Mannalal Jain

Vs

The State of Assam and Others

Petition No. 303 of 1960

(CJI B. P. Sinha, A. K. Sarkar, N. Rajgopala Ayyangar, S. K. Das, J. R. Mudholkar JJ)

29.09.1961

JUDGMENT

S. K. DAS, J. –

This writ petition by one Mannalal Jain was originally filed on October 17, 1960, and the order complained of was dated September 13, 1960. This was an order made by the Deputy Commissioner, Kamrup, Gauhati, rejecting an application made by the petitioner for the grant of a license for the year 1960 for dealing in rice and paddy under the relevant provisions of the Assam Foodgrains (Licensing and Control) Order, 1960. This writ petition was put up for hearing in this Court on February 2, 1961. The hearing was, however, adjourned sine die, because it was stated before us that the period of licence for 1960 had already expired and a fresh application would have to be made for a license for 1961. A fresh application was accordingly made by the petitioner on February 4, 1961. But before that date a fresh Assam Foodgrains (Licensing and Control) Order, 1961 was made by the Governor of Assam and the application made by the petitioner had to be dealt with under the new Order. No order having been made on this fresh application by the Deputy Commissioner, the petitioner moved this Court by means of a petition (C. M. P. No. 850 of 1961) asking for certain reliefs, one of which was that the respondents, namely, the licensing authorities, should be directed to consider the application of the petitioner and grant him a license. On April 11, 1961 an order was made rejecting the application of the petitioner. This order which is impugned before us was in these terms.

> "Having regard to the existing licenses in theses areas (Mangaldai and Gauhati), and the quantity of foodgrains available therein, any further license would be superfluous. "

When the petition was again put up for hearing on May 1, 1961 the petitioner asked for time to amend his original petition which related to the order refusing to grant him a license for 1960. This amendment became necessary by reason of the subsequent order passed on April 11, 1961, quoted earlier, by which the petitioner's application for a license for 1961 was rejected. This amendment was allowed. Therefore, we have now to deal with the writ petition as amended by the petition dated May 5, 1961 (C. M. P. No. 1140 of 1961).

It is necessary now to state the relevant facts out of which the petition has arisen. The petitioner states that he is an Indian citizen carrying on a business dealing in rice and paddy in the district of Kamrup in the State of Assam. In 1955 was enacted the Essential Commodities Act, 1955 (Act 10 of 1955). In exercise of the powers conferred by section 3 of the said Act, read with a notification by which the said powers were delegated by the Central Government to the Government of Assam,

the letter Government made an Order called the Assam Foodgrains (Licensing and Control) Order, 1958. The result of this was that no dealing in rice and paddy in wholesale quantities was permissible unless the petitioner obtained a license from the relevant licensing authority. The petitioner states that he obtained such a license in 1958. This license expired on December 31, 1958. The case of the petitioner is that in 1959 also he carried on his business though there is some dispute as to whether he obtained a license for that year. On November 26, 1959, the petitioner received a letter from the office of the Deputy Director of Supply, Gauhati, which said that his license would not be renewed after December 31, 1959. This communication, it is stated, was the result of a decision taken by the Government of Assam on the advice of a body called the Food Advisory Council to give a right of monopoly procurement of paddy to a co-operative society in the district of Kamrup known as the Assam Co-operative Apex Marketing Society Ltd. (respondent No. 6 before us). In a letter dated November 13, 1959, the Director of Supply, Assam, indicated the policy to be followed to give effect to the decision aforesaid in these terms :

> "The right of monopoly procurement in respect of Kamrup district including Mangaldai Sub-division, Taxpur Sub-division, Cachar district, Nowgong district including United Mikir and North Cachar Hills and North Lakhimpur Sub-division has been given to the Co-operative Apex Marketing Society. The Society will procure paddy from the growers through various service Co-operative Societies spread over the district or sub-division. They will procure all available surplus paddy and deliver to Supply Department the quantity required for the buffer stock for those areas. Any paddy procured by them which is not required by us may be delivered to the mills. "

A copy of the letter was forwarded to all licensing authorities. On January 5, 1960, the Assam Foodgrains (Licensing and Control) Order, 1960, came into force. This replaced the earlier Order of 1958. Clause 5 of the 1960 Order was in these terms :

> "5. Matters to be taken into consideration for granting a license. - In granting or refusing a license under this Order, the licensing authority shall among other matters have regard to the following, namely :-
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> (a) the stock of foodgrains available in the locality for which the license in required;
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> (b) the number of persons who have applied for and/or been granted licenses in respect of the foodgrains under this Order in the locality;
>
> (c) the business ordinarily carried on by the applicant; and
>
> (d) the past activities of the applicant as a licensee or business man/firm :
>
> Provided that the State Government may from time to time modify the conditions for granting a license. "

On January 28, 1960 the petitioner made his application for a license for the year 1960. This application was rejected by an order dated February 17, 1960. The reason given for the rejection was in these terms :

> "You are hereby informed that as the Co-operative Apex Marketing Society has been given the right of monopoly purchase in the Kamrup district this year, your case

cannot be considered for issue of the license. "

This reason was obviously based on the decision as to monopoly procurement which the Government of Assam had adopted.

Against this order the petitioner move the High Court of Assam by means of a writ petition under Article 226 of the Constitution. The High Court allowed the petition mainly on the ground that the application of the petitioner for a license for the year 1960 was not considered on merits by the licensing authority in accordance with the provisions of clause 5 of the Assam Foodgrains (Licensing and Control) Order, 1960. The High Court did not go into the larger question whether the State could or could not create a monopoly in the matter of procurement of paddy under the said provisions by means of executive instructions issued to the licensing authorities. It, however, quashed the order dated February 17, 1960 and issued a writ of mandamus directing the licensing authority to consider the application of the petitioner on merits and in accordance with the provisions of the aforesaid Control Order. Till June 7, 1960 no order was passed by the licensing authority, and on that date the petitioner made two applications to the High Court, one for directing the licensing authority to grant him a license for 1960 and the other for taking action for contempt of court. A notice of these applications, it is stated, was served on the respondents. On June 8, 1960 the licensing authority made another order refusing to grant a license to the petitioner. This order stated that "as the Assam Co-operative Apex Marketing Society Ltd., had already been granted a license to deal in rice and paddy, with its branches spread all over the district, it Was considered unnecessary to grant further dealing licenses to individual dealers for the same area. " On June 9, 1960 the applications earlier made by the petitioner to the High Court on June 7, 1960 were withdrawn and a fresh application was made on June 15, 1960, which was directed against the order dated June 8, 1960. On August 10, 1960 the High Court again set aside the order and directed the licensing authority to act independently of instructions received from the Government and to apply its mind to the merits of the application and decide it in accordance with the relevant provisions of the Assam Foodgrains (Licensing and Control) Order, 1960. Again, no orders were made by the licensing authority till September 8, 1960 in accordance with the directions of the High Court, and the petitioner made two applications on that date : one for enforcing the direction of the High Court, and the other for initiating proceedings in contempt. These applications were admitted and it is stated that notices were served on the respondents, including the licensing authority, on that very date. On September 13, 1960 the licensing authority made another order, again rejecting the application of the petitioner. This order stated inter alia :

> "For the areas for which the application have been made the Assam Co-operative Apex Marketing Society Ltd., has earlier applied for and has been granted license. This is a relevant consideration under Clause 5(b) of the Assam Foodgrains (Licensing and Control) Order, 1960. The stock of foodgrains available in the area can easily be procured by the party already given license. Being a co-operative, it has better facility in this respect.
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> As such, I do not find it necessary to grant license to the applicant. The petition is, therefore, rejected".

This time instead of going to the High Court of Assam, the petitioner came here and filed his writ petition on October 17, 1960 (Writ Petition No. 303 of 1960). Thereafter, certain proceedings took place in this Court to which we have earlier referred in the first paragraph of this judgment. The amended writ petition as it now stands is directed against the order of the licensing authority dated

April 11, 1961, by which it rejected the application of the petitioner for a license for 1961. The provisions of the Assam Foodgrains (Licensing and Control) Order, 1960, are no longer relevant, because a fresh Order called the Assam Foodgrains (Licensing and Control) Order, 1961, was made by the Governor of Assam. We shall hereinafter call this the Control Order, 1961. It is necessary to read here clause 5 of the Control Order, 1961.

> "5. Matters to be taken into consideration for granting a license. -In granting or refusing a license under this Order, the licensing authority shall, among other matters, have regard to the following, namely :-
>
> (a) the stock of foodgrains available in the locality for which the license is required;
>
> (b) the number of persons who have applied for and those who have been granted licenses in respect of the foodgrains under this Order in the locality;
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> (c) the business ordinarily carried on by the applicant;
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> (d) the past activities of the applicant as a licensee or business man/firm; and
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> (e) whether the applicant is a co-operative society. "

It should be noticed that the proviso to old clause 5 was omitted and a new sub-clause (e) was added. This sub-clause enables the licensing authority, in granting or refusing a license, to have regard to the consideration whether the applicant is a co-operative society. To complete the statement of facts, it may perhaps be observed that on November 10, 1960, the High Court rejected the application for proceeding against the opposite parties by way of contempt, mainly on the ground that the order made on September 13, 1960, was not before it.

On behalf of the petitioner the order dated April 11, 1961, has been impugned on two main grounds. The first ground of attack is that sub-clause (e) of clause 5 of the Control Order, 1961 is ultra vires, because it goes beyond the powers granted to the State Government under section 3 read with section 5 of the Essential Commodities Act, 1955. The second ground of attack is that even if sub-clause (e) of clause 5 of the Control Order, 1961, is intra vires being within the powers granted to the State Government, it merely allows the licensing authority to take into consideration, among other relevant matters, the circumstance that the applicant for a licence is a co-operative society; it does not say that a monopoly right of procurement should be given in favour of a co-operative society by excluding all others; therefore, it was not open to the licensing authority to proceed on the footing as if that sub-clause had created a right of monopoly in favour of co-operatives. The argument is that in the present case the licensing authority instead of applying its mind to the provisions of clause 5 of the Control Order, 1961, went by the instructions issued by the State Government to grant a right of monopoly to co-operative societies and based its order on such instructions, in spite of directions to the contrary given by the High Court on earlier applications made by the petitioner. In other words, it is contended that the impugned order was mere colourable exercise of power in the sense that instead of exercising the powers in accordance with the provisions of law by which the licensing authority had to be guided, it acted in accordance with the instructions of the State Government and granted a monopoly in favour of co-operative societies, such monopoly not being contemplated by the provisions of clause 5 of the Control Order, 1961; therefore, the impugned order was bad being without any legal authority or jurisdiction, and as it took away the right of the petitioner to carry on his trade, and furthermore made a discrimination

against him for the purpose of granting a monopoly to respondent No. 6 not contemplated by law, it violated the petitioner's rights under Arts. 14 and 19 of the Constitution. He is accordingly entitled to come to this Court under Article 32 of the Constitution to have the order quashed. The petitioner has also claimed that for the same reasons, the grant of a license in favour of respondent No. 6 should also be quashed.

On behalf of the respondents, the State of Assam, its officers, and the Assam Co-operative Apex Marketing Society Ltd. (respondent No. 6), it has been urged that neither of the aforesaid two grounds of attack is valid. On their behalf the argument is that sub-clause (e) of clause 5 of the Control Order, 1961, is within the authority and power granted to the State Government under section 3 read with section 5 of the Essential Commodities Act, 1955. Secondly, it is contended that no monopoly has been granted to the Assam Co-operative Apex Marketing Society Ltd., and the order of the licensing authority dated April 11, 1961 is based on the considerations referred to in sub-clauses (a) and (b) of clause 5 of the Control Order, 1961, and cannot be assailed on a petition under Article 32 of the Constitution.

We proceed now to a consideration of the grounds of attack and the replies thereto. As to the first ground of attack it must be made clear at the very outset that the vires of the Essential Commodities Act, 1955 have not been challenged before us. What has been contended before us is that section 3 of the Act gives certain powers to the Central Government, which powers the Central Government has delegated the State Government of Assam. These powers it is contended, do not authorise the insertion of sub-clause (e) of clause 5 of the Control Order, 1961; in other words the argument is that whether the applicant for a licence is a co-operative Society or not has no relevance whatsoever to the objects for which section 3 grants the powers to the Central Government or its delegate to make certain Orders. Sub-section (1) of section 3 is relevant to this argument and reads :

> "3(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may by order, provide for regulating or prohibiting the production, supply and distribution there of and trade and commerce therein. "

Sub-section (2) of section 3 which we need not read enumerates the various categories of Orders which can be made in exercise of the powers conferred by sub-section (1), but without prejudice to the generality of those powers. Now, the argument before us is that the powers under section 3 can be exercised when the Central Government or its delegate is of opinion that it is necessary or expedient to exercise the powers to achieve two objects : (a) for maintaining or increasing supplies of any essential commodity, or (b) for securing their equitable distribution and availability at fair prices. It is contended that the circumstance whether the applicant for a licence is a co-operative society or not has no connection whatsover with the aforesaid two objects and therefore, sub-clause (e) of clause 5 of the Control Order, 1961 is not within the powers granted by section 3 of the Act.

We cannot accept this agrument in the very broad terms in which it has been stated. We are satisfied that clause 5 of the Control Order, 1961 does not provide for a monopoly in favour of co-operative societies. The clause enumerates five matters and states that the licensing authority shall have regard to those matters in granting or refusing a license. The five matters enumerated in the clause are not exhaustive of the matters which the licensing authority may consider; because the clause says that the matters enumerated therein are five "among other matters" which the licensing authority may consider. Obviously enough it is open to the licensing authority to consider all matters relevant to

the grant or refusal of a license and the five matters enumerated in the clause merely highlight some of those matters. All that can be said is that sub-clause (e) enabled the licensing authority to prefer a co-operative society in certain circumstances in the matter of granting a license; in other words, there may be cases or localities where the considerations set out in sub-clause (e) may override other considerations in the matter of granting a license. We do not think that sub-clause (e) has any more far reaching effect. Indeed the learned Attorney-General appearing for the respondents conceded that sub-clause (e) of clause 5 did not have the effect of creating a monopoly in favour of co-operative societies.

Proceeding, therefore, on the footing that sub-clause (e) of clause 5 does not provide for the creation of a monopoly, can it be said that it is outside the powers conferred on the State Government by section 3 of the Essential Commodities Act, 1955 ? It is not disputed before us that sub-clauses (a) to (d) fall within the powers conferred by section 3. Matters such as the stock of foodgrains available in the locality for which the license is required, the number of persons who have applied for and those who have been granted licenses in the locality, the business ordinarily carried on by the applicant, and the past activities of the applicant as a licensee or businessman, are undoubtedly matters which have relation to the two objects mentioned in section 3. Can it be said that the fifth matter mentions in sub-clause (e) viz., whether the applicant is a co-operative society is completely unrelated to those two objects ? We are unable to say that it is. In the counter-affidavit filed on behalf of the respondents it has been stated that co-operative societies have better facilities for procuring foodgrains and are in a position to ensure scheduled prices to the farmers who grow paddy. It has been further stated that amongst the co-operative societies are primary societies which consist of the growers of paddy; there are also co-operative societies called supply co-operatives, which are in a position to eliminate middle-man's profits. In para. 4 it was stated that the National Development Council decided that the State should take over wholesale trade in foodgrains with a view to maintaining price levels which are fair to the producer and the consumer and reduce to the minimum the disparity between the prices received by the farmer and the prices paid by the consumer throughout the year. It was also decided that an adequate number of primary marketing societies should be set up and linked with village co-operatives which should serve as agencies for collection and sale of foodgrains at assured prices at the village level. The affidavit then stated :

> In view of the decision of the National Development Council, the Government of Assam in consultation with their State Food Advisory Council decided that in making procurement of rice and paddy in the State, preference should be given to the co-operative societies wherever they have resources and facilities. "

We are of the view that by reason of the position which co-operative societies may occupy in the village economy of a particular area, it cannot be laid down as a general proposition that sub-clause (e) of clause 5 of the Control Order, 1961, is unrelated to the objects mentioned in section 3 of the Essential Commodities Act, 1955. There may be places or areas where co-operative societies are in a better position for maintaining or increasing supplies of rice and paddy and even for securing their equitable distribution and availability at fair prices. We must, therefore, repel the very broadly stated contention of the learned counsel for the petitioner that sub-clause (e) of clause 5 of the Control Order, 1961, can have no relation whatsoever to the two objects mentioned in section 3 of the Essential Commodities Act, 1955. On behalf of the petitioner reliance was placed on the decision in Ramanlal Nagardas v. M. S. Palnitkar (A. I. R. 1961 Guj. 38). That was a case in which the validity of State action in entrusting wholesale distribution of sugar which is an essential commodity under the Essential Commodities Act, 1955, to Co-operative Societies only and excluding other dealers holding similar licenses like the co-operative societies from such distribution, was challenged and

arose for consideration. It was held that a State could make a classification for the purpose of achieving particular legislative objects but the classification must satisfy two conditions : (1) it must be founded on intelligible differentia, and (2) the differentia must have a rational relation to the objects sought to be achieved. The question was considered from the point of view of Article 14 of the Constitution and it was held that the action of the State Government in entrusting wholesale distribution of sugar to co-operative societies to the exclusion of other licence-holders amounted to a discrimination which violated the right guaranteed under Article 14. The principles underlying Article 14 of the Constitution are now well-settled and have been enunciated and explained in a number of decisions of this Court and we consider it unnecessary to refer to those principles in detail. In the case under our consideration no discrimination has been made between one class of license-holders and another class of license-holders as in the case of Ramanlal Nagardas v. M. S. Palnitkar (A. I. R. 1961 Guj. 38). What has happened in the present case is that licenses have been granted only to co-operative societies and a license has been denied to the petitioner, the licensing authority proceeding on the footing that a monopoly must be created in favour of co-operative societies. A discrimination has indeed taken place as against the petitioner, a discrimination which is not justified by the provisions of clause 5 of the Control Order, 1961. In dealing with the application of the petitioner the licensing authority has made a discrimination which is not justified by clause 5. That would take us to the second argument of the learned counsel for the petitioner, but on his first argument the decision in Ramanlal Nagardas v. M. S. Palnitkar (A. I. R. 1961 Guj. 38) is of no assistance. Sub-clause (e) of clause 5, we have already stated, enables the licensing authority to give preference to a co-operative society in certain circumstances; but it does not create a monopoly in favour of co-operative societies. The preference given has a reasonable relation to the objects of the legislation set out in section 3 of the Act; therefore, sub-clause (e) of clause 5 of the Control Order, 1961, cannot be held to be bad on the ground of class legislation, but the passing of an order under the sub-clause for a purpose not contemplated by it will amount to discrimination and denial of the guarantee of equal protection of the law.

This brings us to the second argument urged on behalf of the petitioner and here we think that the learned counsel for the petitioner is on much surer ground. It was open to the licensing authority to give preference to co-operative societies, if it was of the opinion that granting a license to a co-operative society in a particular locality would facilitate the objects of section 3 of the Act. This is not what the licensing authority did. He repeatedly refused a license to the petitioner, for the only reason and purpose of granting a monopoly to co-operative societies. In other words, the discrimination that has been made by the licensing authority is really in the administration of the law. It has been administered in a discriminatory manner and for the purpose of achieving an ulterior object, namely, the creation of a monopoly in favour of co-operatives, an object which, clearly enough, is not within sub-clause (e) of clause 5 of the Control Order, 1961. We have quoted earlier the various orders which the licensing authority had passed. Those orders clearly show that the licensing authority refused a licence to the petitioner not on grounds referred to in sub-clauses (a) and (b) of clause 5 but on the ground that the State Government had decided to introduce a right of monopoly procurement of paddy in favour of co-operative societies and therefore, no licenses should be granted to individual dealers other than co-operative societies. Judged against the background of facts to which we have earlier referred in this Judgment, the impugned order dated April 11, 1961 appears to us to have been based on the same ground, namely, the creation of a monopoly in favour of co-operatives, even though the order refers to existing licenses and the quantity of foodgrains available in the locality. In the course of the hearing before us, the case was adjourned in order to give the parties an opportunity of filing necessary affidavits to show whether individual dealers other than co-operative have been completely excluded in the whole of the State

in the matter of dealing in paddy. The affidavits show that private dealers have been completely excluded. In the affidavit filed on behalf of respondent No. 1, it has been stated in para. 4 :

> "It is not denied that in the year 1961 licenses for the procurement of paddy have been issued to the co-operatives in all the paddy producing districts in Assam. "

To show however that no monopoly has been created in favour of a particular co-operative society like respondent No. 6, it has been stated that a number of co-operative societies have been or are being granted licenses for the procurement of paddy. In our view these statements in the affidavits filed on behalf of the respondents show only one and one object viz., creation of a monopoly in favour of co-operatives. To achieve that object the State Government has resorted to an indirect method. Instead of making an order authorising such monopoly (if the State was competent to make such an Order under the Essential Commodities Act, 1955, as to which we express no opinion), it has chosen to adopt the indirect method of issuing instructions to the licensing authorities in all the districts to grant licenses to co-operatives only. The vice of the impugned order lies in the licensing authority accepting such instructions and passing an order in accordance therewith. The duty of the licensing authority was to pass orders in accordance with clause 5 of the Control Order, 1961. Instead of doing that, it passed an order in accordance with the instructions given to it on behalf of the State Government, instructions which appear to us to be not in consonance with sub-clause (e) of clause 5; because sub-clause (e) contemplates a preference to co-operative societies in certain circumstances, but not a monopoly in their favour.

We accordingly hold that the impugned order is bad as violating the rights of the petitioner guaranteed under Articles. 14 and 19 of the Constitution. We must, therefore, quash the order of the licensing authority dated April 11, 1961. We must also quash the order by which the licensing authority granted a licence in favour of respondent No. 6. The licensing authority must now consider the application of the petitioner for a license for the year 1961 on merits along with the application of respondent No. 6 and such other applications as may be still pending. In dealing with these applications the licensing authority must have regard to the provisions of clause 5 of the Control Order, 1961, and such other provisions of law as have a bearing on them, in the light of the observations made in this judgment. It would be the duty of the licensing authority to ignore all instructions which are not in consonance with the provisions of law by which it is to be guided. As the year 1961 will come to an end within a few months, the applications should be dealt with as expeditiously as possible so that the right of the petitioner may not be rendered infructuous by reason of the delay made in disposing of the applications.

Before we part with this case we express our deep concern over the manner in which the State Government or its officers have issued instructions in the matter of granting of licenses, instructions which clearly enough are not in consonance with the provisions of law governing the grant of such licenses. We doubt the wisdom of issuing executive instructions in matters which are governed by provisions of law; even if it be considered necessary to issue instructions in such a matter, the instructions cannot be so framed or utilised as to over-ride the provisions of law. Such a method will destroy the very basis of the rule of law and strike at the very root of orderly administration of law. We have thought it necessary to refer to this matter because we feel that the instructions which the State Government or its officers have issued in the matter of granting of licenses for the procurement of paddy are not in consonance with the provisions of clause 5 of the Control Order 1961.

In the result the petition is allowed with costs and the necessary orders should now issue as directed

above.

SARKAR J. –

The petitioner is a citizen of India and carries on business as dealer in rice and paddy in the State of Assam. Since 1958, dealing in rice and paddy was controlled in that State by Orders made by the State Government from time to time under the Essential Commodities Act, 1955 by virtue of powers delegated to it by the Central Government under section 5 of that Act. These Orders hereafter called Licensing Orders, provided that no person could engage in any business involving purchase, sale or storage for sale of any foodgrains, which included rice and paddy, in wholesale quantities except under and in accordance with the terms and conditions of a licence issued thereunder. Purchase or sale in wholesale quantities was defined as purchase or sale of quantities exceeding ten maunds in any one transaction. The petitioner had obtained a license to deal in paddy for the year 1958. It is not clear whether he had obtained a license to do so for 1959. With these years, however, this case is not concerned.

On January 28, 1960, the petitioner had applied under the Licensing Order then in force for a license to deal in paddy in Kamrup district of Assam for the year 1960. His application was refused by an order made on February 17, 1960 on the ground that it could not be considered as the Co-operative Apex Marketing Society had been given the right of monopoly purchase in Kamrup district. The petitioner then moved the High Court of Assam under Article 226 of the Constitution to quash this order. On April 27, 1960, the High Court delivered judgment quashing the order on the ground that the authority concerned was bound to consider the petitioner's application for licence and had failed to do so. The High Court issued a writ of mandamus directing that the petitioner's application be considered on its merits. As the licensing authority did not consider the petitioner's application till June 7, 1960, the latter on that date moved the High Court again for enforcement of the writ issued. On receipt of the notice this motion, the licensing authority passed an order on June 8, 1960 again refusing to grant the petitioner the licence. This order stated, "Your petition is considered. As the Assam Co-operative Marketing Society has already been granted a licence to deal in rice and paddy with branches spread all over this district, it is considered unnecessary to grant further dealing licences to individual dealers for the same area. Hence the petition is rejected. "

The petitioner thereupon dropped his motion to the High Court of Assam of June 7, 1960 and moved the High Court afresh under Article 226 against the order of June 8, 1960 refusing him the licence and the High Court on August 8, 1960, quashed it on the ground that the licensing authority had to act in a quasi-judicial capacity and that it had decided the case on the instructions of the State Government without considering for itself the merits of the case in terms of the Licensing Order. The authority was again directed to decide the case in a quasi-judicial capacity.

The licensing authority not having taken up for decision the petitioner's case for the grant of licence as directed by the High Court, he moved the High Court on September 8, 1960 for appropriate reliefs. On receipt of the notice of this motion the licensing authority passed an order on September 13, 1960, again refusing to grant licence to the petitioner and certain other private dealers. The order stated, "For the areas for which the applications have been made the As sam Co-operative Apex Marketing Society has earlier applied for and has been granted licence. This is a relevant consideration under clause 5(b) of the Assam Foodgrains (Licensing and Control) Order, 1960. The stock of foodgrains available in the area can easily be procured by the party already given the licence. Being a Co-operative Society it has better facility in this respect. As such I do not find it

necessary to grant licence to these applicants. The petitions are therefore rejected". Thereupon the High Court on November 10, 1960, made an order on the petitioner's aforesaid motion of September 8, 1960 discharging the rule as the order asked for had been made. It observed that the order of September 13, 1960 was not before it and it was competent to say whether that order was in consonance with its order of August 8, 1960. It also observed that it did not find sufficient reason to take any action against the licensing authority for the delay in the matter of the disposal of the application for licence.

Before proceeding further I would like to point out that the Assam Foodgrains (Licensing and Control) Order, 1960 being the Licensing Order by which the petitioner's application for licence for 1960 was governed did not contain any provision enabling any preference to be given to a co-operative society in the matter of the grant of licence.

I now come to the present petition. It was moved in this Court by the petitioner under Article 32 of the Constitution challenging the validity of the order of the Licensing authority dated September 13, 1960, and asking that the licence granted to the Assam Co-operative Apex Marketing Society be declared illegal and for an order directing the licensing authority to consider the applications for licences according to the provisions of the Licensing Order, 1960. The petition came up for hearing on February 2, 1961. By that date the year for which the petitioner had asked for a licence had expired and the Licensing Order, 1960 had been replaced by another Order of 1961. In the result the petition had become substantially infructuous. The petitioner, therefore, suggested to this Court that he would make an application for a licence for the year 1961 and in the meantime the petition might stand adjourned. An order was thereupon made adjourning the petition sine die.

Thereafter the petitioner on February 4, 1961, made a fresh application for licence for dealing in paddy for the year 1961. An order was made by the licensing authority on this application on April 11, 1961, in these terms : "Having regard to the existing licences in these areas (Mangaldai and Gauhati), and the quantity of food grains available therein any further licences would be superfluous. " In the result the petitioner was refused licence for the year 1961. Thereafter, the petitioner under orders obtained from this Court amended his petition and now seeks to challenge the order of April 11, 1961. The respondents to this petition are the State of Assam and some of its officers including the licensing authority concerned, as also the Assam Co-operative Apex Marketing Society, hereafter called the Apex Society.

As I have already said, the application for licence for 1961 was governed by the Licensing Order, 1961. The dispute in this case mainly turns on clause (e) of paragraph 5 of this Order. That paragraph is in these terms :

> "In granting or refusing a licence under this Order, the licensing authority shall, among other matters, have regard to the following, namely :-
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> (a) the stock of foodgrains available in the locality for which the licence is required;
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> (b) the number of persons who have applied for and those who have been granted licences in respect of the foodgrains under this Order in the locality;
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> (c) the business ordinarily carried on by the applicant;
>
> (d) the past activities of the applicant as a licensee or business man/firm; and

(e) whether the applicant is a co-operative society. "

It is not in dispute that in the areas to which the Licensing Order 1961, had been applied, licences to deal in paddy had been given to various Co-operative Societies which were subsidiaries of the Apex Society and no licence had been given to any private dealer. The respondents say that these grants were duly made under clause (e) of paragraph 5 of the Licensing Order, 1961. It is this action which forms the main grievance of the petitioner. He puts his contention on two grounds. First, he says that clause (e) of paragraph 5 of the Licensing Order 1961 is ultra vires as it has no relation to the object of the Essential Commodities Act under which it was made. Secondly, he says that in any event the Order has been applied in a discriminatory manner and with a view to create a monopoly in favour of the Apex Society to deal in paddy and the petitioner's fundamental rights under Articles. 19(1) (g) and 14 have thereby been violated.

It does not seem to me that either of these two contentions is well founded. I shall first consider whether paragraph 5(e) of the Order is ultra vires the Act. Now it is important to note that the validity of the Act is not challenged. It would follow that if the Order made under the Act is not ultra vires, it would be perfectly valid. It is section 3 of the Act which enables the Orders to be made. That section so far as relevant is in these terms :

> Section 3(1). - If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

The object of the Act, therefore, is to maintain or increase the supplies of essential commodities which include foodgrains and to secure their equitable distribution and availability at fair prices. Clause (e) of paragraph 5 of the Licensing Order, 1961 certainly allows a co-operative society to be preferred in the matter of a grant of licence. The question then is, would the object of the Act be achieved if the trade in paddy is given to co-operative societies ? I think it would. A co-operative society is one which has as its object the promotion of the economic interests of its members in accordance with co-operative principle : see section 4 of the Co-operative Societies Act, 1912. A society carries on business in accordance with co-operative principles when it trades with its own members, the profit motive not being paramount in such business. When, therefore, a licence to purchase paddy is given to a co-operative society of growers, what happens is that the seller sells to a body of which he is a member. The result is the virtual elimination of the middleman and a consequential reduction in the price. The following observations from the judgment of this Court in Narendra Kumar v. The Union of India ([1960] 2 S. C. R. 375) are, to my mind, very apposite in the present context :

> "That middleman's profits increase the price of goods which the consumer has to pay is axiomatic. " (p. 389)."It has therefore been the endeavour at least in modern times for those responsible for social control to keep middlemen's activities to the minimum and to replace them largely by co-operative sale societies of producers and co-operative sale societies of the consumers. " (p. 390).

Therefore, I feel no doubt that if the purchase of paddy is left to growers co-operative - and that is what clause (e) of paragraph 5 aims at - rice, which is husked paddy, can reasonably be expected to be made available to the consumers at a fair price. That would serve the object of the Act and the

Clause cannot, therefore, be said to be ultra vires the Act.

Then it is said that clause (e) of paragraph 5 would result in creating a monopoly in favour of co-operative societies and that would be illegal and also outside the object of the Act. This contention also seems to me to be ill founded. It seems to me that if paragraph 5 had contained only clause (e) directing preference being given to co-operative societies in the matter of grant of licences - and that is the basis on which the present contention is advanced - that would not have made it bad. The question of creating a monopoly does not really arise in such a case. The Order may then allow one class only, namely, co-operative societies, to do the business. That would, as I have already stated, advance the object of the Act. It would also however amount to a prohibition of others doing the business. The only question then would be whether such prohibition would be reasonable under Article 19(6). That is how the matter appears to have been considered by this Court in two cases to which I will now refer.

The first is the case of Narendra Kumar ([1960] 2 S. C. R. 375. ) earlier mentioned. There an order called the "Non-ferrous Metal Control Order, 1958" had been issued under section 3 of the Essential Commodities Act, as the Licensing Order now under consideration also was Clause (4) of the order there considered provided that no person could acquire any non-ferrous metal except under a permit issued by the Controller in accordance with such principles as the Central Government might from time to time specify. Subsequently, the Central Government enunciated certain principles for the grant of these permits in a certain communication to the Chief Industrial Adviser. Under these principles, no permit could be issued to a dealer but it could only be issued to certain manufacturers. The result was that the dealer's trade was totally prohibited and only certain manufacturers were eligible for permits to carry on the trade of selling non-ferrous metals. Certain dealers moved this Court under Article 32 for a declaration that clause (4) read with the principles formulated by the Government was bad as offending Article 19(1) (f) and (g). This Court held that (p. 387) :

> "It is reasonable to think that the makers of the Constitution considered the word "restriction" to be sufficiently wide to save laws 'inconsistent' with Article 19(1), or 'taking away the rights' conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt therefore that they intended the word 'restriction' to include cases of 'prohibition' also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot therefore be accepted. "

Having considered the facts of the case, the Court came to the conclusion that clause (3) of the Order, the legality of which also had been challenged, and clause (4) were valid provision. It observed that, (p. 390) :

> "It must therefore be held that clause 3 of the Order even though it results in the eliminination of the dealer from the trade is a reasonable restriction in the interests of the general public. Clause 4 read with the principles specified must also be held for the same reason to be a reasonable restriction. "

I ought here to point out that the principles enunciated by the Government were held to be of no effect as they had not been issued in compliance with sub-sections (5) and (6) of section 3 of the Essential Commodities Act and on that basis petition was allowed and a writ was issued restraining the Union from giving effect to clause 4 of the order so long as the principals governing the issue of permits were not duly specified. This however does not affect the force of the observations that I

have earlier read from the judgment in the case.

It seems to me that these observations fully apply to the present case. The order read with the policy statement though it resulted in a complete prohibition in trading by dealers and in the creation of what the petitioner would call a monopoly in favour of certain manufacturers was held to be good as a reasonable restriction on the dealer's right to trade under Article 19(6) and the writ was issued only because the formalities required for specifying the policy statement had not been complied with. There is no defect in the issue of the Licensing Order, 1961, with which the present case is concerned. Therefore, the only question would be whether such a prohibition of the trade of the dealers like the petitioner, if any, by the Licensing Order, 1961 would be reasonable in the circumstances of this case.

The other case to which I wish to refer is Glass Chatons Importers & User's Association v. The Union of India decided by this Court on April 10, 1961. That case arose out of a petition under Article 32 by certain importers of glass chatons. There, the Central Government had issued an order under the Import and Export (Control) Act, 1947, called the Imports (Control) Order, 1955, prohibiting the import of glass Chatons except under a licence. Paragraph 6 of the Order laid down a number of grounds on which the Central Government or the Chief Controller of Imports and Exports might refuse to grant a licence or direct any other licensing authority not to grant a licence. The ground mentioned in clause (h) of this paragraph was "if the licensing authority decide to canalise imports and the distribution thereof through special or specialised agencies or channels. " It appears that since 1958, licences had been granted to the State Trading Corporation. No applications for licences had been made by the petitioners or any other trader at any time since 1957. It was however contended that so long as paragraph 6(h) of the Order remained, it was useless for the private traders to apply for licences. The argument advanced on behalf of the petitioners was that paragraph 6(h) was void being in contravention of Article 19(1) (f) and (g). In regard to this argument this Court observed :

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

The Court held that it was unable to accept the argument that a decision that imports shall be canalised is per se not a reasonable restriction on the right to trade. On the facts of the case, the Court took the view that a decision to canalise imports of glass chatons was in the interest of the general public. In this case, it had been contended that the Government was creating a monopoly in favour of the State Trading Corporation. The Court held that the period of permits granted to the State Trading Corporation having already expired, the question did not really arise. But, as would have been noticed earlier, the Court really dealt with the same contention in deciding the validity of paragraph 6(h) of the Order. This decision lends equally strong support to the view that preference directed to be given by clause (e) of paragraph 5 of the Licensing Order with which we are concerned to co-operative societies would not necessarily render it invalid.

I feel no doubt on the facts of the present case that a preference to co-operative societies even if that

resulted in the dealers being prevented altogether from dealing in paddy, would be a reasonable restriction on the latter's right of trade. Assam is a deficit State in foodgrains. It is the duty of the State Government to see that the people living within its boundaries are supplied with adequate foodgrains and that at a reasonable price. If paddy is procured for the use of the consumers in the State through a co-operative society, there is good reason, as already stated, to think that rice at a reasonable price would be available to the people of Assam. I will latter in detail discuss the structure and the activities of the co-operative societies to whom licences had been granted. What I will have to say there will amply establish that it was a reasonable step to have taken to put the trade in charge solely of the co-operative societies.

I turn now to the petitioner's second contention, namely, that clause (e) of paragraph 5 has been worked in a discriminatory manner so as to create a monopoly in favour of the Apex Society. The first thing that I wish to observe is that licences have not been given for the year 1961 to the Apex Society but they have been given to large number of primary co-operative societies of growers. I find it difficult, in any case, to appreciate how this can be said to create a monopoly. It may amount to a prohibition of trade by some persons. That however is a different matter with which I have already dealt. I may state here that it appears that in 1960 the licences had been issued to the Apex Society, but that is not the situation now. Whether what was done in 1960 was strictly legal or not is not a question that now arises, for we are no longer concerned with the licences for 1960.

Before proceeding further, I think it right to say a few things about the co-operative societies with which we are concerned. About 1957, the Assam Government sponsored the formation of the Apex Society. I would like to remind here that It is one of the directive principles of the Constitution that co-operative societies should be encouraged. Now, the structure of the Apex Society is like a pyramid. It appears to have three tiers. On the top is the Apex Society. Under it come various primary marketing co-operative societies. At the bottom rung are a large number of primary co-operative service societies. The membership of the marketing societies consists mostly of cultivators and service societies, and of the service societies, mostly of cultivators. The function of the Apex Society appears to be to coordinate the working of the subsidiary societies and to obtain moneys from the Co-operative Apex Bank and there out make advances to the cultivators through the subsidiary societies, to help them in their cultivation. The service societies procure from the growers the paddy grown by them which they can spare and realise the moneys advanced to them out of the price of the paddy purchased. The money realised is duly passed on to the Apex Society. The paddy collected is sold by the service societies to the marketing societies. The marketing societies in their turn deliver part of the paddy to the Government for creating a buffer stock and the remaining quantity to mills for milling into rice, in both cases according to the directions of the Government. The benefits derived from the whole scheme are obviously very large. The middlemen are eliminated. The growers being themselves members of the societies, participate in their profits whatever they are. This helps to keep down the price because a service society in passing on the paddy to the marketing society charges very little by way of profit and that profit is shared by the growers who are its members. This enables the growers to sell at a comparatively lower price. The growers have further the advantage of loans from the Apex Society to help them in the work of cultivation; these loans can be easily advanced and on liberal terms because their repayment is secured by the process of purchase of the produce through the service societies. It would be reasonable to think that this would encourage cultivation and result in larger quantities of foodgrains being produced. That would also help to achieve the object of the Act. It may further be pointed out that each of these societies is a body corporate : see section 18 of the Co-operative Societies Act, 1912. The societies form a net work over the entire surplus grain producing area of Assam, each working in its own area. A vast number of growers of foodgrains are the members of the primary

marketing and service societies. It is to these societies that the licences had been issued of which a grievance is being made by the petitioner.

It appears that after the Apex and the subsidiary societies had been formed. The State Government with the concurrence of the State Government decided on a policy of procuring paddy in certain specified areas only through these societies. The State Government thereupon issued instructions to certain officers at the end of 1959 that procurement of paddy for the Kharif year 1959-60 would be made through the co-operative societies. It may be that it was for this reason that the licensing authority had stated in its order of February 17, 1960, earlier mentioned, that the petitioner's application for a licence could not be considered. I have now to remind that the Licensing Order, 1960 did not contain any provision enabling preference being given to a co-operative society in the grant of a licence. This case however is not concerned any more with regard to a licence for the year 1960 or the validity of any order of the licensing authority refusing to grant the petitioner any licence for that year.

Returning to the contention that the power under paragraph 5(e) of the Licensing Order had been exercised in a discriminatory manner, I wish first to observe that under the Order which I have already held to be good, the authority concerned in granting the licences was entitled to prefer a co-operative society, and this is what it has done. Though the result may have been to prevent the petitioner from carrying on the trade of purchasing and selling paddy, that in my view is, in the circumstances of this case, a reasonable restriction on his right to trade for that was necessary to secure for the people of Assam supply of foodgrains at a reasonable price and in adequate quantities.

I have very grave doubts if the licensing authority was intended to act in a quasi-judicial capacity in the matter of granting licences. It has to be remembered that the question before it was not so much of the competing rights of various applicants or of any his between an applicant and the State. The duty of the licensing authority was to advance the object of the Act in terms of the Licensing Order. Its main consideration has to be to see that the licences granted by it helped to make foodgrains available at a fair price to the people of Assam. The Act gave the powers for that purpose. It is because this purpose is legitimate that the resultant prohibition of trading by private dealers is also legitimate. I believe that the two cases I have earlier mentioned proceeded on the basis that the licensing authority was not a quasi-judicial officer. It is not necessary for me however to pronounce finally on this question.

It was contended that the licensing authority in granting the licence to the co-operative society had only carried out the Government and had not acted independently. I find no basis for this contention apart from the bald allegation of the petitioners which is denied by the respondent. No directions by the Assam Government for the year 1961 have been produced. The instructions to which I have earlier referred requiring the licence to be given to the co-operative societies were confined to the year 1959-60. That had no force in regard to the year 1961 with which we are concerned. Those instructions cannot be taken as operating for then the licensing authority's order granting licences to a co-operative society in future years will always have to be held to have been made nuder these instructions. I am unable to take such a view of the matter. As already stated, the High Court had by its Order of August 10, 1960 asked the licensing authority to proceed in a quasi-judicial manner. There is no reason to think that the licensing authority had not observed this direction of the High Court.

It also seems to me reasonable to think that the Assam Government inserted clause (e) in paragraph

5 of the Licensing Order, 1961 in view of the judgments of the High Court of Assam to which I have earlier referred. The Assam Government obviously intended that the licensing authority would in view of clause (e) give preference to the co-operative societies. Furthermore, section 4 of the Act provides that an order made under section 3 conferring powers on any officer or authority may contain directions to him as to the exercise of such powers. In my view, for the reasons earlier stated, a direction in the Licensing Order to give preference to co-operative societies would not be bad. It seems to me that clause (e) of paragraph 5 of the Licensing Order, 1961 really amounts to such a direction. It was not necessary after the Licensing Order, 1961 for the Government of Assam therefore to give any other direction to the licensing authority.

I do not think any question of violation of Article 14 can be seriously pressed. If the duty of the licensing authority was quasi- judicial in its nature, then it is difficult to appreciate how it can be said that its decision would offend Article 14. In any case, it seems to me quite clear that the co-operative societies form a class by themselves and a provision giving preference to such a class, would be a good provision because the object of the Act would be better served thereby for the reasons earlier mentioned; such provision would have a clear nexus with the object of the Act and therefore satisfy the test of Article 14.

Looking at the matter from any point of view it seems to me that the Order of the licensing authority giving preference to the co-operative societies is not open to any objection. In my view that was a fair Order to have been made in the circumstances of this case.

I would for these reasons dismiss this petition.

MUDHOLKAR, J. –

I agree with the judgment delivered by Sarkar, J.

BY COURT –

In accordance with the opinion of the majority this Writ Petition is allowed with costs.

Petition allowed.

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