
(1966) 02 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 497, 498 and 499 of 1965

Baldoo Banshi

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-02-1966

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 245
Essential Commodities Act, 1955 — Section 3, 3(2)

Citation : AIR 1966 MP 273 : (1967) JLJ 238 : (1966) 11 MPLJ 537

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavde, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; M. Adhikari, General and K.K. Dube, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Dixit, C.J.

This order will also govern the disposal of Misc. Petitions Nos. 498 and 499, both of 1965.

The three petitioners, who are agriculturists, challenge the validity of action taken by the Collector, Narsinghpur, in the exercise of his powers under Clause 8 of the Madhya Pradesh Wheat Stock Requisitioning Order, 1958, (hereinafter referred to as the Order), in seizing certain quantity of wheat from each of them. They pray that the seizure proceedings taken against them be quashed and that the opponents be restrained from taking any action against them under the Order.

The matter arises thus. All the three petitioners are agriculturists engaged in the cultivation and production of wheat in Narsinghpur district. The Collector, Narsinghpur, first made an order under Clause 3 of the Order calling upon each of the petitioners to declare the stock of wheat held by him on his own behalf or on behalf of others, in the form attached to the order under Clause 3 served on them. In compliance with the order served on him under Clause 3, the petitioner

Baldoo (in M. P. No. 497 of 1965) declared that he had 28 quintals (that is 28 bags) of wheat in stock. The petitioner Mahendrapalsingh (in M. P. No. 498 of 1965) did not make any declaration of his stock as required of him. But according to him he had informed the Patwari in the second week of August 1965 that he had 79 quintals of wheat in stock. In the return, it has been, however, stated that the information furnished by the Patwari disclosed that Mahendrapalsingh had 80 quintals of wheat with him. The third petitioner Chatarsingh (in M. P. No. 499 of 1965) declared that on 17th September 1965 he had 99 quintals of wheat with him. After this information about stocks was obtained by the Collector, he made orders on 25th September 1965 against each of the petitioners under Clause 5 of the Order requiring each one of them to sell the quantity of wheat stated in the respective orders to the Co-operative Marketing Society, Gotegaon. Baldoo was directed to sell ten quintals of wheat held by him to the Society. Similarly, Mahendrapalsingh and Chatarsingh were directed to sell 40 quintals each to the Society. All the petitioners failed to comply with the orders dated the 25th September 1965 under Clause 5 of the Order. Baldoo wrote on the order served on him under Clause 5 of the Order that he had utilised a substantial portion of the wheat stock for sowing and for paying wages to labourers and that whatever stock remained with him was just sufficient to meet his needs. Mahendrapalsingh sold only four quintals of wheat to the Cooperative Marketing Society, Gotegaon, after the receipt of the order, and wrote on the order that whatever wheat he had been utilised for sowing purposes; that the sowing operations were still, on; and that if any stock remained with him after operations were over and after payment of wages to the labourers, he would lender that to the Collector. Chatarsingh also expressed his inability to sell 40 quintals of wheat to the Society. He expressed his willingness to sell 18 quintals, and said that he needed the remaining stocks of wheat for sowing purposes, for his own needs, and for payment of wages to the labourers. The Collector was not satisfied with the explanations given by the petitioners with regard to their inability to sell to the Co-operative Marketing Society, Gotegaon, the quantities of wheat which they were required to under the orders dated the 25th September 1965 under Clause 5 of the Order served on them. He therefore, directed the Tehsildar to enter upon and search the premises in occupation of the petitioners for the purpose of finding the stock of wheat with them. Accordingly the Tehsildar took a search of the petitioners' premises, and found that Baldoo had 80 quintals and 26 kilograms of wheat with him on 21st October 1965; Mahendrapalsingh had, on 22nd October 1965, 62 quintals and 73 kilograms of wheat; and Chatarsingh had on 21st October 1965, 39 quintals and 90 kilograms of wheat, on the information which the petitioners had supplied earlier with regard to the stock of wheat with them and the quantity of wheat utilised according to them for sowing and other purposes, it was found that Baldoo made a false declaration when he stated on 5th September 1965 that he had only 28 quintals of wheat, that Mahendrapalsingh also made a false declaration that he had only 79 quintals of wheat, and according to the statements of stock of wheat and the wheat utilised made by him, he should have

had with him on the date of the search 55 quintals of wheat but actually 62 quintals and 73 kilograms of wheat was found with him and he could not account for the excess quantity of 7 quintals and 73 kilograms; that Chatarsingh should have had with him on the date of search 57 quintals of wheat but only 39 quintals and 90 kilograms of wheat was found with him, and he could not explain where nearly 18 quintals of wheat had disappeared. The Collector has seized the quantity of wheat recovered from the possession of each of the petitioners during the course of search. The petitioner contends that the orders of the Collector under Clause 5 of the Order requiring them to sell certain quantities of wheat to the Co-operative Marketing Society, Gotegaon, are all illegal and the seizure of wheat from them was forcible and illegal. They further say that they have been threatened with arrest and with penal proceedings for their failure to obey the orders made against them by the Collector under the Order.

Before dealing with the contentions advanced by Shri Dabir learned counsel for the petitioners, it is necessary to refer to the material provisions of the order. The M. P. Wheat Stock Requisitioning Order, 1958, has been made by the State Government in exercise of the powers conferred by Clauses (f), (h), (i) and (j) of Sub-section (2) of Section 3 of the Essential Commodities Act, 1955, read with the Government of India. Ministry of Food and Agriculture (Department of Food) Order No. G. S. R. 785 (No 201 (23) (i)/58-PY II) dated 5th September 1958 published in the Gazette of India. Extraordinary, dated the 5th September 1958. The word "dealer" was originally defined in the Order thus.

"dealer means a person who engages in the business of purchase, sale or storage for sale of wheat whether on his account or on account of or in partnership or in association with any other person, or a commission agent or artia and includes a pledgee or pawnee of such dealer and the owner or manager of a flour-mill holding wheat in stock. "

This definition was amended in 1958 so as to make " an agriculturist holding wheat in stock exceeding one hundred maunds in quantity " a dealer. This definition was again amended on 18th April 1962 (vide Notification No. 1620-3890-XXX-60 dated the 18th April 1962) by substituting for the words " one hundred maunds " the words " thirty seven quintals". It was again amended by notification No. 8091/6020/XXX/66 dated the 22nd November 1965 and Corrigendum No. 8925/9092/XXX/65 dated the 23rd December 1965 substituting for the word "thirtyseven" the word "seven".

Clause 3 of the Order provides that every dealer holding wheat in stock shall, on demand by the Director, furnish to him a full correct statement of the stock of wheat held by him in the prescribed form. Clause 5, as it stood originally, ran thus :

" The Director may, by order, require any dealer holding wheat in stock exceeding 100 maunds in quantity to sell the whole or a specified part thereof, to such person or persons as may be specified in the Order."

This clause was amended by Notification No. 1620-3890-XXX 60 dated the 18th April 1962, and by the amendment for the figure and word "100 maunds" the words " thirtyseven quintals " were substituted. It was again amended by Notification No. 6720/6020/XXX dated the 20th September 1965 substituting for the word "thirtyseven" the word "ten". This limit of ten quintals was again modified and substituted by the limit of " seven "" quintals by notification No 8091/6020/XXX/65 dated the 22nd November 1965. Then Clause 6 says :

"Whenever any dealer sells any wheat in compliance with an order made under Clause 5, he shall be paid the price therefore at the rate determined in accordance with the provisions of Sub-section (3-A) of Section 3 of the Essential Commodities Act, 1955. "

For securing compliance with the provisions of the Order Clause 8 gives to the Director the power inter alia to "enter and search, or authorise any person to enter and search any premises and seize any article in respect of which he has reason to believe that a contravention of this Order has been committed."

Shri Dabir, learned counsel for the applicants, argued that Clause 5 of the Order was unconstitutional on the ground of excessive delegation and that the said clause, as also Clause 8 (c) violated Article 19(1) (f) and (g) of the Constitution. He did not dispute before us and indeed he could not in view of the decision of the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , the validity of sections 3 and 4 of the Essential Commodities Act, 1955. He, however, urged that the inclusion of an agriculturist holding wheat in a stock exceeding a certain prescribed quantity in the definition of "dealer" was artificial and fictitious, done in bad faith, and was inconsistent with the other provisions of the Order which could be applied only to a "dealer" meaning a person engaged in the business of purchase, sale or storage for sale of wheat; that Clause 6 gave unrestricted power to the Director to require any dealer to sell any quantity of wheat in stock with him to any person; that it did not lay down matters, such as the wheat requirements of the agriculturist for sowing purposes, for his labourers and for the members of his family, for guidance of the Director in making an order under Clause 5; that it did not even prescribe the maximum quantity of wheat which a person could be directed under the said Clause 5 to sell to any person; and that the discretion given to the Director by Clause 5 was unrestrained and unfettered leading to an abuse of power and if he acted arbitrarily and from improper motives, there was no check over him and no way of obtaining redress. Learned counsel proceeded to say that under Clause 5, as it was worded, an agriculturist holding wheat in stock less than the prescribed quantity was outside the scope of the clause and could not be compelled to sell any wheat in stock with him to any person, but that an agriculturist having wheat in stock exceeding that quantity could be compelled by the Director to sell the entire stock with him to any named person or body. It was thus urged that the power conferred by Clause 5 on the Director was uncanalised and unguided and consequently the clause was unconstitutional on the ground of excessive

delegation.

In our judgment, the attack on the validity of Clause 5 of the Order on the ground of excessive delegation, must fail. The Essential Commodities Act, 1955, under which the Order was made by the State Government, is, as the preamble to the Act says, a measure "to provide in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities". Section 2 of that Act defines "essential commodity", which includes food-stuffs. Section 3(1) gives to the Central Government, and to the State Government when it acts in the exercise of the powers delegated to it under the Act, the power to make an order for regulating or prohibiting the production, supply and distribution of any essential commodity and trade and commerce therein if the Government is of opinion that it is necessary or expedient to do so far maintaining or increasing supplies of that commodity or for securing their equitable distribution and availability at fair prices. When an order is made u/s 3(1), the Government can in the exercise of its powers under Clauses (f) and (j) of Sub-section (2) of Section 3 of the Act include therein provisions requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to such person or class of persons and in such circumstances as may be specified in the order, and provide also for any incidental and supplementary matters, including in particular the entering and search of premises and seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed. Now, the Supreme Court has held in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, that Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, (analogous to Section 8 of the Act of 1955) is valid. The validity of that provision was not challenged before us also. If Section 3 of the Act of 1955 is valid, then, as pointed out by the Supreme Court in *Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. Bhanamal GulzariMal Ltd. and Others*, , that necessarily means that it does not suffer from the vice of excessive delegation. In that case, it has also been pointed out that where by notified order; passed by the Government u/s 3 an, authority is empowered to pass appropriate orders, the notified order cannot be challenged on the ground that it suffers from the vice of excessive delegation.

Now, Clause 5 of the Order in question cannot be said to be a provision made by the Government in excess of its authority. Clause (f) of Sub-section (2) of Section 3 of the Act of 1955 expressly gives to the Government the power to make an order providing for requiring any person holding in stock any essential commodity 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 of persons and in such circumstances as may be specified in the order. That clause is obviously intended to secure supply of wheat--an essential commodity--and to arrange for its equitable distribution and availability at fair prices. It is a provision intended to bring out the stocks of wheat which dealers and

agriculturists hoard up in the expectation of getting a price much above the fair price. It is not correct to say that Clause 5 of the Order gives to the Director a naked and arbitrary power. The Director cannot under Clause 5 compel a person holding wheat in stock less than the prescribed minimum quantity to sell it to any specified person or persons. Again, even in the case of a person holding wheat in stock exceeding a certain quantity, the Director can compel him to sell the whole or a specified part of the excess quantity above the prescribed minimum limit. Clause 5 has to be construed reasonably and not in a manner so as to lead to the anomaly of a dealer holding wheat in stock less than a certain quantity falling outside the purview of the clause, and a dealer holding wheat in stock exceeding that limit being required to sell the entire stock in his possession. It is true that Clause 5 does not indicate the maximum quantity of wheat that a dealer to whom the clause applies, can be compelled to sell. But it is easy to see that it would have been altogether inexpedient and impracticable to prescribe in detail all the relevant factors which the Director should take into consideration in asking a dealer covered by Clause 5 to sell a particular quantity of wheat in stock with him. The decision about the quantity which a particular dealer should be asked to sell must necessarily depend on a variety of factors operating during a particular period. It is on a proper appraisal of those factors that the Director has to determine the quantity which a particular dealer should be asked to sell for the purpose of securing equal distribution and availability to all at the fair price of the commodity. In making an order under Clause 5, the Director has to bear in mind the interests of the general public, that is interests of the consuming public and not the interests of the dealers. The argument, therefore, of the learned counsel for the applicants that as the exercise of the power, conferred by Clause 5, by the Director is unfettered and has not been made dependent on the requirements of wheat of the dealer holding the stock, therefore, it is bad on the ground of excessive delegation, cannot be accepted. The possibility of the Director abusing his power in any particular case does not in any way affect the validity of that provision. If there is any abuse of power, there is ample power, in the courts to undo the mischief. As observed by the Supreme Court in *Dr. N.B. Khare Vs. The State of Delhi*, "Abuse of the power given by a law some times occurs: but the validity of the law can not be contested because of such an apprehension". In the cases before us, there is no reason to think that there has been an abuse of the power conferred by Clause 5 in requiring each of the petitioners to sell a specified quantity of wheat. It has been stated in the return that the quantity which the petitioners were asked to sell was fixed after due consideration of their own requirements and the stock held by them. In our opinion, Clause 5 canalises the power conferred on the Government by Section 3 of the Act of 1955 for maintaining and increasing the supplies of wheat and for securing their equal distribution and availability at fair prices to all. That being so, its validity cannot be challenged on the ground of excessive delegation.

The argument that Clause 5 violates Article 19(1) (f) and (g) of the Constitution

is also untenable. It was said that it was unreasonable to require any dealer holding wheat in stock exceeding the quantity prescribed in the clause to sell the whole or a specified part thereof to a specified person or persons at the rate determined in accordance with Clause 6 and this put a restriction on the petitioners' right to hold and dispose of property and on the right of freedom of trade or business. In support of this argument, learned counsel relied on the decisions of the Supreme Court in *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , and *The State of Rajasthan Vs. Nath Mal and Mitha Mal*, .

There is no doubt that Clause 5 is directly hit by Article 19(1) (f) and (g) of the Constitution. But the provision would be valid if it is saved by Clauses (5) and (6) of Article 19. The question, therefore, that arises for determination is whether Clause 5 imposes a reasonable restriction on the fundamental rights under Article 19(1) (f) and (g) in the interests of the general public. As to when a restriction imposed on the exercise of a fundamental right can be regarded a reasonable restriction in the interests of the general public has been expounded by the Supreme Court in *Chintaman Rao Vs. The State of Madhya Pradesh*, ; *State of Madras Vs. V.G. Row*, and *Collector of Customs v. Sampathu Shetty* AIR 1962 SC 816. In the case of 1962 SCR 597 : AIR 1962 SC 196 (supra), it has been observed that--

".. .. the test of reasonableness, wherever prescribed should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

In the case of *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, , it has been said with regard to the above observations that they are in line with the principle underlying the structure of rights guaranteed by Article 19, namely, "a balancing of the need for individual liberty in the matter inter alia of the right to hold property or of the right to trade, with the need for social control in order that the freedoms guaranteed to the individual subserve the larger needs--moral, social, economic and political--of the community and thus ensure orderly progress towards the goal indicated by the preamble." It was also emphasized in that case that reasonableness of the restraint should be judged by the magnitude of the evil which it is the purpose of the restraint to curb or eliminate. Again as pointed out by the Supreme Court in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, , the reasonableness of a restriction has to be determined from the stand-point of the interests of the general public and not from the point of view of the persons upon whom the restriction has been imposed.

On the application of the above principles, it is clear that the restriction imposed

by Clause 5 in the form of requiring a dealer holding wheat in stock exceeding a certain quantity to sell the whole or a part of the excess quantity is a reasonable restriction in the interests of the general public. As has been stated earlier, the object of the clause is to secure supply of wheat--an essential commodity--and to arrange for its equitable distribution and availability at fair prices. When wheat, undoubtedly an essential commodity, is in short supply, it is clearly in the interests of the general public that stock of wheat should be regulated and that the sale, distribution and price of wheat should be controlled. The interest of any particular dealer may suffer by the exercise of the power under Clause 5 But on that ground the provision cannot be struck down as unconstitutional when it has been enacted in the interests of the general public.

The decisions relied on by the learned counsel are of no assistance to the petitioners. There is no similarity between the provisions dealt with in those cases and the provision of the Order before us. In the case of AIR 1964 SC 224 Clause 4(3) of the U.P. Coal Control Order, 1958, was held to be void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not falling within the purview of the protection afforded by Clause (6) of the article. This was on the around that Clause 4 (3) conferred on the licensing authority unrestricted power without framing any rules or issuing any directions to regulate or guide its (authority's) discretion. Clause 3 of the U. P. Coal Control Order 1953, was also held to be imposing unreasonable restrictions and invalid inasmuch as it gave to the State Controller unrestricted power to make exemptions. We have already endeavoured to point out that the power conferred on the Director by Clause 5 of the Order is not unbridled or unguided The case of The State of Rajasthan Vs. Nath Mal and Mitha Mal, is also distinguishable. In that case, Supreme Court struck down that part of Clause 25 of the Rajasthan Foodgrains Control Order, 1949, which empowered the Government to requisition or dispose of "frozen stocks of foodgrains" at the rate fixed for purposes of Government procurement. The Supreme Court took the view that the last portion of clause 25 placed an unreasonable restriction upon the carrying on of trade or business as under the clause, as it was worded, it was open to the Government to requisition the stocks at a price lower than the ceiling price, thus causing loss to the persons whose stocks were frozen while at the same time the Government was free to sell the same stocks at a higher price and make a profit The Supreme Court said:

"It is obvious that the dealer whose stocks are thus freezed will stand to lose considerably and will be unable to carry on his trade or business at the prevailing market price. No dealer will be prepared to buy foodgrains at the market price when he knows that he is exposed to the risk of his stocks being freezed any moment and the same being requisitioned at the procurement rate."

If was on this view about the effect of the clause in general that the offending portion of Clause 36 was struck down under Article 19(1)(g) of the Constitution. The clause under consideration before us stands on a different footing. The price

payable to a dealer required to sell any wheat in compliance with an order made under Clause 5 is one determined in accordance with Sub-section (3A) of Section 3 of the Essential Commodities Act, 1955, and it is not the suggestion of the petitioners that under Clause 6 a dealer was required to sell wheat at a price much lower than the ceiling price.

Reference was also made by the learned counsel for the petitioners to the decision of the Supreme Court in *Corporation of Calcutta Vs. Calcutta Tramways Co. Ltd.*, . In that case, the Supreme Court considered the validity of the parenthetical clause occurring in Section 437(1) (b) of the Calcutta Municipal Act, 1961, which is as follows:

"437 (1). No person shall use or permit or suffer to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf namely,--xx xx xx xx xx

(b) any purpose which is, in the opinion of the Corporation (which opinion shall be conclusive and shall not be challenged in any court) dangerous to life, health or property, or likely to create a nuisance."

The Supreme Court held that the parenthetical clause, consisting of the words "which opinion shall be conclusive and shall not be challenged in any court", which makes the opinion of the Corporation conclusive and non-justiciable in any court, amounts to an unreasonable restriction on the right to carry on trade etc. enshrined in Article 19(1)(g) of the Constitution, and that the vice in the provision is that it makes the opinion of the Corporation, howsoever capricious or arbitrary it may be or howsoever unreasonable on the face of it may be, conclusive and non-justiciable. It was also held that such a parenthetical clause is, however, distinct and separate and severable from the rest of Section 437 (1) (b) and only the provisions of the parenthetical clause were void. There is no analogy whatsoever between the provisions of the Calcutta Municipal Act, which the Supreme Court considered, and the provisions of Clause 5 of the Order before us. This decision of the Supreme Court does not in any way advance the petitioners' case.

Turning to Clause 8(c) of the Order, that also cannot be said to be a provision made by the Government in excess of its authority. Clause (j) of Sub-section (2) of Section 3 of the Essential Commodities Act, 1955, expressly gives to the Government the power to make an order providing for any incidental and supplementary matters, including in particular the entering and search of premises and seizure by a person authorized to make such search of any articles in respect of which there is reason to believe that a contravention of the order has been committed. It also does not suffer from the infirmity of excessive delegation. It is altogether unreasonable to say that Clause 8(c) should have detailed the circumstances and factors for the formation of a belief by the Director whether a certain person has or has not contravened the Order. That the clause does not infringe Article 19(1)(f) is clear enough from the decision of the

Supreme Court in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, In that case, while dealing with the validity of Section 98(1) of the Code of Criminal Procedure the Supreme Court said:

"..... a search by itself is not a restriction on the right to hold and enjoy property No doubt a seizure and carrying away is a restriction of the possession and enjoyment of the property seized. This, however, is only temporary and for the limited purpose of investigation. A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized Statutory regulation in this behalf is a necessary and reasonable restriction and cannot "per se" be considered to be unconstitutional. The damage, if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings."

The attack on the validity of the action taken by the Collector, Narsinghpur, against the petitioners resting on the unconstitutionality of Clauses 5 and 8(c) of the Order must, therefore, fail. But the orders made against each of the petitioners under Clause 5 of the Order must be quashed for the reason that on 25th September 1966, the date on which orders under Clause 5 were passed, the said Clause 5 did not apply to any of the petitioners, though according to the stock of wheat with the petitioners, each one of them fell within the definition of the word "dealer". It must be noted that the definition of "dealer", as it stood on 25th September 1965, included an agriculturist holding wheat in stock exceeding 37 quintals in quantity. Five days before 25th September 1965, that is on 20th September 1965, Clause 5 of the Order was amended by substituting for the word "thirtyseven" occurring therein the word "ten", with the result that after the amendment the Director was given the power to require any dealer holding wheat in stock exceeding ten quintals in quantity to sell the whole or a specified part thereof When Clause 5 was amended by substituting for the word "thirtyseven" the word "ten", no concomitant amendment was made in the definition of "dealer" Thus on 25th September 1965 the position was that "dealer" included an agriculturist holding wheat in stock exceeding thirtyseven quintals in quantity, but Clause 5 empowered the Director to require any dealer holding wheat in stock exceeding ten quintals to sell the whole or a specified part thereof It is obvious that Clause 5 could not be applied to an agriculturist holding wheat in stock exceeding ten quintals in quantity. The reason being that such an agriculturist was not at all a "dealer" within the definition of the term "dealer" as it stood on 25th September 1965 as on that date an agriculturist holding wheat in stock exceeding 37 quintals in quantity was included in the definition of "dealer". Thus having regard to the definition of the term "dealer" as it stood on 25th September 1965, Clause 5 applied only to a person engaged in the business of purchase, sale or storage for sale of wheat, whether on his own account or on account of or in partnership or in association with am other person, or a commission agent or artia and to a pledgee or pawnee of such dealer or the owner or manager of a dour-mill holding wheat in stock, and not to an agriculturist included in the definition of the term "dealer" Clause 5 became

applicable to an agriculturist-dealer only on 22nd November 1965 when the definition of the term "dealer" was amended so as to include "an agriculturist holding wheat in stock exceeding seven quintals in quantity" and Clause 5 was also amended by substituting the limit of seven quintals for the limit of ten quintals. On this view, the orders made against each of the petitioners under Clause 8 cannot be sustained.

The conclusion that on 26th September 1965 no order under Clause 5 could be made against any of the petitioners does not, however, affect the validity of the search of the premises of the petitioners and seizure of wheat-stock from them. A search and seizure under Clause 8(c) of the Order can be made by the Director with view to secure compliance with the Order. By Clause 3 every dealer holding wheat in stock is required on demand by the Director to furnish to him a full and correct statement of the stock of wheat held by him. So also under Clause 4, the Director can direct every dealer to maintain true and correct accounts from day to day of the wheat purchased and sold by him and furnish to him on the 1st and 16th of every month a true return of stocks, receipts and deliveries of wheat during the fortnight. It is plain that correct information with regard to the stock of wheat held by every dealer is necessary for enabling the Director to determine whether and if so in what manner a direction under Clause 5 should be made against a dealer. Even if no order under Clause 5 could be made on 25th September 1965 against an agriculturist-dealer, yet such an agriculturist-dealer was bound to comply with the provisions of Clauses 3 and 4 of the Order and the Director could, with a view to seeing whether the agriculturist-dealer had or had not complied with the provisions, search the premises of the dealer and seize any article in respect of which he had reason to believe that a contravention of the Order had been committed. On the basis of the information gathered from the agriculturist-dealers with regard to stock, the Director could determine whether, and if so in what manner, a direction under Clause 5 should be made against "trader-dealers". Thus though Clause 5 is an important provision of the Order, it cannot be said to be a pivotal provision having the effect of the whole Order becoming inapplicable to an agriculturist-dealer if Clause 5 does not apply to him. Here, the seizure of wheat from each of the petitioners was made as the Collector had reason to believe that they had committed a contravention of the Order by failing to give a full and correct statement of the stock of wheat held by them. Whether the petitioners did or did not contravene the provisions of the Order is not a matter to be determined in these proceedings, and we express no opinion on it. It is sufficient to say that when the Collector thought that the petitioners had contravened the Order, he had the power to direct a search of the premises of the petitioners and seize the stock of wheat in respect of which he had reason to believe that a contravention of the Order had been committed. Thus the "seizure proceedings" taken against the petitioners were legal.

In the view we have taken of the matter, it is unnecessary to consider the objection raised by the learned Advocate General on behalf of the State that in view of the Proclamation of Emergency under Article 352 of the Constitution by

the President of India, and of the provisions of Articles 358 and 360 of the Constitution, it was not open to the petitioners to challenge the validity of the orders under Clause 5 made against them and of the seizure proceedings on the ground that Clauses 5 and 8 (c) violated Article 19(1) (f) and (g) of the Constitution. It is sufficient to say that the Proclamation of Emergency and Articles 368 and 359 do not stand in the way of the orders under Clause 6 made against the petitioners being struck down on the ground that Clause 5 was inapplicable to them on the date when those orders were made.

For these reasons, all these three petitions are allowed in part. The orders made on 26th September 1965 against the petitioners under Clause 5 of the Order are quashed. The action of the Collector, Narsinghpur, under Clause 8(c) of the Order in seizing certain quantity of wheat from each of the petitioners is declared to be legal. Consequently, the petitioners' prayers for the grant of various reliefs based on the contention that the seizure proceedings were illegal, are rejected. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amounts of security deposits shall be refunded to the petitioners in each case.