depend on that yarn for their existence nor have they been allowed the quota in full according to their requirements. They have perforce to obtain more raw material from the market than the imported raw material. Why should, therefore, some units of industry be given weightage by allocation of a large quota by starving other units engaged in the same manufacturing business? Let all the units compete equally and be allotted whatever raw material is imported according to their consumption in the year preceding the year of import. A bogey has been created in the written statements and it has been emphasised in the argu ments that there are 28 lakh handlooms in the country and if the imported shoddy material has to be distributed amongst them all, a few yards may fall to each one's share which will be highly uneconomical for them as well as the Government. We, however, find no substance in this assertion as the allocation of the imported shoddy material, even according to the impugned Press Note, is not to be made on the basis of loomage, that is, the number of handlooms, but on the basis of consumption of that material during a year of choice out of the years of the basic period. An affidavit dated August 16, 1972, has been filed by Ram Labhaya Kapur appellant denying that the raw wool, shoddy wool and rags etc., which are imported through respondent 2, has to be distributed amongst 28 lakh handlooms. It is stated that respondent 5 has 75 members owning approximately 750 handlooms only while the appellants own 29 handlooms and the members of the Swadeshi Handloom Weavers Association, Amritsar, which are 45 in number including the appellants, own about 200 handlooms. Thus, in the whole of Amritsar there are only 950 handlooms which are working on the weaving of shoddy yarn. In the whole of India there are not more than 1,500 handlooms approximately including 950 of Amritsar. No affidavit rebutting the assertions made by Ram Labhaya Kapur in his affidavit has been filed. It is thus clear that the apprehension of the respondents is not well founded.

(10) It has then been emphasised that the Government of India has to set apart foreign exchange for the import of shoddy raw material which is very limited with the result that the shoddy raw material cannot be imported to meet the requirements of all the units of industry. We find no merit in this submission as well. It has been pointed out that when the Press Note was issued, the Government had not collected the data for the import of shoddy raw material. In fact, the last paragraph of the Press Note gave instructions to the industrial units to send in their requirements to the Regional Offices of the Textile Commissioner. The shoddy raw material was imported on an estimate worth about rupees 45 lakhs and once imported, it had to be distributed equitably amongst all the units of industry effectively in operation.

(11) It is the admitted case of the parties that the appellants are new units, actual users and small scale industries. Their applications for allocation of the shoddy raw material had, therefore, to be processed by the sponsoring authority, that is, respondent 6. They could not be excluded merely on the ground that they had not been established prior to September, 1967. Even under paragraph 82(5) of the Blue Book, it is open to the sponsoring authority not to recommend an application from a new unit for the import of material required for the manufacture of an end-product, which is banned in terms of the policy in force, from time to time, only in those cases in which adequate capacity exists in the country. In the first place this rule does not apply to the facts of the present case as it does not relate to the import of raw material but to the distribution of the imported raw material. Secondly, neither the Government nor the sponsoring or the licensing authority ever declared that adequate capacity existed in the country for the consumption of shoddy raw material and for that reason it could not be allocated to the new units. Thirdly, the manufacture of the end-product, that is, blankets, tweeds etc., made from the shoddy raw material is not banned. It was the statutory duty of the sponsoring authority to consider the applications of the appellants for the allotment of the quota according to their consumption of shoddy raw material during the period of their existence and not to shut them out merely on the ground that applications from industrial units, which had established themselves before September, 1967, could alone be considered on the basis of the impugned Press Note.

(12) I pointed out in *Messers Jagdish Parshad Babu Ram and others* v. *The State of Haryana and others* (1), (supra) that for equitable distribution of imported raw material a scheme should be framed so that all the units of the industry are treated equally and one is not preferred to the other to afford a grievance to the excluded ones. I need not repeat what I said in that judgment but the respondents will be well advised to study that judgment in order to frame schemes for the future years. For the year 1970-71 allocations have already been made to the existing units on the basis of the consumption during the best year of performance chosen by them out of the years of the basic period. On the same analogy the appellants should also be allocated their share according to their consumption on the basis of the best year of their performance on shoddy yarn during the period of their existence to avoid delay in framing a fresh scheme for allocating the shoddy raw material amongst all the units of the industry. For the future it will be better if a scheme is framed well in advance so that all the units of the industry are benefited equally, as has been emphasised by their Lordships of the Supreme Court in *Rasbihari Panda etc.* v. *State of Orissa* (3), (supra).

(13) The learned Single Judge has held the impugned Press Note to be in order and not violative of Articles 14 and 19(1) (g) of the Constitution. He has further held that the appellants were not eligible for the quota of imported shoddy raw material and, therefore, they had no cause for grievance. In the light of the above discussion it is evident that the decision of the learned Single Judge on both the points cannot be upheld.

(14) For the reasons given above, we are of the opinion that the impugned Press Note is violative of Articles 14 and 19(1) (g) of the Constitution. We, accordingly, accept this appeal, set aside the judgment of the learned Single Judge and quash that Press Note. The respondents are directed to consider the cases of the appellants for the allotment of the imported shoddy raw material on the basis of their consumption during the year of their choice since their establishment and to allot them the necessary quota, if they are found eligible on that basis. We are informed that the imported shoddy raw material for the year 1970-71 is still available out of which necessary allotment can be made to the appellants. The

parties are, however, left to bear their own costs as the points of law involved were not free from difficulty.

HARBANS SINGH, C.J.—I agree.

N.K.S.

APPELLATE CIVIL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

M/S. DELUX DHABA, AMBALA CANTT.,—*Petitioner.*

versus

STATE OF HARYANA, ETC.,—*Respondents.*

L.P.A. No. 50 of 1972.

September 11, 1972.

Punjab General Sales Tax Act (XLVI of 1948)—Schedule B, Entry 72—Dhaha and restaurant—Distinguishing features of—Stated—Establishment, if answering the description of a dhaba *or restaurant—Determination of—Whether a mixed question of law and fact—High Court—Whether has the jurisdiction to examine the decision of the Sales-tax authorities on the question—*Dhaba *also selling tea, biscuits and soft drinks—Whether exempt from sales-tax under Entry 72.*

Held, that there are certain distinguishing features between a *dhaba* and a restaurant. The food preparations which are served in a *dhaba* are such which are prepared according to the estimated number of customers visiting the place and preparations to suit each customer's taste are not prepared whereas in the restaurant the customer can walk in and order anything that he wants and if the restaurant can prepare that preparation or has it ready, it will be served. In *dhabas dal* is served free along with the sale of chapatis or rice. This is a peculiar characteristic of a *dhaba.* Another distinguishing feature is the type of service. In a restaurant, service is done by bearers wearing some kind of uniform whereas in the case of a *dhaba* ordinary urchins are employed for the purpose with no regard to the dress that they wear and it is generally seen at *dhabas* that small urchins serve the food with scanty clothing. In a *dhaba* the service is very quick, whereas in a restaurant the customer has to wait for the supply of the food to him for a good bit of time after having ordered the same. Another distinguishing feature is the way of billing and tipping. The *dhabawalas* go on recording what each customer has taken and then ask for the amount without issuing any cash memo or bill. A bill is invariably issued in a restaurant and is brought to the customer by the bearer in order to get a tip for himself. On the other hand, the payment