

be reasonable, if the same were necessary to secure the efficient enforcement of valid provisions. The inclusion of a reasonable margin to ensure effective enforcement will not stamp a law otherwise valid as within legislative competence with the character of unconstitutionality as being unreasonable." These observations, in our opinion, clearly apply and suffice to support the validity of the related provisions here impugned.

Ranedhandas
State of Punjab
Ayyangar J.

The petition fails and is dismissed with costs.

Petition dismissed.

GLASS CHATONS IMPORTERS & USERS'
ASSOCIATION April 30.

UNION OF INDIA

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Import and Export—Decision to canalise import through specialised channel or agency—Constitutional validity—Import and Export Control Act, of 1947, s. 3 —Imports (Control Order, 1955, Para. of India, Arts. 14, 19(f) & (g) and 31.

The appellants were importers and users of glass chatons the import of which was prohibited except under a licence granted by the licensing authorities under the Import and Export Control Act, 1947, and the Imports (Control) Order, 1955. The import was totally prohibited for some time but afterwards it was permitted under the Export Promotion Scheme and licence was issued in favour of the State Trading Corporation. The appellants who made no application for licence contended inter alia that the provisions of para. 6(h) of the Imports (Control) Order, 1955, that the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any licensing authority not to grant licence if the licensing authority decided to canalise imports and the distribution thereof through special

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or specialised agencies or channels are unreasonable restrictions on the right to carry on trade

and to acquire property and as such contravene Arts. 14, 19(1) (f) & (g) and 31 of the Constitution.

Held, that the decision that import of a particular commodity shall be canalised by a selected channel or through & selected agencies is a reasonable restriction in the interest of the Users' Association general public.

The provisions of para. 6(h) of the Imports (Control) Order, Union of India 1955 and s. 3 of the Imports and Exports Control Act, 1947, are valid and do not contravene Arts. 14, and (g). Nor do they contravene Art. 31 of the Constitution as no question of acquisition of any right arises by the refusal of a licence.

ORIGINAL JURISDICTION: Writ Petition No. 65 of 1959.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

B. D. Sharma, for the petitioners.

H. N. Sanyal, Additional Solicitor-General of India,
R. Ganapathy Iyer and T. M. Sen, for the respondents.

1961. April 10. The Judgment of the Court was delivered by

DAS GUPTA, J.—This application under Art. 32 of the Constitution is for the protection of fundamental rights under Art. 19(1)(f) and (g), Art. 31 and Art. 14 of the Constitution. The second and the third applicants are merchants who used to import considerable quantities of glass chatons upto 1957. The first applicant is an Association of merchants, some of whom were importers and some the actual users of glass chatons. Import of glass chatons—which form an important part of the raw materials for the manufacture of glass bangles and other similar articles of wear

—could, be made only on licences granted by licensing authorities. Since 1955 the matter has been regulated by the Imports (Control) Order, 1955. This Order which was made by the Central Government in exercise of powers conferred by sections 3 and 4.A of the Import

and Export Control Act, 1947, prohibited the import of a large number of goods including inter alia glass chatons, except under and in accordance with a licence, granted on application by the licensing 1961 authorities under the Act. Policy statements are Glass Chatons made from time to time by the Government of India, *orders &* indicating the policy for the issue of Import licences.

Users' Association The policy as regards the import of glass chatons for v. the period January, 1957 to the end of March, 1958 Union of India was that the import was totally prohibited. Since Das Gupta J. April 1958, the policy as laid down is that import was permitted only under the Export Promotion Scheme. It appears that in view of this policy statement no application was made at all by the second or third applicants or other merchants for the import of glass chatons, in 1957 or thereafter and no licence was issued to them. Licences were however issued in favour of the State Trading Corporation, for the import of glass chatons of the value of five lakhs of Rupees, for the period April*September, 1958, and again, for the import of these goods of the value of Rs. for the period October, 1958 to March, 1959. The present application was made on April 27, 1959. The prayer is that respondents I and 2—i.e., the Union of India and the Chief Controller, Imports, should be directed (i) to "forbear from giving the State Trading Corporation any preference over the petitioners, in the grant of permits", (ii) not to create a monopoly in favour of the State Trading Corporation, (iii) to cancel the import permits already granted in favour of respondent No. 3—the State Trading Corporation and the petitioners also prayed that the respondent No. 3 should be directed not to import on the basis of import licences already granted.

It has to be mentioned at once that the periods of the import permit "already granted" as referred to in the petition has already expired and consequently, the last two prayers mentioned above cannot possibly be granted. There was no application at all by the second and the third applicants, or any of the merchants who form the association, the 1st appellant for the issue of any import licences; there can be no question therefore of respondents 1 and 2 being given any

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preference over the petitioners in the grant of permits. Nor is there, as far as can be made out, any scheme to issue fresh licences in favour of the

State Trading Corporation so that apart from what has already happened there is no question of any Chatons future action "to create a monopoly in favour of the Importers & State Trading Corporation". Therefore the petitioners Association cannot be given any relief on the present application.

Learned Counsel however submitted that so long as Union of India

Para. 6(h) of the Imports (Control) Order, 1955, remains it will be useless for his clients to make any application Gupta J. for licences.

Para. 6 lays down a number of grounds on which the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any other licensing authority not to grant a licence. The ground mentioned in the clause (h) is "if the licensing authority decide to canalise imports and the distribution thereof through special or specialised agencies or channels". Learned Counsel has argued that this provision in clause (h) of Para. 6 is void being in contravention of Art. 19(1)(f) and (g), and Art. 31 of the Constitution. He also urged that to the extent s. 3 of the Imports and Exports Control Act, 1947, permits the Central Government to make an order as in Para. 6(h) s. 3 itself is 'bad. In view of these submissions the learned Counsel was permitted to urge his contentions against the validity of Para. 6(h) of the Imports (Control) Order, 1955, and also his limited attack against the validity of s. 3 of the Imports and Exports Control Act, 1947.

The requirement as regards any goods that they cannot be imported except and in accordance with a licence is undoubtedly a restriction on the right to carry on trade in such goods and also on the right to acquire property. Learned Counsel does not however contend that by itself this requirement of s. 3 of the Imports and Exports Control Act is an unreasonable restriction. His attack is only against the further restriction which follows from the provisions in s. 6(h) of the Order that the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any licensing authority not to grant licences—"if the licensing authority decides to canalise imports and the distribution thereof

through special or specialised agencies or channels". Glass
 Chatons The argument is that the further restriction on the
 Importers & right to carry on trade and the right to acquire
 proUsers' Association perty that results from this provision is totally
 unreaasonable.

Union of India

It is obvious that if a decision has been made that

Das Gupta J. imports shall be by particular agencies or channels .
 the granting of licence to any applicant outside the agency or
 channel would frustrate the implementation of that decision. If
 therefore a canalization of imports is in the interests of the
 general public the refusal of imports licences to applicants
 outside the agencies or channels decided upon must necessarily
 be held also in the interests of the general public. The real
 question therefore is: Is the canalization through special or
 specialized agencies or channels in the interests of the general
 public.

A policy as regards imports forms an integral part of
 the general economic policy of a country which is to
 have due regard not only to its impact on the internal or
 international trade of the country but also on monetary
 policy, the development of agriculture and industries
 and even on the political policies of the country
 involving questions of friendship, neutrality or hostility
 with other countries. It may be difficult for any court to
 have adequate materials to come to a, proper decision
 whether a particular policy as regards imports is, on a
 consideration of all the various factors involved, in the
 general interests of the public. Even if the necessary
 materials were available it is possible that in many
 cases more than one view can be taken whether a
 particular policy as regards imports—whether one of
 heavy customs barrier or of total prohibition or of
 entrustment of imports to selected agencies or
 channels—is in the general interests of the public. In
 this state of things the burden on the person challenging
 that the government of the country is not right in its

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estimate of the effects of a policy as regards imports in the general interests of the public will be very heavy indeed and when the Government decides in respect of any particular commodity that its import should be by a selected

channel or through selected agencies the Court would proceed on the assumption that that decision is in the interests of the general public unless the contrary is clearly shown. Consequently, we are unable to accept the argument that a decision that imports shall be

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canalised, is per se not a reasonable restriction in the Union of India interests of the general public. We wish to make it clear that while the decision that import of a particular commodity will be canalised may be difficult to challenge, the selection of the particular channel or agency decided upon in implementing the decision of canalisation may well be challenged on the ground that it infringes Art. 14 of the Constitution or some other fundamental rights. No such question has however been raised in the present case. The attack on the validity of Para. 6(h) of the Imports Control Order, 1955, therefore, fails. The contention that s. 3 of the Imports and Exports Control Act, 1947, is bad to the extent that it permits the government to make an order as in Para. 6(h) of the Imports Control Order, 1955, consequently also fails.

The attack on this provision in Para. 6(h) of the order that it contravenes Art. 31 is not even plausible. Assuming for the purpose of this case that the right to carry on trade is itself property, it is obvious that there is no question here of the acquisition of that right. What happens if licence is refused to an applicant under Para. 6(h) is that the applicant can no longer carry on trade in these goods. When licence is granted to the agencies or channels through which imports have been decided to be canalised, these agencies or channels can carry on trade but this is not because of an acquisition by these agencies or channels of the right to carry on trade which the unsuccessful applicants for licence had. Article 31 of the Constitution has therefore no application.

It was next urged that the grant of licences to the third respondent, the State Trading Corporation of India while none has been granted to the second and the third

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U petitioners has resulted in a denial of equal protection of law guaranteed by Art. 14 of the Constitution. If these petitioners had applied for licences ⁹⁶²under the Export Promotion Scheme and still the Glass Chatons State Trading Corporation had been preferred it would ¹¹⁰²perhaps have been necessary to consider whether the ¹¹⁷⁵Association preference accorded to the Corporation was based on reasonable and rational grounds. It is clear however Union of India that though it was open to these petitioners to apply — for licences under the Export Promotion Scheme they Das Gupta J • made no application for licence thereunder. There is

no scope therefore for the argument that they have been discriminated against.

In the result, we are of opinion that the petitioners are not entitled to any relief under Art. 32 of the Constitution. The petition is accordingly dismissed with costs.

Petition dismissed,

HIRALAL PATNI

April rr.

LOONKARAM SETHIYA & OTHERS

(K. SUBBA RAO, RAGHUBAR DAYAL and
J. R. MUDHOLKAR, JJ.)

Civil Procedure—Receiver, continued by Preliminary decree till discharged—Find decree silent—Whether receiver automatically discharged—Lease by receiver to Party—Term of lease existing—Dispossession of lessee by receiver—Summary Procedure or civil suit—Code of Civil Procedure, 1908 (V of 1908), O. 40.

The John Mills comprising of three textile mills and one flour mill were jointly owned by several persons. The financier of the Mills filed a suit for recovery of the amount due to him. During the pendency of the suit a receiver was appointed to take possession of the flour mills but he was not empowered to run the mills directly without further directions of the court. A preliminary decree

was passed in the suit directing among other things that the receiver was to continue until discharged. Thereafter, an arrangement was made for running the mills and the court directed that the appellant, who was one of the co. owners of the mills, be given a lease of the flour mill for three years by the receiver. In the lease deed the appellant undertook to deliver back possession to the receiver upon the expiry