

(1966) 08 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Judicial Case No. 256 of 1966

Acharaj Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 19-08-1966

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 2
Constitution of India, 1950 — Article 13, 13(3), 14, 19, 23
Defence of India Rules, 1962 — Rule 125, 125(2), 125(3)

Citation : AIR 1967 Patna 114

Hon'ble Judges : R.L. Narasimham, C.J;K.K. Dutta, J

Bench : Division Bench

Advocate : Birendra Prasad Sinha and Jagdish Pandey, for the Appellant; A.G.,
Govt. Pleader and Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—The petitioner, who is a cultivator of Patna District has challenged the validity of a direction given to him (Annexure A) in pursuance of the provisions of the Bihar Foodgrains Procurement Order, 1966 (hereinafter referred to as the Order) to deliver certain quantity of paddy at the Government godown.

2. On the 26th October 1962, the President issued the well known proclamation of Emergency under Article 352(1) of the Constitution, and thereafter the Defence of India Act, 1962, was passed by the Parliament. Subsection (1) of Section 3 of that Act conferred power on the Central Government to make rules for maintaining supplies and services essential to the life of the community. In Subsection (2) of that section various matters which may be provided for in the rules were specified "without prejudice to the generality of the powers conferred by Sub-section (1)". Clause (23) of Sub-section (2) referred to (omitting immaterial portion) "the control of trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to

articles or things of any description whatsoever, . . .for maintaining supplies and services essential to the life of the community."

Sub-section (2) of Section 3 of the Act further empowered the Central Government not only to make rules for the purpose but also to provide in the rules Cor any other authority to make orders providing for various matters referred to in that sub-section. In pursuance of the power conferred by Section 3 of the Act, the wellknown Defence of India Rules. 1962, were made, and Rule 125 dealt with the matters referred to in Clause (23) of Sub-section (2) of Section 3 of the Act. Sub-rule (2) (omitting immaterial portions of that rule authorised the appropriate authority to provide, by order. for regulating the production, supply and distribution, use and consumption of articles or things for the purpose of 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 things at fair prices.

Sub-rule (3) of the same rule specified various matters which may be provided for in the said order "without prejudice to the generality of the powers conferred by Sub-rule (2) ". Clause (c) of Sub-rule (3) is as follows :

" (c) for requiring any person holding in stock any article or thing to sell the whole or a specified part of the stock to the Government or to an officer or agent of the Government or to such other person or class or classes of persons and in such circumstances as may be specified in the order;

and if the order relates to foodgrains at such price as may be specified in the order having regard to (i) the maximum price, if any, fixed by order under Clause (a) or by or under any other law for the time being in force, for the grade or variety of foodgrains to which the order under this clause applies : and

(ii) the price for that grade or variety of foodgrains prevailing or likely to prevail during the post-harvest period in the area to which the order applies :]"

With a view to provide an additional safeguard against the unreasonable exercise of this power to make an order, Sub-rule 3 (A) which was inserted by an amendment made on the 13th May, 1965. required the prior concurrence of the Central Government before an order could be made under Sub-rules (2) and (8) of that rule so far as food stuffs, edible oil seeds, oils and certain other commodities were concerned.

3. In exercise of the powers conferred by Rule 125. the Government of Bihar. with the prior concurrence of the Central Government, made the order which was published in notification No. 18038. dated the 29th October, 1965. As the validity of the order is in question. I may briefly refer to the main provisions of the order. The primary purpose of the order was to confer power on the appropriate authority to direct even cultivator to supply at the Government godown a certain quantity of paddy or rice or in lieu of the same, wheat. gram or maize at a price fixed by the Government The first five acres of lands in the possession of a

cultivator were completely exempted from the scope of the order. But where a cultivator was in possession of lands in excess of 5 acres, he was required to supply at the Government godown 60 Kilograms of paddy per acre, in respect of the excess, in Bihar plains, and 40 Kilograms per acre in Bihar Plateau (Clause 3). He was given the option of supplying rice in lieu of paddy. and for that purpose 62 1/2 Kilograms of rice were treated as equivalent to one quintal (100 Kilograms) of paddy (1st proviso to Clause 3). Where he has neither paddy nor rice, he may after satisfying the Block Development Officer, supply in lieu of paddy, wheat or gram or maize on the same scale 2nd proviso to clause 3).

Certain classes of lands, such as diara lands, lands lying fallow due to an order of a competent authority, or lands where widespread calamities like famine, flood, drought, locusts, etc. have taken place were excluded from the operation of this clause (3rd proviso to clause 3). Apart from these general exceptions to the levy, Clause 15 of the order conferred power on the appropriate authority to specially exempt any class of persons of the scheduled tribes, or any class of land, from the operation of the order. In pursuance of this power the Government exempted the Paharis and Asur Class of the scheduled Tribes wholly from the operation of the order and similarly certain class of lands in Chotanagpur Division and Santhal Parganas forests or homestead or rocky lands in all places, and lands which were not fit for horticulture or cultivation, and other class of lands were also exempted. By virtue of these exemptions it seems fairly clear that the right to levy foodgrains conferred by Clause 3 of the order was restricted to those lands which were either actually under cultivation or capable of being cultivated.

The procedure for making the levy was provided in Clauses 4 to 8. Under Clause 4 the Block Development Officer is first required to issue notice on the cultivator concerned, mentioning therein the extent of the land in his possession, the quantity of paddy to be sold by him and the period during which the paddy should be delivered at the Government godown. Clauses 5 and 6 deal with service of notice and they are not material for the present discussion. Clause 8 authorises the cultivator on whom such a notice is issued to file an objection before the Anchal Adhikari on the following grounds :

- (a) He, or the land in respect of which the notice has been served, is wholly, or in part, exempted from the operation of Clause 3
- (b) The extent of the land possessed by him under Clause 3 is less than what is mentioned in the notice.
- (c) The quantity of paddy or other food-grains saleable by him under Clause 3 is less than what is mentioned in the notice.

The Anchal Adhikari was required to give an opportunity to the cultivator to be heard and then pass orders on the objection. Sub-clause (2) of Clause 8 provides for a right of appeal against the order of the Anchal Adhikari to the Land Reforms Deputy Collector, but the proviso to this sub-clause has somewhat restricted the right of appeal by saying that no appeal shall lie unless one half of

the quantity of paddy levied was actually supplied to the Government. Sub-Clauses (2), (8) (4), (5), (6) and (7) deal with the procedure for the disposal of the appeal. Clause 7 says that on delivery at the Government godown, the Block Development Officer shall pay the price of the foodgrains to the persons delivering the same at such rate as may be fixed by the Government and published in the Bihar Gazette from time to time.

Transport charges are also provided at 10 paise per quintal per mile for the transport of the foodgrains from the village of the cultivator to the Government godown. The other clauses contain ancillary and incidental provisions and need not be referred to. Thus, by virtue of the order, powers were conferred on the appropriate revenue authorities to direct the cultivator to supply certain quantity of specific foodgrains at the Government godown where he could be paid the price as fixed in the Gazette notification and also the transport charges. Provision for hearing objection with a right of appeal was obviously made with a view to prevent arbitrary levy by the revenue authorities concerned. A broad distinction was made between Bihar Plains (which are presumably more fertile) and Bihar Plateau as regards the rate of levy per acre.

4. The challenge to the validity of the order is mainly on the following two grounds :

(1) The order violates some of the important fundamental rights guaranteed in Part III of the Constitution.

(2) The order is in excess of the power conferred by Rule 125 of the Defence of India Rules and hence is ultra vires and invalid.

5. Taking the first ground, the main arguments advanced were based on Articles 19 and 14 of the Constitution. It was urged that the exemption of the first 5 acres only from the operation of the order did not take into account the needs of the cultivators, and the rate of 60 kilograms of paddy per acre in excess of 5 acres was also unreasonable, bearing in mind the cost of cultivation, the expenses to be incurred by the cultivator in paying Government revenue, etc. It was also urged that the omission to provide exemption in respect of those lands in which neither paddy nor wheat nor gram nor maize was grown also made the order vulnerable to attack as an unreasonable restriction on the right of the cultivator to hold his property. It was also urged that the exemption of two clauses of the scheduled Tribes alone, namely Paharias and Asurs. from the operation of the order and the omission to exempt other backward classes who may be placed in similar circumstances. was violative of Article 14 of the Constitution. A complete answer to this argument is found in Article 358 and Notification No. G. S. R. 1464, dated the 3rd November, 1962, as modified by Notification No. G. S. R. 1510, dated the 11th November, 1962, issued by the President under Article 359(1) of the Constitution. By virtue of the aforesaid Article and the Notification, the fundamental rights guaranteed in Articles 14 and 19 have been suspended during the operation of the Proclamation of Emergency

in respect of any law made in pursuance of the said Proclamation. The wide definition of the expression "law" in Article 13 will include the order made under the Defence of India Rules also. Hence it is no longer open to the petitioner to urge that the provisions of the order violate Articles 14 and 19.

6. It was then urged that in respect of religious institutions the provisions of the order would violate Articles 25 and 26 which guaranteed freedom of religion and the right of religious institution to administer its property in accordance with law and to manage its own affairs in matters of religion (Clauses (b) and (d) of Article 26). In the well-known *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, their Lordships interpreted the word "religion", occurring in Articles 25 and 26, to include not only the philosophical tenets of a religious sect but also the rituals to be followed in a religious institution according to well established usage or customs :

"A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital or sacred lexis or oblations to the sacred fire. all these would be regarded as parts of religion, within the meaning of Article 26(b)."

Hence, if it could be established that in a particular religious institution. whether Math or temple. a certain quantity of food should be offered as Bhog to the deity or feeding the Athithis and Abhivagats as a part of the well established ritual of the institution, this practice should be held to be part of the religion guaranteed under Article 20(b) and if there is any provision in the order which materially impairs the continuance of that practice, that provision will be unconstitutional to that extent. Whether the levy at the rate of 60 kilograms per acre in Bihar Plains and 40 kilograms per acre in Bihar Plateau will have the effect of impairing the continuance of the said religious practice in a particular religious institution can be tested, only in the light of the evidence of actual practice prevalent in the institution. The right to raise objection has been conferred in Clause s and it will always be open to the person concerned to show that in respect of the certain classes of land the compulsory levy under the order would interfere with the religious practices and would be unconstitutional to that extent. In *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, and *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, their Lordships further clarified the principle laid down in the *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, and observed that the protection of religious practices under Article 26 must be confined to such religious practices as are essential and integral Part of it and no

other. They further added. "In deciding the question as to whether a given religious practice is an integral part of the religion or not the test always would be whether it is regarded as such by the community following the religion or not." This must be left for the decision of the Anchal Adhikari under Sub-clause (1) of Clause 8, subject of course, to appeal to the Land Reforms Deputy Collector under Sub-clause (2). So far as the present petition, however, is concerned, it is not necessary to dilate further on this point, except to say that the provisions of the order should be so construed as not to hamper the performance of well established practices and rituals which are regarded as essential and integral part of the religion in the religious institutions in Bihar.

7. Article 31(2) was also relied upon and it was urged that the compulsory purchase of foodgrains from a cultivator at a price to be fixed by the purchaser himself, without giving the cultivator an opportunity to show that the price fixed is too low, is violative of clause (2) of Article 31. Compulsory purchase of foodgrains may amount to compulsory acquisition of moveable property within the meaning of Clause (2) of Article 31, the price offered being the compensation for the purpose of the said clause. But it was urged by the learned Advocate-General that Clause (2) of Article 31 (after the amendment of 1955) made the question of adequacy of compensation not justiciable by the following words : "no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate." The Advocate-General rightly contended that "law" here should be given the same meaning as given in Article 13(3) 1a1. and it will include not only the provisions of the Defence of India Rules but also the provisions of the order. Hence, according to him, where the order provides for payment of price at the rate notified by the Government from time to time in the Gazette, the law itself must be construed to have provided the compensation, and the adequacy of compensation is not justiciable. Hence, according to him, even if the price fixed in the Gazette is too low. Clause (2) of Article 31 will be of no avail.

8. On the other hand. Mr Birendra Singh for the petitioner urged that the law merely lays down the principles of the levy and the manner in which the compensation is to be determined. and that for such determination there should be provision in the law itself for the aggrieved party to object to the price fixed and to get it modified if it is not found to be fair price.

9. I am inclined to accept the contention of the Advocate-General. It is true that Clause 7 of the order says that the price payable for the foodgrains shall be at such rate as may be fixed by the Government and published in the Gazette from time to time. But the power to fix the price is not derived from this clause but from Sub-rules (2) and (3) of Rule 125 of the Defence of India Rules. Sub-rule (2) of that rule says that the price fixed should be "fair price". By way of illustrating what was meant by the expression "fair price", clause (c) of Sub-rule (3) says that the price may be fixed having regard to the maximum price that may be fixed under Clause (e) of that Sub-rule and also the price for that grade

or variety of foodgrain prevailing or likely to prevail during the post-harvest period in the area to which the order applies. The actual notification fixing the price is not on record, and as the validity of that notification was not specifically challenged on the ground that the price fixed is not fair price, the State also did not file a copy of the same. But the notification fixed the price must be construed to be an order under Sub-rule (2), read with Sub-rule (3), of, Rule 125. Hence, it will also be "law" for the purpose of Article 31(2), read with Article 13(3)(a), and as the law itself thus fixed the compensation payable for compulsory purchase of foodgrains. it will come within the first part of Clause (2) of Article 31, being a "law which provides for compensation for the property so acquired or requisitioned and fixes the amount of the compensation". There is thus no scope for the argument that the law merely provides for the principles on which and the manner in which the compensation is to be determined so as to require a quasi judicial determination of the amount of the fair price after giving notice to all concerned. It was, however, urged that by virtue of clause (c) of Sub-rule (3) of Rule 125 the order itself must fix the price, and here the order does not fix any such price. On the basis of this omission it was urged that, there was contravention of the provisions of Clause (c) of Sub-rule (3) of Rule 125. The answer to this argument is found in the general power conferred in Sub-rule (2). That sub-rule does not require that the order fixing the price must form part of the same order by which the compulsory levy is provided for. Sub-rule (3) is merely by way of illustration and cannot detract from the wide ambit of the power conferred by Sub-rule (2)

10. Even if it be assumed that Rule 125 (2) and (3) and the order do not by themselves fix the compensation payable but only specify the principles on which and the manner in which the compensation is to be determined and given, it does not necessarily follow that the fixation of price for the purpose of compulsory levy can only be made after giving every cultivator an opportunity of being heard. The analogy derived from the provisions of the Land Acquisition Act regarding the determination of compensation payable for acquisition of Immovable property cannot be stretched so far. As pointed out in *Naurang Rai Chirangi Lal Vs. The State of Bihar and Another*, while construing a similar provision in the Essential Commodities Act, 1955, "the fixation of one uniform controlled rate is inherent in the power to control the sale and distribution of an essential commodity, and the mere fact that in consequence of fixation of price some loss may fall upon an individual trader cannot lead to the implication that the provisions of the Central Order are constitutionally invalid." Prices are fixed in the interests of the general public and they must be of a uniform rate for all classes of persons in respect of a particular commodity, though they may vary from place to place. I cannot, therefore, accept the extreme contention that on a construction of the words "compensation is to be determined", occurring in Clause (2) of Article 31 where foodgrains are compulsorily purchased by the Government from the cultivator, the law itself must provide for a quasi judicial determination of the "compensation" after giving the cultivator an opportunity of

being heard. The implication arising out of the word "determined", occurring in Clause (2) of Article-31. cannot be carried so far. It is true that the price cannot be fixed arbitrarily but, as pointed out, sufficient guidance for the fixation of fair price is found in Sub-rule (2). read with Sub-rule (3) (c), of Rule 125. In my opinion, therefore, the impugned law does not contravene either the first part or the second part of Article 31(2).

11. It was then urged that Clause 7 of the order provides for payment of transport charges at 10 paise per quintal per mile for the transport of the foodgrains from the village of the cultivator to the nearest Government go-down and that this rate of transport charges is grossly inadequate and amounts, for practical purposes, to forced labour for nominal charges. This portion of the order was, therefore, alleged to contravene Article 23 of the Constitution. This argument is also too farfetched. It is well known that even when there is a voluntary sale there may be delivery of the goods at the place of the buyer, provided the transport charges are added to the price. Here, though the sale is compulsory, the delivery is required to be made at the place of the buyer and some transport charges are provided. The transport charges should not be considered in isolation but should be added to the price fixed, as they undoubtedly form an important element in the amount paid to the buyer. If the charges are somewhat low, it is always open to the aggrieved party to challenge the validity of that portion of the order on the ground that it is in excess of the power to fix fair prices as given in Sub-rule (2) of rule 125 of the Defence of India Rules. Article 23 of the Constitution can never be attracted. Moreover, the order is made for a very important public purpose, namely, to provide for the equitable distribution of essential commodities which affect the life of the community, and even if it be held that the cultivator is compelled to render service to the Government by being required to bring the foodgrains from his village to the Government godown, clause (2) of Article 23 will not be contravened because the compulsory service is for "public purposes".

12. I now take up the second ground, as to whether the provisions of the order are in excess of the powers conferred by the parent rule, namely, Rule 125, Clauses (2) and (3). The main argument in this connection is that Rule 125 authorises the levy only where the cultivator has actually grown the foodgrains and is in actual possession of the stock of such foodgrains. whereas the order directs the levy merely on the basis of the acreage without giving due allowance to the acreage not under cultivation and without taking into consideration the nature of the crops grown on the land. It was urged that if, for example, a cultivator is in possession of 10 acres and he has grown money crops, such as sugarcane or tobacco, in 8 acres, keeping only 2 acres for food crops, there is no provision in the order for making due allowance for the growing of money crops, and the cultivator is required to sell at the rate of 60 kilograms per acre for the 5 acres in excess of the limit. This provision may in some instances result in compelling the cultivator to buy the foodgrains from another source and deliver them at the godown for the purpose of complying with the order. It was urged

that Rule 126 did not contemplate that the person concerned should be asked to buy the foodgrains and then sell them to the Government at the controlled price.

13. In the counter-affidavit filed on behalf of the State an attempt has been made to justify the provisions of the order on the ground that a survey of production of crops in Blhar during the last seven years showed that 80 per cent of the acreage is grown with major crops, such as, rice, wheat and maize, and only a small percentage grew cash crops in small portions of their holdings. It was stated that the exception of land growing cash crops was not considered desirable, as it would lead to diversion of land growing food crops to growing of cash crops and this would accentuate the food deficit in the State. This statement, however, does not meet the point at issue. We are not concerned with what will be the effect of excepting land growing cash crops from the operation of the order, but we have to see whether the power conferred by Rule 126 includes the power to direct a cultivator to compulsorily sell to the Government foodgrains that were not grown on his land and thereby compel him to buy foodgrains in the open market and sell the same to the Government. In my opinion, it is implicit both in the general powers conferred by Sub-rule (2) and the specified power conferred in Clause (c) of Sub-rule (3) of Rule 126 that any order regulating the supply of foodgrains by a cultivator must be in respect of the foodgrains grown by him on his own land. The cultivator is obviously not engaged in the trade or commerce of food-grains, and if he is asked to supply foodgrains at a controlled rate it is always implied that he has an adequate supply of these foodgrains. He cannot obviously be directed to supply an article which he has not got.

14. It was then contended with considerable ingenuity by the learned Advocate-General that as the order was issued on the 29th October, 1966, and the levy was made only after the expiry of a year thereafter, it was open to the cultivator, who must be presumed to be aware of the contents of the order, to give up cultivation of cash crops and take up cultivation of food crops with a view to comply with the provisions of the order; and if he deliberately persisted in growing cash crops, he cannot take advantage of his own contumacy. The Advocate-General went further and contended, that, though the order purports to have been made under Rule 125 of the Defence of India Rules, in substance, it is a composite order made both under Rule 124 and Rule 125 of the Defence of India Rules, and it may be taken as an implied direction controlling the cultivation of specified crops, as provided in Clause (a) of Sub-rule (1) of Rule 124. In my opinion, this argument is too farfetched and not convincing. It is true that there may be a composite order by the competent authority directing the growing of a specified crops by a certain class of cultivators under Rule 124 and directing the supply of specified quantity of those crops at the controlled price under Rule 125, and the mere fact that in the preamble to the order, Rule 124 is omitted may not be decisive. But even if the provisions of the order are construed very liberally it will be difficult to hold that there is any implied direction to the cultivators to grow only foodgrains, namely, paddy, wheat, gram

or maize. There is no direction as to what crops a cultivator should grow on his land. If it was the intention of the Government to prevent evasion of the provision of the order, it is inexplicable as to why separate order under Rule 124 was not issued, I would, therefore, reject this extreme contention of the Advocate-General.

15. Hut on that ground alone Clause 3 of the order cannot be struck down as invalid. I have already inferred to the provisions of Clause 8 which give the cultivator a reasonable opportunity to object to the notice issued under Clause 1. One of the grounds of objection which he could take is that "the quantity of paddy or oilier foodgrains saleable to the Government under Clause 3 is less than what is mentioned in the notice". Here the word "saleable" may be reasonably construed to mean "available for sale". If he can, therefore, satisfy the Anehal Adhikari that in view of his having grown cash crops or for other reasons the quantity of paddy available with him for sale is less than the quantity directed to be sold by the notice under Clause 4, the Anehal Adhikari has full power to reduce the quantity levied from him. There is also a right of appeal against the order of the Anehal Adhikari to the Land Reforms Deputy Collector. The non-availability for sale may arise due to several causes and it will not be proper to exhaustively enumerate them here. The destruction of crops due to pests, flood, drought or hail, the requirement of the religious institution to which the land belongs, the minimum needs of his own family and various other relevant considerations have to be carefully weighed by the Anehal Adhikari while disposing of the objection. Merely because in the order the acreage in the possession of a cultivator is taken as the basis for estimating the quantity of foodgrains to be compulsorily levied from him, it cannot be said to be invalid so long as adequate provision is made in Clause 8 so as to give the cultivator an opportunity to show the availability for sale of the foodgrains in his possession. It was urged that the levy should be based on the actual stock of foodgrains in the possession of the cultivator and not on the acreage of land held by him. This may be one of the methods of compulsory levy, but if the competent authority thought that if the quantum of levy is based on the actual stock in the possession of the cultivator there may be scope for widespread evasion of the order and that other practical difficulties may arise and hence, decided to take the acreage as the basis for such levy, the order cannot be held to be in excess of the power conferred by Rule 125 so long as the safeguard under clause 8 has been provided.

16. It is true that the order does not exempt that portion of the land of a cultivator which though fit for cultivation is deliberately left fallow by the cultivator. The absence of such a provision, however, cannot justify the conclusion that the order is in excess of the power conferred by Sub-rules (2) and (8) of Rule 125 of the Defence of India Rules. If a cultivator deliberately allows his culturable land to remain fallow, he cannot be permitted to take advantage of his own negligence and to claim exemption. Where, however, the omission to cultivate the land is due to circumstances beyond his control, there is

adequate provision for granting him exemption (see third proviso to Clause 3 of the order).

17. It was then urged that Sub-rules (2) and (3) of Rule 125 amount to excessive delegation and that naked arbitrary power was conferred on the authority to levy any quantity from a cultivator irrespective of his stock and to fix any price which the authority may consider to be fit irrespective of the market price. To meet this criticism we have to examine if any guidance in these matters is given in Sub-rules (2) and (3) of Rule 125. In my opinion such guidance is clearly found. Thus the right to levy foodgrains arises only for the purpose of maintaining or increasing supplies essential to the life of the community and for securing the equitable distribution and availability of any article at fair prices. Thus Sub-rule (2) the rule-making authority made it absolutely clear that the price offered should be fair price. In Clause (c) of Sub-rule (8) this aspect was illustrated by reference to the maximum price that they may be fixed under Clause (e) of Sub-rule (3) and also the prevalent price during the post-harvest period in the locality. There is thus sufficient guidance for the fixation of the price, and if in a particular case it can be shown that the price has been fixed without having regard to these factors and that it is not fair price, the notification fixing the price may be struck down as invalid. But it cannot be said that Sub-rules (2) and (3) give unfettered and arbitrary power on the authority concerned to fix any price he may choose. Similarly, there is some guidance about the quantity that he may levy from every cultivator. The paramount consideration is maintenance or increase of supplies essential to the life of the community and to secure equitable distribution and availability of these articles. It will be neither feasible nor practicable for the rule-making authority to lay down in detail principles for the guidance of the authority making the order. The power conferred must be somewhat flexible to meet the circumstances that may arise in different areas of the State. In my opinion, therefore, Sub-rules (2) and (3) of Rule 126 do not suffer from the vice of excessive delegation.

18. It cannot also be contended that the quantity levied per acre is excessive. The counter-affidavit of the State shows that the average yield of rice per acre in Bihar Plains is 3.45 quintals and in Chotanagpur 3.40 quintals. In Bihar Plains the rate of levy is 37.5 kilograms of rice per acre, whereas the average yield is 3.45 quintals per acre. Thus the percentage of levy to the total yield per acre is only about 10.9 per cent. Similarly, in Chotanagpur area the levy is at the rate of 25 kilograms of rice per acre, whereas the average yield is 3.40 quintals per acre. This gives a percentage of about 7.4. Thus the rate of levy cannot be said to be excessive.

19. In the counter-affidavit filed by one Shri Lakshman Sukul, Deputy Secretary to the Government, Supply and Commerce Department, on the 7th August 1966, full particulars have been given as to how the price was fixed for the foodgrains and how the various relevant factors were taken into consideration (see paragraph 9). As the reasonableness of the quantum of price actually fixed is not

under challenge here it is unnecessary to examine this question at length, If is sufficient to say that apart from the safeguard provided in Clause (c) of Sub-rule (3) of Rule 125, the Government of India also had issued instructions in their letter No. 203 (Cenl) (s)/DTR-66-PYI, dated the 10th October. 1965, as to how the procurement price should be fixed and what are the factors to be duly considered before their concurrence could be secured, as required by Sub-rule (3-A) of Rule 125. This shows that the State Government have not got naked arbitrary power to fix nrv price they choose for procurement purposes.

20. I should further point out that too much reliance should not be placed on the language of Clause (c) of Sub-rule (3) of Rule 125 of the Defence of India Rules with a view to see whether the provisions of the order strictly come within the scope of that clause. Sub-rule (3) of Rule 125 begins with the opening words "Without prejudice to the generality of the powers conferred by Sub-rule (2)", and the power for making the order is derived from Sub-rule (2) and not from Sub-rule (3). Sub-rule (2) is in wide terms, subject of course to certain principles for guidance mentioned, above ; and so long as the provisions of the order can be reasonably construed to come within the wide ambit of Sub-rule (2), they cannot be held to be invalid. As pointed out in the well-known Privy Council judgment in AIR 1945 156 (Privy Council) , the provisions of Sub-rule (3) are merely, illustrative and not restrictive of Sub-rule (2).

21. One of the arguments advanced against the validity of the order was that it made no provision for the separate interests of the various coparceners of a Hindu undivided family, whereas in the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (Bihar Act 12 of 1962), a member of a Hindu undivided family entitled to a share in the land was treated as a separate person for the purpose of that Act. (see explanation to Clause (g) of Section 2 of that Act). Thus, if a Hindu undivided family consists of three coparceners, and the total area of land in the possession of the joint family is only 15 acres, and 10 acres in excess of the first 5 acres will be liable to the levy under Clause 3 of the order, whereas if the principle of Bihar Act 12 of 1962 had been followed, the area in the possession of each of the coparceners being only 5 acres, all the lands of the Hindu joint family would have been exempted from the levy. This is a question of policy for the competent authority to consider. It cannot affect the validity of the provisions of the order. Moreover, in the objection under Clause 8 of the order it will be always open to the cultivator to show that in view of the size of his family and the minimum requirement of foodgrains for the consumption of the family the surplus available for sale to the Government will be very little. Individual requirements of every family cannot obviously be dealt with in the order and must be left for consideration by the appropriate authority under Clause 8 when specific objections are taken.

22. Though I must reject the arguments regarding the unconstitutionality or invalidity of the provisions of the order. I must point out one or two anomalies which may require careful consideration by the authorities concerned. The

definitions of "Anchal Adhikari" and "Block Development Officer" in Sub-clauses (a) and (f) of Clause 2 seem to indicate that they should be two different officers. Similarly in Clause 4 a list is required to be prepared by the Anchal Adhikari and the notice to the cultivator is sent by the Block Development Officer. But under Clause 8 objection should be heard by the Anchal Adhikari alone, subject to appeal to the Land Reforms Deputy Collector. But in the second and third provisos to Clause 3 it is the satisfaction of the Block Development Officer that is required with a view to enable a cultivator to sell wheat, gram or maize in lieu of paddy, or to claim exemption due to famine, flood, drought, pests, fluvial action, and other causes mentioned in the third proviso. The second proviso further requires that the cultivator may produce evidence to the satisfaction of the Block Development Officer. It is not clear about the precise stage when this inquiry should be made by the Block Development Officer for the purpose of enabling a cultivator to avail of the benefit of the second and third provisos to clause 3. No procedure is prescribed for such a preliminary inquiry. If it be held to precede the issue of notice under Clause 4, the cultivator will be entitled to take the same objection again before the anchal adhikari under Clause 8 (1), while trying to establish the quantity of food-grains available for sale with him. There will be thus duplication of work, and moreover the Anchal Adhikari may be embarrassed by any decision given by the Block Development Officer earlier. This matter should be clarified by an appropriate amendment to the provisions of the order.

23. I should further point out that in paragraph 5 of the counter-affidavit filed on behalf of the State it was urged that the petitioner's objection under Clause 8 (1) was heard and disposed of according to law. It is not, however, clear as to whether a copy of the order of the Anchal Adhikari was communicated to the cultivator as required by the last portion of Sub-clause (1) of Clause 8 of the order. If it has not yet been communicated, it should be done at once with a view to enable the petitioner to file an appeal under Sub-clause (2) of Clause 8. if so advised.

24. For these reasons the petition is dismissed, but. in the circumstances. without costs.

Dutta, J.

25. I agree.