MEGHRAJ KOTHARI

v.

DELIMITATION COMMISSION & ORS.

September 20, 1966

[K. SUBBA RAO, C. J., M. HIDAYATULLAH, S. M. SIKRI, J. M. SHELAT AND G. K. MITTER, JJ.]

Constitution of India, 1950, *Arts.* 82, 327, 328 *and* 329—*Order under s.* 9 *of the Delimitation Commission Act*, 1962—*published under s.* 10(1)—*Whether law under Art.* 327—*Therefore whether can be questioned in a court or whether Art.* 329 *applies.*

Delimitation Commission Act, 1962, *ss.* 8, 9 *and* 10—*Scope of.*

By a notification of the Delimitation Commission dated July 24, 1964 issued in terms of s. 10(1) of the Delimitation Commission Act, 1962, Ujjain City, which had been a general constituency, was notified as reserved for the Scheduled Castes.

The appellant who was a resident of Ujjain and a citizen of India, filed a petition under Art. 226 praying for a writ of *certiorari* for quashing the notification on the ground that he had a right to be candidate for parliament from the Ujjain City constituency which had been taken away. The petition was rejected by the High Court on the short ground that the notification could not be questioned in any court because under Art. 329(a) of the Constitution the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Art. 327 or Art. 328, could not be called in question in any court.

In appeal to this Court it was contended on behalf of the appellant that the impugned notification, which was an order under s. 9 and published in accordance with the provisions of s. 10(1) of the Act, was not a law within the meaning of s. 329; that in any event under s. 10(2) such an order was to have the force of law but was not itself a law; and that the notification was not made under Art. 327 but Art. 82 of the Constitution.

HELD : dismissing the appeal,

The impugned notification was a law relating to the delimitation of constituencies or the allotment of seats to such constituencies made under Art. 327 of the Constitution.

An examination of ss. 8 and 9 of the Act showed that the matters therein dealt with were not to be subject to the scrutiny of any court of law. Section 10(2) clearly demonstrates the intention of the legislature that the orders under ss. 8 and 9 published under s. 10(1) were to be treated as law which was not to be questioned in any court. There was very good reason behind such a provision. If the orders made under ss. 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. [410 B-C, G, H]

Although an order under s. 8 or s. 9 published under s. 10(1) is not part of an Act of Parliament, its effect is to be the same. Section 10(4) puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Art. 327. [415 E]

A Case law referred to.

Article 82 merely envisages that upon the completion of each census the allocation of seats in the House of the People and the division of each State into territorial constituencies may have to be readjusted. It is Art. 327 which enjoins upon Parliament to make provision by law from time to time with respect to all matters relating to or in connection with elections to either House of Parliament, delimitation of constituencies and all B other matters necessary for securing the due constitution of such House or Houses. [406 C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 843 of 1966.

Appeal by special leave from the judgment and order dated February 25, 1965 of the Madhya Pradesh High Court in Misc. C petition No. 72 of 1965.

G. N. Dikshit, K. L. More and *R. N. Dixit*, for the appellant.

Niren De, Addl. Solicitor-General, R. Ganapathy Iyer and *R. H. Dhebar* and *B. R. G. K. Achar*, for respondents Nos. 1-4.

S. S. Shukla, for respondent No. 5. D

The Judgment of the Court was delivered by

Mitter, J. This is an appeal by special leave from a judgment and order dated February 25, 1965 of the Madhya Pradesh High Court at Jabalpur in Miscellaneous Petition No. 72 of 1965. The High Court summarily dismissed the petition under Art. 226 of E the Constitution praying for a writ of *certiorari* for quashing a notification issued in pursuance of sub-sec. (1) of s. 10 of the Delimitation Commission Act, 1962 in respect of the delimitation of certain Parliamentary and Assembly constituencies in the State of Madhya Pradesh. The petition was rejected on the short ground that under Art. 329(a) of the Constitution the said noti- F fication could not be questioned in any court. Article 329—which is relevant for our purpose—reads:

"Notwithstanding anything in this Constitution

(*a*) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;" G

Before us it was contended that the notification referred to is not law and secondly it was not made under Art. 327 of the Constitution.

H The facts are shortly as follows: The petitioner is a resident of Ujjain and a citizen of India. He had been a voter in all the previous general elections and still claims to be a voter in Daulatganj, Ward No. 5, in the Electoral Roll of Ujjain. He claims

to have a right to contest the election to any Assembly or Parliamentary constituency in the State of Madhya Pradesh. The impugned notification which was published in the Gazette of India Extraordinary on July 24, 1964 shows Ujjain as a constituency reserved for the scheduled castes. It was made in pursuance of sub-s. (1) to s. 10 of the Delimitation Commission Act, 1962 and recites that proposals of the Delimitation Commission for the delimitation of Parliamentary and Assembly constituencies in the State of Madhya Pradesh had been published on October 15, 1963 in the Gazette of India and in the official gazette of the State of Madhya Pradesh and that after considering all objections and suggestions the Commission determined that the territorial constituencies into which the State of Madhya Pradesh shall be divided for the purpose of elections to the House of the People and the extent of each such constituency shall be as shown in Table A.

Respondent No. 1 to the petition was the Delimitation Commission, respondent No. 2 was its Chairman and respondents Nos. 3 and 4 were its members. The petition alleges many acts of omission and commission on the part of the Commission and its Chairman, but we are not here concerned with all that. If we come to the conclusion that the High Court was not justified in rejecting the petition on the short ground noted above, we shall have to send the case back to the High Court for trial on merits. According to the petitioner, Ujjain city has been from the inception of the Constitution of India a general constituency and by the fact of the city being converted into a reserved constituency his right to be a candidate for Parliament from this constituency has been taken away.

In order to appreciate the working of the Delimitation Commission and the purpose which it serves reference must be made to the following Articles of the Constitution. Article 82 provides that—

> "Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:
>
> Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House."

This Article is a verbatim copy of clause (3) of Art. 81 of the Constitution before its amendment in 1956.

A Article 327 of the Constitution provides that—

> "Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the
B preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses."

It was argued before us that the Delimitation Commission Act, 1962, was not passed by Parliament under Art. 327, but
C under Art. 82 and as such courts of law are not precluded from entertaining the question as to the validity of a notification under the Delimitation Commission Act because of the opening words of Art. 329. Article 82, however, merely envisages that upon the completion of each census the allocation of seats in the House of the People and the division of each State into territorial constituencies may have to be readjusted. It is Art. 327 which enjoins
D upon Parliament to make provision by law from time to time with respect to all matters relating to or in connection with elections to either House of Parliament....delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

E The preamble to the Delimitation Commission Act 1962 shows that it is an Act to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States
F and for matters connected therewith. Article 82 only foreshadows that readjustment may be necessary upon completion of each census, but Art. 327 gives power to Parliament to make elaborate provision for such readjustment including delimitation of constituencies and all other matters connected therewith as also elections to either House of Parliament. Section 3 of the Delimitation Commission Act (hereinafter referred to the Act) enjoins upon the Central
G Government to constitute a Commission to be called the Delimitation Commission as soon as may be after the commencement of the Act. Section 4 of the Act provides that it is the duty of the Commission to readjust on the basis of the latest census figures the allocation of seats in the House of the People to the several States.....and the division of each State into territorial constituencies for the purpose of elections to the House of the People.
H Section 8 of the Act makes it obligatory on the Commission to determine by order, on the basis of the latest census figures, and having regard to the provisions of Arts. 81, 170, 330 and 332, the

number of seats in the House of the People to be allocated to each State and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State as also the total number of seats to be assigned to the Legislative Assembly of each State and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State. The delimitation of the constituencies is provided for in s. 9, sub-s. (1) of the Act which reads:—

> "The Commission shall, in the manner herein provided, then distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State to single-member territorial constituencies and delimit them on the basis of the latest census figures, having regard to the provisions of the Constitution and to the following provisions, namely:
>
> (*a*) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience;
>
> (*b*) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;
>
> (*c*) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and
>
> (*d*) constituencies in which seats are reserved for the scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest."

Under sub-s.(2) of the section the Commission shall publish its proposals for the delimitation of the constituencies together with the dissenting proposals, if any, of an associate member, specify a date on or after which the proposals will be further considered and consider all objections and suggestions which may have been received by it before the day so specified. Thereafter its duty is by one or more orders to determine the delimitation of Parliamentary constituencies and the delimitation of assembly constituencies of each State. Publicity is to be given to the orders of the Commission under s. 10(1) of the Act. Sub-section (1) prescribes that each of its orders made under s. 8 or s. 9 is to be published in the Gazette of India and the official gazettes of the States con-

A cerned. Sub-section (3) provides that as soon as may be after such publication every such order shall be laid before the House of the People and the Legislative Assemblies of the States concerned.

The legal effect of the orders is given in sub-ss. (2) and (4) of s. 10 of the Act. Under sub-s. (2) "upon publication in the B Gazette of India, every such order shall have the force of law and shall not be called in question in any court". Under sub-s. (4) (omitting the irrelevant portion) the readjustment of representation of the several territorial constituencies in the House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in any such order shall apply C in relation to every election to the House or to the Assembly, as the case may be, held after the publication in the Gazette of India of that order and shall so apply in supersession of the provisions relating to such representation and delimitation contained in the Representation of the People Act, 1950, and the Delimitation of Parliamentary and Assembly Constituencies Order, 1961.

D It will be noted from the above that it was the intention of the legislature that every order under ss. 8 and 9 after publication is to have the force of law and not to be made the subject matter of controversy in any court. In other words, Parliament by enacting s. 10(2) wanted to make it clear that orders passed under ss. 8 and 9 were to be treated as having the binding force of law and not E mere administrative directions. This is further reinforced by sub-s. (4) of s. 10 according to which the readjustment of representation of the several territorial constituencies in the House of the People and the delimitation of those constituencies provided for in any such order (*i.e.* under s. 8 or s. 9) was to apply in relation to every election to the House held after the publication of the order in the F Gazette of India and these provisions contained in the order were to supersede all provisions relating to such representation and delimitation contained in the Representation of the People Act, 1950 and the Delimitation of Parliamentary and Assembly Constituencies Order, 1961. In effect, this means the complete effacement of all provisions of this nature which were in force before the passing of the orders under ss. 8 and 9 and only such orders were to hold G the field. Therefore although the impugned notification was not a statute passed by Parliament, it was a law relating to the delimitation of constituencies or the allotment of seats to such constituencies made under Art. 327 of the Constitution.

Our attention was drawn to Bill No. 98 or 1962 for providing H for readjustment of allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State into territorial constituencies for elections to the House of the People and Legislative

Assemblies of the States and for matters connected therewith and the statement of objects and reasons therefor as appearing in the Gazette of India Extraordinary, Part II, Section 2 of the year 1962 which mentions Arts. 82 and 170(3) of the Constitution. The said statement further shows that as the 1961 census had been completed a readjustment of the several matters earlier mentioned was necessary inasmuch as there had been a change in the population figures from the 1951 census. This, however, does not mean that the Delimitation Commission Act was a law made under Art. 82. Article 82, as already noted, merely envisaged that readjustment might be necessary after each census and that the same should be effected by Parliament as it may deem fit, but it is Art. 327 which casts a duty on Parliament specifically to make provision with respect to all matters relating to or in connection with elections to either House of Parliament etc. the delimitation of constituencies and all other necessary matters for securing the due constitution of such House or Houses.

With regard to s. 10 (2) of the Act it was argued by counsel for the appellant that the order under s. 9 was to have the force of law, but such order was not itself a law. To support this contention our attention was drawn to a judgment of the Supreme Court of Canada in *His Majesty the King* v. *William Singer*(1). There sub-s. (2) of s. 3 of the War Measures Act of 1914 provided that all orders and regulations made under this section shall have the force of law and shall be enforced in such manner and by such courts, officers and authorities as the Governor-in-Council may prescribe and may be varied, extended or revoked by any subsequent order or regulation. By s. 4 of the Act the Governor-in-Council was empowered to prescribe the penalties that may be imposed for violating the orders and regulations under this Act and also to prescribe whether such penalties shall be imposed upon summary conviction or upon indictment. Purporting to act under the provisions of the War Measures Act the Governor-in-Council made an order to the effect that no retail druggist shall sell or supply straight, Codeine, whether in powder, tablet or liquid form, or preparations containing any quantity of any of the narcotic drugs mentioned in Parts I and II of the Schedule to the Opium and Narcotic Drug Act, mixed with medicinal or other ingredients, except upon the written order or prescription therefor signed and dated by a physician, veterinary surgeon or dentist.... The order further provided that any person found in possession of Codeine or preparation containing narcotic drugs mentioned in Parts I and II of the Schedule to the Opium and Narcotic Drug Act mixed with other medicinal or other ingredients, save and except under the authority of a licence from the Minister of Pensions and National Health shall be liable to the penalties provided upon

(1) [1941] Canada Law Reports, 111.

A summary conviction under the provisions of s. 4 of the Opium and Narcotic Drug Act.

The Opium and Narcotic Drug Act which was a Dominion statute contained a schedule wherein narcotic drugs were enumerated, but which up to the date of the order in question did not contain Codeine. Under the provisions of that order a charge was laid B against the respondent, a retail druggist, that he did without lawful excuse disobey an Act of the Parliament of Canada for which no penalty or other mode of punishment was expressly provided, to wit; Paragraph two of regulations dated 11th day of September, 1939, of the War Measures Act, by wilfully selling Codeine, a narcotic drug mentioned in Part Two of the Schedule to the C Opium and Narcotic Drug Act without first having had and obtained a written order or prescription therefor signed and dated by a physician, contrary to sec. 164, Criminal Code of Canada. Section 164 of the Criminal Code enacted specifically that the offence must consist in wilfully doing any act which was forbidden or omitting to do any act which was required to be done by D an Act of the Parliament of Canada. In his judgment Rinfret, J. observed: (page 114):—

> "It is an Act of the Parliament of Canada which the guilty person must have disobeyed without lawful excuse."

His Lordship agreed with the Trial Judge and with the majority E of the Court of Appeal that in the premises s. 164 of the Criminal Code had no application and said:—

> "Of course, the War Measures Act enacts that the orders and regulations made under it "shall have the force of law. It cannot be otherwise. They are made to be obeyed and, as a consequence, they must have the force of law. But F that is quite a different thing from saying that they will be deemed to be an Act of Parliament."

Taschereau, J. put the matter rather tersely (*see* at p. 124):—

> "An order in Council is passed by the Executive Council, and an Act of Parliament is enacted by the House of Commons and by the Senate of Canada. Both G are entirely different, and unless there is a provision in the law stating that the Orders in Council shall be considered as forming part of the law itself, or that any offence against the regulations shall be a violation of the Act, it cannot be said that the violation of an Order in Council is a violation of an Act of Parliament within the meaning of section 164 H of the Criminal Code."

The observations from the judgment of Taschereau, J. point out the difference between something which has the force of law as

distinguished from an Act of Parliament itself. The Order in Council in the Canadian case, although it had the force of law, was not a provision contained in an Act of Parliament and therefore although there was a violation of the Order in Council there was no violation of any section of an Act of the Parliament of the Dominion of Canada.

Counsel for the appellant also drew our attention to the judgment of this Court in *Sangram Singh* v. *Election Tribunal, Kotah, Bhurey Lal Baya.*(1) There the Court had to consider the effect of s. 105 of the Representation of the People Act, 1951 (Act XLIII of 1951) which provided that "every order of the Tribunal made under this Act shall be final and conclusive". The contention there put forward was that this provision put an order of the Tribunal beyond question either by the High Court under Art. 226 of the Constitution or by the Supreme Court in appeal therefrom. It was further submitted that the intention of the Legislature was that the decisions of the Tribunals were to be final on all matters whether of fact or of law, and they could not be said to commit an error of law when acting within the ambit of their jurisdiction. They decided what the law was. This submission was turned down by this Court and it was observed after referring to *Hari Vishnu* v. *Ahmed Ishaque*(2) that "the Court laid down in general terms that the jurisdiction under Art. 226 having been conferred by the Constitution, limitations cannot be placed on it, except by the Constitution itself."

In this case we are not faced with that difficulty because the Constitution itself provides under Art. 329(a) that any law relating to the delimitation of constituencies etc. made or purporting to be made under Art. 327 shall not be called in question in any court. Therefore an order under s. 8 or 9 and published under s. 10(1) would not be saved merely because of the use of the expression "shall not be called in question in any court". But if by the publication of the order in the Gazette of India it is to be treated as law made under Art. 327, Art. 329 would prevent any investigation by any court of law.

In dismissing the petition under Art. 226 of the Constitution the High Court of Madhya Pradesh relied exclusively on the decision of this Court in *N.P. Punnuswami* v. *Returning Officer, Namakkal Constituency and others*(3) which proceeded on the basis of certain concessions made. There the appellant was a person who had filed a nomination paper for election to the Madras Legislative Assembly from the Namakkal constituency which was rejected. The appellant thereupon moved the High Court under Art. 226

(1) [1955] 2 S.C.R. p. 1 at pp. 6 and 7. (2) [1955] 1 S.C.R. 1104.
(3) [1952] S.C.R. 218.

A of the Constitution praying for a writ of *certiorai* to quash the order of the Returning Officer rejecting his nomination paper and to direct the said officer to include his name in the list of vaild nominations to be published. The High Court dismissed the application on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of Art. 329 (b) of the B Constitution. The Court pointed out (at p. 225):—

> "A notable difference in the language used in Arts. 327 and 328 on the one hand, and Art. 329 on the other, is that while the first two articles begin with the words "subject to the provisions of this Constitution", the last article begins with the words "notwithstanding anything in this C Constitution". It was conceded at the Bar that the effect of this difference in language is that whereas any law made by Parliament under Art. 327, or by the State Legislatures under Art. 328, cannot exclude the jurisdiction of the High Court under Art. 226 of the Constitution, that jurisdiction is excluded in regard to matters provided for D in Art. 329."

Reference was also made by counsel to certain other concessions which appear at pp. 233 and 237 of the report. It will be noted, however, that the decision in that case did not proceed on the concessions made. The Court examined at some length the scheme of Part XV of the Constitution and the Representation of the E People Act, 1951 which was passed by the Parliament under Art. 327 of the Constitution to make detailed provision in regard to al matters and all stages connected with elections to the various Legislatures in the country. It was there argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it could not bar the jurisdiction of the F High Court to issue writs under Art. 226 of the Constitution. This was turned down by the Court observing:—

> "This argument, however, is completely shut out by reading the Act along with Art. 329(b). It will be noticed that the language used in that Article and in s. 80 of the Act is almost identical, with this difference only that the G Article is preceded by the words "notwithstanding anything in this Constitution". (p. 232)

The Court went on to observe at p. 233:—

> "It may be pointed out that Art. 329 (b) must be read as complimentary to lause (a) of that Article H Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Arts. 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies....If Part XV of the

Constitution is a code by itself, *i.e.*, it creates rights and provides for their enforcement by a special tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject matter of contest before the High Courts and thereby upset the time schedule of the elections. The more reasonable view seems to be that Art. 329 covers all "electoral matters". A B

An examination of ss. 8 and 9 of the Act shows that the matters therein dealt with were not to be subject to the scrutiny of any court of law. Section 8, which deals with the readjustment of the number of seats, shows that the Commission must proceed on the basis of the latest census figures and by order determine having regard to the provisions of Arts. 81, 170, 330 and 332, the number of seats in the House of the People to be allocated to each State and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State. Similarly, it was the duty of the Commission under s. 9 to distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State to single member territorial constituencies and delimit them on the basis of the latest census figures having regard to the provisions of the Constitution and to the factors enumerated in cls. (a) to (d) of sub-s. (1). Sub-section (2) of s. 9 shows that the work done under sub-s. (1) was not to be final, but that the Commission (a) had to publish its proposals under sub-s. (1) together with the dissenting proposals, if any, of an associate member, (b) to specify a date after which the proposals could be further considered by it, (c) to consider all objections and suggestions which may have been received before the date so specified, and for the purpose of such consideration, to hold public sittings at such place or places as it thought fit. It is only then that the Commission could by one or more order, determine the delimitation of Parliamentary constituencies as also of Assembly constituencies of each State. C D E F

In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under ss. 8 and 9 were published in the Gazette of India and in the official gazettes of the States concerned, these matters could no longer be reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under ss. 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the orders under ss. 8 and 9 published under G H

A s. 10 (1) were to be treated as law which was not to be questioned in any court.

It is true that an order under s. 8 or 9 published under s. 10(1) is not part of an Act of Parliament, but its effect is to be the same.

The situation here bears some comparison with what obtained
B in *Harishankar Bagla and another* v. *The State of Madhya Pradesh.*(1) There s. 3 of the Essential Supplies (Temporary Powers) Act, 1946, provided that the Central Government, so far as it appeared 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, might by order provide for regulating or prohibiting the production, supply and
C distribution thereof and trade and commerce therein. Under s. 4 it was open to the Central Government by notified order to direct that the power to make orders under s. 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Central Government or such State Government
D or such officer or authority subordinate to a State Government as may be specified in the direction". Section 6 of the Act read as follows:—

> "Any order made under s. 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having
E effect by virtue of any enactment other than this Act."

Under powers conferred by s. 3 the Central Government promulgated on September 10, 1948, Cotton Textiles (Control of Movement) Order, 1948. Section 3 of the said order provided that no person shall transport or cause to be transported by rail, road, air, sea or inland navigation any cloth, yarn or apparel except
F under and in accordance with a general permit notified in the Gazette of India by the Textile Commissioner or a special transport permit issued by the Textile Commissioner. The appellant Harishankar Bagla and his wife were arrested at Itarsi by the Railway Police for contravention of s. 7 of the Essential Supplies (Temporary Powers) Act, 1946 read with cl. (3) of the Cotton Textiles
G (Control of Movement) Order, 1948 having been found in possession of new cotton cloth weighing over six maunds which was being taken by them from Bombay to Kanpur without any permit. The State of Madhya Pradesh contended before this Court that the judgment of the High Court that s. 6 of the Act was unconstitutional was not justified. This contention was upheld by this Court and it was observed:—

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> "By enacting s. 6 Parliament itself has declared that an order made under s. 3 shall have effect notwithstanding any

(1) [1955] S.C.R. 380.

inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the Legislature itself has declared its will that way in s. 6....The power of the delegate is only to make an order under s. 3. Once the delegate has made that order its power is exhausted. Section 6 then steps in wherein the Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act."

Similarly it may be said here that once the Delimitation Commission has made orders under ss. 8 and 9 and they have been published under s. 10(1), the orders are to have the same effect as if they were law made by Parliament itself.

Reference was also made by counsel for the respondent to the judgment of this Court in *Kailash Nath and another* v. *State of U.P. and others*.(1) There under s. 4 of the U.P. Sales Tax Act the State Government was empowered either to exempt certain kinds of transactions from the payment of sales tax completely, or to allow a rebate of a portion of the tax payable. In pursuance of that, the Uttar Pradesh Government issued a notification that with effect from December 1, 1949 the provisions of s. 3 of the Act (relating to the levy of sales tax) shall not apply to the sales of cotton cloth or yarn manufactured in Uttar Pradesh, made on or after December 1, 1949 with a view to export such cloth or yarn outside the territories of India on the condition that the cloth or yarn is actually exported and proof of such actual export is furnished. It was held by this Court that "this notification having been made in accordance with the power conferred by the statute has statutory force and validity and, therefore, the exemption is as if it is contained in the parent Act itself."

In *Jayantilal Amrit Lal Shodhan* v. *F. N. Rana and others*(2) the question for consideration by this Court was the effect of a notification of the President of India under Art. 258(1) of the Constitution. The President of India by a notification dated July 24, 1959, under Art. 258(1) of the Constitution entrusted with the consent of the Government of Bombay to the Commissioners of Divisions in the State of Bombay the functions of the Central Government in relation to the acquisition of land for the purposes of the Union. Two new States were constituted by the Bombay Reorganisation Act (XI of 1960) and the Baroda Division was allotted to the State of Gujarat. In exercise of the powers entrusted by the notification ssued by the President on July 24, 1959, the Commissioner of the Baroda Division notified under s. 4(1) of the Land Acquisition Act (I of 1894) the appellant's land as being needed for a public purpose,

(1) A.I.R. 1957 S.C. 790.

(2) [1964] 5 S.C.R. p. 294.

A and authorised the Special Land Acquisition Officer, Ahmedabad, to perform the functions of the Collector under the Act. The Special Acquisition Officer after considering the objections raised by the appellant submitted this report to the Commissioner who issued a declaration under s. 6(1) of the Act. The appellant then moved the High Court of Gujarat under Arts. 226 and 227 of the B Constitution for a writ, but his petition was dismissed. His case *inter alia* was that the President's notification under Art. 258 (1) was ineffective after the partition since the consent of the Government of the newly formed State of Gujarat to the entrustment of functions to its officer had not been obtained as required by Art. 258 (1).

C Article 258 (1) of the Constitution reads:—

> "Notwithstanding anything in this Constitution the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends".

D One of the contentions put forward before this Court was that the power exercised by the President was executive in character and the functions which might be entrusted to a State Government under Art. 258(1) were executive and as such entrustment of such executive authority was not law within the meaning of s. 87 of the Bombay Reorganisation Act which made provisions for maintaining E the territorial extent of the laws even after the appointed day. On this basis, it was argued that the Commissioners of the new State of Gujarat after May 1, 1960 were incompetent by virtue of the Presidential notification to exercise the functions of the Union under the Land Acquisition Act.

It was observed by the majority Judges of this Court at p. F 308:—

> "The question which must be considered is whether the notification issued by the President is law within the meaning of s. 87 read with s. 2 (d) of the Bombay Reorganisation Act, 11 of 1960."

After analysing the three stages of the constitutional process leading G to the ultimate exercise of function of the Union Government the Court observed (at p. 309):—

> "By Art. 53 the executive power of the Union is vested in the President and is exercisable by him either directly or through officers subordinate to him in accordance with the Constitution and the executive power of the Union by Art. H 73 extends subject to the provisions of the Constitution:
>
> (*a*) to the matters with respect to which Parliament has power to make laws; and

(*b*). to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreements:

Provided that the executive power referred to in sub-cl. (a) shall not, save as expressly provided in the Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has power to make laws. *Prima facie*, the executive power of the Union extends to all matters with respect to which Parliament has power to make laws and in respect of matters to which the power of the Parliament extends".

The Court then went on to consider the nature of the power exercised by the President under Art. 258(1). It noted that by item 42 List III the subject of acquisition of property fell within the Concurrent List and the Union Parliament had power to legislate in respect of acquisition of property for the purposes of the Union and by Art. 73(1)(a) the executive power of the Union extended to the acquisition of property for the Union. It was observed that "by Art. 298 of the Constitution the executive power of the Union extends to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purposes. The expression "acquisition, holding and disposal of property" would, in our judgment, include compulsory acquisition of property. That is a provision in the Constitution which within the meaning of the proviso to Art. 73(1) expressly provides that the Parliament may acquire property for the Union and consequently executive power of the Union in relation to compulsory acquisition of property is saved thereby, power of the State to acquire land notwithstanding."

Reference was made also by the majority of Judges to the case of *Edward Mills Co. Ltd.* v. *State of Ajmer*(1) where it was held that an order made under s. 94(3) of the Government of India Act, 1935 was, notwithstanding the repeal of the Government of India Act, 1935, by Art. 395 of the Constitution, law in force. Finally, it held by the majority of Judges (p. 315):—

"We see no distinction in principle between the notification which was issued by the Governor General in Edward Mills' case, and the notification with which we are dealing in this case. This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise of any statutory authority it may not have the force of law. But where a general order is issued even by an executive

(1) [1955] 1 C.S.R. 735.

A authority which confers power exercisable under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law."

In this case it must be held that the order under ss. 8 and 9 published under s. 10 (1) of the Delimitation Commission Act B were to make a complete set of rules which would govern the re-adjustment of number of seats and the delimitation of constituencies.

In this case the powers given by the Delimitation Commission Act and the work of the Commission would be wholly nugatory unless the Commission as a result of its deliberations and public C sittings were in a position to re-adjust the number of seats in the House of the People or the total number of seats to be assigned to the Legislative Assembly with reservation for the Scheduled Castes and Scheduled Tribes and the delimitation of constituencies. It was the will of Parliament that the Commission could by order publish its proposals which were to be given effect to in the subsequent election and as such its order as published in the notifica- D tion of the Gazette of India or the Gazette of the State was to be treated as law on the subject.

In the instant case the provision of s. 10 (4) of the Act puts orders under ss. 8 and 9 as published under s. 10 (1) in the same street as a law made by Parliament itself which, as we have already E said, could only be done under Art. 327, and consequently the objection that the notification was not to be treated as law cannot be given effect to.

In the result the appeal fails and is dismissed with costs.

R.K.P.S. *Appeal dismissed.*