

intimated to the police constable the place to which he would like to go, the constable purchases a railway ticket for that place, gives it to the externee and then makes a note of it on the order. This, however, cannot be regarded as compliance with the provisions of the section under which the place and the route are to be mentioned in the order itself.

The petition must, however, be allowed in view of the decision in *State v. Vithal Waman Mazire*, by which I am bound.

Petition allowed.

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APPELLATE CRIMINAL

Before Mr. Justice Bavdekar and Mr. Justice Chainani.

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Essential Supplies (Temporary Powers) Act (XXIV of 1946), s. 3—Cotton Textiles (Control) Order, 1948, Cls. 5 (1) and (2)—Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (XXXVI of 1947), s. 2 (1)—Cotton Textiles (Raw Materials and Stores) Order, 1946—Order passed by Central Government controlling supply and price of lickerin wire, a non-essential Commodity—Whether order valid.

The words "regulating the production, distribution and supply of essential goods and trade and commerce therein" in s. 3 of the Essential Supplies (Temporary Powers) Act, 1946 do not empower the Central Government to direct by an order that there should be exercised by the Textile Commissioner Control over the supply or the prices of non-essential commodity like lickerin wire, although such commodity is necessary for the manufacture of essential goods.

The Cotton Textile (Control) Order, 1948 issued on August 2, 1948, and the Cotton Textiles (Control) Order, 1948 issued previously on February 19, 1948 are *ultra vires* of the Central Government in so far as they relate to lickerin wire.

Whereas the legislative body is a sovereign body, the body to which powers of subordinate legislation are delegated is not a sovereign legislative body, and it must strictly act within the powers which are conferred upon it. It cannot act beyond the powers, except of course, to the extent that any other powers which it takes upon itself are justified by the doctrine of implied powers; but where the doctrine of implied powers cannot be availed of, it is not permissible to a body, to which

* Criminal Appeal No. 699 of 1950. (With Cri. Appln. No. 703 of 1950).

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powers of subordinate legislation have been given, to say that the power which has been given to it carried with it what may be called subsidiary or ancillary powers of operating beyond the field within which it can operate.

Messrs. Agarwal Ayengar and Co. Ltd. (appellant No. 1) was a private limited Company and appellants Nos. 2 to 5 were its directors. Appellant No. 1 Company had a branch in England and they had imported in the year 1947, 1,319 lbs. of lickerin wire, a material which is used by Cotton mills in the process of carding. Out of this wire appellant No. 1 had disposed of, in accordance with the instructions of the Textile Commissioner, 823 lbs. of wire; and they should have had in their possession the rest of it. They had besides imported, during the months of January 1949 to March 1949, 2,075 lbs. more of the same wire, but without declaring it to the Textile Commissioner. On March 23, 1949 upon information received the premises of appellant No. 1 were raided by the Police and there were found in the possession of appellant No. 1 Company 1,932 lbs. of the lickerin wire imported by appellant No. 1 firm in 1949. On these facts appellants Nos. 1 to 5 were charged with failing to furnish information to the Textile Commissioner within 15 days of the arrival of the consignment of lickerin wire from Manchester and further charged for disposing of about 614 pounds of lickerin wire without the instructions and release order from the Textile Commissioner and aiding and abetting one another and thus having committed offences under s. 2 (1) of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act, 1947 read with s. 3 of the Essential Supplies (Temporary Powers) Act, 1946, read with cls. 5 (1) and 5 (2) of the Cotton Textile (Control) Order, 1948.

The trial Magistrate convicted the Appellants of the offences with which they were charged. In the course of his judgment the Magistrate observed :

“By reading s. 3, it is clear that the powers are vested in the Central Government to pass orders so far as it appears necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at their prices, which cannot be done without also controlling the necessary things which go to make up the price of such commodities or production or supply of such commodities.

“It will be also seen that before the expiry of the Defence of India Rules, the Central Government passed the Order known as the Cotton Textiles (Raw Materials and Stores) Order, 1946, wherein lickerin wire

was one of the articles mentioned as being included in the said Order. Now this Order was continued under s. 5 of Ordinance 18 of 1946 and the same was continued by reason of s. 17 of Act 24 of 1946 till it was repealed by the Cotton Textiles Control Order, 1948 dated February 19, 1948. This fact will show that the Central Government had before them the said Order before passing the Cotton Textiles Control Order, 1948 and the fact that it was repealed after its provisions were incorporated in the Order goes to show that they intended to make provisions for such materials as lickerin wires.

"It is then contended by the defence that if such a construction is resorted to, the list of the necessary articles will always be fluctuating and the public will not be able to know actually what goods are controlled besides the essential commodities. I think this argument cannot hold water because the Government makes it known by a notified order what articles are included in a particular order and what are not included and a very compact system is provided in the said order so as to serve the Order on the person in possession of such articles, giving him sufficient time as to what he has to do with the same. On the whole, therefore, I find that the Central Government was competent to legislate with regard to raw materials such as lickerin wire which are necessary for the production and supply of textiles".

The Accused appealed against their conviction and sentence.

Purushottam Tricumdas, with *R. L. Dalal* and *J. P. Pandit* with *Bhatt & Co.*, for the appellants.

H. M. Choksi, Government Pleader for the State.

BAVDEKAR J. [His Lordship, after narrating facts and dealing with points not material to the report, proceeded:]

The learned counsel, who appears on behalf of the appellants, contends, however, that s. 3 of the Essential Supplies (Temporary Powers) Act, 1946, even after the amendment of the Act, by which cotton and certain other commodities were added to the definition of 'essential commodities' in the Act, did not permit the Central Government to direct by an Order that there should be exercised by the Textile Commissioner control over the supply or the prices of lickerin wire. He says that the section merely permits the Central Government by a notified Order to regulate the production, distribution and supply of an essential commodity and trade and commerce therein. It does not permit directly control over the production, distribution and supply of commodities, which are not essential commodities, nor does it permit the regulation of the trade and commerce in such non-essential commodities. If we look at the section itself, it is obvious that the commodities, of which the production, distribution and supply is permitted to be regulated, are

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essential commodities; and similarly the commodities in which trade and commerce is permitted to be regulated are essential commodities. But even though that is what appears to be the prima facie meaning of the section, it is contended on behalf of the State that, for certain reasons, which it would be convenient to state a little later, if the Central Government found it necessary, in order to control supply and distribution of the essential commodities and trade and commerce therein, to control the production, distribution and supply of the commodities, which are not essential, and trade and commerce in such commodities, s. 3 will permit the Central Government so to provide by a proper Order. The learned Government Pleader, who appears on behalf of the State, says that the words "regulating the production, distribution and supply of essential goods and trade and commerce therein" are very wide words, and in case they can be made to bear a wider interpretation, then, there is no reason why a narrower interpretation should be placed upon them. Now, we quite understand that, in case we find that the words have got two meanings, one, a wider one, and one, a narrower one, and it would be carrying out the intention of the Legislature, that is, to accept the wider meaning would assist in the removal of the mischief which the Act was enacted in order to obviate, then, we should accept the wider meaning rather than the narrower meaning. But if we look at the words themselves, we do not think that it can be said that the words are capable of bearing the interpretation which the learned Government Pleader states that they are. The words "regulating the production, distribution and supply of essential commodities and trade and commerce therein" seem to us to be plain enough, and by no stretch of imagination can it be said that, when the powers of the Central Government are to regulate the production, distribution and supply of essential commodities and trade and commerce therein, nevertheless because it would assist in the regulation of the objects which the Legislature have in view to control the production, distribution and supply of non-essential commodities also, it would be permissible to interpret the words to mean to control the production, distribution or supply or trade and commerce of non-essential commodities. We think that the argument has merely got to be stated in order to make out that it is plainly unmaintainable. The learned counsel, who appears on behalf of the appellants, points out as against this that, when it was thought necessary to give powers to the Central Government by an Order for regulating the production, distribution and

supply of cotton and trade and commerce therein, it was thought necessary to amend the definition of essential commodity and add thereto cotton; and he says that it was further considered necessary to amend the Imperial Act, under the powers given by which the Essential Supplies (Temporary Powers) Act itself was enacted, by adding to the commodities, of which the production, distribution and supply could be regulated, and in which trade and commerce could be regulated, the commodity, cotton. There are other commodities which were also added to the commodities mentioned in the Imperial Act, but for the present argument it would suffice to mention cotton, and he says that, in case it was considered necessary to add cotton to the essential commodities which were defined in the Essential Supplies (Temporary Powers) Act, and to add the commodity 'cotton' to the commodities, with regard to the production, distribution and supply of which the Central Legislature was, during the stated period, empowered to enact, it cannot possibly be argued that, by the same words used in s. 3 of the Essential Supplies (Temporary Powers) Act, powers were intended to be given to the Central Government to control the production, distribution and supply of non-essential commodities and trade and commerce therein. Now, we called upon the learned Government Pleader to tell us why, if those words which find a place in s. 3 of the Essential Supplies (Temporary Powers) Act were of such import, it was considered necessary to amend the Imperial Act, under which powers were conferred upon the Central Legislature to legislate upon the production, distribution and supply of cotton and trade and commerce therein. He says that that may possibly be due to the fact that, whereas in regard to small things like lickerin wire or hydro sulphite of soda there was not what he called an independent market, there is in regard to cotton an independent market, in which both transactions for ready delivery and for future delivery take place. Now, we have no doubt that that was the reason which prompted the amendment of both the Essential Supplies (Temporary Powers) Act as well as the Act of the Imperial Parliament. That explains why it was thought necessary to take any action at all; but it does not explain why, if action could have been taken with regard to the control of the production, distribution and supply of a raw material of the cotton textile industry under the powers conferred by the Central Act, it was considered necessary to amend the definition of essential commodities by adding to it the word 'cotton'. The only argument which can possibly be made in

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that case is that this was done by way of what may be called abundant caution. Undoubtedly, there is a large trade in cotton going on and it was perhaps thought that those who were interested in the cotton trade may not accept as *intra vires* any legislation upon the control over the production, distribution and supply of cotton, if it was embarked upon under the powers given by s. 3 of the Essential Supplies (Temporary Powers) Act. But even so when an inference is sought to be drawn from this, the possibility must remain that the amendments were made by way of abundant caution, and not on the ground that it was not intended that there could not be control of supply and the prices of things required for manufacture of cotton textiles under the powers given to the Central Government by s. 3.

But even if no inference can be drawn from the addition of 'cotton' to the section of the Imperial Act empowering the Indian Legislature to legislate on matters other than those in the Central or the concurrent list in the Government of India Act, 1935, and in the preamble as well as in the definition of essential commodities in the Essential Supplies (Temporary Powers) Act, it must be made out on behalf of the State that the Central Government had got the powers to control the distribution of trade and commerce in raw materials like lickerin wire. The argument which has been advanced before us on behalf of the State is that, if the production of cotton textiles is to be controlled, and distribution also is to be controlled, not only in the sense of how much each individual or corporation should get, but with regard to what should be the price at which they should get it, it would be necessary to control the supply of raw materials or other articles required for cotton manufacture and also their prices. It has been contended on behalf of the appellants that it has not been shown that lickerin wire is absolutely necessary for the manufacture of cotton textiles; but it is in evidence that, wherever there is machinery for carding cotton employed, lickerin wire is necessary, and even though cotton manufacture even with the aid of machine is possible without the use of lickerin wire, it does not follow therefrom that lickerin wire is not required for cotton manufacture. Whenever there is any such contention made that it is necessary to have a particular type of article for cotton manufacture, the argument is not that cotton manufacture is impossible without that article. As a matter of fact, cotton

textiles could be manufactured without any machine altogether only with the use of a spindle and a handloom; but wherever there is machinery employed for carding cotton, it is obvious that, if that machinery requires parts, those parts must be made available; otherwise, there would be great difficulty experienced in manufacturing cotton textiles, and economic manufacture of cotton textiles may become impossible. We are prepared to accept, therefore, the contention which has been raised on behalf of the State that lickerin wire is an article which is essential for the manufacture of cotton textiles; but that would, at the most, present a strong argument in favour of the Legislature empowering the Central Government to regulate its supply and its price, after a proposal for empowering the Central Government in that manner was laid before it. The question is as to whether, merely because lickerin wire is necessary for the manufacture of cotton textiles, it could be said that the Central Government could, in exercise of the powers conferred upon them under s. 3 of the Essential Supplies (Temporary Powers) Act, control its distribution and supply and control its price. The only legal principle upon which an argument in favour of the Central Government having such powers could be based is the principle which would be found enunciated in Maxwell, 9th edn., at page 360, as the principle of Implied Powers. The learned author mentions the principle in this form:

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution."

As an illustration, the learned author mentions (p. 360) :

"...an Act which empowered justices to require persons to take an oath as special constables, and gave them jurisdiction to inquire into an offence, impliedly empowered them to apprehend the persons who unlawfully failed to attend before them for those purposes. Otherwise, the jurisdiction could not be effectually exercised. Where an inferior Court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced.....An Act which authorises the making of by-laws, impliedly authorises the annexation of a reasonable pecuniary penalty for their infringement, recoverable (in the absence of other provision) by action or distress."

Now, the basis of this principle is that, wherever there is conferred either a jurisdiction or a power, there is an implied power to do anything, without which the power or jurisdiction conferred would be nugatory or could not be effectively exercised. It is contended on behalf of the State that in this

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case they have shown that lickerin wire which is required for manufacture of cotton textiles is an essential article, and if that is shown to be essential, then, the power to control the production, distribution and trade and commerce in the cotton textiles would include the power to control the supply and the prices of articles necessary, like the lickerin wire in the present case, upon the principle of implied powers. But even if we assume that a cotton manufacturer, who has got a carding machine, must have lickerin wire, it does not follow that, in order that he should have the lickerin wire, it is necessary that the Central Government should be able to control the supply of such wire or its price. It is true that production cannot go on, unless a manufacturer has lickerin wire, which is necessary for a carding machine; but it appears to us that the object of supplying it to him could be easily achieved, even if there were no powers given to the Central Government to control the production and supply and the prices of such wire. It is not in dispute that prior to the last War lickerin wire was used in the manufacture of cotton textiles, and that too without control. That wire was obviously available, because there were no difficulties in the way of importing it, and the law of supply and demand operated. We can understand an argument that the conditions changed after the commencement of the last War; but even then an adequate supply of lickerin wire for the mills could be ensured by allowing either an open general licence in respect of the lickerin wire, or, in the alternative, allowing the mills themselves licences for its import. We fail to understand that it was absolutely necessary, in order that the mill should have adequate quantities of lickerin wire at a reasonable rate, that it was necessary to control its supply, and to call upon the traders, who had such wire, to sell it to the mills. We do not intend to suggest that it was not convenient, in order that the mill should have an adequate supply of lickerin wire, that Government should have powers to direct any one, who had got lickerin wire, with him, to sell it to a mill, which required the wire, at a fair price. But in this case the contention which has been made is that it was absolutely necessary, in order that the powers under s. 3 should be effectively exercised; that the Central Government should also have powers to control the supply of lickerin wire, and we do not find that that case has been established. As a matter of fact, speaking for myself, I have got some doubt as to whether a case could be made out by leading evidence that there was no better way of ensuring an adequate supply of lickerin wire to

the mills than by giving the Central Government the powers under an Order to control the supply of lickerin wire at a particular rate. Wherever we have found an implied power inferred in certain circumstances, that has been without any evidence; for example, in the case of by-laws, where power is conferred to enact a by-law, without any further evidence, it can easily be seen that such a power would be rendered nugatory, if it did not carry with it the power to pass a by-law providing a pecuniary penalty for its infringement. What the State says in this case is not that the powers given to the Central Government could not be effectively exercised, unless it was held that they had further powers in all circumstances; but the case seems to be that, owing to the difficulties created by the exigencies subsequent upon the termination of the last War, it was difficult, if not impossible, to ensure an adequate supply of lickerin wire to cotton mills without controlling its supply. It is open to doubt whether it is permissible for the State to contend that and to show by leading evidence that they must in the circumstances have these powers. The powers which it is contended are implied must be such that one can see on the face of the enactment that the powers must be possessed in order effectively to exercise the powers which are specifically granted. But even if this was not correct, and even if it was open to the State to show by leading evidence that it was necessary to have these powers in order to effectively exercise the powers of controlling the production, distribution and supply and trade and commerce of cotton textiles, we are not satisfied in this case in the absence of anything more than evidence that the lickerin wire is necessary for the use of carding machine of a cotton mill that it was absolutely necessary for the Central Government to have these powers. The doctrine of implied powers cannot, therefore, avail the State anything.

It is necessary, besides, to point out that, when originally the Essential Supplies (Temporary Powers) Act was enacted, there was conferred, in the first instance, upon the Central Government a general power to regulate the production, distribution and supply of essential commodities and trade and commerce therein. But s. 3 had also got another sub-section. That is sub-s. (2) which, without prejudice to the general powers conferred by sub-s. (1), specifically granted certain powers to the Central Government. They were to provide by an Order among other things control of the price at which the essential goods themselves were to be sold. The Legislature

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obviously, therefore, seems to have thought it necessary to enact certain cases in which, may be in order to avoid a doubt, the specific powers of the Central Government should be enumerated, and if there was an intention that the power to regulate the production, distribution and supply of, and trade and commerce in, the essential commodities should include powers to control the prices of the raw materials, the machinery or parts of the machinery required for cotton manufacture, we should have thought that the Legislature would have mentioned them among the specific powers which it was conferring the Central Government under sub-s. (2). It did not do so at the outset; but it did not do so even when subsequently a question arose as to whether cotton would have to be added as an essential commodity to the commodities defined as essential commodities by the Essential Supplies (Temporary Powers) Act, 1946. This is a strong argument against the State.

As a matter of fact, if we were to accede to the argument which has been adduced on behalf of the State, it is obvious that wide powers could be claimed by the Central Government, and if the power to control the production, distribution and supply of essential commodities and trade and commerce therein carried with it the power to control the distribution, supply and the prices of raw materials required, for example, for cotton manufacture, there is no reason why an argument should not be advanced that the former power included the power to ensure an adequate supply of labour to the cotton mills. We do not intend to suggest that it may not be necessary sometimes for the Central Government to have such powers. As a matter of fact, in England it has become necessary to enact legislation empowering Central Government to control supply of labour in certain industries; but the question is that, if we were to accede to the argument which has been made on behalf of the State, we would necessarily have, as a logical corollary thereto, to accept an argument that s. 3 of the Essential Supplies (Temporary Powers) Act empowered the State to control the supply of labour to the mills manufacturing cotton textiles. I think that we should be very slow before we accept an interpretation which would lead to such far-reaching consequences.

The learned Government Pleader for the State points out, however, that the view has often been taken that, whenever power is conferred upon the Legislature to pass laws in a field mentioned, the power carried with it the power to pass laws

on matters which may be called subsidiary or ancillary. This principle has been well established, and it is not necessary to go, therefore, into the cases which have been cited in support of this proposition. Prior to the Constitution of 1950 it has been well established that both the Central Legislature as well as the Provincial Legislatures were, within the ambits of the powers conferred upon them by the Constitution, sovereign legislative bodies, and they did not exercise their powers by way of delegation from the Imperial Parliament. What the position is under the present Constitution has not, so far as I am aware, been the subject-matter of any decision. In the United States of America, considering the cases upon the subject of delegated legislation, the view seems to have prevailed that both the Congress as well as the State Legislatures were exercising the powers of legislation by delegation; but the cases which have been brought to our notice so far have dealt with Acts of Legislatures acting in what are called fields of legislation or categories, in regard to which they have got power to make laws, and the principle upon which the cases proceed is that the power to make laws in those subjects included the subsidiary and ancillary powers to operate incidentally in other fields and that too to such an extent that where there are what are called exclusive central and provincial lists, a Legislature does not act beyond its powers, because when operating in its legitimate field incidentally it encroaches upon the field which is exclusively reserved for another Legislature. To my mind, that principle cannot possibly be applied, where subordinate powers of legislation are conferred upon a body, whether it may be a Municipality which is empowered to make by-laws, or it may be the Central Government itself, empowered to provide by an order for regulating the production, distribution and supply of, and trade and commerce in, essential commodities like cotton, etc. Whereas the legislative body is a sovereign body, the body to which powers of subordinate legislation are delegated, like the Municipality or the Central Government, is not a sovereign legislative body, and it must strictly act within the powers which are conferred upon it. It cannot act beyond the powers, except, of course, to the extent that any other powers which it takes upon itself are justified by the doctrine of implied powers; but where the doctrine of implied powers cannot be availed of, it is not permissible to a body, to which powers of subordinate legislation have been given, to say that the power which has

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been given to it carried with it what may be called subsidiary or ancillary powers of operating beyond the field within which it can operate. This contention must, therefore, be rejected.

In the result, therefore, to the extent that the Order of 1946 provided that the Central Government could exercise control over the supply of lickerin wire, it was not continued because of the provisions of the Essential Supplies (Temporary Powers) Act, 1946, the powers conferred by this Act not permitting of a fresh Order being issued controlling the supply and price of lickerin wire. It is not in dispute that only those portions of the Order which were issued under the Defence of India Rules would be continued which could have been issued by the Central Government by a fresh order, if necessary, under the provisions of s. 3 of the Essential Supplies (Temporary Powers) Act. Subsequent orders are obviously issued under the powers conferred upon the Central Government under the Essential Supplies (Temporary Powers) Act. As those powers did not include a power to control the distribution and supply of lickerin wire, those Orders were *ultra vires* of the Central Government to the extent mentioned. In our view, therefore, even though on the merits the State had made out its case, the appeal must be allowed upon the ground that the Orders for the contravention of which the appellants were prosecuted were either not in force at the time when the offence is alleged to have taken place, or were *ultra vires* of the powers conferred upon the Central Government under s. 3 of the Essential Supplies (Temporary Powers) Act.

In this view of the case it is not necessary to go into the question whether sanction to the prosecution of the appellants was necessary though sanction would appear to be a matter of procedure.

The appeal must be allowed, and the conviction and the sentences passed upon the appellants must be set aside. Fine, if paid, should be refunded. The wire should be returned to the appellants.

CHAINANI J. I wish to add a few words in regard to the question whether the Cotton Textiles (Control) Order, 1948, issued by the Central Government on August 2, 1948, and the earlier Order issued on the same subject on February 19, 1948, are *intra vires*, in so far as they relate to lickerin wire and whether the Cotton Textiles (Raw Materials and Stores) Order, 1946, issued on September 28, 1946, continued to remain in force

after the Defence of India Rules came to an end on September 30, 1946, in so far as it related to lickerin wire. Under the Government of India Act, 1935, the Central Legislature could not legislate with regard to production, supply and distribution of goods and trade and commerce within the Province. The legislation with regard to these subjects could only be enacted by the Provincial Legislatures. See entries Nos. 27 and 29 in list II in the 7th Schedule to the Government of India Act. When the Defence of India Rules were about to come to an end, it was considered necessary to empower the Central Legislature to legislate with regard to the production, supply and distribution of certain commodities and trade and commerce therein. The Government of India Act was, therefore, amended in March 1946 by the India (Central Government and Legislature) Act, 1946. Section 2 of this Act provided *inter alia* that notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall have power to make laws with respect to trade and commerce (whether or not within a province) in and the production, supply and distribution of, cotton and woollen textiles, paper, foodstuffs petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron and steel and mica. In exercise of the powers conferred on the Central Legislature, the Essential Supplies (Temporary Powers) Ordinance No. XVIII of 1946 was issued on September 25, 1946. This came into force on October 1, 1946, when the Defence of India Rules expired. Section 3 of the Ordinance empowered the Central Government to provide by notified Order for regulating or prohibiting the production, supply and distribution of certain commodities, which were specified as essential commodities in s. 2 of the Ordinance, and trade and commerce in these commodities. The Ordinance also continued certain Orders which were previously in force and which were issued under the Defence of India Rules. The commodities specified as essential commodities in the Ordinance were food-stuffs, cotton and woollen textiles, paper, petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron and steel and mica, i.e., the same commodities in respect of which the Central Legislature was authorised to make laws by the India (Central Government and Legislature) Act, 1946. The Ordinance was replaced by the Essential Supplies (Temporary Powers) Act, 1946, on November 19, 1946. Thereafter it appears that it was considered necessary to empower the Central Government to issue orders with regard to cotton and certain other commodities. The Government of India Act, 1935, was, therefore,

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amended by the Constituent Assembly by the India (Central Government and Legislature) Amendment Act, 1949, on June 4, 1949. By this Act, the Central Legislature was empowered to pass laws with regard to raw cotton, cotton seed, coke and other derivatives of coal. In exercise of the powers conferred on the Central Legislature by the Act passed by the Constituent Assembly, the Essential Supplies (Temporary Powers) (Ordinance No. XIV of 1949) was issued on June 27, 1949. This amended the preamble of the Essential Supplies (Temporary Powers) Act, 1946, and also added the following commodities in the list of essential commodities in s. 2 of that Act, raw cotton, cotton seed and coke and other derivatives of coal. This Ordinance was replaced by the Essential Supplies (Temporary Powers Second Amendment) Act, 1949. It will, therefore, be seen that cotton textiles was one of the essential commodities mentioned in the Essential Supplies (Temporary Powers) Act, 1946, in regard to which the Central Government was authorised to issue orders under s. 3 of the Act. Cotton is an essential raw material necessary for manufacturing cotton textiles. In 1949, both the Government of India Act and subsequently the Essential Supplies (Temporary Powers) Act, 1946, were amended in order to enable the Central Legislature to legislate, and the Central Government to issue orders, with regard to cotton. It has, therefore, been contended by Mr. Purushottam, and there is undoubtedly considerable force in this argument, that the fact that the Legislature amended the Essential Supplies (Temporary Powers) Act, 1946, in order to enable the Central Government to control cotton shows that the Legislature's intention clearly was that the powers of the Central Government should be confined to the commodities specified as essential commodities in s. 2 of the Act and should not extend to other articles, which it might be considered desirable or necessary to control, in order to better achieve the object of the Act, viz. to control the production, supply and distribution of and trade and commerce in the commodities specified as essential commodities. This contention finds support in the provisions of s. 3. Sub-section (1) of this section runs as follows :

“The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.”

The words, "thereof" and "therein" have obviously reference to the words 'essential commodity' used in the earlier part of the sub-section. Sub-section (2) provides *inter alia* as follows :

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

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity,

(c) for controlling the prices at which any essential commodity may be bought or sold,

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity,

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale,

(f) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order."

These provisions, therefore, empower the Central Government to issue orders with regard to essential commodities only and not with regard to any other articles. Mr. Purushottam has, therefore, urged that as lickerin wire is not specified as an essential commodity in the Act, the Central Government was not competent to issue any order with regard to it and that consequently the various orders issued by it, in so far as they relate to lickerin wire, are *ultra vires*.

The learned Government Pleader has, on the other hand, contended that the power to regulate the production, supply and distribution of and trade and commerce in cotton textiles, conferred upon the Central Government by s. 3 of the Essential Supplies (Temporary Powers) Act, includes the power to control any article which is required for making cotton textiles, and that as lickerin wire is necessary for carding cotton, as stated by witness Ramswami, who is a Deputy Director in the Textiles Commissioner's Office, the Central Government was competent to issue orders in regard to it. One of the objects of the Act is to secure equitable distribution and availability at fair prices of cotton textiles. The learned Government Pleader has contended that Government could not effectively regulate the supply and distribution at fair prices of cotton textiles, unless they could also ensure to the mills the supply at reasonable prices of essential raw materials and other articles necessary for manufacturing cotton textiles. With regard to the

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amendments made in the Act and in the Government of India Act in 1949, the learned Government Pleader has urged that these were made, either by way of caution or because there is extensive trade in cotton, which Government wanted to control. He has invited our attention to the decision of the Federal Court in *The United Provinces v. Atiqah Begum*,⁽²⁾ in which it was held that none of the items in the lists in the 7th Schedule to the Government of India Act is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters, which can fairly and reasonably be said to be comprehended in it. This decision was followed by a full bench of this Court in *Fram Nusserwanji Balsara v. State of Bombay*⁽¹⁾ in which it was observed that in construing any particular entry, widest import is to be given to the language used by the Parliament. At page 816, it was observed that the sovereignty of the Provincial Legislature to legislate with regard to the items mentioned in list 2 in the 7th Schedule carries with it the power to legislate with regard to all ancillary and subsidiary matters. The principle laid down in these cases applies, in my opinion, to laws passed by a Legislature, whose powers have to be ascertained by reference to lists, in which the various matters or items on which it could legislate are mentioned in general terms. It cannot apply in cases in which the executive Government or any other authority is empowered by the Legislature to issue orders. The powers which the executive Government or the other authority can exercise in such cases are the powers which are expressly conferred upon it or which are derived by necessary implication from the provisions of the Act, by which the powers are conferred.

It is true that where the Legislature has conferred any power, it must be deemed to have also granted any other power, without which that power cannot be effectively exercised. This principle is enunciated in Halsbury's Laws of England, Vol. XXXI, paragraph 642 (1938 edition) as follows :—

“A duty imposed or a power granted by Parliament carries with it the power necessary for its performance or execution. Similarly, an authority given by Statute to do certain work authorises the doing not only of all things absolutely necessary for its execution, but of all things reasonably necessary.”

Maxwell in his book on Interpretation of Statutes (9th edn.) has observed (p. 360) :

⁽¹⁾ [1940] F. C. R. 110.

⁽²⁾ (1950) 52 Bom. L. R. 799, F. B.

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution."

As an illustration, the learned author has stated :

"An Act which authorises the making of by-laws, impliedly authorises the annexation of a reasonable pecuniary penalty for their infringement, recoverable (in the absence of other provision) by action or distress."

At p. 361, the learned author has observed :

"In the same way, when powers, privileges, or property are granted by statute, everything indispensable to their exercise or enjoyment is impliedly granted..."

The learned Government Pleader has, therefore, contended that the Legislature must be deemed to have impliedly granted powers to the Central Government to issue orders with regard to other articles, without controlling which they could not effectively regulate the production, supply and distribution of and trade and commerce in cotton textiles. Apart from the evidence that lickerin wire is necessary for carding cotton there is however nothing to show that the powers conferred upon the Government by s. 3 to issue orders with regard to cotton textiles would become useless or nugatory or could not be effectively exercised, if they do not exercise control over the supply and distribution of lickerin wire. There is also no evidence to show that but for such control, the mills would not have been or would not be in a position to obtain the supplies of lickerin wire at reasonable prices. On the other hand, the evidence shows that even though the accused had reported to the Textile Commissioner in September 1947 that they had received 1,319 lbs. of lickerin wire, upto March 1949 they had been authorised to sell 823 lbs. only. This would suggest that lickerin wire was not a scarce commodity or an article in short supply. It also appears from the stock register maintained by the accused that lickerin wire was sold by them at different prices ranging from Rs. 2-4-0 per lb. to Rs. 4-8-0 per lb., although their cost was about Re. 1 and some annas per lb. It, therefore, appears that there was no control over the price of lickerin wire. It cannot, therefore, be said that control over lickerin wire was essential in order to enable the Central Government to effectively regulate the production, supply and distribution of, and trade and commerce in cotton textiles.

The words used in both the sub-ss. (1) and (2) of s. 3 are also clear and unambiguous and empower the Central Government to issue orders only with regard to the commodities

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specified as essential commodities in the Act. The inference that the Legislature intended to confine the powers of the Central Government to essential commodities only and did not intend to authorize it to issue orders with regard to other commodities is also borne out by the fact that the Act was amended in 1949 in order to empower the Central Government to issue orders with regard to cotton. I am, therefore, of the opinion that the Central Government was not competent to issue any order in regard to lickerin wire either under the Essential Supplies (Temporary Powers) Ordinance, 1946, or under the Essential Supplies (Temporary Powers) Act, 1946. These enactments continued in force only those orders issued under the Defence of India Rules which could be issued in exercise of the powers conferred by these enactments. As in exercise of these powers the Central Government could not make any order in regard to lickerin wire, the Cotton Textiles (Raw Materials and Stores) Order, 1946, issued under the Defence of India Rules did not continue in force after September 30, 1946, in so far as it related to lickerin wire.

On the merits of the case, there can be little doubt that the firm of Aryan Industries Corporation, behind which the accused have tried to seek shelter, did not exist. The facts that the invoices for the consignment of 2,075 lbs. were sent to the accused, that this consignment was stored in the accused's godown after it had been taken delivery of from the Customs authorities, that at least three rolls of wire out of this consignment were found in the accused's office, when the police raided it on March 23, 1949, and that no representative of the Corporation or its office could be traced, show clearly that the importers of this consignment were the accused. It is also clear that the cases containing lickerin wire had been opened before the police raided the place, for otherwise some of the rolls out of this consignment would not have been found in the accused's office. No complaint about there being any shortage in this consignment was made by the accused to their office in Manchester until March 25, that is, after the police raid, although the goods had been cleared on February 28 and had been opened before March 23. The only inference which can be drawn from these facts and the fact that no report was made to the Textile Commissioner in regard to the arrival of this consignment is that the quantity of wire, which was found short on March 23, must have been disposed of by the accused.

The appeal must, however, be allowed in view of our opinion that the Cotton Textiles (Control) Order, 1948, and the previous

Order issued on the same subject, are *ultra vires*, in so far as they relate to lickerin wire and that the Cotton Textiles (Raw Marterials and Stores) Order, 1946, did not continue in force after September 30, 1946, in so far as it related to lickerin wire.

Appeal allowed.

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Before Mr. Justice Rajadhyaksha and Mr. Justice Dixit.

MURLIDHAR NARAYAN KULKARNI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* DATTAJIRAO GANGARAM SHINDE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

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Bombay Court of Wards Act (I of 1905), s. 14—Claims contemplated by, —Whether claims relating to immoveable property included.

Section 14 (1) of the Bombay Court of Wards Act, 1905 which requires persons having claims against the Government ward or his property, to submit the same to the Court of Wards, applies to claims relating not only to money but also to immoveable property.

Hence a suit by the plaintiff to recover possession of immoveable property, which was under the superintendence of the Court of Wards, is barred under s. 14 (3) if the plaintiff has failed to submit his claim against it to the Court of Wards in conformity with s. 14 (1) of the Bombay Court of Wards Act, 1905.

Second Appeal from the decision of L. Y. Ankalgı, Judge Small Causes Court, Poona (with Appellate Powers).

Suit for possession of immoveable property.

The suit property which was a house belonged originally to a joint Hindu family consisting of two brothers, Ramkrishna and Gopal. Gopal died in 1902 leaving a widow Saraswatibai. Ramkrishna died in 1908 leaving a widow Laxmibai and a son, Laxman. Laxmibai died in 1913 and Laxman died in the same year but after Laxmibai. Gopal's widow Saraswatibai succeeded to the estate as a Hindu widow. On June 19, 1920 Saraswatibai sold the suit property to one Dr. Shinde. The Court of Wards assumed management of Dr. Shinde's property in October 1932. Saraswatibai died on June 15, 1932. The Court of Wards published a notice on March 20, 1933, calling

* Second Appeal No. 106 of 1948.