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v.

STATE OF MYSORE & ANOTHER

May 2, 1975

[H. R. KHANNA, M. H. BEG AND Y. V. CHANDRACHUD, JJ.]

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Constitution—Articles 19(1) (g), 304(b) & 32—Whether a 32 petition maintainable to challenge non-compliance with proviso to Article 304(b)—Mysore Silk Worm Seed & Cocoon (Regulation of Production, Supply & Distribution) Act, 1960—Amendments whether requires fresh sanction of the President under Article 304(b)—Increase in quantum of penalty whether amounts to additional restrictions—Nature of penalty.

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The petitioners challenged the validity of amendments made to Mysore Silk Worm Seed and Cocoon (Regulation of Production, Supply and Distribution) Act, 1960, on the ground that the amendments imposed additional restrictions upon the rights of the petitioners to carry on trade and business without obtaining the Presidential sanction required by proviso to Art. 304(b) of the Constitution.

The Principal Act had received the sanction of the President. The reasonableness of any restrictions either of the principal Act or of the amendments has not been challenged. It is not disputed that the Presidential sanction was not obtained for the amendments.

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The respondents contended—

(1) No petition under Article 32 of the Constitution can lie to challenge restrictions covered by Article 304(b), since the freedom of trade envisaged by Article 304(b) is different from freedom of trade guaranteed by Art. 19(1) (g).

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(2) The amendments did not impose additional restrictions on the petitioners' right to carry on trade and business. Amendments merely introduced the restrictions which were contained in the principal Act and the statutory rules made thereunder and therefore did not impose any additional restrictions.

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Section 12 of the principal Act reads as under :

"12. Penalties—(1) Any person who contravenes the provisions of section 3 or 4 shall be punishable with fine which may extend to one hundred rupees.

(2) any rearer who contravenes the provisions of section 6 or 7 or any other provision of this Act or any rule, order or notification made thereunder, shall be punishable with fine which may extend to fifty rupees.

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(3) Any licensed buyer who contravenes the provisions of sections 7 or 8 or any other provision of this Act or any rule, order or notification made thereunder, shall be punishable with fine which may extend to two hundred and fifty rupees.

(4) Save as otherwise provided in sub-section (1), (2) and (3), any person who contravenes any of the provisions of this Act or of any rule, order or notification thereunder, shall be punishable with fine which may extend to two hundred and fifty rupees.

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(5)(a) Without prejudice to any punishment under the preceding sub-sections the Director of Sericulture in Mysore may, after giving a reasonable opportunity to the person concerned to be heard, suspend or cancel the licence granted to any person for preparing silk-worm seed if such person is convicted at least twice for an offence under this Act.

A (b) Any person aggrieved by the suspension or cancellation of a licence under clause (a) may appeal to the Government within such time as may be prescribed and the decision of the Government on such appeal shall be final and shall not be called in question in any Court of Law".

Amendments to section 12 were made by section 7 and 8 of the Amending Act which read as under :—

B "7. Amendment of section 12. In section 12 of the principal Act,—

(1) in sub-section (1), for the words "one hundred rupees", the words "two hundred rupees" shall be substituted;

C (2) in sub-section (2), for the words and figures "section 6 or 7 or any other provision of this Act or any rule, order or notification made thereunder", the words, figures, brackets and letter, "section 6" or clause (a) of sub-section (1) of section 7" shall be substituted;

(3) after sub-section (2), the following sub-section shall be inserted, namely :—

D "(2A) Any person who contravenes the provisions of clause (b) of sub-section (1) of section 7 or sub-section (2) of that section shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both";

(4) for sub-section (3), the following sub-section shall be substituted, namely :—

E "(3) Any person who contravenes the provisions of section 8 shall be punishable with fine which may extend to two hundred and fifty rupees";

(5) in sub-section (4), for the words, brackets and figures "sub-sections (1), (2) and (3)", the words, brackets, figures and letter "sub-sections (1), (2), (2A) and (3) shall be substituted".

F "8. Insertion of new sections 12A and 12B—After section 12 of the Principal Act, the following sections shall be inserted, namely :—

"12A. Abetment—Whoever abets any offence punishable under this Act shall be punished with the punishment provided in this Act for such offence.

12B. Certain offences to be cognizable—The offences under sub-section (2A) of section 12 shall be cognizable".

G HELD : A citizen is entitled to come to Court with the allegation that his fundamental right to carry on business or trade is affected adversely by a provision which does not legally exist. The restrictions contemplated by Article 304(b) may be of a character different from those of an individual citizen's right to trade, but it cannot be denied that their impact on individual's right is very often direct. [477A-B]

H HELD FURTHER : Stringent regulations were already existing under the principal Act and the rules framed thereunder. No additional restriction is imposed by the Amending Act 4(1). New section 7(2) merely makes evasion of the requirement to conduct business in the cocoon market of an area more difficult. [481C-D, 482-D]

The amendments to section 12 increase the quantum of penalties. But the increase in the penalties is such, in view of the change of the value in money, as not to amount to an appreciable increase in restriction even from the point of view of a person who wants to break the restrictive laws. Penalties are

really part of the procedure for the enforcement of restrictions. They do not create new offences. They only make violation of whatever restrictions on trade and commerce were there more onerous. They, therefore, cannot be looked upon as additional restrictions upon freedom of trade and commerce. [484B-D] A

HELD FURTHER : Amendments requiring some more persons to take out licences, who may not have been previously covered by provisions relating to licences does not constitute a real increase in restriction upon commerce. If the substance of the statutory rule is converted into a statutory provision, there can hardly be said to be additional restrictions imposed by the amending Law. What may be a restriction of his choice, from the point of view of an individual citizen engaged in a trade may not be a restriction on inter-state or intra-state commerce viewed from the angle of the trade as a whole. It is only an additional restriction from the special point of view of Art. 304(b) which requires Presidential sanction. [487C-E] B

Petition dismissed. C

ORIGINAL JURISDICTION : Writ Petitions Nos. 137 and 203 of 1971.

Petitions under Art. 32 of the Constitution of India.

A. K. Sen, K. R. Choudhuri and K. Rajendra Choudhary, for the petitioner (In Petition No. 137). D

K. K. Chaudhuri and K. Rajendra Chowdhary, for the petitioner (In petition No. 203).

F. S. Nariman, Additional-Solicitor General of India and *M. Veerappa*, for the respondents (In petition No. 137).

M. Veerappa, for respondents (In Petition No. 203). E

The Judgment of the Court was delivered by

BEG, J. The two writ Petitions before us under Article 32 of the Constitution of India by persons carrying on the business of silk worm cocoon rearing and reeling challenge the validity of various amendments of the Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) Mysore Act 5 of 1960 (hereinafter referred to as 'the Principal Act') by the Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) (Amendment) Act, 1969 (hereinafter called as the 'Amending Act'). The petitioners alleged that their fundamental rights guaranteed by Art. 19(1) (g) of the Constitution have been illegally interfered with by these amendments in so far as the amendments impose additional restrictions upon these rights without having secured the Presidential sanction required by the proviso to Article 304(b) of the Constitution. F

Article 304 of the Constitution reads as follows :

"304. Notwithstanding anything in Article 301 or article 303, the Legislature of a State may by law— H

- (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported

- A and goods so manufactured or produced ; and
- (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :
- B Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President".

- C It will be seen that Article 301 of the Constitution provides : "Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free". Article 302 limits the powers of Parliament to impose "restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India", to such restrictions "as may be required in the public interest". Restrictions falling under Art. 304(b) must not only be reasonable but are expressly required to be in public interest. It is in order to ensure that purposes of Art. 304(b) are satisfied that a bill in a State Legislature has to obtain the previous sanction of the President. It is worth-remembering that Art. 255 of the Constitution provides for a retrospective curing of the defect of want of previous sanction by the president so that, where this requirement has been overlooked before an enactment, public interest may not suffer by any want of sanction.
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- The only question, on merits, which has been argued before us on behalf of the petitioners is : Do the changes introduced by the Amending Act amount to such additional restrictions as to require the sanction of the President even though the Principal Act had received such sanction at the appropriate stage ? The reasonableness of any restrictions, new or old, has not been challenged before us. All that is urged is that the additional restrictions introduced by the Amending Act were bound to obtain the previous sanction of the President before they are introduced in the form of a Bill in the Legislature of a State because that is the Constitutional mandate.
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- G As the restrictions covered by Article 304(b) have to be those on "freedom of trade and commerce", which is a broader and somewhat different concept than that of an individual citizen's freedom to trade and carry on business, guaranteed by Article 19(1)(g), a preliminary objection has been raised, on behalf of the State of Mysore, that no petition under Article 32 of the Constitution can lie to challenge such restrictions as they could not be on rights guaranteed by Article 19(1)(g). Reliance was placed on *Ram Chandra Pillai & Ors. v. State of Orissa & Ors.*, ⁽¹⁾ where there is an observation indicating that the petitioner under Article 32 could not rely upon the guarantee of freedom of inter-State or intra-State trade, embodied in Article 301 of the Constitution, because "... it is not a fundamental
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(1) [1956] S.C.R. 28.

right conferred by Part III of the Constitution which can be enforced by a petition under Article 32". That was a case relating to a pre-Constitution enactment so that Article 305 of the Constitution was held to provide a complete answer to the petitioners' claim. We do not think that the mere fact that the legality of an enactment is challenged for non-compliance with the proviso to Article 304(b) of the Constitution would take away the character or substance of a petitioner's claim when a citizen comes to Court with the allegation that his fundamental right to carry on business or trade is affected adversely by a provision which does not legally exist. No doubt the restrictions contemplated by Article 304(b) may be of a character different from those on an individual citizen's rights to trade but it cannot be denied that their impact on individual rights is often very direct. The stage for considering the reasonableness of a direct or indirect restriction of a fundamental right arises only where the restriction is otherwise valid. As this Court has repeatedly held, restrictions which have no authority or sanction of law to back them would, *per se*, be bad restrictions. The question of reasonableness of a restriction on individual rights to carry on trade could only arise where the purported law does not fail on other tests.

Learned Counsel for the petitioners had relied upon the case of *Himmattal Harilal Mehta v. the State of Madhya Pradesh & Ors.*,⁽¹⁾ where a reference was made to *Mohd. Yasin v. The Town Area Committee Jalalabad & Anr.*⁽²⁾ He also urged, on the strength of *District Collector of Hyderabad and Ors. v. M/s. Ibrahim & Co. etc.*,⁽³⁾ that Article 301 of the Constitution guarantees not merely freedom of trade and commerce in the abstract. In other words, individuals affected by the violation of the guarantees under Articles 301 and 304 could also complain, at the same time, of infringement of their right guaranteed under Article 19(1)(g) of the Constitution provided a breach of the former involves violation of the latter also as it would ordinarily do. Therefore, we overrule the preliminary objection.

The State of Mysore has tried to justify the want of Presidential sanction to amendments on the ground that they do not impose additional restrictions but are covered by the objects and the provisions of the Principal Act which had already obtained the Presidential sanction at the appropriate stage. Indeed, the amendments, it was urged, merely gave an enacted form to what were previously statutory rules validly made under the authority conferred by Section 18 of the Principal Act. This Section provides as follows :

"18. Power of Government to make rules... (1) The Government may subject to the condition of previous publication, by notification, make rule to carry out *the purposes of this Act.*

(1) [1954] S.C.R. 1122.

(2) [1952] S.C.R. 572.

(3) [1970] 3 S.C.R. 498.

- A (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—
- B (a) the duties and powers of officers authorised to enforce the provisions of this Act and the manner of constitution of market committees and the powers and duties of such committees;
- C (b) the qualifications of persons who produce or prepare silkworm seed for rearing of silkworms and other persons to whom licences under this Act may be granted;
- C (c) the grant of licences and the imposing of conditions in respect of the same and fees for the grant of such licence;
- (d) the sanitary and other conveniences that should be provided for at the production and distribution centres of silkworm seed ;
- D (e) the grant of duplicate licences and the renewal of licences and fees for the same ;
- (f) appeals from any order under this Act, the authority to which such appeals shall lie, the time within which such appeals should be made and the procedure for dealing with such appeals ;
- E (g) the forms of licences to be granted, returns to be submitted and accounts to be maintained under this Act;
- F (h) the fee payable by the licensed buyer in respect of cocoons purchased by him in the cocoon market, such fee not exceeding two per cent of the purchase price;
- (i) the particulars to be furnished by any person of the occurrence of silkworm disease in silkworm or silkworm seed, and the steps to be taken for the prevention or eradication of such disease;
- G (j) generally regulating the procedure to be followed in proceedings under this Act;
- (k) any other matter which may be prescribed under this Act.

H (3) All rules made under this Act shall be laid as soon as may be after they are made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more sessions and if before the expiry of the said period, either House of the State Legislature makes any modification in any rule or directs that any rule shall not have effect and if the modification or direction is agreed to

by the other House, the said rule shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

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The argument before us on behalf of the State is that no amendments falling beyond the purview of the Principal Act and the rules framed thereunder were made, and, therefore, no fresh restrictions could be said to have been introduced by change of form or even of some substance of those restrictions because they were all, in any case, within the purposes of the Principal Act which had already received Presidential sanction.

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According to the State, the Principal Act was introduced principally with the object of improving and maintaining the quality of silk which is manufactured; and, in order to be able to do this, it was submitted, it was necessary to keep a record of all those who breed silkworms in the State of Mysore so that a watch may be kept over the genetic purity of silkworms. It was stated that there is no control over pierced cocoons which become useless for purposes of reeling. Hence, “cocoon” is defined in the Act as a product of mulberry silkworms “either green or stifled, dried or in any other state or condition, but does not include pierced cocoon”. Anyone wanting to use silk for purposes other than reeling could use pierced cocoons. The “cocoon market” is defined in Section 2(b) of the Principal Act as a market established under Section 10 which provides that the Government may, for regulation and distribution of silkworm seed, by notification, specify the places at which cocoon markets, cocoon market yards, and stores may be located, fix the sericultural areas to be served by each cocoon market where silkworm cocoon produced by such areas may be sold, and assign zones and markets in which any licenced buyer may carry on his business. It is also provided in Section 10 that all transactions in the cocoon market shall be by open auction on payment of cash, Silkworm are defined as mulberry silkworms. Silkworms seeds are defined as cocoons of all kinds (excluding cross-breed cocoons) used or reared for purposes of production. A rearer is a person defined as engaged in rearing silkworms for the production of silkworm cocoons, whether for reproduction or reeling. The preamble of the Act shows that it is intended to consolidate the laws “providing for the regulation, of the production, supply, and distribution of silkworm seed and cocoon in the State of Mysore”.

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It is urged on behalf of the State that the whole object of this machinery of regulation and control of production, supply, and distribution of silkworm seed and cocoons was that, by ensuring the high standard of purity and quality of Mysore silk, to promote the business and trade of the Mysore State in silk products, and, thereby, to contribute to the growth and freer flow of trade. It is stated by the petitioners themselves that almost 7 per cent of the population of Mysore State is engaged in various processes connected with the

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A rearing of silkworms and reeling of silk and that over two lakh acres of land in Mysore State are under mulberry cultivation and mulberry is used exclusively to feed silkworms. The raising and maintenance of the quality of silk was, it was submitted, both in the interests of the trade in silk products and in public interest.

B In order to carry out the purposes of the Principal Act, Sections 3 to 9 had, even before its amendments, laid down as follows :

C "3. Regulation of production, etc., of silkworm seed. . . . No person shall produce, prepare, store, transport, sell or otherwise distribute or dispose of silkworm seed, except under and in accordance with the terms and conditions of a licence granted under this Act.

D 4. Regulation of rearing. . . . (1) No person shall rear silkworms from silkworm seed other than silkworm seed obtained from a person who holds a licence under this Act.

(2) The Government may by notification direct that in any specified area no silkworm other than silkworm of specified race shall be reared and that such silkworm shall be reared from silkworm seed obtained from specified sources. On the issue of such notification, no person shall rear in such specified area any other race of silkworm or obtain silkworm seed from any other source.

E 5. Regulation of possession of silkworm seed. . . . No person shall be in possession of silkworm seed unless—

(a) he is a rearer; or

(b) he holds a licence granted under this Act; or

F (c) he is authorised in writing by the prescribed officer to possess silkworm seed.

G 6. Regulation of disposal of silkworm cocoons.—No rearer shall dispose of or agree to dispose of or in pursuance of an agreement entered into, make delivery of silkworm cocoons for reeling or for reproduction except to persons holding a licence under this Act.

H 7. Regulation of sale or purchase of silkworm cocoons for reeling. In any area in which a cocoon market is established under this Act, no rearer shall sell or agree to sell, and no licenced buyer shall purchase or agree to purchase silkworm cocoons, for reeling, except in such cocoon market, and except in accordance with such conditions and in such manner as may be prescribed.

8. Regulation of reeling.—No person shall carry on the business of reeling silkworm cocoons unless he holds a licence granted under this Act.

9. Application for licence.—Every person who desires to obtain a licence under this Act shall make an application to the Licensing Authority in such form as may be prescribed.”

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We find that, as regards regulation of rearing, Section 4(1) is reframed by the Amending Act, so that now it reads as follows :

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No person shall engage in the rearing of silkworms for the production of silkworm cocoons except under and in accordance with the terms and conditions of a licence granted under this Act”.

On behalf of the State, it is pointed out that the amended Section 4(1) does not amplify the restrictions which had to be read with Section 3 of the Principal Act set out above and the detailed provisions of Rules 3, 4, and 5 read with definitions given. After going through these rules, the validity of which was not challenged, we are satisfied that no additional restriction is imposed by the Amending Section 4(1).

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We may here indicate the already stringent regulation or restrictions existing under the Principal Act and the rules framed thereunder which were not challenged. Rule 3(1) contained a prohibition against rearing silkworms by any person from silkworm seed other than silkworm seed obtained from a seed preparer licensed under these rules. Rule 3(2) imposed a duty upon a person who obtains silkworm seed from a licensed seed preparer, to preserve the bill and the egg sheets issued by the licensed seed preparer in respect of the silkworm seed supplied by such seed preparer, so that, when so required by an officer, it could be produced before him. Rule 4(1) prescribed the application form for licensing to be filled in and submitted by Rearing and seed preparers. Rule 5 provided for the grant of various licences after satisfying the licensing authorities of the qualifications of the applicant. It also enable the licensing authority to refuse licenses to limit the number of seed preparers in an area. The reason for the refusal of the grant of the licence by the licensing authority had to be communicated to the unsuccessful applicant. Buying of cocoons for reeling had to be licensed. Section 8 read with Rule 5(b) lays down that no person could carry on “the business of reeling silkworm cocoons” without a license. Section 6, set out above, prohibited disposals and deliveries of silkworm cocoons for reeling and for reproduction except to persons holding licences under the Act. Section 7 prohibited, in cocoon market areas, the rears of silkworm cocoons from selling or agreeing to sell and licensed buyers from purchasing or agreeing to purchase silkworm cocoon for reeling except in the cocoon market of the area. It is difficult for us to see how the mere change of wording in Section 4(1) of the Act had really amplified or increased the restrictions already there.

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Section 4 of the Amending Act amends Section 6 of the Principal Act by omitting words : “for reeling or for reproduction.” Section 5 of the Amending Act says :

A 5. "Substitution of new section for section 7.—For section 7 of the Principal Act, the following section shall be substituted, namely :—

"7. Regulation of sale or purchase of silkworm cocoons for reeling. (1) In any area in which a cocoon market is established under this Act,—

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(a) no rearer shall sell or agree to sell ; and

(b) no person shall purchase or agree to purchase, silkworm cocoons except in such cocoon market and except in accordance with such conditions and in such manner as may be prescribed.

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(2) After a cocoon market is established for any area, no person shall except in such cocoon market, use or permit the use or assist in the use of, any building, room, tent, enclosure, vehicle, vassel or place in such area for the sale or purchase of silkworm cocoons or in any manner aid or abet the sale or purchase of silkworm cocoons".

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Here also we are unable to find any substance in the grievance that there has been any significant increase in restrictions. The new Section 7(2) merely makes evasion of the requirement to conduct business in the cocoon market of an area more difficult.

E The only amendments complained of are those in Section 12 which, in the Principal Act, read as follows :—

"12. Penalties.—(1) Any person who contravenes the provisions of Section 3 or 4 shall be punishable with fine which may extend to one hundred rupees.

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(2) Any rearer who contravenes the provisions of Section 6 or 7 or any other provision of this Act or any rule, order or notification made thereunder, shall be punishable with fine which may extend to fifty rupees.

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(3) Any licensed buyer who contravenes the provisions of Section 7 or 8 or any other provision of this Act or any rule, order or notification made thereunder, shall be punishable with fine which may extend to two hundred and fifty rupees.

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(4) Save as otherwise provided in sub-section (1), (2) and (3), any person who contravenes any of the provisions of this Act or of any rule, order or notification thereunder, shall be punishable with fine which may extend to two hundred and fifty rupees.

(5) (a) Without prejudice to any punishment under the preceeding sub-sections, the Director of Sericulture in Mysore may, after giving a reasonable opportunity to the person concerned to be heard, suspend or cancel the licence granted to any person for rearing

silkworm seed if such person is convicted at least twice for an offence under this Act.

- (b) Any person aggrieved by the suspension or cancellation of a licence under clause (a) may appeal to the Government within such time as may be prescribed and the decision of the Government on such appeal shall be final and shall not be called in question in any Court of law".

Section 7 of the Amending Act lays down :

"7. Amendment of Section 12. In Section 12 of the Principle Act,—

(1) in sub-section (1), for the words "one hundred rupees", the words "two hundred rupees" shall be substituted ;

(2) in sub-section (2), for the words and figures "section 6 or 7 or any other provision of this Act or any rule, order or notification made thereunder", the words, figures, brackets and letter "section 6 or clause (a) of sub-section (1) of section 7" shall be substituted;

(3) after sub-section (2), the following sub-section shall be inserted, namely :—

- (2A) Any person who contravenes the provisions of clause (b) of sub-section (1) of section 7 or sub-section (2) of that section shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both" ;

(4) for sub-section (3), the following sub-section shall be substituted, namely :—

"(3) Any person who contravenes the provisions of section 8 shall be punishable with fine which may extend to two hundred and fifty rupees" ;

(5) in sub-section (4), for the words, brackets and figures "sub-sections (1), (2) and (3)", the words brackets, figures and letter "sub-sections (1), (2), (2A) and 3 shall be substituted".

Section 8 of the Amending Act provides as :

8. Insertion of new section 12A and 12B.—After Section 12 of the Principal Act, the following sections shall be inserted, namely :—

12A. Abetment.—Whoever abets any offence punishable under this Act shall be punished with the punishment provided in this Act for such offence.

- A 12B. Certain offences to be cognizable.—The offences under sub-section (2A) of section 12 shall be cognizable”.

B It was contended that the increase in the penalties would, in any event, be additional restrictions. Learned Counsel for the State replied that penalties are merely sanctions provided for enforcing restrictions and are not additional restrictions on freedom of trade or commerce. It is true that, even without a change in the nature of violations punished, those who contravene the provisions of the Act are subjected to somewhat severer punishment. But, the increase in the penalties is such, in view of the change in the value of money, as not to amount to an appreciable increase in restriction even from C the point of view of a person who wants to break the restrictive laws. Penalties are really part of the procedure for the enforcement of restrictions. They do not create new offences. They only make violation of whatever restrictions on trade and commerce were there more onerous. We therefore, doubt very much whether they could D really be looked upon as additional restrictions upon freedom of trade and commerce.

We may now refer to the cases cited by learned Counsel. In *Atiabari Tea Co. Ltd. V. the State of Assam & Ors.*,⁽¹⁾ this Court held the Assam Taxation (on goods carried by Roads and Inland Waterways) Act, 1954, to be void for not having secured the Presidential E sanction under the proviso to Art. 304(b) before it was introduced in the form of a bill in the State Legislature. In the case before us, the Principal Act had the sanction of the President and enables orders to be passed which had the force of law enabling restrictions to be imposed by rules covered by the purposes of the Act. We have F already cited Section 18 of the Principal Act to show the amplitude of the rule making power which had the required Presidential sanction. And, we have found that the amendments before us only varied the form of restrictiveness without appreciably adding to its content. This case has, therefore, no application to the situation before us.

The Automobile Transport (Rajasthan) Ltd. V. the State of Rajasthan & Ors.⁽²⁾, was relied upon by both sides for the distinction G between mere “regulation” and a restriction contemplated by Article 304(b) of the Constitution. It was held here that taxation of Motor Vehicles was a compensatory measure incidental to transport by Motor Vehicles which did not infringe the guarantee of freedom of trade and commerce conferred by Art. 301 of the Constitution. The effect of such taxation was held to be too remote in its effect upon freedom of trade and commerce to be a restriction contemplated by it. Subba H Rao., J., who agreed with the conclusions of three other learned Judges of this Court so as to form a majority said that the nature and extent of taxation would have to be carefully scrutinized to determine whether it amounted to mere regulation or restriction. He observed (at p. 557) :

(1) [1961] 1 S.C.R. 809.

(2) [1963] 1 S.C.R. 471.

"Of all the doctrines evolved, in my view, the doctrine of 'direct and immediate effect' on the freedom would be a reasonable solvent to the difficult situation that might arise under our Constitution. If a law, whatever may have been its source, directly and immediately affects the free movement of trade, it would be restriction on the said freedom".

Subba Rao, J., summarised the whole law by formulating the following propositions (at p. 564-565) :

"(1) Art. 301 declares a right of free movement of trade without any obstructions by way of barriers, inter-State, or intra-State or other impediments operating as such barriers. (2) The said freedom is not impeded, but, on the other hand, promoted, by regulations creating conditions for the free movement of trade, such as, police regulations, provision for aerodromes, Wharfs, etc., with or without compensation (3) Parliament may by law impose restrictions on such freedom in the public interest ; and the said law can be made by virtue of any entry with respect where-of Parliament has power to make a law. (4) The State also, in exercise of its legislative power, may impose similar restrictions, subject to the two conditions laid down in Art. 304(b) and subject to the proviso mentioned therein. (5) Neither Parliament nor the State Legislature can make a law giving preference to one State over another or making discrimination between one State and another, by virtue of any entry in the Lists, infringing the said freedom. (6) This ban is lifted in the case of Parliament for the purpose of dealing with situations arising out of scarcity of goods in any part of the territory of India and also in the case of a State under Article 304(b), subject to the conditions mentioned therein. And (7) the State can impose a non-discriminatory tax on goods imported from other States or the Union territory to which similar goods manufactured or produced in that State are subject".

In *Khyerbari Tea Co. Ltd. & Anr. V. The State of Assam*, (1) the Assam Taxation (on goods carried by Road or on Inland Water ways) Act (Assam Act X of 1961), was held to be valid. It was pointed out here by Gajendragadkar, J., that, whereas, the ratio of the majority decision in the *Automobile Transport (Rajasthan)* case (supra) was that compensatory taxation would be outside Article 301, and, therefore, of Article 304(b) of the Constitution, in *Atiabari Tea Co's* case (supra), the Court had adopted the view that the compensatory character of a tax may be taken into account in deciding whether it was a restriction under Article 304(b) which was reasonable and in public interest. In *Khyerbari Tea Co's* case (supra), the Court proceeding on the assumption that the tax was not compensatory upheld its validity, presumably because it was considered reasonable and in public interest as a restriction. No such question of reasonableness of any restriction imposed by the Amending Act before us

(1) [1964] 5 S.C.R. 975.

A has been raised by the petitioners. But if the position of even taxation, from the point of view of "restrictions" contemplated by Article 304(b) of the Constitution could be doubtful and depended upon its nature and extent and purpose, we think that there could be no doubt that some additional licensing, at nominal fees charged presumably to defray the expenses of carrying out the objects of the Act, could not be held to be anything more than "regulation" in the cases before us.

The question of regulatory character or otherwise of amending provisions has arisen only in the course of discussion of the question whether any new provisions, possibly resulting in requiring some more persons to take out licenses, who may not have been previously covered by provisions relating to licensing, would be a "restriction" as contemplated by Article 304(b). The learned Additional Solicitor General has contended that such licensing is necessary even for simply maintaining a record of those who carry on various activities in connection with the silk production industry and business so that their purely business and industrial activities may be watched and the quality and reputation of this industry and trade of Mysore may be maintained. Such "regulation", it is contended, ultimately contributes to greater flow and freedom of trade, even if it involves some inconvenience to those who have to take out license which, according to rules, were granted to all those found qualified. We find considerable weight in these arguments. In any case, we are not satisfied that there has been a real increase in restrictions upon commerce in silkworms and cocoons by the provisions of the Amending Act which mostly cover what was already laid down by the statutory rules. If the substance of statutory rules is converted into statutory provisions there could hardly be said to be an addition even in "regulation" imposed by the amending law.

F Learned Counsel for the petitioner cited *Hughes and Vale Proprietary Ltd. v. State of New South Wales & Ors.* (1), where provisions of the State Transport (Co-ordination) Act, of the State of New South Wales, requiring applications to be made for licences, which may be granted or refused by an official in the exercise of an uncontrolled discretion, and of all provisions consequential thereto, in so far as they were sought to be applied to public Motor Vehicles operating in the course of or for the purposes of inter-State trade, were held to be invalid for a contravention of Section 92 of the Constitution of Commonwealth of Australia. This section, as we know, provides that "trade, commerce and inter-course, among States whether by means of internal carriage or motor navigation shall be absolutely free". Here, the Privy Council discussed a large number of cases which had a bearing on the interpretation of Section 92 of the Australian Constitution, including *Commonwealth of Australia v. Bank of New South Wales* (2) case, where it was observed at page 311) :

"Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that

(1) [1955] A.C. 241.

(2) [1950] A.C. 235,311.

in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free".

The Privy Council after quoting this passage said :

"As to the passage in the judgment of the Board in the Bank case upon which counsel for the respondents particularly relied, their Lordships accept without qualification everything that was said by the Board in the Bank case, but they are not aware of any circumstances in the present case giving rise to the situation contemplated in that passage".

Thus, even if we were to apply the test of regulation to distinguish it from restriction which may be deduced from *Hughes'* case (*supra*), it will be seen that a decision on it depends upon the circumstances to which a legislative measure is meant to apply and its consequences. In the case before us, the amendments did not, in our opinion, go beyond a regulation which was fully authorised by the language of the provisions of the Principal Act. Even any additional licensing involved did not go beyond the purview of the provisions of the Principal Act and by the rules framed thereunder. The mere change in form, from statutory rules to statutory provisions, could hardly constitute even additional "regulation". It is only an additional "restriction" from the special point of view of Article 304(b) which requires Presidential sanction.

Although, a petition under Article 32 alleging infringement of the fundamental right guaranteed under Article 19(1)(g) of the Constitution would lie, yet, it has to be remembered that it cannot be allowed until such an infringement, falling outside Article 19(6) of the Constitution, has been established. Now, as we have mentioned earlier, learned Counsel for the petitioners stated that no question about reasonableness of any restriction was being raised by them before us. They rested their case solely on the want of Presidential sanction to additional "restrictions" on freedom of business, trade, and commerce which are not, as we have indicated earlier, to be equated with a mere reduction of the area of freedom of choice of those who are engaged or who want to engage in a business or trade. The passage cited in *Hughes'* case (*supra*), from the *Bank of New South Wales* case (*supra*) makes that clear. In other words, an allegedly additional restriction on trade and commerce is to be judged from a broader and more general angle of the freedom of a particular trade. What may be a restriction of his choice, from the point of view of an individual citizen engaged in a trade, may not be a restriction on inter-State or intra-State commerce viewed from the angle of the trade as a whole. Even if we could not, as we did not, find any additional restrictions on the silkworm and silk production business and industry in the amendments, the petitioners could show that they were unduly hampered by the impugned amendments from carrying on their business.

- A or trade by some unreasonable restrictions on their fundamental rights as individuals engaged in silk production industry or business. But, if that was their grievance, they had to demonstrate an unreasonable-ness of restrictions upon their activities falling outside Article 19(6) before they could succeed. They have not even attempted to do that. It is evident that they could not do so because the licensing fees for various activities to be licensed is quite nominal and they have not been denied any licences they wanted.
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Consequently, we dismiss these petitions with costs.

C.M.P. No. 1929 of 1975 (in Writ Petition No. 137 of 1971) is also dismissed as not pressed.

Petitions dismissed

P.H.P.