

**(1987) 12 CAL CK 0028**

**In the Calcutta High Court**

**Case No :** Appeal from Original Order No. 184 of 1979

Ashok Chandra Rakshit (P) Ltd. and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 02-12-1987

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226, 265

Essential Commodities Act, 1955 — Section 3

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 21(5)

**Citation :** (1987) 12 CAL CK 0028

**Hon'ble Judges :** Dipak Kumar Sen, Acting C.J.; Shyamal Kumar Sen, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Dipak Kumar Sen, Acting C.J.

1. The material facts on record and the proceedings leading up to this appeal are, inter alia, that M/s. Ashok Chandra Rakshit (P) Ltd., the appellant, No. 1, carries on business in buying and selling "Ghee" from its registered office and principal place of business at No. 26, Cotton Street, Calcutta and its godown and packing centre at No. 59/5, Natabar Pal Road, Howrah. The appellant No. 1 deals in "Ghee" produced outside West Bengal and procures the same from Uttar Pradesh, Bihar, Andhra Pradesh and also from other sellers in West Bengal who also procure "Ghee" from outside the State.

2. On the 1st November 1965, The West Bengal Milk Trade Control Order, 1965, (hereafter called the said Control Order) was promulgated by the State of West Bengal, the respondent No. 1 in exercise of powers conferred u/s 3 of the Essential Commodities Act, 1955. In 1974, the appellant No. 1 was served with a notice issued under the said Control Order calling upon it to obtain a licence for selling and dealing in "Ghee". A form of application for licence being Form No. "A" under the said Control Order was enclosed to the notice. The appellant, No. 1 paid Rs. 3996 by way of licence fee for the year 1973-74 on the basis that the

outturn of the appellant No. 1 in its business was for 5000 kgs of Ghee. The validity of the said Control Order was challenged in this Court by a number of persons in applications under Article 226 of the Constitution and Civil Rules were issued them including Civil Rule No. 6289 (W) of 1974 where an ad interim order was issued on the 10th October 1974.

3. On or about the 25th April 1978, four notices of demand all dated the 12th April 1978 were issued to the appellant No. 1 by the Controlling Officer appointed under the said Control Order calling upon the appellant No. 1 to pay under the said Control Order licence fees for the year 1974-75, 1975-76, 1976-77 and 1977-78 of Rs. 3995 in, each year by the 27th April, 30th May, 27th June and 27th July 1978 respectively.

On the 31st May 1978, the appellant No. 1 along with Mallinath Rakshit, Bimansri Rakshit and Sakyasree Rakshit, its Directors, the appellants Nos. 2, 3 and 4 herein, moved an application under Article 226 of the Constitution against the State of West Bengal, the Milk Commissioner, West Bengal, the Controlling Officer, West Bengal, Milk Trade Control Order, 1S65 and the Union of India who were impleaded respectively as the respondents Nos, 1, 2, 3 and 4. In the said application, the appellants prayed for, inter alia, a writ in the nature of certiorari calling upon the respondents to send up to this Court the records of and relating to the said notices or orders, elated the 12th April 1978 issued by the respondent No. 3 and for quashing or setting aside the same. A writ of mandamus directing the respondents to act according to law and to cancel or withdraw the said notices or orders dated the 12th April 1978 was also prayed for. There was also a prayer for an injunction restraining the respondents from giving effect to the said notices or orders dated the 12th April 1978 or from demanding licence fees.

4. On the said application, a Rule nisi was issued on the 31st May 1978.

5. It was contended by the appellants in the said application, inter alia, that the appellants Nos. 2, 3 and 4 were the shareholders and the Directors of the appellant No. 1 and also citizens of India. It was alleged that the appellants never dealt with any, milk or milk products produced in the State of West Bengal. It was stated further that in, 1974, the appellants paid Rs. 3996 as licence fee under a misapprehension that they were liable to pay the same.

6. On being apprised of proceedings pending before this Court from the newspaper "Amritabazar Patrika" on the 21st October 1974, the appellants informed the respondent No. 3 by its letter dated the 6th January 1975 that the said Control Order was applicable only to milk and milk products manufactured within the State of West Bengal and not those imported from outside the State and as such the appellants were not required to obtain any licence under the said Control Order. Pursuant to the said letter, it was alleged that the respondents did not call upon the appellants to obtain further licence from the year 1974-75 till the 12th April 1978 as stated hereinabove. On their representations to the respondent No, 3 it was alleged that the latter assured the appellants that their

case was being considered and final decision would be taken later. By a letter dated the 27th May 1978, the appellants applied to the respondent No. 3 of time to pay the licence fees, as demanded. The respondent No. 3 refused to consider or even to accept the said letter. The respondent No. 2, the Milk Commissioner also refused to hear the representation of the appellants.

7. The appellants contended that as they did not carry on any business in any part of the demarcated areas specified in schedule I of the said control order they did not come under the mischief of the said Control Order. Amendment of Schedule 1 made subsequently on the 24th May 1967 purporting to extend the Order to the areas of Calcutta, Howrah and other parts of West Bengal, was contended without any basis or reason. The said Control Order had not been extended to many other Districts and areas of West Bengal and as such the classification between the different Districts and areas of West Bengal was unreasonable and bad.

8. It was contended further that the object of promulgating the said Control Order was maintenance and increase of supply and equitable distribution of milk and milk products in West Bengal. As the appellants did not carry on any business with milk or milk products of West Bengal but procured the same from outside the State, there was no nexus between the said Control Order and the impugned notices demanding licence fees issued on the appellants and, therefore, the same were bad in law and liable to be quashed.

9. It was further contended that the respondents sought to impose a tax on the appellants in the guise of a licence fee by issuing the said impugned notices, which they had no power to do. The rate at which such licence fees were charged would clearly establish that the same was nothing but a tax and the respondents acted without any power or in excess of their powers in issuing the said impugned notices.

10. It was contended further that there were a number of milk products dealt with and sold in West Bengal in respect of which the said Control Order was not applied or enforced. Particulars of 17 different items of milk products were set out in Annexure "D" to the petition and it was contended that by calling upon the appellants to obtain a licence in respect of "Ghee" and demanding licence fees for the same, the appellants had been discriminated against and the impugned notices were violative of Article 14 of the Constitution.

11. It was contended further that the impugned imposition of licence fees on the appellants was arbitrary, without any application of mind and in violation of the principles of natural justice inasmuch as the said fees sought to be imposed for all the years were without any basis and there was no material available to the respondents to come to a finding that the appellant No. 1 was dealing with 5000 kgs. of "Ghee" in all the said years. It was contended further that in any event "Ghee" was not a milk product within the meaning of the said Control Order and the respondents were not entitled to treat, "Ghee" as milk product and call upon

the respondents to obtain a licence for dealing with the same. It was contended by a letter dated the 30th May 1978 from their Advocate, the appellants had demanded justice which was, however, denied to the appellants.

12. Santosh Kumar Pain, the Additional Milk Commissioner (II) West Bengal, affirmed an affidavit on the 23rd June 1978 which was filed in opposition to the petition and in answer to the Rule. It was contended in the said affidavit, inter alia, that the appellants carried on the business of procurement, transport and sale of "Ghee", a milk product, within the areas which were demarcated under the said Control Order. It was contended further that in respect of the licensing year 1973-74 a general notification was published on behalf of the respondents in all leading local daily newspapers on the 30th and the 31st December 1973 and the 1st January 1974 drawing the attention of traders of milk products to the said Control Order and calling upon them to take out licences thereunder. Pursuant thereto, the appellants, after some correspondence with the respondents, voluntarily deposited licence fees demanded along with an application for a licence in the prescribed form. It was contended further that several Civil Rules issued by this Court challenging the validity of the said Control Order was ultimately decided in this Court in Civil Rule No. 5433 (W) of 1974 whereby the validity of the said Control Order was upheld by a judgment and order, dated the 21st January 1977. In view of the said decision, the respondents decided to call upon the traders in milk and milk products in the demarcated areas to obtain licences for the relevant years after 1974 and demanded arrears of licence fees. It was contended that the appellants, before moving this Court, did not challenge the said notices, dated the 12th April 1978 but only asked for extension of time to deposit the licence fees. It was denied that any assurance was given to the appellants that there would be further consideration of their case, It was contended that "Ghee" which consisted of milk fat, a principal milk solid came within the purview of the said Control Order. It was contended that the said Control Order was initially made applicable to the demarcated areas as specified in Schedule 1. The said areas were rich in milk. By the subsequent notification, dated the 24th May 1967, the said Control Order was extended to areas where the consumption of milk and milk products were high. It was contended that one of the objects of the said Control Order was to obtain equitable distribution of milk and milk products and the classification of the demarcated areas was not unreasonable. It was further contended that no discrimination had been made between different types of milk products as alleged.

13. It was contended that licence fees demanded from the appellants were on the basis of the quantum of the product for which licence had been obtained by the appellants themselves in 1973-74. Renewal of such licence entails the deposit of licence fees at the same rate. It was contended that there was no representation from the appellants that their licence should be renewed for a different quantity. The other allegations in the petition were denied and the contentions were disputed.

14. The appellant No. 2 affirmed an affidavit on the 6th July 1978 which was filed in reply to the said affidavit of Santosh Kumar Pain. It was contended, inter alia, in this affidavit that the judgment and order, dated the 21st January 1977 was in respect of "Butter" and not "Ghee" and the contentions raised in the petition of the appellants were neither raised nor decided in the said judgment. In any event, an appeal was pending from the said judgment. The other allegations and contentions in the said affidavit of Santosh Kumar Pain were denied and disputed.

15. The said application was disposed of by a judgment and order, dated the 6th February 1979 by His Lordship Sabyasachi Mukharji J. (as His Lordship then was).

16. Following the judgment, dated the 21st January 1977 in Civil Rule No. 5433 (W) of 1974 intituled Aligarh West End Dairy v. The State of West Bengal and others, the learned Judge held that "Ghee" was not only an essential commodity within the meaning of the Essential Commodities Act, 1955 but also a milk product as envisaged in the said Control Order. The learned Judge in coming to the aforesaid conclusion considered the definition of the product "Ghee" in the Illustrated Chamber's Encyclopedia, 1930 Edition and Wilson's Glossary, 1940 Edition. The learned Judge also considered the definition of "Ghee" as contained in the Food Adultration Act, 1954.

17. The learned Judge also considered the average chemical composition of both cow's and buffalo's milk as also of Ghee.

18. The learned Judge held that the fact that the said Control Order had not been implemented in various Districts of West Bengal and in particular to the Districts of Dankuni and Burdwan did not result in any unlawful discrimination against the appellants. The contention of the respondents that they had undertaken surveys in respect of milk and milk products in the said Districts which could not be taken up earlier in view of the injunctions issued by this Court from time to time in various Civil Rules was accepted. The further contention of the respondents that the said Control Order would also be extended to other Districts after investigation and subject to administrative feasibility v as also accepted though the learned Judge noted that in the affidavit filed on behalf of the respondents this specific case had not been made out.

19. The learned Judge rejected the contention of the appellants that the said Control Order did not extend to milk products imported from outside the State of West Bengal. The contentions of the respondent that under the said Control Order, some control even in respect of milk products imported into the State of West Bengal would be necessary for the purpose of equitable distribution of the same in the whole of the State, that for such purpose, certain amount of restriction was necessary to be imposed in respect of imported milk products and that such restriction would not be outside the purview of the Essential Commodities Act and the said Control Order in view of their objects were accepted.

20. The learned Judge rejected the contention of the appellants that the licence

fees imposed by the said Control Order were disproportionate to the services to be rendered under the said Control Order and as such the same were unreasonable. The learned Judge noted the observation in Civil Rule No. 5433 (W) of 1974 that the licence fees collected under the said Control Order were not being merged with the general revenue of the State and that the same were being utilised to meet the cost of implementation of the said Order partially. The learned Judge observed that in such matters certain amount of latitude was required to be given and that the quantum of fees could not be judged with the mathematical accuracy.

20(a). The learned Judge dismissed the application of the appellants and discharged the Rule.

21. The present appeal is from the said judgment and order dated the 6th February, 1979.

22. To appreciate the controversies raised in the present proceedings, it will be convenient at this stage to refer to the relevant provisions of the said Control Order which are set out hereafter.

Clause 1. Short title, extent and commencement. (1) This order may be called the West Bengal Milk Trade Control Order, 1965.

(2) It extends to demarcated areas as specified in Schedule I and to such other demarcated area or areas as may be specified by the Government by notification in the "Official Gazette".

Clause 2. Definition: In this order, unless the context otherwise requires,-

(a) ....

(b) ...

(c) "demarcated area" means an area demarcated in Schedule I.

(d) ....

(e) ....

(f) "licence" means a licence granted under this order.

(g) ....

(h) ....

(i) "milk products" means any products containing milk solids and includes channa;

(j) "milk solids" means the constituents of milk excluding water.

(k) ....

Clause 3. Regulation of procurement, processing, manufacture, sale or transport

of milk or milk products in a demarcated area. No person shall carry on the business of procurement, processing, manufacture, sale or transport of milk or milk products in a demarcated area except under and in accordance with the terms and conditions of a valid licence, save and except the quantity of milk or milk products which may be allowed, from time to time, by the Controlling Officer to be procured, processed, manufactured, sold or transported without a licence.

Clause 4. Application and fees for the grant or renewal of Licence. Every person desiring to obtain a licence or renew a licence shall make an application in duplicate to the Controlling Officer or the Officer authorised by him in this behalf in form "A" along with the following fees, namely: -

For handling up to 10 Kilograms of milk per day - Re. 1.

For handling every additional 10 kilograms - Re. 1.

For handling milk-products upto 10 kilograms per day - Rs. 4.

For handling every additional 10 kilograms of milk-products or part thereof per day - Rs. 8.

Clause 10. Powers of entry, search, seizure, etc.: (1) The Controlling Officer or the officer authorised by him in writing in this behalf may, with a view to securing compliance with this order,-

(i) require any holder of a licence to give any information in his possession with respect to milk or milk products, procured, processed, manufactured, sold or transported by him.

(ii) at any time, enter and inspect any place or premises which is used or believed to be used for the procurement, processing, manufacture, sale or transport of milk or milk products with a view to satisfying himself that the requirements of this order or the terms and conditions of a licence issued thereunder are being complied with; and

(iii) search and seizure any milk or milk products in any place or premises together with packages, coverings or receptacles containing such milk or milk products, where he has reason to believe that the contravention of this order has been, is being, or is about to be committed and thereafter take all measures necessary for securing the production of evidence of such milk products, packages, coverings or receptacles so seized, in a Court and for their safe custody pending such production.

(2) Every holder of a licence shall be bound to furnish the information so required to the Controlling Officer or the officer authorised by him and afford all necessary facilities to the Controlling Officer or the officer authorised by him for the purpose of exercising the powers under clauses (ii) and (iii) of sub-paragraph (1) of this paragraph.

Clause 11. Maintenance of records and submission of returns:

The Controlling Officer or the officer authorised by him in this behalf may, by order in writing, direct any holder of a licence -

(i) to maintain such records relating to procurement, processing, manufacture, sale or transport of milk or milk products, as may be specified by him in the said order;

(ii) to submit to him such returns or statements in such form and containing such information relating to milk or milk products, procured, processed, manufactured, sold or transported and within such time as may be specified by him in the said order.

Clause 12. The maximum prices at which milk shall be sold or purchased in demarcated areas: The prices for milk chargeable by a person carrying on the business of procurement, processing, manufacture, sale or transport of milk in demarcated areas shall not exceed the rates specified in Schedule II.

Clause 13. A holder of licence to sell part of stock to Controlling Officer or the Officer authorised by him. Every holder of licence shall sell to the Controlling Officer or the officer authorised by him in this behalf such part of the total quantity of milk procured, processed, manufactured, sold or transported by him at the commencement of this order and procured, processed, manufactured, sold or transported, by him every day beginning with the date of commencement of this order as specified in Schedule III."

23. At the hearing before us, learned Advocate, for the appellants submitted that the licence fees charged under the said Control Order were in effect a tax and not a fee. He drew our attention to Clauses 3 and 4 of the said Control Order noted hereinbefore under which a licence fee was charged. It was submitted that in lieu of such fees, no service whatsoever was rendered or required to be rendered under the said Control Order. There was no quid pro quo. It was submitted that Article 265 of the Constitution laid down that no tax could be levied or collected except by authority of law. The said Control Order was promulgated in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955 which did not authorise or empower the State of West Bengal to levy a tax. As such the licence fees imposed under the said Control Order were illegal and ultra vires the Constitution. In support of such contention, learned Advocate for the appellants relied on and cited:

(a) The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, . In this case the Supreme Court considered the distinction between a tax and a fee and observed as follows:

"It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services

rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore, they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the - public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, correlation between the fees collected and the service intended to be rendered. Whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case."

(b) Kewal Krishan Puri and Others Vs. State of Punjab and Another, . In this case also the Supreme Court considered the nature of a fee which could be validly imposed by Governmental authority. The Supreme Court observed as follows:

"Generally speaking a fee is defined to be a charge for a special service rendered to individuals by some governmental agency." . . . . . "The impost of fee and the liability to pay it is on a particular individual or a class of individuals. They are under the obligation to submit accounts, returns or the like to the authorities concerned in cases where quantification of the amount of fees depends upon the same. They have to undergo the botherations and harassments, sometimes justifiably and sometimes even unjustifiably, in the process of discharging their liability to pay the fee." . . . . . "It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special services was rendered to the payer of the fee and what proportion went to others. But generally and broadly speaking it must be shown with some amount of certainty reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers."

24. In this case the Supreme Court also laid down the principles for satisfying the tests for a valid levy of fees as follows:

(a) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(b) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural product.

(c) It is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(d) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(e) Spending of the amount of fees mainly or exclusively for the benefit of others will not be permissible on the ground that in the long run the licensees would also be ultimately benefited. Such an indirect and remote benefit to the licensees is not a special benefit.

(f) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(g) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

25. Learned Advocate for the appellants next submitted that the said Control Order unfairly discriminated against the appellants and as such violated Article 14 of the Constitution.

26. Our attention was drawn to annexure "D2" to the writ petition where 17 items of milk products were enumerated. The same were cream, malai, skimmed milk, curd", cheese, processed cheese, ice cream, milk ices, condensed milk, milk powder, skimmed milk powder, khoa, infant milk food, chocolate, milk coffee, kulfi and chocolate ice cream. It was submitted that all the said items which were admittedly milk products were not subjected to the said Control Order.

27. It was next submitted that even at the time of the hearing of this appeal, the said Control Order had not been extended to or made applicable to 11 Districts of West Bengal. This was patently discriminatory. In support of this contention, learned Advocate for the appellants relied on and cited the following cases :

(a) Budhan Choudhry & ors. vs. State of Bihar, reported in AIR 1955 S.C. 101. This decision of the Supreme Court was cited for the following observations on Article 14 of the Constitution:

"While Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure."

(b) Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . In this case the Supreme Court reiterated the principles laid down by it earlier in the case of Budhan Choudhry (supra) and further laid down as follows:

"A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the Court will strike down the law as an instance of naked discrimination."

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply." ..... "After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons and things similarly situated and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law."

"A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the Selections or classification does not proceed on or follow such policy or principle,.....in such a case the executive action but not the statute should be condemned as unconstitutional."

(c) Nani Gopal Paul vs. State of West Bengal, reported in AIR 1960 Cal. 167. In

this case under the West Bengal Chhana Sweets Control Order, 1965 the object of which was maintenance and supply and equitable distribution of milk, manufacture and sale and supply of particular varieties of chhana sweets were prohibited. The Government was granted power under the said Order to grant occasional exemptions from the said prohibition imposed. The vires of the said Control Order was impugned in an application under Article 226 of the Constitution in this Court. It was held by the learned Judge that the impugned Control Order contained various infirmities. There was no nexus between the supply or equitable distribution of milk and the prohibition of manufacture or supply of particular varieties of chhana sweets. It was held further that the release of an equivalent quantity of milk by reason of the prohibition of particular varieties of sweets would not result in maintenance or increase in supply or distribution of milk and in any event the said Control Order did not ensure or provide for distribution of milk at a fair price. It was held that the impugned Control Order had been made in arbitrary exercise of powers conferred under rule 125 of the Defence of India Rules on speculative grounds. The impugned order was directed to be quashed.

28. It was next submitted that the said Control Order purportedly promulgated for maintenance and increase of supply and the equitable distribution of milk and milk products did not provide any machinery for implementation of the aforesaid objects and, therefore, the same was unenforceable. Till such machinery was set up, the respondents were not entitled, to collect licence fees. In support of this contention, learned Advocate for the appellants cited:

Mrs. Debi Bhaduri Vs. Kumarjib Bhaduri, . In this case the vires and various provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the rules framed thereunder were challenged in an application under Article 226 of the Constitution. It was held, inter alia, by me in that case that though u/s 21 (5) of the said Act of 1957 the State Government was entitled to recover the prices of minerals raised and disposed of unlawfully, as no rule had been framed by the said Act laying down the procedure for ascertainment of such prices and also in view of the limited power of the State Government conferred by Section 15 of the said Act to promulgate rules, the State Government could recover such prices by way of regular suits and not by ad hoc determination of prices.

29. It was last submitted that in demanding licence fees for the years 1974-75 till 1977-78 at a flat rate of Rs. 3996 per year on the basis that the appellants were handling 5000 kgs. of "Ghee" per year, the respondents violated the principles of natural justice. The appellants were not given any opportunity to produce their records and make representation thereon in respect of the quantity of Ghee handled by them in each of the said years. The respondents proceeded arbitrarily and without any application of mind.

30. Learned Advocate for the respondents contended to the contrary. He submitted that the judgment dated the 21st January, 1977 passed in Civil Rule

No. 5433 (W) of 1974 in Aligarh West End Dairy vs. The State of West Bengal and others had been upheld by a Division Bench of this Court in a judgment dated the 15th December, 1977 in Appeal from Original Order No. 591 of 1977 entitled Aligarh West End Dairy vs. The State of West Bengal & ors, The controversies raised in the instant proceedings were covered by the said judgment which was binding on a subsequent Division Bench. Learned Advocate for the respondents relied on and cited the said judgment which is considered hereafter.

31. The Division Bench held that Clause 1(2) of the said Control Order authorised the State Government to add to the Schedule I other demarcated areas. An other consideration of Clause 1(2) would make the provision and the said clause nugatory and this could not have been the intention of the Legislature. In any event, the construction which would make the statutory provision nugatory should be avoided.

32. It was further held that the said Control Order would be applicable to milk products imported from outside the State inasmuch as the object of the said Control Order was not only the maintenance and increase of supply but equitable distribution of the same. In that view, it was irrelevant whether the milk products involved were produced within or outside the West Bengal as long as they were imported into the State for supply. It was held that butter constituted a milk product within the meaning of the said Control Order as it contained milk solids as a part of its constituents.

33. It was also held that the object of the Essential Commodities Act, 1955 was to invest power to the Government not only to ensure availability of an essential commodity at a fair price but also for a equitable distribution of the same. The said objects were not required to be read conjunctively. In any event the regulation for equitable distribution by themselves would result in availability of the product at a fair price. It was also held that the said Control Order was valid and within the sanctions laid down by Section 3 of the Essential Commodities Act, 1955.

34. The contentions in the affidavit filed on behalf of the State that the fees realised on account of licence under the said Control Order were not merged with the general revenue but were utilised for the purpose of implementation of the Control Order itself were accepted. The appeal was dismissed and the judgment passed in Civil Rule No. 5483 (W) of 1974 was upheld.

35. Learned Advocate for the respondents produced records and registers to show that the said Control Order has been implemented in respect of most of the items of milk products enumerated in annexure "D2" to the petition of the appellants and licences in respect of the said items have been issued regularly. It was submitted that infant milk food was covered under the West Bengal Baby Food Licensing Order, 1966 promulgated under the Essential Commodities Act and was made exempt from the said Control Order on representation from the

Bengal Chamber of Commerce and Industries.

36. It was submitted that kulfi and khoa were items sold in sweetmeat shops and licences were issued regularly in respect of the same. Items like skimmed milk, milk ices and malai were not marketed regularly through commercial establishments and no application, for licence for the said items had been received by the authorities.

37. It was submitted on the basis of records that of the 11 Districts in the State of West Bengal to which the said Control Order had not been extended or made applicable, surveys have been completed in respect of the five Districts, namely, Burdwan, Birbhum, Bankura, Darjeeling and Purulia and Milk Chilling Plants had been set up in each of the said Districts. It was submitted that the said Control Order had been extended to all urban Municipal Areas of the South 24-Parganas District.

38. In respect of six other Districts, namely, Midnapore, Malda, West Dinajpore, Jalpaiguri, Cooch Behar, Murshidabad, no survey had been conducted but the said Districts had been allotted to Milk Co-operative Union under the West Bengal Cooperative Milk Producers Federation Ltd. sponsored by the Government of West Bengal. Dairies had been set up in the said Districts. It was intended to extend the said Control Order to all Districts in near future subject to availability of facilities for quick transport and storage as milk and milk products were perishable in nature.

39. We first take up for consideration the contention of the appellants that the impugned Control Order is discriminatory inasmuch as the same had not been applied to and enforced in respect of 17 items of milk products particulars of which had been furnished in Annexure "D2" to the writ petition noted hereinbefore. From the records produced by the respondents it appears that the said Control Order has been applied to and enforced in respect of most of the said items. One exception was in respect of infant milk food which was covered by the West Bengal Baby Food Licencing Order, 1966 and on a representation of the Bengal Chamber of Commerce and Industries, the said item had been exempted from the impugned Control Order. The other exceptions were skimmed milk, milk ices and malai. As the said items were not regularly marketed through commercial establishments, no application had been received by the authorities in respect of the said items. Apart from the said four items, all other items of milk products enumerated in Annexure "D2" to the petition of the appellants came within the purview of the impugned Control Order and the persons engaged in dealing with the same in demarcated areas were required to obtain licences under the impugned Control Order.

40. In the circumstances, in our view, it cannot be held that the impugned Control Order is discriminatory or violates Article 14 of the Constitution on the ground that the same had not been extended or enforced in respect of milk products other than "Ghee".

41. Next to be considered is whether the impugned Control Order is discriminatory inasmuch as the same has been extended only to certain districts of the State of West Bengal and not to other districts. The learned Judge in the first Court noted in his judgment and order, dated the 6th February 1979 that the respondents had carried out surveys of milk and milk products in the districts to which the said impugned Control Order had not till then been extended. The learned Judge noted that by reason of the order of injunction issued from this Court from time to time, the matter could not be proceeded with further. The learned Judge also noted that after investigation and subject to administrative convenience; it was intended that the said Control Order would be extended to all districts of the state.

42. Seven years have passed since the judgment of the first Court but the matter has not progressed further. It was submitted on behalf of the respondents on the basis of records that surveys have been completed in respect of only five districts where milk chilling plants had been set up but the said Control Order had not been extended to cover the said districts. So far as the balance six districts are concerned, no survey had been conducted as yet but the said districts have been earmarked for being dealt with by Milk Co-operative Unions set up under the West Bengal Co-operative Milk Producers Federation Ltd. in the districts. It was intended to extend the said Control Order to all districts in near future subject to availability of facilities for quick transport and storage.

43. Though we are not impressed by the progress of the respondents in the matter, we are prepared to accept the submission of the respondents that the said Control Order would be extended to all parts of West Bengal as soon as feasible. We have not been informed by the respondents whether facilities of transport and storage were existing or available in the areas to which the said Control Order has been made applicable.

44. Next to be considered is the contention of the appellants that the said Control Order does not provide for any machinery for implementation of the object of the said statute, viz., maintenance and increase of supply and equitable distribution of milk and milk products in the State and, therefore, the said Control Order was unenforceable till such machinery was set up.

45. It cannot be disputed that there is no direct regulation or control of procurement, manufacture, sale or transport of milk products under the said Control Order. But, it can be contended that through the licences granted under the said Control Order the authorities may regulate the quantities of milk products handled by the dealers and transporters and also storing thereof indirectly. Machinery has been provided for issue of licences and to the extent the said Control Order permits such indirect regulation it cannot be said that the same is unenforceable.

46. We next take up for consideration the contention of the appellants that the licence fee charged under the said Control Order was in effect a tax and not a fee

and as such the same could not be imposed u/s 3 of the Essential Commodities Act, 1955 and contravened Article 265 of the Constitution. The further contention was that no service whatsoever was or was contemplated to be rendered by the authority concerned under the said Control Order to the persons paying the said fee.

47. The same point came up for consideration before this Court in Civil Rule No. 5433(W) of 1974 and in Appeal from Original Order No. 591 of 1977 in Aligarh West End Dairy (supra). It was noted in the judgment that licence fees collected under the said Control Order were not merged with the general revenue of the State but were disbursed to meet the costs of implementation of the said Control Order. The question of services to be rendered in lieu of the licence fee imposed was not considered. In the judgment under appeal before us it has been held that the licence fees collected were not disproportionate to the services sought to be rendered under the said Control Order. The details of the services to be rendered by the authorities collecting licence fees were, however, not considered.

48. On this question law has been laid down by the Supreme Court in *The Hingir-Rampur Coal Co. Ltd. and Kewal Krishan Puri & anr.* (supra). None of the said decisions was cited or considered in Civil Rule No. 5433(W) of 1974 or in the Appeal from Original Order No. 591 of 1977 or in the instant case before the first Court.

49. In view of the said decisions of the Supreme Court it cannot be disputed that the authorities imposing and collecting fees are required and bound to render services to persons paying the fees in lieu of such fees. There must be a correlation between fees collected and the services which are rendered or intended to be rendered and a substantial portion of the amount of fees collected would have to be shown to have been or intended to be spent for special benefit of the payers.

50. In the instant case the only services which are apparently required to be rendered under the said Control Order to the appellants by the authorities concerned as also other dealers in milk products is the issue of licences and renewal thereof. The said Control Order provides for entry and search by the authority concerned for ensuring the compliance of the statute. For violation of the statute there is provision for seizure of stocks. The licence holders may be required to maintain records relating to the controlled products and submit returns and statements when called upon to do so by the authority concerned. These are, however, not services to be rendered to the licence holders. Admittedly some services are being rendered to the licence holders under the said Control Order by way of issue of licences and by providing some machinery for such issue and collection of fees. We have also to assume that an infrastructure has to be set up by the authority concerned to render the aforesaid services and ensure compliance of the statute for which necessary expenditure will have to be incurred.

51. We do not intend to ascertain mathematically as to what proportion of the licence fees collected are being spent for rendering the aforesaid services to the licence holders. We accept the finding of the learned Judge in the first Court that licence fees imposed by the Control Order are not disproportionate to the services to be rendered under the statute or that the same are unreasonable. We reiterate that the reasonableness of the quantum of fees cannot be judged with mathematical accuracy and in such matters some latitude should be given to the authority imposing the fees. In view of the aforesaid, we are unable to accept the contention of the appellants.

52. Last to be considered is the contention of the appellants that licence fees at a flat rate of Rs. 3996 per year has been imposed on the appellants for the years 1974 to 1978 on the basis that the appellants had handled 5000 kgs. "Ghee" in each year without giving any opportunity to the appellants to produce their records and make representation thereon to establish the quantity of the licenced product which was being handled in the said years.

53. This grievance of the appellants is not without substance. In the usual course it would be for the appellants to apply for licence and in such applications the appellants would be free to indicate the quantity of the licenced product for which licence was being applied for. In the instant case licence fee is being imposed in respect of past years without any application from the appellants. Before fixing the quantum of the licenced product handled and charging licence fees thereon, the appellants should have been given an opportunity to establish the quantum of the licence products which they had handled in the years involved. The authorities proceeded on the basis of the first licence which the appellants applied for and obtained.

54. We accept this contention of the appellants. We direct the respondents to afford an opportunity to the appellants to establish the quantity of the licenced products handled by the appellant No. 1 during the relevant years and on the basis thereof determine the licence fees payable by the appellants. If necessary the respondents will give a personal hearing to the appellants who will be at liberty to produce their books and records at the hearing.

55. Before concluding we would like to observe that the object of the said Control Order is maintenance and increase of supplies and equitable distribution of milk and milk products in West Bengal. So far as milk is concerned, the said Control Order provides for control of price. Maximum price at which milk can be sold or purchased has been fixed in Schedule II to the said Control Order. The said Control Order also provides for compulsory sale of part of any stock of milk to the controlling or the authorised officer. The quantities which can be compulsorily purchased out of any particular stock have been laid down in Schedule III to the said Control Order.

56. The aforesaid provisions of the Control Order do not apply to milk products. There is no control of price of any milk product nor any machinery has been

provided for acquisition of any stock of milk product or a part thereof by the authorities concerned. There are no provisions in the said Control, Order under which the disposal or movement of milk products in the demarcated areas can be controlled or regulated.

56(a). Apart from forcing the dealers of the milk products to take out licences under the said Control Order on payment of fees there is nothing in the statute which provides either for maintenance or increase of supplies of milk products or distribution thereof. The licences issued may provide statistical data recording the quantity of milk products which are being handled in the demarcated areas and nothing more.

57. For the reasons as aforesaid the appeal is allowed. The impugned notices of demand all dated the 12th April 1978 are set aside.

58. It is on record that the appellants obtained an interim order in this proceeding restraining the respondents from enforcing the said impugned notices on deposit of a sum in cash which is presently in the hands of the Advocate on record of the respondents, who was appointed a Receiver, over the same and was directed to keep the same invested in a short term deposit account under an order passed in this appeal. The said interim order has continued.

59. The Receiver is directed to refund to the appellants forthwith the interest which has accrued on the said deposit, if necessary, by encashing the fixed deposits prematurely and also to refund the principal amount of said deposit within four months from date. The balance, after payment of interest as directed above, will be kept in a Savings Bank Account till the same is disbursed in terms of this order. The respondents will issue a notice to the appellants for determination of the licence fees payable by the appellants for the years involved within two week from date. Within three weeks therefrom the appellants will furnish to the authority concerned a statement showing the quantum of "Ghee" handled by them in each of the years involved. The authority concerned will give a hearing to the appellants within one week after the statements are received by them. At the hearing the appellants will be, entitled to produce and rely on their books and records. The matter should be disposed of within eight weeks from date of the issue of the first notice by the respondents. In the event the proceedings are concluded before four months from date, the amount of licence fees as determined will be paid by the Receiver to the authority concerned from the balance of the deposit then in his hand.

Parties to pay and bear their own costs.

60. The Receiver and all parties to act on a signed copy of the minutes of the operative part of this judgment.

61. Appeal allowed.

Shyamal Kamar Sen, J.

62. I agree.