

Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others

Vs

State of Madhya Pradesh and Others

Writ Petition (Civil) No. 4186 of 1981

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

25.08.1981

JUDGMENT

CHINNAPPA REDDY, J. –

1. These writ petitions under Article 32 of the Constitution and petitions for special leave to appeal under Article 136 of the Constitution may be disposed of by a common order since they raise the same questions. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 and delegated to it by the Government of India by its Order No. GSR 1088 dated November 15, 1958, Ministry of Food and Agriculture (Department of Food), the Government of Madhya Pradesh made the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960. The undoubted object of the Order was to provide for better distribution of foodstuffs to such class of consumers as required a regular supply of such foodstuffs. Detailed provision was made for the issue of "family cards", the registration of the holders of such "family cards" with "appointed retailers", the appointment of "appointed retailers", the supply of foodstuffs to "appointed retailers" by the Government, the sale of foodstuffs by "appointed retailers" to consumers etc. "Family card" was defined as meaning "a card or document issued to the head of a family under or in pursuance of the provisions of this order". "Appointed retailer" was defined to mean "a retail dealer appointed or deemed to be appointed under the provisions of Clause 3 in respect of any foodstuff". "Government scheme" was defined to mean "the scheme for distribution of foodstuffs to consumers through fair price shops set up by the Government in this behalf". Clause 3 of the Order made provision for the appointment of "appointed retailers" by the Collector for purposes of distributing foodstuffs under the Government scheme. Clause 4 of the Order prohibited an "appointed retailer" from supplying any foodstuffs in respect of which he held his appointment except under and in accordance with the provisions of the Order. Pursuant to the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960, several persons were appointed as "appointed retailers". The petitioners were so appointed and many of them claimed that they were unemployed graduates at the time of their appointment as "appointed retailers". Things went on, according to the Government very badly, till the Government moved in the matter, first, by sending urgent wireless messages to all Collectors on October 28, 1980, and following it up very soon thereafter, on October 30, 1980, by amending the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960.

The wireless message was as follows :

#No. 6494/4755/XXIX/180 Dated October 30, 1980##

GOVERNMENT HAS DECLINED TO EXCLUDE THE APPOINTMENT OF APPROVED
RETAILER I.E. FAIR PRICE SHOP FROM THE PURVIEW OF MADHYA PRADESH

FOODSTUFFS (DISTRIBUTION) CONTROL ORDER, 1960 STOP THESE APPOINTMENTS WILL UNTIL FURTHER ORDERS OF THE COLLECTORS STOP GAZETTE NOTIFICATION TO THEIR EXCEPT ISSUING TODAY STOP NEW ARRANGEMENTS WILL BE EFFECTIVE FROM FIRST NOVEMBER 1980 FROM WHICH DATE EXISTING SHOPS WILL BE DEEMED TO BE CONTINUING TO OPERATE UNDER THE COLLECTORS' AUTHORITY STOP SINCE COLLECTORS WILL NOW BE FREE TO CANCEL SUSPEND AND APPOINT NEW RETAILERS GOVERNMENT DESIRE THAT IN ALL NEW APPOINTMENT STOP COOPERATIVE SOCIETIES BE GIVEN FIRST PRIORITY AND CASES OF OTHERS BE DETERMINED ON MERIT I.E. PERSONS WHO WOULD BE INTERESTED AND BE ABLE TO DO THIS BUSINESS STOP IT MAY BE NECESSARY TO INSIST ON FOODGRAINS AND SUGAR DEALERS LICENCERS FROM NEW RETAILERS AT LEAST IN URBAN AREAS AND WITHIN A MONTH OR SO IN RURAL AREAS WHEN FORMAL APPOINTMENTS ARE MADE STOP TILL PRESENT RETAILERS ARE SUBSTITUTED FORMERLY PRESENT ONES WILL CONTINUE STOP PLEASE COMPLETE THIS PROCESS WITHIN A WEEK STOP DETAILED INSTRUCTIONS WILL FOLLOW STOP

By the amendment made on October 30, 1980, in the Madhya Pradesh Foodstuffs (Distribution) Control Order, the definition of "appointed retailer" was deleted and an expression "fair price shop" was newly defined to mean a shop set up by the Government under the Government scheme. All the clauses of the Order dealing with "appointed retailers" were deleted. The provision of the Order relating to "family cards" were however retained. The holder of a "family card" was required to get the card registered with the "fair price shop" in the prescribed manner for the purpose of obtaining foodstuffs for his family. In the Order, as it stood originally, there were provisions for appeal and revision against orders of suspension or revocation of the appointment of "appointed dealer". These clauses also went the way of the order clause relating to "appointed retailers". Thereafter the Government of Madhya Pradesh promulgated a scheme known as the Madhya Pradesh Foodstuffs (Civil Supplies Public Distribution) Scheme, 1981. The Scheme cast a duty upon the Collector to establish "fair price shops". It was proposed that there should be a "fair price shop" in each area with a population of 2000 so that no consumer may have to travel more than five kilometers to purchase foodstuffs. The fair price shops were to be run by agents appointed by the Collector. It was made clear that the agents were to have no right of legal ownership over the "fair price shops". In the allotment of "fair price shops", cooperative societies were to be given first preference. If there was a cooperative society in an area, and if such society expressed, in writing, its unwillingness to run the fair price shop, the fair price shop could be allotted to other persons. The allottee was to be a person with satisfactory financial resources and in a position to discharge the duties and obligations of a fair price shop. He should not have been adjudged insolvent. He should bear good character and should not have been convicted of a criminal offence. Every fair price shop was expected to stock specified items of foodstuffs in such quantities as would be sufficient for one and half month's supply to consumer. The opening and closing hours of the shop were to be regulated by the Collector. The shop had to be kept open for at least eight hours every day. The fair price shop was to be paid commission and transport and other incidental expenses at the rates to be determined by the Government.

2. The vital change brought about by the amendment and the new Scheme was the abolition of the system of "appointed retailers" and their replacement by "fair price shops" which were to be run by the agents appointed under new Scheme, preference in the matter of appointment of agents being given to cooperative societies.

3. Writ petitions were filed immediately in the High Court of Madhya Pradesh by erstwhile

"appointed retailers" questioning the validity of the wireless message, the amendment of the Madhya Pradesh Foodstuffs (Distribution) Control Order and the Madhya Pradesh Foodstuffs (Civil Supplies Public Distribution) Scheme. A Division Bench of the Madhya Pradesh High Court (G.P. Singh, C.J. and Faizanuddin, J.) dismissed the writ petitions by their judgment dated April 13, 1981. Most of the submissions made before us were also made before the High Court and were rejected by the learned Chief Justice in a well considered judgment. Some of the applicants before the High Court have filed petitions for special leave to appeal to this Court and some others have directly moved this Court under Article 32 of the Constitution.

4. Shri Bhatt, learned counsel for the petitioners in Special Leave Petitions Nos. 4234-4235 of 1981 urged that the preference to be shown to cooperative societies in the matter of appointment of agents to run fair price shops was discriminatory. He sought to place reliance on the decision of this Court in *Mannalal Jain v. State of Assam* [(1962) 3 SCR 936 : AIR 1962 SC 386]. Shri Amlan Ghosh learned counsel for the petitioners in the remaining cases made several submissions : (1) The wireless message dated October 28, 1980, was without any legal authority as the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 had not even been amended by that date; (2) The amendment of the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 was invalid as it was not approved by a legislation within six months; (3) The amendment was invalid as the concurrence of the Central Government had not been obtained; (4) The amendment and the Schemes were also invalid as they were not laid before the Parliament; (5) There was a violation of the principles of natural justice as the amendment took away the right of the existing "appointed retailers" without hearing them; (6) The Scheme was invalid as it was made pursuant to delegation of delegated powers; (7) There was an unlawful creation of monopoly in favour of cooperative societies. We do not find any substance in any of the submissions made by the counsel.

5. Shri Gopala Subrahmanyam, who presented the case for the State of Madhya Pradesh with ability and clarity drew our attention to the history of the scheme of distribution of foodstuffs in the State of Madhya Pradesh and pointed out, with reference to the counter-affidavit filed on behalf of the State of Madhya Pradesh, how the well intentioned efforts of the Government to distribute foodstuffs in a fair and equitable manner were foiled and frustrated by the "appointed retailers". It appears from the counter-affidavit that many serious irregularities were being committed with impunity and without hindrance, under the 1960 Scheme and because of the provision for appeals and revisions, erring traders could not be brought to book in time. In the past few months, there was a tremendous increase in flagrant violations of the 1960 Control Order. Shops were opened well after the appointed time and closed well before the appointed time. Consumers found it difficult to obtain their rations easily. Traders would hoard foodstuffs and refuse to sell them to the customers. They would not maintain sufficient stocks and they would not lift stocks from Government godowns in time. The situation was getting so much out of control that in July 1980 the Chief Minister called a conference of responsible officials including the Director of Civil and Food Supplies and the Collectors of the Districts. There was considerable discussion, in the course of which the Collectors of the Districts drew the attention of the Chief Minister to the plight of the poor consumers and the abuse to which the existing system had lent itself at the hands of the retailers. Thereafter a conscious and responsible decision was taken to scrap the existing system of distribution of foodstuffs through "appointed retailers" and to introduce a system of distribution of foodstuffs by authorised agents who were preferably to be cooperative societies. The impugned wireless message was therefore, issued by the Government to the Collectors incorporating the decision of the Government. It was rightly conceded by Shri Gopala Subrahmanyam that the wireless message should have properly come after the amendment of the Control Order but in the circumstances of the case no harm was done as no action was taken pursuant to the wireless message until after the Control Order was

amended. This circumstance, we may mention here, meets one of the submissions of the learned counsel for the petitioners that the wireless message should have been issued after the amendment of the Control Order.

6. The original Order of 1960 was made by State Government pursuant to the powers delegated to it by the Central Government by Notification No. GSR 1088 dated November 15, 1958. GSR No. 1088 dated November 15, 1958 required that the concurrence of the Central Government should be obtained by the State Government in respect only of orders made in relation to matters covered he clauses (a) and (d) of Section 3(2) of the Essential Commodities Act. GSR 1088 of November 15, 1958, was later superseded by other notifications. The notification in force on the date of the amendment of the Control Order was GSR 800 dated June 9, 1978, under which concurrence of the Central Government was necessary only when the orders related to matters specified in clauses (a), (c) and (f) of Section 3(2) of the Essential Commodities Act or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuffs under clause (d). The Control Order of 1960 and the amendment dated October 30, 1980 do not relate to any of these matters and the concurrence of the Central Government was therefore unnecessary. It may be that the concurrence of the Central Government was obtained by the State Government before the 1960 Control Order was made but that was really unnecessary. Merely because concurrence of the Central Government was needlessly obtained on an earlier occasion, the State Government was needlessly obtained on an earlier occasion, the State Government was not obligated to obtain the concurrence of the Central Government whenever again there was an amendment of the Control Order.

7. The submission that the amendment was invalid because it had not been placed before the legislature within six months is totally misconceived. The amendment was not an ordinance and it was not required to be placed before the legislature within six months. We are also not able to appreciate why the amendment should have been placed before the Parliament. What is required to be placed before the Parliament under Section 3, sub-section (6) of the Essential Commodities Act is an order made by the Central Government or by any officer or authority of the Central Government. An order made by the State Government in exercise of the powers delegated to it by the Central Government under Section 5 is not required to be placed before Parliament.

8. It was submitted that the amendment of the Control Order had the effect of doing away with "appointed retailers" and as this was being done without notice to them, there was a violation of the principles of natural justice. The amendment of the Control Order was a legislative function and there was therefore no question of affording an opportunity to those who were to be affected by it : vide *International Tourist Corporation, Delhi v. State of Haryana* [(1981) 2 SCR 364 : (1981) 2 SCC 318].

9. One of the submissions of the learned counsel was that the formulation of the Scheme was an exercise of power by the delegate of a delegate and, therefore, void. We see no force in this submission. The basic assumption underlying the argument was that the Scheme was formulated by the Government pursuant to some power purported to be vested in the Government under the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 and that the Government would otherwise have no power to formulate such a scheme. The assumption is not well founded. In the first place the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 as amended in 1980 defines "fair price shop" as a "shop set up by the Government under the Government schemes" and the "Government scheme" as "the scheme for distribution of foodstuffs to consumers through fair price shops set up by the Government in this behalf". There is no other provision in the Order

authorising the setting up of fair price shops or the making of a scheme for setting up fair price shops. On the other hand the State Government has undoubted competence to make a scheme for setting up fair price shops and to set up fair price shops in pursuance thereof, in exercise of its executive power under Article 162 of the Constitution. The executive power of the State Government under Article 162 of the Constitution is coextensive with the legislative power of the State legislature. Entry 33(b) of List III (Concurrent List) is "trade and commerce in, and the production, supply and distribution of foodstuffs, including edible oil-seeds and oils". The Government, therefore, has the undoubted right to make a scheme for the distribution of foodstuffs, without being vested with any special authority under any order made under the Essential Commodities Act. As already mentioned by us the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 does not purport to vest any such power in the Government. It must, therefore, be taken that the Madhya Pradesh Foodstuffs (Civil Supplies Public Distribution) Scheme, 1981, was made in exercise of the executive power of the Government and not in exercise of any power delegated by a delegate under the Essential Commodities Act.

10. Finally we come to the argument which was strenuously pressed before us namely that the Scheme was discriminatory inasmuch as preference was to be shown to cooperative societies in the matter of allotment of fair price shops and thus a monopoly was ought to be created in favour of cooperative societies. Before we proceed to discuss the matter further we must refer to the statement made by the learned Advocate-General before the High Court and repeated before us by the learned counsel for the State that the expression "cooperative society" in Clause 2 of the Scheme meant only a consumers' cooperative society and no other. The learned counsel for the petitioners urged that the Scheme itself used the expression "cooperative society" and not "consumers' cooperative society" and therefore there was not reason to think that the expression "cooperative society" was intended to be confined to consumer' cooperative societies only. According to the learned counsel not only consumers' cooperative societies but other societies also have been allotted fair price shops in actual practice. We are of the view that in the context of the Scheme the expression "cooperative society" was meant to include consumers' cooperative societies only and no other. If any society other than a consumers' cooperative society has been allotted a fair price shop, we are assured by the learned counsel for the State that steps would be taken for cancellation of such allotment. We will proceed on the basis that the preference proposed to be given by the Scheme in the matter of allotment of fair price shops was to consumers' cooperative societies only.

11. Earlier, we have referred to the abuses which had grown up in the prevailing system of distribution of foodstuffs under the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960. The system had deteriorated and become completely unworkable and rotten to a breaking point. An absolute and thorough overhaul of the system had become compulsive if the population of Madhya Pradesh were to receive a regular supply of their rations. It was in those circumstances that the Government came to the conclusion that distribution of foodstuffs through cooperative societies (consumers' cooperative societies), would be the best method of distribution by which the goods could be delivered i.e. rations could be supplied to the consumers. No one can doubt the positive and progressive role which cooperative societies are expected to and do play in the economy of our country and, most surely, in the fair and effective distribution of essential articles of food. There certainly was a reasonable classification and a nexus with the object intended to be achieved, which was a fair and assured supply of rations to the consumer. The fundamental right of traders like the petitioners to carry on business in foodstuffs was in no way affected. They could carry on trade in foodstuffs without hindrance as dealers; only, they could not run fair price shops as agents of the Government. No one could claim a right to run a fair price shop as an agent of the Government. All that he could claim was a right to be considered to be appointed as an agent of the Government to

run a fair price shop. If the Government took a policy decision to prefer cooperative societies for appointment as their agents to run fair price shops, in the light of the frustrating and unfortunate experience gathered in the last two decades, we do not see how we can possibly hold that there was any discrimination.

12. The learned counsel for the petitioners placed strong reliance on *Mannalal Jain v. State of Assam* [(1962) 3 SCR 936 : AIR 1962 SC 386]. An examination of what was decided in that case shows that it does not help the petitioners. The Assam Foodgrains Licensing and Control Order was made in exercise of the powers conferred by Section 3 of the Essential Commodities Act. The Order provided that no one could do wholesale business in paddy and rice except under a licence. In granting or refusing a licence the licensing authority was required to have regard, among other matters, to the matters enumerated in sub-clauses (a) to (e) of Clause 5. One such matter [sub-clause (e)] was "whether the applicant is a cooperative society". The Government issued directions to all licensing authorities that rights of monopoly procurement had been given to the Apex Cooperative Society. The petitioner's application for a licence was rejected because of the Government's directions. The Supreme Court held 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 cooperative societies in certain circumstances, but not a monopoly in their favour.

It is apparent that the question before us is altogether different from the question considered by the Court in *Mannalal Jain* case [(1962) 3 SCR 936 : AIR 1962 SC 386]. In that case the Control Order prescribed the matters to be considered in deciding whether a licence should be granted or not. The licence was refused on a ground extraneous to the matters prescribed by the Control Order. It was not the Control Order that was found to be wrong but its administration. That was expressly stated by the Court who observed :

It was open to the licensing authority to give preference to cooperative societies, if it was of the opinion that granting a licence to a cooperative 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 licence to the petitioner, for the only reason and purpose of granting a monopoly to cooperative 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 cooperatives, an object which, clearly enough, is not within sub-clause (e) of Clause 5 of the Control Order, 1961.

In the present case, apart from defining the expressions "fair price shop" and "Government scheme", the Control Order has given no indication of the lines on which the Government scheme was to be drawn or of the guidelines to regulate the allotment of fair price shops. The Scheme, as already found by us, was formulated outside the Control Order and in exercise of the State's executive power. The appointment of agents to run fair price shops was to be made under the Scheme and in accordance with the guidelines prescribed by the Scheme. There could, therefore, be no question of the fair price shops not being allotted in consonance with the Control Order. On the other hand, there are several observations in the judgment which are in fact opposed to the contention of the petitioners. It was said (at SCR page 949) :

We are of the view that by reason of the position which cooperative 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 cooperative 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.... Sub-clause (e) of Clause 5, we have already stated, enables the licensing authority to give preference to a cooperative society in certain circumstance; but it does not create a monopoly in favour of cooperative 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.

We are, therefore, unable to agree with the submission of the petitioners that the preference to be shown to cooperative societies creates a monopoly in their favour and is discriminatory. In the result the writ petitions and special leave petitions are dismissed.

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