SUPREME COURT OF INDIA

Om Prakash Raj Kumar, Bilshinda

Vs.

State of Uttar Pradesh

C.A.Nos.1568-76, 1609-12, 1656, 1616, 1644, 1645, etc. of 1974

(A. Varadarajan, M. P. Thakkar and S. Murtaza Fazal Ali JJ.)

09.01.1984

JUDGMENT

M.P. THAKKAR, J.

1. The Constitution which promises a socialistic pattern of Society in the preamble and traces the contours of the socialistic philosophy which permeates the spirit of the Constitution, can neither command nor commend the exercise of the Constitutional Jurisdiction to issue HIGH PREROGATIVE WRITS under Article 32, 226 or 227, in order not to remove injustice, but to do injustice, in order not to prevent exploitation of the poor by the rich, but to permit such exploitation. And yet the CONSTITUTIONAL JURISDICTION of the Court (as polarized from its 'ERROR JURISDICTION' has been invoked in order to use the hand of the Court for transferring money from the pockets of poor cultivators (who feed the Nation) to the pockets of the dealers in fertilizers (who feed themselves) by challenging a notification on technical grounds. Such jurisdiction is invoked to enable the 'dealers' to reap a 'rich' harvest of 'unjust enrichment' through the instrumentality of the Court at the cost and expense of the cultivatOrs. We firmly believe that the Court exercising CONSTITUTIONAL JURISDICTION is not obliged to grant a writ in such circumstances. But we need not elaborate on the theme furthermore as the High Court has rejected the petition on merits and as we are of the same opinion.

2. Events leading to the institution of the Writ Petitions under Article 226 of the Constitution of India giving rise to this group of appeals (by certificate of fitness granted by the Allahabad High Court) have taken the following course :

(i) On October 11, 1973 the Central Government issued a notification fixing the maximum retail selling price of certain varieties of fertilizers to the consumers. It was issued in exercise of powers under Clause (3) of the Fertilizer (Control) Order of 1957 promulgated under Section 3 of the Essential Commodities Act of 1955 (referred to as 'Act' hereinafter).

(ii) Some time later, on June 1, 1974, the Central Government issued a Notification whereby the maximum retail selling price of different varieties of fertilizers was steeply revised upwards in order to compensate the 'manufacturers' in the context of the spurt in the prices of various inputs. The extent of the rise may be illustrated by taking the instance of 'Urea 46% Nitrogen'. Its price was revised upwards from Rs. 1090 per ton to Rs. 2000 per ton.

(iii) On June 14, 1974 the State of Uttar Pradesh issued the Uttar Pradesh Fertilizer Prices (Supplementary) Order, 1974 in exercise of the powers conferred by Rule 114 of the Defence of India Rules, 1971, adverted to as 'D.I.R.' hereinafter. Under this notification the registered 'dealers' were prohibited from charging to the cultivators price in excess of the maximum price prevailing immediately prior to the upward revision authorised by the Central Government on June 1, 1974, in respect of stocks acquired at pre-revision rates held by the dealers on the eve of the upward revision of prices.

(iv) The net result of the two last mentioned notifications was as follows : The dealers could sell to the cultivators fertilizers at the higher rates authorised by the notification dated June 1, 1974 from out of the stocks acquired thereafter under both the notifications. As regards the stocks acquired after June 1, 1974 the registered dealers were not affected by the notification issued by the State Government under the DIR in as much as the notification issued by the Central Government authorising the upward revision remained unaffected by the notification issued by the State. The dealers however could not sell the fertilizers at the higher rates from out of the existing stock acquired by them at the lower rates immediately prior to the upward revision effected on June 1, 1974, in view of the aforesaid notification issued by the State Government on June 14, 1974. Taking the instance of 'Urea 46% Nitrogen' the net impact of the impugned State notification was that the 'dealers' were not permitted to charge to the cultivators Rs. 2000 per ton instead of Rs. 1090 per ton in respect of stocks acquired at the lower rates.

(v) It was in this background that the dealers instituted the petitions giving rise to the present appeals by certificate, challenging the legality and validity of the impugned notification issued by the State Government on June 14, 1974.

3. Now, the following facts are not in dispute :

(i) The registered 'dealers' were entitled to a fixed profit margin of Rs. 45 per ton (and no more) under the terms and conditions of the licence held by them.

(ii) The stocks acquired prior to June 1, 1974 were meant for sale to the cultivators at the pre-upward revision rates at which rates the dealers had acquired the stocks. This stock had remained unsold with the dealers till then because the cultivators had not been able to effect their purchases till that date.

(iii) The price rise was authorised to compensate the 'manufacturers' in the context of the spurt in the price of various 'inputs' and had no bearing on the selling price for the 'dealers' who were not concerned with the cost of production.

(iv) In case the State Government had not issued the impugned notification dated June 14, 1974, the dealers would have been enabled to charge about twice the prices at which the stocks were made available to them for sale prior to the notification. For instance, 'Urea 46% Nitrogen' made available to the dealers for effecting sales to the cultivators at Rs. 1090 per ton could have been sold to the cultivators at Rs. 2000 per ton. Thus they would have been enabled to make a wind fall bumper profit of Rs. 910 per ton (in respect of 'Urea 46% Nitrogen') as against permitted profit margin of Rs. 45 per ton (i.e. about 1000% in place of about 5%) and to secure 'unjust enrichment' for themselves to such an unconscionable extent at the cost of the cultivatOrs.

4. It is in the backdrop of these undisputed facts that the question regarding the validity of the impugned notification dated June 14, 1974 issued by the State of Uttar Pradesh came to be challenged before the High Court of Allahabad.

5. The impugned notification was issued in order to meet a problem which arose in the peculiar facts and circumstances of the situation. The problem arose apparently because the competent authority exercising the powers of the Central Government under the Essential Commodities Act overlooked that the dealers who were concerned with the distribution of the fertilizers to the cultivators, on a fixed and assured profit margin of Rs. 45 per ton, would be having with them stock-in-trade obtained at the pre-enhancement prices. And that they might take undue advantage of the situation by charging a higher rate to the consumers even in respect of the stocks acquired at the lower rates. The dealers could and should have sold the stock-in-trade acquired at the pre-enhancement price at the hitherto prevailing rates till the old stocks were exhausted. That is what would have been expected of them, having regard to the fact that they were getting a fixed and assured margin of profit of Rs. 45/- per ton and that the enhancement of the price was necessitated and made solely, to neutralize the rise in the cost of the inputs, which phenomenon affected only the 'manufacturers' and not the 'dealers'. There was therefore no occasion or justification on their part for charging a higher price to the consumers in regard to the sales effected from the existing stocks acquired at the lower rates. The notification issued by the Central Government on June 1, 1974 was silent on the question of selling prices in respect of sales from out of stocks acquired earlier at the lower rate. Since the said notification issued by the Central Government was silent, the State Government, which appears to have been more vigilant, stepped in and exercised powers which were conferred on it by the DIR.

6. The challenge before the High Court was made on three main grounds, viz:

(A) The Central Government having issued a notification, in exercise of powers under the Essential Commodities Act, 1955, the State Government could not have issued the impugned notification under the Uttar Pradesh Fertilizer Prices (Supplementary) Order, 1974 issued, in exercise of the powers conferred under Rule 114 of the 'D.I.R.'. The power to fix the maximum price in respect of fertilizers could be exercised only under the Essential Commodities Act; it being a special Act, and could not have been exercised by the State Government by issuing an order under the 'D.I.R.'

(B) Even if the State Government had the power to issue the notification under the D.I.R., the notification was invalid by reason of its inconsistency with the notification issued by the Central Government on June 1, 1974 under the Essential Commodities Act, 1955.

(C) The impugned notification was violative of Article 14 of the Constitution of India.

7. The High Court of Allahabad negatived all the three contentions by an extremely well considered and well reasoned judgment. In the present group of appeals by certificate, the original petitioners have reiterated the same contentions before this Court.

8. Re: Ground A : The argument in substance is that Essential Commodities Act, 1955, is a special Act under which the price relating to a commodity declared to be an essential commodity can be regulated. The power to regulate the price in respect of such an essential commodity cannot therefore be exercised under Defence of India Rules, 1971 or under any other provision of law.

9. Now, both the Essential Commodities Act, 1955, as also the Defence of India Rules of 1971, are Central legislations enacted by the Parliament. The 'D.I.R.' were brought into force by the Parliament in 1971 in order to meet an emergency situation. The legislative competence of the Parliament to enact the legislation on the subject in question, namely, fixation of prices of all articles, is not questioned. The Parliament having competence to legislate in regard to the subject has enacted both the legislations, one in 1955, another in 1971.

10. The impugned notification has been issued under the latter statute. The 'D.I.R.' having been enacted later, it cannot, and it has not been, contended that the doctrine of repeal is attracted. Since there is legislative competence, since the statute is not eclipsed by the doctrine of express or implied repeal, how can the power exercised under the valid statute be assailed ? The only argument advanced, a misconceived one in our opinion, is, that since the 'Act' deals with essential commodities, and fertilizer has been declared under the Act as an essential commodity, the power conferred by the 'D.I.R.' cannot be exercised in respect of regulation of the price of such a commodity or article. It is not disputed that under the DIR power has been conferred, inter-alia, to regulate the price of 'any' article. The expression 'any article' is wide enough in its amplitude to envelope 'fertilizers'. The fact that 'fertilizers' have been declared as an essential commodity, and its price can be regulated under the powers conferred by the Act, is altogether immaterial. There is no constitutional or jurisprudential limitation on the competence of the Parliament to create two avenues or sources of power for the regulation of prices of articles. There is nothing in principle or precedent to support the proposition that two avenues or sources of power cannot be validly created. What then is the fabric of the challenge ? The only answer offered by the counsel is that the Act is a statute specially enacted, inter alia, for regulation of the prices of commodities declared to, be essential and therefore in respect of such commodities, the power can be exercised only under the Act. We are unable to accede to this argument, Since, as discussed earlier, Parliament can constitutionally and validity enact two statutes creating two sources of power, and since, under both the statutes prices of fertilizers can be regulated, there is no illegality in acting under 'either' or 'both'. Counsel, however seeks support from the following passage from Craies on Statute Statute Law of Craise, 7th Edition 222 :-

Acts of Parliament some times contain general enactments relating to the whole subject-matter of the statute, and also specific and particular enactments relating to certain special matters; and if the general and specific enactments prove to be in any way repugnant to one another, the question will arise, which is to control the other ? In *Pretty v. Solly*, (1859) 26 Beav. 606, Romilly M.R. stated as follows what he considered to be the rule of construction under such circumstances. "The general rules," said he, "which are applicable to particular and general enactments in statutes are very clear; the only difficulty is in their application. *The rule is, that whenever there is a particular enactment and a general enactment in the same statute*, and the latter, taken in its most comprehensive sense, would over rule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

(Emphasis added)

It is overlooked that the said passage deals with different provisions in the "same" statute. That when there is a special provision in the very same statute in regard to a subject matter, the special provision of the statute will ordinarily prevail, in rivalry or competition with the general provision, is a proposition with which there is no quarrel. But then we are not at all concerned with any rivalry between two provisions of the 'same' statute. We are faced with two enactments by the same

legislature 'which create two sources of power to achieve the same purpose. To repeat what has been observed earlier, there is no legal bar to creating two sources of power. And there is no authority in principle or precedent for contending that one source of power is more valid than the other. Or that the power validly conferred by the same legislature can be exercised only under one, and not the other, of the two statutes, leaving aside the question of irreconcilable or intolerable inconsistency. We, therefore, confirm the view of the High Court and repel the challenge.

11. Re: Ground B: The validity of the impugned, notification issued by the State under the 'DIR' is assailed on the ground that it is inconsistent with the earlier notification issued by the center. As discussed earlier, the Central notification does not 'specifically deal with the question as regards selling price in respect of sales from the existing stocks acquired by the dealers at the pre-enhancement prices which remained unsold with them as the cultivators could not effect purchases till then. In other words the Central notification does not deal with this ramification at all. It does not show awareness of this dimension and is altogether silent on the subject. The impugned State notification, issued later, on the other hand, deals, specifically, pointedly/and solely, with this dimension. It is in this perspective that the issue has to be judged bearing in mind the undisputed position that there is no center-State conflict involved in the sense that (1) the center which is not even impleaded as a party, does not question the power of the State or the validity of the notification as impinging on its (center's) jurisdiction or authority; (2) center has not asserted its superior authority from the standpoint of Center-State-power-equation in order to supersede the State notification.

12. The question clamouring for solution in this scenario has two facets, viz :

(1) Whether there is any inconsistency between the Central notification on the one hand and the State notification on the other, and;

(2) whether the inconsistency is an irreconcilable or intolerable one.

Is there inconsistency ?

13. The Central notification as discussed earlier, is altogether silent on the ramification regarding sales from out of existing stocks acquired by the dealers at lower rates. The impugned State notification, on the other hand, deals exclusively with this aspect. The State notification speaks on a refinement of the subject about which the Central notification is blissfully unaware and on which it is altogether silent. The two do not overlap. There is therefore no real inconsistency. The principle may be stated thus. The center and the State both cannot speak on the same channel and create disharmony. If both speak, the voice of the center will drown the voice of the State. The State has to remain 'silent' or it will be 'silenced'. But the State has the right to 'speak' and can 'speak' (with unquestionable authority) where the center is 'silent,' without introducing disharmony. If the center sits only on a portion of the Chair, the State can sit on the rest of the portion with arms thrown on the shoulders of each other. While the State cannot sit on the lap or on the shoulders of the center, both can certainly walk hand-in-hand lending support to each other, in a friendly manner, towards the same destination. If the center has built a wall, and has left a gap from which intruders can infiltrate, the State can fill the gap in the wall, and thus make its own contribution to the Common Cause. What is more, each in theory and principle must be presumed to be conscious of the need for accord and need for accommodating each other in the interest of 'NATIONAL HARMONY'.

14. The center can object to the State speaking on the same channel, or sitting on its shoulders, and perhaps, even override the State. But the center and the State can certainly accommodate each other in a friendly spirit in the overall NATIONAL INTEREST when both of them are trying to supplement each other. In the present case both notifications can safely be construed as supplementary and friendly rather than inconsistent or hostile. The center does not question the authority of the State, and, evidently, the center does not object to the State speaking on the nuance on which the center has maintained silence. There is therefore no real element of inconsistency in the two notifications. The following passage extracted from Statutory Construction by Sutherland (para 2022 Sutheralnd's statutory Construction 3rd Edition, Vol. 1. Page 488) shows that the aspect relating to 'refinement' is a well recognized factor and that the state law can be treated as an exception when the inconsistency is not irreconcilable :-

A general statute applies to all persons and localities within its jurisdictional scope, prescribing the governing law upon the subject it encompasses, *unless a special statute exists to treat a refinement of the subject with particularity* or to prescribe a different law for a particular locality. Likewise where a later statute adapted for a particular locality conflicts with a general law of state-wide application, the special or local law will supersede the general enactment. Where, however, the later special or local statute is not irreconcilable with the general statute to the degree that both statutes cannot have a coterminous operation, the general statute will not be repealed, *but the special or local statute will exist as an exception to its terms*.

(Emphasis added)

15. Assuming for the sake of argument that it is considered to be an inconsistency, it does not appear to be an irreconcilable or intolerable one, so as to invalidate it, as will be presently shown.

Is the alleged inconsistency irreconcilable or intolerable one ?

16. There are degrees of inconsistency in the context of conflict of laws. There can be apparent or surface inconsistency which may be considered as a non-hostile, tolerable, benign, one, subject to the unquestioned power of the center to override the State if so minded. On principle, every apparent inconsistency cannot be presumed to be hostile or intolerable. More so when the center does not even raise a whisper of discord. One of the tests for ascertaining whether the inconsistency is an irreconcilable or intolerable one, is to pose this question : Can the State law be obeyed or respected without flouting or violating the Central law in letter and spirit ? If the answer is in the affirmative, the State law cannot be invalidated. Not at any rate when the State law merely 'promotes' the real object of both the laws, and is in the real sense 'supplementary' or 'complementary' to the Central law. In the present case the test answers in favour of the validity of the impugned State notification. The Central notification is not violated if the dealers sell the fertilizers from out of the existing stocks acquired at the lower rates, for both the notifications fix the maximum selling price and the maximum selling price fixed under the State notification is not higher than that fixed under the Central notification. What is more, the State notification 'promotes and serves' the object and purpose of both the center and the State. 'Promotes and serves', in the sense, that the manifest object of fixing maximum ceiling price is to make available to the cultivators who grow the food for the NATION to obtain the inputs at reasonable prices and to protect them from exploitation so that the food production is not retarded. It is not contended even by the petitioners, for the very good reason that it is incapable of being so contended, that the object of the price regulation is to enable the dealers to make unconscionable profit. Thus the impugned

State notification promotes rather than 'defeats', the 'life-aim' of Central as also the State notifications. It 'helps' rather than 'hurts' the objectives and goals of the center, and there is no conflict whatsoever of 'interest', 'purpose', or 'perspective'. The State has done only that which the center presumably would have readily done if it was fully aware of the situation from all angles of vision. For, the only impact of the impugned notification is that the 'cultivator' for whose protection the price regulation is essentially made, is saved from exploitation without hurting the legitimate claim of the dealer, who, in any case, gets his fixed profit margin of Rs. 45/- per ton.

17. In Australian Boot Trade Employee's Federation v. Whybrow Co. (1910) C.L.R. 10 the High Court of Australia in a somewhat similar situation held that there was no inconsistency between a State law fixing a minimum wage for workers in the boot trade of 1$ per hour and a federal law fixing a minimum wage for the same workers of 1 1/2 $ per hour. Speaking through Barton, J. the court observed :-

The determinations of the wages boards (in effect the State law) and the proposed award (in effect, the Commonwealth law) are courched in the affirmative in respect of the material part of each, the provision as to the minimum wage. *None of them prescribed an inflexible rate. The (State) determinations prescribe a minimum and it is in each case lower than the minimum named by the proposed (Commonwealth) award. By paying the latter minimum an employer will be obeying both laws*. The affirmative words of the (Commonwealth) award, therefore do not "impart a contradiction" between it and the (State) determinations. *It is impossible to say that the employer cannot obey the one without disobeying the other*. therefore, the former and the latter may stand together. therefore, according to the proper test, they are not inconsistent.

(Emphasis added)

18. It would thus appear that in a somewhat parallel situation the Australian High Court had taken the view that since both laws can be obeyed without disobeying any there is no conflict. In the present case also an endeavour must be made to place a harmonious interpretation which would avoid a collision between the two. Another way of looking at the problem is this : The impugned notification, though issued by the State, has its source of power in the 'DIR'. which is a Central Statute enacted by the Parliament. The State is merely an instrumentality for executing the purpose of the Central Act. The impugned notification which is 'later' in point of time must, therefore, prevail to the extent it 'speaks' on the refinement or nuance of the matter on which nuance the earlier notification is 'silent'. In any view of the matter, therefore, the challenge from this platform cannot succeed.

19. It may be mentioned that a half-hearted argument was advanced that Article 254(2) would be attracted and Presidential assent would become necessary in order to give effect to the impugned notification. There is no merit in it in as much as Article 254(2) does not envision Presidential assent to 'notifications' issued under an Act (as distinguished from 'laws made by legislature') as has been observed by a Constitution Bench of this Court in Kerala State Electricity Board v. Indian Aluminium Co.: [1976]1SCR552 wherein Alagiriswami, J. speaking for himself and for Bhagwati, Goswami and Sarkaria JJ. says :-

Was it necessary to get the President's assent for this notification as contended by some of the respondents ? Quite clearly no Presidential assent was possible to the notification. Article 254(2) does not contemplate Presidential assent to notifications issued under the Act. The article contemplates Presidential assent only to laws made by the legislature of a State." This ground of attach, also accordingly fails.

20. Regarding ground (C) : The appellants contended that the impugned notification was violative of Article 14 of the Constitution of India and was therefore invalid. The argument was advanced on the assumption that the State Government had permitted govermental agencies falling within the definition of 'dealer' in the Fertilizer Control Order, 1957 to sell the stocks held by the said agencies immediately preceding the issuance of the impugned notification dated June 1, 1974 at the higher rates. This allegation has been controverted by the State of Uttar Pradesh. A reference to the counter-affidavit sworn by the Accounts Officer, Fertilizers and Manuals Directorate of Agriculture, field in C.M.P. No. 6773 of 1974 clearly shows that the State Government had not granted any such permission. Thus the very basis of the challenge on the score of hostile discrimination is found to be non-existent. The High Court was perfectly justified in rejecting this contention. We, therefore, confirm the view taken by the High Court.

21. Thus all the grounds called into aid by the appellants for challenging the impugned notification are found to be devoid of substance.

22. Under the circumstances the appeals fail and are dismissed. Having regard to the facts and circumstances of the case there will be no order regarding costs.

23. The interim orders passed by this Court are hereby vacated. In the result, the concerned District Magistrate will now have to take appropriate steps to pass on and pay to the cultivators the differential amount deposited by the dealers pursuant to this Court's orders dated September 2, 1974, and, October, 10, 1974, as early as possible. And, in any event, within six months of this order, after proper verification. We order accordingly.

24. Appeals dismissed. Interim orders vacated.

VARADARAJAN, J.

25. civil Appeal 1656 of 1974 is by special leave. The other appeals are by certificate granted by the Allahabad High Court. All the appeals arise out of the judgment of a Division Bench of that High Court in a batch of Writ Petitions out of which W.P. No. 3421 of 1974 was treated as the leading case. civil Appeals 1568-1576 of 1974 and batch have arisen out of that batch of Writ Petitions. In the other set of civil Appeals another Writ Petition of 1974 is said to have been treated as the leading case by the High Court. The decisions were rendered in Writ Petition No. 3421 of 1974 for one batch and in another Writ Petition of 1974 for the other batch. But in all the appeals before us, the judgment in W.P. No. 3421 of 1974 alone was referred to.

26. The Writ Petitions filed under Article 226 of the Constitution challenged the validity of a notification dated 14-6-1974 issued by the Government of Uttar Pradesh in exercise of the power conferred by Rule 114 of the Defence of India Rules, 1971, directing that no registered dealer of fertilizer shall charge or retain, enter into or enforce any contract for charging, in respect of any

fertilizer sold to any person on or after 1.6.1974, from any stock held on 31.5.1974, a price exceeding the maximum price fixed by the Central Government for the sale of fertilizer under an earlier notification dated 11.10.1973 issued under Clause 3 of the Fertilizer (Control) Order, 1957 made in exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955, as it prevailed on 31-5-1974. The Writ Petitions challenged also an order dated 18.6.1974 passed by the District Agricultural Officers directing registered dealers of fertilizers to refund the excess price charged on the sale of fertilizer effected on or after 1.6.1974 from out of the stock which was in existence on 31.5.1974. The Writ Petitions sought the quashing of the said notification dated 14.6.1974 and also a direction to the District Agricultural Officers and other District Authorities not to ask the dealers to refund the excess in respect of sales completed prior to the date of that notification. The High Court has, while upholding the validity of the notification dated 14.6.1974 and dismissing the prayer for quashing the same, directed the District Agricultural Officers and other District Authorities not to enforce the order for refund of the excess price realized on the sale of fertilizer up to 14.6.1974 from the stocks which were in existence on 31.5.1974. This part of the High Court's order has become final and has not been challenged by the State Government. This Court has directed by orders dated 2.9.1974 and 30.10.1974 that the excess price charged on the sale of fertilizer which was in the possession of the appellants before 1.6.1974 should be deposited with the District Magistrate concerned within a fortnight of the sales, to remain in a separate account.

27. The fertilizer in question is admittedly a commodity controlled under the Fertilizer (Control) Order, 1957 issued by the Central Government in exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955. The maximum price for sale of fertilizers by registered dealers to consumers is fixed under Clause 3 of the Fertilizer (Control) Order, 1957 by notifications issued from time to time. The sale price of one of the varieties of fertilizers with which we are concerned in these appeals has been fixed at Rs. 1050 per ton by a notification dated 11.10.1973 which was in force on 31.5.1974. The price fixed in that notification for the sale of that variety of fertilizer to registered dealers was Rs. 1005 per ton leaving a margin of Rs. 45 per ton on sale to consumers at Rs. 1050 per ton. The Central Government, in supersession of the notification dated 11.10.1973 fixed the maximum sale price of that variety of fertilizer at Rs. 2000 per ton by a notification dated 1.6.1974, thus giving an increase of Rs. 950 per tone for that variety to the dealers. The dealers started selling at the new rates fixed in that notification for the several varieties of fertilizers. The Government of Uttar Pradesh being of the view that the Central Government's notification dated 1.6.1974 was not intended to apply to old stock procured by dealers at considerably lower price from producers which was in existence on 31.5.1974, issued the impugned notification dated 14.6.1974 directing that the old stock should be sold at the old rate of Rs. 1050 per ton with effect from 1.6.1974. The Writ Petitions were filed by the dealers, some of them for quashing the state Government's notification dated 14.6.1974, some of them for quashing that Stat Government's notification as also for directing Agricultural Officers and other District Authorities not to enforce the order mentioned above and some for the latter direction alone.

28. The question for consideration by the High Court was the validity of the state Govenment's notification dated 14.6.1974 as regards the stock of fertilizer available with the dealers at the end of 31.5.1974, i.e., whether that notification will prevail over the Central Government's notification dated 1.6.1974.

29. The first contention urged for the dealers before the High Court was that fertilizer was not a commodity essential to the community within the meaning of Section 3 of the Defence of India Act, 1971 and, therefore, the State Government had no power to fix its price or give any other direction

in regard thereto. The learned Judges of the High Court held that chemical fertilizers being necessary for increased production of food crops and oil seeds crops under modern scientific methods of agriculture would be commodities essential for the life of the community and that the argument that trade in chemical fertilizers cannot be regulated under Section 3 of the Defence of India Act, 1971 is untenable. Before us no argument was advanced by the learned Counsel for the appellants that chemical fertilizers are not essential commodites. On the other hand, it was repeatedly contended that it is an essential commodity within the meaning of Section 2(1)(a) of the Essential Commodities Act, 1955 and is specifically mentioned as such in Section 2(1)(a)(xi) of that Act. There is no dispute before us about this matter though there is dispute whether fertilizer can be brought within the words "any article" mentioned in Rule 114(2) of the Defence of India Rules, 1971. therefore, that question does not arise for detailed consideration by us.

30. The second ground of attack before the High Court was that the State Government lacked the power to control the price of chemical fertilizer on the ground that no such power is conferred on it by the Defence of India Act, 1971 and the rules framed thereunder in respect of chemical fertilizer as being needed for the preparation of the defence or connected with the prosecution of war. This contention was rejected by the learned Judges of the High Court. It is not necessary for us to consider this aspect of the matter as no such argument was advanced before us by the learned Counsel for the appellants. The dispute before us is as to whether chemical fertilizer would fall within the words "any article" found in Rule 114(2) of the Defence of India Rules framed in exercise of the power conferred by Section 3 of the Defence of India Act, 1971 though it is. not disputed that the impugned State Government notification dated 14.6.1974 was issued when the emergency which was lifted on 22.3.1977 was in force.

31. The next contention urged before the High Court was that as the Central Government had already fixed the price of chemical fertilizer by the notification dated 1.6.1974 issued under the Fertilizer (Control) Order, 1957 made in exercise of the power conferred by Section 3(2)(c) of the Essential Commodities Act, 1955, the State Government had no power to fix its price under Rule 114(2) of the Defence of India Rules, 1971 by the later notification dated 14.6.1974 in exercise of its delegated power. This contention was rejected by the learned Judges of the High Court as being unacceptable. The argument of the learned Advocate-General appearing for the State of Uttar Pradesh before the High Court was that by the impugned notification dated 14.6.1974 the State Government had not fixed any price, but had only directed that certain stocks of fertilizers which were in the possession of dealers on 31.5.1974 shall be sold at the rates fixed by the Central Government in the earlier Notification dated 11.10.1973 which had been superseded by its own notification dated 1.6.1974, has not been accepted by the learned Judges of the High Court as the basis of their decision. On the other hand, they have proceeded on the basis that the State Government has fixed the dealers' sale price of the fertilizer by the impugned notification in exercise of the power conferred by Rule 114 of the Defence of India Rules, 1971.

32. The undisputed fact is that the price fixed for the sale of the fertilizer to dealers was Rs. 1005 per ton under the Central Government's previous notification dated 11.10.1973 which was superseded by its subsequent notification dated 1.6.1974 in which the price fixed for sale of the same variety of fertilizer to dealers was Rs. 1960 per ton from the date of that notification. The price fixed for sale by dealers was Rs. 1050 per ton under the superseded notification dated 11.10.1973 and Rs. 2000 per ton in the notification dated 1.6.1974. The learned Judges of the High Court noted the obvious fact that the dealers would get an excessive margin of Rs. 995 per ton in respect of the old stock purchased by them at Rs. 1005 per ton by selling that stock at the new sale

price of Rs. 2000 per ton fixed by the notification dated 1.6.1974, whereas under the notification dated 11.10.1973 their margin was only Rs. 45 per ton. They have expressed the view that it could be a legitimate circumstance to persuade them to exercise their discretion under Article 226 of the Constitution against the appellants.

33. The learned Judges rejected the contention urged on behalf of the dealers that there is conflict of power exercised by the Central Government and the State Government in the same commodity, fertilizer, by the two notifications dated 1.6.1974 and 14.6.1974 on the ground that the Essential Commodities Act, 1955 under which the Fertilizer (Control) Order, 1957 has been made and the Central Government's notification dated 1.6.1974 has been issued and the Defence of India Act, 1971, under which the Defence of India Rules, 1971 have been framed and the State Government's notification dated 14.6.1974 has been issued, are both Central enactments operating in different fields and have different objects, that it is only an accident that the two notifications relate to the same commodity, fertilizer, considered as an essential commodity by the Central Government under the Essential Commodities Act and as a commodity essential to the community by the State Government under the Defence of India Rules, that the State Government has unfettered power under Rule 114 of the Defence of India Rules, 1971 to fix the price of fertilizer and regulate its supply notwithstanding the fact that fertilizer is an essential commodity under the Essential Commodities Act, 1955 and that the State Government can also do under the Defence of India Rules, 1971 framed under the Defence of India Act, 1971 what the Central Government can do under the Fertilizer (Control) Order, 1957 made under the Essential Commodities Act, 1955. The learned Judges rejected the argument of the learned Advocate-General that the Central Government's notification dated 1.6.1974 does not apply to stock of fertilizer which the dealers had carried forward from the stock which was available on 31.5.1974 and held that in view of Section 37 of the Defence of India Act, 1971 which says that the provisions of that Act or any Rule made thereunder or any Order made under any such Rule shall have effect not withstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument having effect by virtue of any enactment other than that Act confers supremacy on the later State Government notification dated 14.6.1974 over that of the Central Government dated 1.6.1974. They held that the similar provision in Section 6 of the Essential Commodities Act, 1955 which says that any order made under Section 3 of that Act shall have effect notwithstanding anything inconsistent therewith in any other enactment or any instrument having effect by virtue of any enactment other than that Act will not have any effect on the power of the State Government exercised under the Rules made under the later Defence of India Act, 1971 which also is a Central enactment on the ground that the provisions of the later enactment prevail over those in the earlier enactment of the same legislative body in view of Section 37 of the later Act.

34. The learned Judges of the High Court rejected the contention urged on behalf of the dealers that the Essential Commodities Act is a special Act dealing with essential commodities and the Defence of India Act, 1971 is a general Act dealing with all other commodities and, therefore, the notification dated 1.6.1974 issued by the Central Government under the Fertilizer (Control) Order, 1957 made under the provisions of that Act must prevail over the State Government's notification dated 14.6.1974 issued under the Defence of India Rules, 1971, framed under the Defence of India Act, 1971. They have observed that no question of special or general Act arises in these cases in view of the provisions contained in Section 37 of the Defence of India Act, 1971 and that Section 6 of the Essential Commodities Act, 1955 draws within its ambit only those Acts which were in existence and in force on the date of commencement of that Act and that it cannot take within its ambit the later Defence of India Act, 1971.

35. The learned Judges of the High Court rejected the contention urged on behalf of the dealers that the State Government's impugned notification dated 14.6.1974 is malafide and motivated and the result of colourable exercise of power. There is no need to refer to this ground of attack in detail as no argument was advanced in this Court about any such ground.

36. The next contention urged before the learned Judges of the High Court on behalf of the dealers was that the State Government's notification dated 14.6.1974 was discriminatory on the ground that some governmental agencies falling within the definition of "dealer" in the Fertilizer (Control) Order, 1957 were permitted to sell their stock of fertilizer carried over from 31.5.1974 at the new rate mentioned in the Central Government's notification dated 1.6.1974. The learned Judges rejected this contention on the ground that the impugned notification dated 14.6.1974 applies to all dealers of fertilizer equally and does not provide for any such discriminatory treatment to governmental agencies and that the executive odder to that effect, if any, may be illegal and would not invalidate the impugned notification as being discriminatory.

37. The learned Judges of the High Court thus upheld the validity of the State Government's impugned notification dated 14.6.1974 and held that it is only prospective in operation and would apply only to sates of fertilizer made from 14.6.1974 out of the stock which was available with the dealers at the end of 31.5.1974.

38. The appellants are dealers in fertilizer as defined in Clause 2(c) of the Fertilizer (Control) Order, 1957. According to that clause "dealer" means any person carrying on the business of selling fertilizer, whether wholesale or retail." According to Clause 2(d) of that Order, fertilizer means any substance used or intended to be used as a fertilizer of the soil and specified in column 1 of Schedule I and includes a mixture of fertilizers and a special mixture of fertilizers. Trade and commerce in, and the production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in public interest fall under entry 33 of the Concurrent List III in the Seventh Schedule of the Constitution. Trade and commerce within the State subject to the provisions of Entry 33 of List III fall under entry 26 of the State List II in the same Seventh Schedule. Fertilizer is an essential commodity under Section 2(a)(xi) of the Essential Commodities Act, 1955. The Fertilizer (Control) Order, 1957, has been made in exercise of the power conferred by Section 3 of the Essential Commodities Act in respect of fertilizer. Under Clause 3(1) of that Order the Central Government has power, with a view to regulating equitable distribution of fertilizers and making fertilizers available at fair prices, by a notification in the official gazette, to fix the maximum price or rates at which any fertilizer may be sold by a manufacturer or a dealer. The Central Government had issued the notification dated 11.10.1973 fixing the maximum sale price by producers to dealers as Rs. 1005 per ton and the maximum sale price by dealers to consumers as Rs. 1050 per ton in respect of the variety of fertilizer with which we are concerned in these appeals. There is nothing on record to show that when that notification of the Central Government was in force there was any notification of the State Government of Uttar Pradesh fixing the maximum price of fertilizer for sale by dealers. Subsequently, the Central Government issued the notification No. G.S.R. 254E dated 1.6.1974 fixing the maximum price at which a dealer could sell that variety of fertilizer as Rs. 2000 per ton in supersession of the earlier notification dated 11.10.1973. There is no dispute that the price fixed for sale of that variety of fertilizer by the producer to the dealer is Rs. 1960 per ton. Under Section 3(1) of the Defence of India Act, 1971 the Central Government had power, by notification in the Official Gazette, to make such rules as appear to it necessary or expedient for securing the defence of India

and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community. Section 1(3) of that Act said that the Act shall come into force at once and shall remain in force during the period of operation of the Proclamation of Emergency and for six months thereafter. There is no dispute that the Emergency which was in force when that Act was passed was lifted on 22.3.1977. Rule 114(2) of the Defence of India Rules, 1971 made in exercise of the power conferred by Section 3(1) of the Defence of India Act, 1971 says that if the Central Government or the State Government is of opinion that it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order provide for regulating or prohibiting the production, manufacture supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt practice or abuse; of authority in respect of any such matter.

39. Rule 114(3)(h) gives power to the Central Government or the State Government to fix the prices or rates at which articles or things of any description whatsoever may be sold or hired or for relaxing any maximum or minimum limits otherwise imposed on such prices or rates; It is under that rule that the State Government issued the impugned notification No. A-490(V) XII-1974 dated 14.6.1974 fixing the maximum price of the concerned variety of fertilizer in these terms : "No registered dealer shall charge or retain or enter into or enforce any contract for charging, in respect of any fertilizer sold to any person on or after June 1, 1974 from out of any stock carried over by him from May 31, 1974 a price exceeding the maximum price fixed under Clause 3 of the Fertilizer (Control) Order, 1957 as it prevailed on May 31, 1974". The reference to the price as it prevailed on May 31, 1974 is to the price fixed in the Central Government's notification dated 11.10.1973 which has been specifically superseded by the Government's notification dated 1.6.1974. The High Court has held that the impugned notification dated 14.6.1974 is prospective in operation and can apply only to sales made from 14.6.1974 of the fertilizer which was carried over from the stock held at the close of 31.5.1974. It is not disputed that the notification could be only prospective in operation and would not apply to sales effected up to 14.6.1974 of the fertilizer carried over from the stock which was held at the end of 31.5.1974. It is also not disputed that the State Government issued the impugned notification with the object of preventing dealers from profiting to the extra extent of Rs. 950 per ton in respect of the stock which had been purchased by them prior to 1.6.1974 at Rs. 1005 per ton by selling the same at Rs. 2000 per ton fixed in the notification dated 1.6.1974 while that stock could have been sold prior to 1.6.1974 only at Rs. 1050 per ton. The question is which of these two notification is valid and should prevail in regard to the fertilizer carried over from the stock held by dealers at the close of 31.5.1974.

40. The Central Government's notification dated 1.6.1974 issued under Clause 3(1) of the Fertilizer (Control) Order, 1957 made in exercise of the power conferred by Section 3(1) of the Essential Commodities Act, 1955, and the State Government's impugned notification dated 14.6.1974 issued under Rule 114 of the Defence of India Rules, 1971 made in exercise of the powers conferred by Section 3(1) of the Defence of India Act, 1971 relate to the same commodity, fertilizer, which is declared to be an essential commodity under Section 2(a)(xi) of the Essential Commodities Act, 1955, and may ordinarily fall under the term "article or things of any description whatsoever" occurring in Rule 114(3)(h) of the Defence of India Rules, 1971 and both of them fix the maximum price at which dealers can sell the fertilizer. The Central Government's notification dated 1.6.1974 applies to the whole country while the impugned notification dated 14.6.1974 of the State

Government can apply only to the State of Uttar Pradesh.

41. The appellants' attack on the impugned notification is two-fold. The first ground of attack forcibly urged by Mr. P. Govindan Nair, Senior Counsel appearing for one set of appellants is that the impugned notification is altogether invalid in law and nonest on the ground that the State Government has no power whatsoever to issue the notification under the Defence of India Rules in respect of an essential commodity, fertilizer, covered by the Central Government's notification issued under the fertilizer (Control) Order, 1957, made in exercise of the power conferred by the Essential.Commodities Act. The second ground of attack urged by Mr. Yogeshwar Prasad, Senior Counsel appearing for the other set of appellants is based on Article 14 of the Constitution, namely, that it is discriminatory and, therefore, bad in law. Mr. S.C. Manchanda, Senior Counsel appearing for the respondents in all the appeals naturally submitted that there is no substance in any of these two grounds.

42. The second ground of attack projected by Mr. Yogeshwar Prasad may be taken up first for consideration. This ground has been considered by the learned Judges of the High Court as the fifth ground of attack before them at pages 29 to 31 of the paper book in civil Appeals 1568-1576 of 1974, and rejected by them. The submission of Mr. Yogeshwar Prasad is that some governmental agencies falling within the definition of "dealer" in the Fertilizer (Control) Order, 1957 were permitted by the State Government to sell the fertilizer carried over from the stock held at the close of 31.5.1974 at the new enhanced rate of Rs. 2000 per ton fixed in the Central Government's notification dated 1.6.1974 and that it is discriminatory against the private dealers who are required by the impugned notification to sell at the old rate of Rs. 1050 per ton fixed in the Central Government's old notification dated 11.10.1973. To show that such a direction was given by the State Government, Mr. Yogeshwar Prasad invited attention to the first sentence in the radiogram 23.7.1974 issued by the Chief Secretary to the Government of Uttar Pradesh. That sentence reads as follows : "All stocks of fertilizer available with ASO, AGRO Cooperatives and Cane Unions be distributed without any condition regarding purchase of fertilizers at new rates". It is not possible to make out what exactly was intended to be conveyed by that sentence in the radiogram. In the counter-affidavit of the Accounts Officer Fertilizers and Manuals Directorate of Agriculture, Government of Uttar Pradesh, filed in C.M.P. 6773 of 1974 on the file of this Court, it is stated that the State Government has not allowed any State owned agency to sell the stocks of fertilizer carried over from 31.5.1974 at the rates fixed in the Central Government's notification dated 1.6.1974, that the radiogram was not meant to permit Agricultural Supplies Organisation and the Agro Industrial corporation and other governmental agencies to sell the stocks carried over from 31.5.1974 at the revised rates and that it was issued to remove only the condition. There is no other material on the record to show that any direction was given by the State Government for the governmental agencies to sell the fertilizer carried over from 31.5.1974 at the enhanced rate fixed in the Central Government's notification dated 1.6.1974. therefore, the very basis of the contention of Mr. Yogeshwar Prasad that there is any discrimination against private dealers like the appellants represented by him compared with governmental agencies in the matter of the sale price of fertilizer has not been established. Even if any such direction had been given, it would certainly be bad in law as being discriminatory. It would not, however, invalidate the impugned notification which per se applies to all dealers of fertilizers in the entire State of Uttar Pradesh, whether private or governmental. Consequently, the impugned notification of the State Government cannot be held to be bad in law on the ground of discrimination if it is otherwise valid. Mr. Manchanda relied upon the aforesaid counter-affidavit in support of his contention that there is no basis for the contention that there is any discrimination against private dealers. The second ground of attack projected by

Mr. Yogeshwar Prasad fails and has been rightly rejected by the learned Judges of the High Court.

43. The first ground is as regards the power of the State Government to issue the impugned notification dated 14.6.1974, fixing for the sale of fertilizers by dealers to consumers a price different from the one fixed in the Central Government's notification dated 1.6.1974. In considering this question the fact that the notification was issued by the State Government with the object of preventing dealers in the State of Uttar Pradesh from driving undue excessive profit from agricultural consumers in respect of the fertilizer which had been purchased by the dealers at Rs. 1005 per ton under the old Central Government's notification dated 11.10.1973 and that it applies to the fertilizer which was in stock at the end of 31.5.1974, should not weigh with the Court, for the question is of the power of the State Government to issue the notification. The question is whether the State Government has power to fix the price of fertilizer under the Defence of India Rules, 1971, framed in exercise of the powers conferred by the Defence of India Act, 1971 after the Central Government had already fixed the price under the Fertilizer (Control) Order, 1957 made in exercise of the power conferred by the Essential Commodities Act, 1955. If in law the State Government could fix the price in respect of the limited stock of fertilizer carried over from 31.5.1974, it can certainly fix the price of the fertilizer received by the dealers even after 1.6.1974 in respect of which the Central Government's notification dated 1.6.1974 would undoubtedly apply.

44. The Essential Commodities Ad, 1955 in an enactment passed by Parliament to provide, in the interest of the general public, for the control of the production, supply and distribution and trade and commerce in certain commodities which have been notified under that Act as essential commodities. The very object of the Essential Commodities Act is to check the inflationary trends in prices and to ensure the equitable distribution of essential commodities. Section 1(2) of that Act makes it applicable to the whole of India. It is a permanent enactment in the sense that its operation is not restricted to any particular period. The Fertilizer (Control) Order, 1957 has been made in exercise of the power conferred by Section 3(2)(c) of the Essential Commodities Act, 1955 for controlling the price at which any essential commodity may be bought or sold. Fertilizer has been declared to be an essential commodity under Section 2(a)(xi) of the Essential Commodities Act as mentioned above. therefore, the price fixed in the notification issued under the Fertilizer (Control) Order, 1957 squarely applies to fertilizer. The Defence of India Act, 1971 also is an Act of Parliament which was intended to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith. That Act also extended to the whole of India, but under Section 1(3), it came into force at once and remained in force during the period of operation of the Proclamation of Emergency and for a period of six months thereafter. Sub-clause (a) of Sub-section (3) of Section 1 saves anything duly done under the Act as if the Act had not expired. As stated earlier the Emergency which was in force when the State Government's impugned notification dated 14.6.1974 was issued, was lifted on 22.3.1977. The life of the Defence of India Act, 1971 thus extended upto six months after 22.3.1977. In that way the Defence of India Act, 1971 was a temporary enactment intended to be in operation for only a limited period.

45. The Defence of India Rules, 1971 had been issued in exercise of the power conferred by Section 3 of the Defence of India Act, 1971. Under Rule 114(2) of those Rules, if the Central Government or the State Government is of opinion that it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order, provide for

regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt practice or abuse of authority in respect of any such matter.

46. Sub-rule (3)(h) of Rule 114 said that without prejudice to the generality of the powers conferred by Sub-rule (2) an order made thereunder may provide for controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired or for relaxing any maximum or minimum limits otherwise imposed on such prices or rates. The State Government's impugned notification has been issued, as already stated, in exercise of the power conferred by this sub-rule of Rule 114.

47. The Central Government had already assumed power under the Essential Commodities Act, 1955 to control the price of essential commodities including fertilizer as a permanent measure, and could do under the provisions of that Act in relation to that essential commodity what it may do under the Defence of India Act, 1971, a temporary measure, if fertilizer could be brought under the description of "articles or things of any description whatsoever". But since it had already assumed the power under the Essential Commodities Act, 1955 to control the price of fertilizer it was not necessary for it to get itself armed once again with the power to control the price of the same essential commodity under the Defence of India Act, 1971 which came about 16 years later. therefore, the contention of Mr. Govindan Nair that the Essential Commodities Act, 1955 is a special enactment relating to only essential commodities and the Defence of India Act, 1971 is a general enactment relating to all other commodities, and that the words "articles or things of any description whatsoever" occurring in Rule 114(3)(h) of the Defence of India Rules, 1971 cannot be understood to include essential commodities has force and has to be accepted. It cannot be assumed that Parliament which had already legislated in the Essential Commodities Act, 1955, a permanent measure, in respect of fertilizer intended to legislate once again and could have felt the need to legislate once again in the temporary Defence of India Act, 1971 in respect of the same article, especially because what could be done under the Defence of India Act and the Rules which may be framed thereunder could as well be done with equal force under the Essential Commodities Act and orders which may be passed thereunder. therefore, the contention that the State Government has no power to fix the price of essential commodities covered by the Essential Commodities Act, 1955 and the Fertilizer (Control) Order, 1957 in exercise of the power conferred on it by Rule 114 of the Defence of India Rules, 1971 issued under the Defence of India Act, 1971 is well-founded and has to be accepted.

48. Section 3(2)(c) of the Essential Commodities Act, 1955, pursuant to which the Fertilizer (Control) Order, 1957 has been made says that without prejudice to the generality of the powers conferred by Sub-section (1) an order made thereunder may provide for controlling the price at which any essential commodity may be brought or sold. This sub-clause of Section 3 of the Essential Commodities Act has not left anything to be done under the Defence of India Act, 1971 in the matter of fixation of price of any essential commodity whether it be for securing any essential commodity for the defence of India or for the effective military operation or for securing the equitable distribution and availability of essential commodities at fair prices or distribution thereof and trade and commerce therein as envisaged in Section 3(1) of that Act.

49. If the State Government felt that there was any special circumstance to be taken into account for fixing the price of the essential commodity, fertilizer, in the State of Uttar Pradesh at a rate lower than the one fixed by the Central Government in its notification dated 1.6.1974, it could have

achieved that object by getting steps to be taken under the Essential Commodities Act itself. Section 3(2) of that Act lays down that the Central Government may, having regard to the local conditions of any area and other relevant circumstances, fix different prices or rates in respect of different areas and for different classes of consumers. The State Government could have requested the Central Government to act under Section 3(2) of the Essential Commodities Act and fix a different price or rate for the sale by dealers in that State of fertilizer carried over from the stock held on 31.5.1974. Section 5(b) of the Essential Commodities Act provides for delegation of powers and says that the Central Government may, by notified order, direct that the power to make or issue notifications under Section 3 of that Act 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 State or such officer or authority subordinate to a State Government as may be specified in the direction. The Central Government has not issued any direction under Section 5(b) of the Essential Commodities Act delegating its power to issue notification under Section 3 of that Act to the State Government or any officer or authority of that Government. The State Government has thus not resorted to the provisions contained in Section 3(2) or Section 5(b) of the Essential Commodities Act, but has proceeded to fix the price of fertilizer on its own under the Defence of India Rules, 1971 which it cannot do under those Rules and the Defence of India Act, 1971 in respect of the essential commodity.

50. Section 6 of the Essential Commodities Act, 1955 saves any order made under Section 3 of that Act from the impact of any other enactment. It is not possible to accept the contention that the other Act or enactment referred to in Section 6 of the Essential Commodities Act, 1955 would be only the Act or enactment which was in force on the date of commencement of that Act and not any future Act or Acts. This Contention has been wrongly rejected by the learned Judges of the High Court. Section 6 of the Essential Commodities Act says that an order made under Section 3 shall have effect notwithstanding any-thing inconsistent therewith contained in any enactment other than that Act or any instrument having effect by virtue of any enactment other than that Act. It is true that there is a similar saving provision in Section 37 of the Defence of India Act, 1971 which says that the provisions of that Act or any Rule made thereunder or any order made under any such Rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument having effect by virtue of any enactment other than that Act. But as stated above, the Defence of India Act, 1971, which was a general and temporary Act and the Rules framed thereunder cannot apply to fertilizer which is an essential commodity governed by the Essential Commodities Act, 1955 and the Fertilizer (Control) Order, 1957 made under the provisions of that Act. therefore, the State Government cannot without delegation issue any notification under the Defence of India Act and Rules; 1971 in regard to the price of fertilizer, an essential commodity governed by the Essential Commodities Act and the Fertilizer (Control) order, 1957. The learned Advocate-General of the State was perhaps fully conscious of the legal position that the State Government cannot fix the price of an essential commodity by any notification under the Defence of India Rules, 1971 in the circumstances when he took the patently unacceptable stand before the learned Judges of the High Court that the State Government did not in fact fix the price of fertilizer in its impugned notification dated 14.6.1974 but it only directed that certain stock of fertilizer which was in the possession of dealers at the end of 31.5.1974 and was carried over by them shall be sold at the rate fixed in the Central Government's earlier notification dated 11.10.1973, which as stated above, has been specifically superseded by its subsequent notification dated 1.6.1974. If the State Government had not fixed the price at which fertilizer can be sold be dealers by the impugned notification dated 14.6.1974 though it is no doubt in respect of the stock carried over from 31.5.1974, one fails to see what else it did or why it was considered necessary. therefore, the learned Judges of the High Court have rightly rejected that submission of the learned

Advocate-General.

51. As stated above, trade and commerce in and the production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest fall under entry 33 of the Concurrent List HI, and trade and commerce within the State subject to the provisions of Entry 33 in the Concurrent List III fall under Entry 26 of List II of the Seventh Schedule to the Constitution. If the State Government's impugned notification is assumed to be a law enacted by that State's Legislature on Entry 26 of List II, since the Act of Parliament passed on Entry 33 of List HI and the Fertilizer (Control) Order, 1957 passed under that Act were already in force, the assent of the President had to be received in order that the State Government's notification assumed to be a law enacted by the State's Legislature may prevail in the State as required by Article 254(2) of the Constitution which reads thus :

Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law, so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

52. There is nothing on record to show that the impugned notification of the State Government was placed before the President for his assent and that his assent has been received. therefore, the State Government's impugned notification even as a law cannot prevail over the earlier notification of the Central Government.

53. The learned Judges of the High Court were not right in rejecting the submission made before them that there is conflict between the two notifications of the Central Government dated 1.6.1974 and of the State Government dated 14.6.1974 and in holding that the State Government has unfettered power under the Defence of India Act, 1971 to fix the price of fertilizer and regulate its supply notwithstanding the fact that fertilizer is an essential commodity under the Essential Commodities Act, 1955 in observing and that what the Central Government can do under the Fertilizer (Control) Order, 1957 the State Government can do under the Defence of India Rules, 1971. There is a clear conflict between the two notifications in respect of the same essential commodity, fertilizer, for under the Central Government's notification dated 1.6.1974 the price at which a dealer can sell fertilizer of the concerned variety is Rs. 2000 per ton while under the State Government's notification dated 14.6.1974 it is only Rs. 1050 per ton though no doubt it is restricted to the stock carried over from 31.5.1974 which is immaterial in judging the power of the State Government to fix the price of an essential commodity by a notification made under the Defence of India Rules, 1971 in respect of which the Central Government had already fixed the price under the Fertilizer (Control) Order, 1957. Once the Central enactment and the Central Government's notification govern the price of an essential commodity the State Government's notification issued in exercise of the delegated authority under the Defence of India Act and the Rules framed thereunder cannot prevail. The Two enactments have to be read in such a way that there is no conflict between them while giving effect to them in their respective fields of operation. On the question of conflict and interpretation of statutes, we find the following passage in Craies on Statute

Law (seventh edition) at page 222 :

Acts of Parliament sometimes contain general enactments relating to the whole subject-matter of the statute, and also specific and particular enactments relating to certain special matters; and if the general and specific enactments prove to be in any way repugnant to one another, the question will arise, which is to control the other ? In Pretty v. Solly (1859) 26 Beav. 606 Romilly M.R. stated as follows what he considered to be the rule of construction under such circumstances. ".The general rules," said he, "which are applicable to particular and general enactments in statutes are very clear; the only difficulty is in their application. The rule is, that whenever there is a particular enactment and a general enactment in the same statute; and the latter, taken in its most comprehensive sense, would over rule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

54. The following passage found at page 187 of the twelfth edition of Maxwell on the Interpretation of Statutes may also be noticed :

If two sections of the same statute are repugnant, the known rule is that the last must prevail". But, on the general principle that an author must be supposed not to have intended to contradict himself, the Court will endeavour to construe the language of the legislature in such a way as to avoid having to apply the rule, leges posteriors prioress contraries abrogant. For example, the provision in Order 47 of the Country Court Rules 1936 that "the scale of costs in an action for the recovery of a sum of money only shall be determined...as regards the costs of the Plaintiff, by the amount recovered" was not construed as peremptory, for this would have brought it out of harmony with the earlier provision in the same Order that "the costs of proceedings in a Country Court shall be in the discretion of the Court.

One way in which repugnancy can be avoided is by regarding two apparently conflicting provisions as dealing with distinct matters or situations.

55. There will be clear conflict between the two notifications if it is understood that the State Government also can fix the price of any essential commodity covered by the Essential Commodities Act, 1955 and the Fertilizer (Control) Order, 1957 in exercise of the power conferred on it by the Defence of India Act, 1971 and the Defence of India Rules, 1971. The conflict can be avoided only if it is held that the Essential Commodities Act, 1955 and the Fertilizer (Control) Order, 1957 deal with essential commodities and the Defence of India Act, 1971 and the Defence of India Rules, 1971 deal with all other articles and things of any description whatsoever. The author of me two enactments, Essential Commodities Act, 1955 and Defence of India Act, 1971 is the same, namely, Parliament, and Parliament must be held to have not intended to contradict itself while dealing with distinct matters or situations under those enactments. If the State Governments are free to fix their own prices in notifications issued by them under the Defence of India Rules, 1971 when the Central] Government's notification fixing a single price for the whole country in respect of an essential commodity is in force that notification of the Central Government will become otiose. The question is whether Parliament would have intended such a consequence. The answer can only be an emphatic No. That situation has to be clearly avoided by a proper interpretation of the respective powers of the Central and State Governments under the two Acts, and by holding that the Essential Commodities Act, 1955, and the Fertilizer (Control) Order, 1957

deal with essential commodities and the Defence of India Act, 1971 and the Defence of India Rules, 1971 dealt with all other commodities notwithstanding that fact that Rule 114(3)(h) mentions "articles or things of any description whatsoever".

56. In Municipal Corporation of Delhi v. Shiv Shankar [1973] 3 S.C.R. 607 it is observed:

To determine if a later statutory provision repeals by implication an earlier one it is accordingly necessary to closely scrutinise and consider the true meaning and effect both of the earlier and the later statute. Until this is done it cannot be satisfactorily ascertained if any fatal inconsistency exists between them. The meaning, scope and effect of the two statutes, as discovered on scrutiny, determine the legislative intent as to whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in pari materia although in apparent conflict should also so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject matter; that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict.

57. If the Essential Commodities Act, 1955 and the Fertilizer (Control) Order, 1957 are considered to apply exclusively to fertilizer, an essential commodity, and the Defence of India Act, 1971 and the Defence of India Rules, 1971 are considered to apply to other commodities excluding essential commodities there would be no conflict whatsoever between the Essential Commodities Act and the Defence of India Act and between the notifications issued under Fertilizer (Control) Order, 1957 and the Defence of India Rules, 1971. If that is not done there will be real conflict between the two and, therefore, the two Acts must be so construed as to avoid conflict in the manner indicated above.

58. Mr. Manchanda invited attention to the following observation in Zaverbhai Amaidas v. The State of Bombay: [1955]1SCR799 .

It is true, as already pointed out, that on a question under Article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law.

59. There is no question of placing the later law, Defence of India Act, 1971, for consideration by the President under Article 254(2) of the Constitution for both the laws, the Essential Commodities Act, 1955 and Defence of India Act, 1971 are Jaws passed by Parliament. There does not appear to

be any provision for placing any notification made by a State Government under the Defence of India Rules, 1971 for consideration by the President. As already stated, if the impugned State Government's notification is, however, considered to be in the nature of a State law there is nothing on the record to show that it was placed before the President for consideration and had received his assent as already stated.

60. Relying upon the above decision in Zaverbhai Amaidas v. The State of Bombay (supra) Mr. Manchanda made a half-hearted plea that the impugned State Government's notification relates only to fertilizer which was carried over from the stock held at the close of 31.5.1974 and that it is intended to protect agricultural consumers from dealers making undue profit and should therefore, be held to be valid in law. It is not possible to accept this submission of Mr. Manchanda. There is no basis, whatsoever, to presume, and it will be totally uncharitable to the Central Government to presume, that the Central Government which had assumed powers under the Essential Commodities Act, 1955 to control the distribution of fertilizer and make it available at fair prices to consumers was ignorant of or had overlooked the fact while making the notification dated 1.6.1974 fixing a higher price for dealers to sell fertilizer to consumers with effect from that date that there may be some stock of fertilizer on 31.5.1974 purchased by dealers at lower prices which may be carried over for sale subsequently. What has been done by the State Government under the impugned notification is utterly lacking in power and cannot be allowed to stand merely because it relates only to a comparatively small quantity of fertilizer carried over from the stock of 31.5.1974 and was intended to benefit and protect agricultural consumers and prevent dealers from making undue profits. For the reasons stated above the appeals are allowed and the impugned State Government's notification dated 14.6.1974 is quashed. There will be an order directing the District Agricultural Officers and other District Authorities in the State of Uttar Pradesh not to ask the dealers to refund the excess in respect of the sales completed prior to the date of the impugned notification. The District Magistrates concerned shall return the monies deposited with them by the dealers pursuant to this Court's orders dated 2.9.1974 and 30.10.1974. The respondents shall pay the appellants' costs. There will be one set of advocate's fees in the batch of appeals in which the appellants are represented by Mr. Govindan Nair and another set of advocate's fees in the other set of appeals in which Mr. Yogeshwar Prasad appears for the appellants.