1961

March 17.

THE SWADESHI COTTON MILLS CO. LIMITED

v.

THE STATE OF U. P. AND OTHERS

(And Connected Appeals)

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

Industrial Dispute—Delegated Legislation—Statute authorising Government to appoint industrial courts and lay down procedure —Validity of—Condition precedent to making of order—Recital Order, if necessary—Failure to set out condition in order—Effect of —Affidavit showing fulfilment of condition, if admissible—U. P. Industrial Disputes Act, 1947 (28 of 1947), s. 3(c), (d) and (g)— G. O. No. 615 dated March 15, 1951.

Clauses (c), (d) and (g) of s. 3 of the U. P. Industrial Disputes Act, 1947, empower the State Government to make provision, by general or special order, for appointing industrial courts, for referring any industrial dispute for conciliation or adjudication in the manner provided in the order and for any incidental or supplementary matters which appear to the State Government necessary or expedient for the purposes of the order. Section 3 provides that such a general or special order is to be made if, in the opinion of the State Government it is necessary or expedient to do so for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment. On March 15, 1951, the State Government made a general order No. 615 under these provisions but did not recite in the order its opinion as to the existence of the conditions prescribed in s. 3. A reference of an industrial dispute was made under the G. O. and an award was given against the appellant. The appellant contended that the G. O. setting up the industrial tribunals was invalid as s. 3 of the Act was unconstitutional as it delegated essential legislative functions to the Government so far as cls. (c), (d) and (g) were concerned and that the G. O. was bad as the condition precedent for its formulation was not recited in the order itself. The respondent filed an affidavit that Government had formed the requisite opinion before making the G. O.

Held, that s. 3 was not unconstitutional as there was no delegation of essential legislative functions to the Government. The legislature has indicated its policy and has made it a binding rule of conduct. Section 3 lays down the conditions in which the Government is to act; it lays down that Government may make general or special order if the conditions are satisfied; it

also provides what those orders are to contain. All that is left to the Government is to provide by subordinate rules for carrying out the purpose of the legislation.

In re The Delhi Laws Act, 1912, [1951] S.C.R. 747 and *Queen* v. *Burah*, (1878) L.R. 5 I.A. 178, applied.

Held, further, that the G. O. was valid and the failure to mention the condition precedent in the order itself was remedied by the filing of the affidavit. Where a condition precedent has to be satisfied before a subordinate authority can pass an order, (executive or in the nature of subordinate legislation), it is not necessary that the satisfaction of the condition should be recited in the order itself, unless the statute requires it. But it is desirable that it should be so mentioned for then the presumption that the condition was satisfied would immediately arise and the burden would be on the persons challenging the order to show that the recital is not correct. Even when the recital is not made in the order, it will not become void *ab initio* and only a further burden is cast on the authority passing the order to satisfy the court by other means, e. g., by filing an affidavit, that the condition precedent was satisfied.

The State of Bombay v. *Purushottam Jog Naik*, [1952] S.C.R. 674, *Biswabhusan Naik* v. *The State of Orissa*, [1955] 1 S.C.R. 92 and *The State of Bombay* v. *Bhanji Munji*, [1955] 1 S.C.R. 777, applied.

King Emperor v. *Sibnath Banerjee*, [1944] F.C.R. 42 and *King Emperor* v. *Sibnath Banerjee*, [1945] F.C.R. 216, referred to.

Wichita Railroad & Light Company v. *Public Utilities Commission of the State of Kansas*, (1922) 67 L. Ed. 124, *Herbert Mahler* v. *Howard Eby*, (1924) 68 L. Ed. 549 and *Panama Refining Company* v. *A. D. Ryan*, (1935) 79 L. Ed. 446, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 327 of 1958.

Appeal from the judgment and decree dated March 6, 1956, of the Allahabad High Court in Civil Misc. Writ Petition No. 967 of 1953.

WITH

CIVIL APPEALS Nos. 363 to 369 of 1958.

Appeals from the judgments and decrees dated February 1, 1957, of the Allahabad High Court in Civil Misc. Writ Petitions Nos. 51 (Lucknow Bench), 523, 524, 607, 632, 633 and 634 of 1955.

G. S. Pathak and *S.P. Varma*, for the appellant (In C. A. No. 327 of 1958).

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C. B. Agarwala, G. C. Mathur and *C. P. Lal*, for respondents Nos. 3 to 4 (In C. A. No. 327 of 1958).

H. N. Sanyal, Additional Solicitor-General for India, H. S. Brar, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the appellants (In C. As. Nos. 363 to 369 of 1958).

C. B. Agarwala and *C. P. Lal*, for respondent No. 1 (In C. As. Nos. 363 to 369 of 1958).

Bhawani Lal and *Dharam Bhusan*, for respondent No. 4 (In C. A. No. 369 of 1958).

J. P. Goyal, for respondent No. 4 (In C. As. Nos. 366 and 368 of 1958).

S. C. Das in person, for respondent No. 4 (In C. A. No. 367 of 1958).

1961. March 17. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This group of appeals raises a question about the constitutionality of s. 3 of the United Provinces Industrial Disputes Act, 1947, (U. P. XXVIII of 1947), (hereinafter referred to as the Act) and the validity of two general orders passed thereunder on March 15, 1951. The appellants are certain industrial concerns. There were disputes between them and their workmen which were referred for adjudication to industrial tribunals alleged to have been set up under the general orders of March 15, 1951. Certain awards were passed which were taken in appeal by the present appellants to the Labour Appellate Tribunal and they failed there also. They then filed petitions under Art. 226 of the Constitution in the Allahabad High Court challenging the constitutionality of s. 3 of the Act and the validity of the two general orders passed on March 15, 1951, by which industrial tribunals were set up. The High Court held that s. 3 of the Act was constitutional. It however held that the two general orders dated March 15, 1951, were invalid; but it went on to hold that orders of reference passed in these cases were special orders as envisaged under s. 3 of the Act and were therefore not invalid; in consequence it dismissed

the petitions. The appellants then applied for and obtained certificates for leave to appeal, and that is how the matter has come up before us.

It is unnecessary to set out the facts further in respect of these appeals, as the only points argued before us are about the constitutionality of s. 3 and the validity of the two general orders of 1951 and also of the references made in these cases. It is not disputed that if the appellants fail on these points their appeals in this Court must fail. We shall therefore first take up the question of the constitutionality of s. 3 of the Act.

The relevant provision of s. 3 in 1951 with which we are concerned was in these terms:—

> "If, in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision—
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> .....
>
> (c) for appointing industrial courts;
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> (d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order;
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> .....
>
> (g) for any incidental or supplementary matters which appear to the State Government necessary or expedient for the purposes of the order:
>
> ....."

The main contention of the appellants is that s. 3 is unconstitutional as it delegates essential legislative function to the Government so far as cls. (c), (d) and (g) are concerned. Reliance in this connection is placed on the following observations of Kania C. J. in *In re The Delhi Laws Act, 1912* (1), where he was considering the meaning of the word "delegation":—

> "When a legislative body passes an Act it has exercised its legislative function. The essentials of such function are the determination of the legislative policy and its formulation as a rule of conduct.

(1) [1951] S.C.R. 747, 767.

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These essentials are the characteristics of a legislature by itself.....Those essentials are preserved, when the legislature specifies the basic conclusions of fact, upon ascertainment of which, from relevant data, by a designated administrative agency, it ordains that its statutory command is to be effective. The legislature having thus made its laws, it is clear that every detail for working it out and for carrying the enactments into operation and effect may be done by the legislature or may be left to another subordinate agency or to some executive officer. While this also is sometimes described as a delegation of legislative powers, in essence it is different from delegation of legislative power which means a determination of the legislative policy and formulation of the same as a rule of conduct."

To the same effect were the observations of Mukherjea J. in that case at p. 982:

"The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy. 'So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the legislation is to apply'."

What we have to see therefore is whether the legislature in this case performed its essential legislative function of determining and choosing the legislative policy and of formally enacting that policy into a binding rule of conduct. It was open to the legislature to formulate that policy as broadly and with as little or as much details as it thought proper. Thereafter once a policy is laid down and a standard established by statute, there is no question of delegation of

legislative power and all that remains is the making of subordinate rules within prescribed limits which may be left to selected instrumentalities. If therefore the legislature in enacting s. 3 has chosen the legislative policy and has formally enacted that policy into a binding rule of conduct, it could leave the rest of the details to Government to prescribe by means of subordinate rules within prescribed limits. Now s. 3 lays down under what conditions it would be open to Government to act under that section; it also lays down that the Government may act by passing general or special order, once those conditions are fulfilled; it also provides what will be contained in the general or special order of Government. The power given to Government is *inter alia* to appoint industrial courts, to refer any industrial dispute for conciliation or adjudication in the manner provided in the order, and to make any incidental or supplementary provision which may be necessary or expedient for the purposes of the order. Thus the legislature has indicated its policy and has made it a binding rule of conduct. It has also indicated when the Government shall act under s. 3 and how it shall act. It has further indicated what it shall do when it acts under s. 3. In these circumstances we are of the opinion that it cannot be said that the delegation made by s. 3 is excessive and goes beyond permissible limits. The order to be passed by the Government under s. 3 would provide, *inter alia*, for appointment of industrial courts, for referring any industrial dispute for conciliation or adjudication, and for incidental or supplementary matters which may be necessary or expedient. The Government will have to act within those prescribed limits when it passes an order under s. 3 which will have the force of subordinate rules. What has been urged on behalf of the appellants is that the section does not indicate what powers the industrial courts will have, what will be the qualifications of persons constituting such courts and where they will sit; and it is urged that these are essential matters which the legislature should have provided for itself. Reference in this connection was made to the observations of the Privy Council in

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Queen v. *Burah* (1), which was a case of conditional legislation. The Privy Council observed there that the proper legislature having exercised its judgment as to place, person, laws and powers and the result of that judgment having been conditional legislation as to all these things, the legislation would be absolute as soon as the conditions are fulfilled. These observations have in our opinion nothing to do with such matters of detail as the place where a court or tribunal will sit or the qualifications of persons constituting the tribunal; they refer to more fundamental matters when the words "place" and "person" are used therein. The place there must mean the area to which the legislation would apply; and so far as that is concerned, the legislature has determined the area in this case to which s. 3 will apply, namely, the whole of the State of Uttar Pradesh. Similarly, the word "person" used there refers to persons to whom legislation will apply and that has also been determined by the legislature in this case, namely, it will apply to employers and employees of industrial concerns. We have already said that the conditions under which the order will be passed have also been set out in the opening part of s. 3, and how the Government will act is also set out, namely, by referring any industrial dispute that may arise for conciliation or adjudication. As to the power of the industrial court that in our opinion is also provided by s. 3, namely, that an industrial court will adjudicate on the industrial dispute referred to it. Therefore all that was left to the Government to provide was to set up machinery by means of a general order which has the force of subordinate rules to carry out that legislative policy which has been enacted in broad details in s. 3 and has been formally enacted into a binding rule of conduct. We are therefore of opinion that s. 3 is not unconstitutional in any manner, for there is no delegation of essentials of legislative function thereunder. All that has been left to the Government by that section is to provide by subordinate rules for carrying out the purpose of the legislation. We must therefore reject

(1) (1878) L.R. 5 I.A. 178.

the contention that s. 3 is unconstitutional on the ground that it suffers from the vice of excessive delegation.

This brings us to the validity of the general order No. 615 of March 15, 1951, passed under s. 3. The preamble to that order was in these terms:—

> "In exercise of the powers conferred by clauses (b), (c), (d) and (g) of section 3 and section 8 of the U. P. Industrial Disputes Act, 1947, (U. P. Act No. XXVIII of 1947) and in supersession of Government order No. 781(L)/XVIII dated March 10, 1948, the Governor is pleased to make the following order, and to direct, with reference to section 19 of the said Act, that notice of this Order be given by publication in the Official Gazette."

Then follows the order setting up conciliation boards for the purpose of conciliation and industrial tribunals for the purpose of adjudication. The main contention on behalf of the appellants is that s. 3 prescribes certain conditions precedent before an order could be passed thereunder and those conditions precedent must be recited in the order in order that it may be a valid exercise of the power conferred by s. 3. Now there is no doubt that s. 3 gives power to the State Government to make certain provisions by general or special order, if, in its opinion, it is necessary or expedient so to do for securing public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment. The forming of such opinion is a condition precedent to the making of the order. The preamble to the second order also does not contain a recital that the State Government had formed such opinion before it made the order. It is therefore contended on behalf of the appellants that the orders were bad as the condition precedent for their formulation was not recited in the orders themselves. At a later stage the appellants also contended that in any case the orders were bad because as a fact they were passed without any satisfaction of the State Government as required under s. 3, though no affidavit was filed by the appellants in this behalf in support

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of this averment. Unfortunately, the State also filed no affidavit to show that the conditions precedent provided in s. 3 had been complied with, even though there was no recital thereof on the face of the order. We should have expected that even though the appellants did not file an affidavit in support of their case on this aspect of the matter, the State would as a matter of precaution have filed an affidavit to indicate whether the conditions precedent set out in s. 3 had been complied with, considering that it was a general order which was being attacked under which a large number of adjudications must have taken place. The High Court has commented on this aspect of the matter and has said that the State Government did not file any affidavit in this connection to show that as a matter of fact the State Government was satisfied as required by s. 3 even though there was no recital of that satisfaction in the order itself. Taking into account, however, the importance of the matter, particularly as it must affect a large number of adjudications affecting a large number of employers and workmen, we asked the State Government if it desired to file an affidavit before us even at this stage. Thereupon the State Government filed an affidavit sworn by the Secretary to Government, Labour Department. The affidavit says that the drafts of G. O. No. 615 and the consequential order G. O. No. 671 passed on March 15, 1951, were put up before the then labour Minister. The said notifications were issued only after all the aspects of the matter were fully considered by the State Government and it had satisfied itself that it was necessary and expedient to issue the same for the purpose of securing public convenience, and maintenance of public order and supplies and services essential to the community and for the maintenance of employment. We accept this affidavit and it follows therefore that the satisfaction required as a condition precedent for the issue of an order under s. 3 of the Act was in fact there before the order No. 615 was passed on March 15, 1951, followed by the consequential order No. 671 of the same date. In view of this the only question that we have to consider is whether

it is necessary that the satisfaction should be recited in the order itself and whether in the absence of such recital an order of this nature would be bad.

The first contention of Shri Pathak, who appears for one of the appellants, is that where a condition precedent is laid down for a statutory power being exercised it must be fulfilled before a subordinate authority can exercise such delegated power. As to this contention there can be no dispute. Further, according to Shri Pathak, there must be a recital in the order that the condition is fulfilled before the subordinate authority acts in the exercise of such delegated power. If there is no such recital in the instrument by which the delegated power is exercised, the defect cannot be cured by an affidavit filed in the proceedings and the order would be bad *ab initio*. It is urged that where subordinate rules of this nature have to be made and they affect the general public or a section thereof, conditions precedent to the exercise of the power must be recited when the power is exercised in order that the public may know that the rules are legal and framed after satisfying the conditions necessary for the purpose. Moreover, some of the subordinate rules may have to be enforced by courts and tribunals and it is necessary that courts and tribunals should also know by the presence of the recital in the order that the rules are legal and binding and have been framed after the condition precedent had been satisfied. In particular, it is urged that where the rules are of a general nature and are subordinate legislation the satisfaction of the condition precedent becomes a part of the legislative process so far as the subordinate authority is concerned and the defect in legislative process cannot be remedied later by affidavit.

Shri C. B. Aggarwala on the other hand contends that where a statute gives power to make an order subject to certain conditions then unless the statute requires the conditions to be set out in the order it is not necessary that the conditions should appear on the face of the order and in such a case it should be presumed that the condition was satisfied unless the

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contrary is established. He drew a distinction between those cases where the condition precedent is the subjective opinion of the subordinate authority and those where the statute requires a hearing and a finding. In the former case he contends that the presumption should be in favour of the opinion having been formed before the order was passed though in the latter case it may be that the order should show that there was a hearing and a finding.

The power to pass an order under s. 3 arises as soon as the necessary opinion required thereunder is formed. This opinion is naturally formed before the order is made. If therefore such an opinion was formed and an order was passed thereafter, the subsequent order would be a valid exercise of the power conferred by the section. The fact that in the notification which is made thereafter to publish the order, the formation of the opinion is not recited will not take away the power to make the order which had already arisen and led to the making of the order. The validity of the order therefore does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence. It would therefore follow that if by inadvertence or otherwise the recital of the formation of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in proceedings where challenge is made to the validity of the order, that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made.

There is no doubt that where a statute requires that certain delegated power may be exercised on fulfilment of certain conditions precedent, it is most desirable that the exercise should be prefaced with a recital showing that the condition had been fulfilled. But it has been held in a number of cases dealing with executive orders that even if there is some lacuna of

this kind, the order does not become *ab initio* invalid and the defect can be made good by filing an affidavit later on to show that the condition precedent was satisfied. In *The State of Bombay* v. *Purushottam Jog Naik* (1), which was a case relating to preventive detention it was held by this Court that even if the order was defective in form it was open to the State Government to prove by other means that it was validly made. In *Biswabhusan Naik* v. *The State of Orissa* (2), which was a case relating to sanction under the Prevention of Corruption Act, No. II of 1947, this Court held that "it is desirable to state the facts on the face of sanction, because when the facts are not set out in the sanction, proof has to be given *aliunde* that sanction was given in respect of the facts constituting the offence charged; but an omission to set out the facts in the sanction is not fatal so long as the facts can be and are proved in some other way". In a later case in *The State of Bombay* v. *Bhanji Munji* (3) which was a case of requisition under the Bombay Land Requisition Act, this Court held that it was not necessary to set out the purpose of the requisition in the order; the desirability of such a course was obvious because when it was not done proof of the purpose must be given in other ways. But in itself an omission to set out the purpose in the order was not fatal so long as the facts were established to the satisfaction of the court in some other way.

We see no difficulty in following this principle in the case of those orders also which are in the nature of subordinate legislation. Whether orders are executive or in the nature of subordinate legislation their validity depends on certain conditions precedent being satisfied. If those conditions precedent are not recited on the face of the order and the fulfilment of the conditions precedent can be established to the statisfaction of the court in the case of executive orders we do not see why that cannot be made good in the same way in the case of orders in the nature of

(1) [1952] S.C.R. 674. (2) [1955] 1 S.C.R. 92.
(3) [1955] 1 S.C.R. 777.

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subordinate legislation. We cannot accept the extreme argument of Shri Aggarwala that the mere fact that the order has been passed is sufficient to raise the presumption that conditions precedent have been satisfied, even though there is no recital in the order to that effect. Such a presumption in our opinion can only be raised when there is a recital in the order to that effect. In the absence of such recital if the order is challenged on the ground that in fact there was no satisfaction, the authority passing the order will have to satisfy the court by other means that the conditions precedent were satisfied before the order was passed. We are equally not impressed by Shri Pathak's argument that if the recital is not there, the public or courts and tribunals will not know that the order was validly passed and therefore it is necessary that there must be a recital on the face of the order in such a case before it can be held to be legal. The presumption as to the regularity of public acts would apply in such a case; but as soon as the order is challenged and it is said that it was passed without the conditions precedent being satisfied the burden would be on the authority to satisfy by other means (in the absence of recital in the order itself) that the conditions precedent had been complied with. The difference between a case where a general order contains a recital on the face of it and one where it does not contain such a recital is that in the latter case the burden is thrown on the authority making the order to satisfy the court by other means that the conditions precedent were fulfilled, but in the former case the court will presume the regularity of the order including the fulfilment of the conditions precedent; and then it will be for the party challenging the legality of the order to show that the recital was not correct and that the conditions precedent were not in fact complied with by the authority: [see the observations of Spens C. J. in *King Emperor* v. *Sibnath Banerjee* (1), which were approved by the Privy Council in *King Emperor* v. *Sibnath Banerjee* (2)]. Nor are we impressed with the contention of Shri Pathak that conditions become a part of

(1) (1944) F.C.R. 1, 42. (2) (1945) F.C.R. 195, 216-7.

legislative process and therefore where they are not complied with the subordinate legislation is illegal and the defect cannot be cured by an affidavit later. It is true that such power may have to be exercised subject to certain conditions precedent but that does not assimilate the action of the subordinate executive authority to something like a legislative procedure, which must be followed before a bill becomes a law. Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, (be it executive or of the character of subordinate legislation), it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal *ab initio* and only a further burden is thrown on the authority passing the order to satisfy the court by other means that the conditions precedent were complied with. In the present case this has been done by the filing of an affidavit before us. We are therefore of opinion that the defect in the two orders of March 15, 1951, has been cured and it is clear that they were passed after the State Government was satisfied as required under s. 3 of the Act. Therefore Government Orders Nos. 615 and 671 of March 15, 1951, with which we are concerned in the present appeals are valid under s. 3 of the Act.

It remains to consider certain cases cited by Shri Pathak in support of his contention. The first case to which reference may be made is *Wichita Railroad & Light Company* v. *Public Utilities Commission of the State of Kansas* (1). That was a case of a Commission which had to give a hearing and a finding that they were unreasonable before contract rates with a public

(1) (1922) 67 L. Ed. 124.

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utility company could be changed. After referring to s. 13 of the Act under consideration, the U. S. Supreme Court held that "a valid order of the Commission under the act must contain a finding of fact after hearing and investigation, upon which the order is founded, and that, for lack of such a finding, the order in this case was void". It rejected the argument that the lack of express finding might be supplied by implication and by reference to the averments of the petition invoking the action of the Commission and rested its decision on the principle that an express finding of unreasonableness by the Commission was indispensable under the statutes of the State. This case in our opinion is based on the provision of the statute concerned which required such a finding to be stated in the order and is no authority for the proposition that an express recital is necessary in the order in every case before a delegate can exercise the power delegated to it.

The next case is *Herbert Mahler* v. *Howard Eby* (1). That was a case dealing with deportation of aliens. The statute provided for deportation if the Secretary (Labour) after hearing finds that such aliens were undesirable residents of United States. But the Secretary made no express finding so far as the warrant for deportation disclosed it. Nor was the defect in the warrant of deportation supplied before the court. The court held that the finding was made a condition precedent to deportation and it was essential that where an executive is exercising delegated legislative power he should substantially comply with all the statutory requirements in its exercise, and that, if his making a finding is a condition precedent to this act, the fulfilment of that condition should appear in the record of the act, and reliance was placed on the case of *Wichita Railroad & Light Company* v. *Public Utilities Commission* (2). This again was a case of a hearing and a finding required by the statute to be stated in the order and must therefore be distinguished from a case of the nature before us. It may however be added that the court did not discharge the deportees and

(1) (1924) 68 L. Ed. 549. (2) (1922) 67 L. Ed. 124.

gave a reasonable time to the Secretary (Labour) to correct and perfect his finding on the evidence produced at the original hearing or to initiate another proceeding against them.

The last case is *Panama Refining Company* v. *A. D. Ryan* (1). In that case s. 9 (e) of the National Industrial Recovery Act of 1933 was itself struck down on the ground of excessive delegation, though it was further held that the executive order contained no finding and no statement of the grounds of the President's action in enacting the prohibition. This case in our opinion is not in point so far as the matter before us is concerned, for there the section itself was struck down and in consequence the executive order passed thereunder was bound to fall.

We are therefore of opinion that s. 3 of the Act is constitutional so far as cls. (c), (d) and (g) are concerned and orders Nos. 615 and 671 passed on March 15, 1951 are legal and valid. In the circumstances it is not necessary to consider whether the High Court was right in holding that the orders of references in these cases were special orders under s. 3 and the references under those orders were therefore valid. In this view of the matter, the appeals fail and are hereby dismissed. In the circumstances we pass no order as to costs.

Appeals dismissed.

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(1) (1935) 79 L. Ed. 446.