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**(1956) 02 GAU CK 0008**  
**In the Gauhati High Court**

Chunilall Rajendra Kumar

APPELLANT

Vs

State of Manipur and Another

RESPONDENT

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**Date of Decision :** 17-02-1956

**Acts Referred:**

Constitution of India, 1950 — Article 19, 369  
General Clauses Act, 1897 — Section 5

**Citation :** AIR 1956 Guw 25 : (1956) CriLJ 1008

**Hon'ble Judges :** Brij Narain, J.C.

**Bench :** Single Bench

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**Judgement**

Brij Narain, J.C.

1. This is an application on behalf of Chunilall Rajendra Kumar, a joint Hindu family partnership firm carrying on business at Maxwell Bazar, P.S. Imphal, for obtaining a writ of mandamus or a writ of a like nature or an order directing the respondent 1 to refrain from interfering with the business of the petitioner and for quashing any order that might have been passed against the petitioner disallowing him from exporting, 252 maunds of chira purchased at Imphal in February/March, 1955 for the purpose of earning sufficient profits during the course of carrying on its business in various commodities including foodstuffs of rice, paddy, chira etc. 2. The petitioner has been carrying on wholesale business in various commodities including foodstuffs of rice, paddy, chira etc., and according to the petitioner the right of free trade in rice, paddy, chira and other similar commodities and also for export from Manipur to places outside Manipur has been guaranteed by the Central Government Notification No. PY-II-656(36)/54 dated 10-7-1954, which was issued in exercise of the powers conferred u/s 3, Essential Supplies (Temporary Powers) Act, 1946, which runs as follows:

As from the date of the commencement of this order there shall be no prohibition, restriction or control on the movement of rice from any place in a State to any other place within or outside that State nor shall there be any

regulation or control in any manner whatsoever in relation to the production price or distribution and price.

3. This notification was issued in substitution of the prior notification dated 20-10-1951, No. DR/80/FCO/51, which was published in the State of Manipur, Extra-ordinary Gazette, No. 61/E.31 dated 24-1-1952 and the Manipur State Government is alleged to have continued the enforcement of Manipur Foodgrains (Movement) Control Order, 1951, even subsequently in contravention of the aforesaid Order of the Central Government and thus the powers under the Manipur Foodgrains (Movement) Control Order, 1951, which was issued in the exercise of the powers conferred by Section 3. Essential Supplies (Temporary Powers) Act, 1946, which had been made applicable to Manipur earlier were exercised later on also.

The Manipur Government had ordered by this notification of 1951 that no person should export or attempt to export any rice, paddy or products thereof from Manipur to any place outside Manipur except under and in accordance with a permit issued by the State Government in this behalf. The Essential Supplies (Temporary powers) Act, 1946 (Act 24 of 1946) expired on 26-1-1955 and Essential Commodities Ordinance (Act 1 of 1955) was enforced, but "foodstuffs" were excluded from the definition of the "Essential Commodity" defined in Section 2 of the said Ordinance.

4. The petitioner after purchasing 252 maunds of chira, worth about Rs. 3,000/- in February/March, 1955 for earning sufficient profits by exporting the goods from Manipur to places outside Manipur, also made commitments with certain merchants outside Manipur for exporting the said chira, but the goods could not be exported in spite of serious attempts by the petitioner to transport the said quantity of chira from Manipur to places outside Manipur on 31-5-1955 as they were stopped by the Police at Kangpokpi, even though a writ of mandamus had been issued that very day by this Court against Respondent 1 in "Mohan Singh Thapa v. Inspector General of Police, Manipur", (A). The petitioner has further alleged that at about 7-00 p.m. on 31-5-1955, respondent 1 issued a notification No. CS/3/55 Manipur Foodgrains (Movement) Control Order, 1955), which was published in the Manipur State Gazette, Extra-ordinary of the same date whereby it was provided by Section 3:

(a) No person shall export or attempt to export any foodgrains from Manipur to any place outside Manipur, except under and in accordance with a permit issued by the State Government or any officer authorised by the State Government in this behalf.

(b) No person shall transport, attempt to transport cause to be transported, or offer for transport any foodgrains into the area of the State lying to the north of the village Kangpokpi except under and in accordance with a permit issued by the State Government in this behalf.

The petitioner made enquiries and it was then found that an Act had been passed

on 1-4-1955 by the Parliament being Act 10 of 1955 (Essential Commodities Act, 1955) which was altered by provisions of the Essential Commodities Ordinance, 1955 by including in the definition of the "Essential Commodities" Foodstuffs, edible oilseeds and oil. The petitioner has contended that this Act 10 of 1955 was not published in the Manipur Gazette at all. The Manipur Foodgrains (Movement) Control Order, 1955 is alleged not to have been legally made in pursuance of the seventh schedule to the Constitution, Entry No. 33 of List 3.

As respondent 1 has not made any bye-law or regulation to issue permits to carry on the aforesaid wholesale grain business, the petitioner has asserted that the Manipur Foodgrains (Movement) Control Order, 1955 cannot prevent him from carrying on his business. It is also contended that the aforesaid order arbitrarily and excessively invades the fundamental rights of the petitioner guaranteed to him by Article 19(1)(g) of the Constitution as it does not strike a proper balance between the freedom guaranteed under the afore-said article and the Social Control permitted by Clause (6) of Article 19 as no provision has been made therein for a check over the Hon"ble Chief Commissioner of Manipur or his officer appointed for the purpose if he acts arbitrarily or from certain motives.

5. The Manipur Foodgrains (Movement) Control Order, 1955 has also been challenged on the ground that its provisions under Clause (4) are not in accordance with the provision of Sub-clause (j) of Clause 2 of Section 3 of Act 10 of 1955 and Clause (5) Of the Order has not been made according to law as the procedure provided in Clause (6) of Section 3 has not yet been followed and the order has not been laid before both the Houses of Parliament after it was issued.

6. The petitioner applied to respondent 1 on the 6th June, 1955, 18th June, 1955, 2nd July 1955 and 19th August 1955 for a permit to carry on the wholesale business in chira, but no permission was granted to him even though respondent 2, later on, stopped purchasing chira, vide application dated 19-8-1955. The petitioner has alleged that respondent 1 illegally granted monopoly to respondent 2 to carry on the wholesale business in rice, paddy and chira and by granting monopoly has put it out of its power to grant a permit to the petitioner to carry on the wholesale business.

The grant of monopoly to respondent 2, is said to be much more than reasonable restrictions on the petitioner as are contemplated by Article 19(6) of the Constitution and as there are no legal or proper regulations or bye-law requiring the petitioner to take out permit, the petitioner avers that the action of respondent 1 in stopping the petitioner's "business constitutes an infringement of the fundamental rights conferred by Article 19(1)(g) of the Constitution.

As no other remedy was available to the petitioner, who had purchased chira at a time when there was no restriction on its export from Manipur and as the commodity is fast decaying and respondent 1 did not issue permit in spite of repeated demands, the present writ petition had been brought in this Court.

7. The connected Miscellaneous Application No. 29 of 1955 on behalf of

Premchand, a joint Hindu family partnership firm carrying on business at Maxwell Bazar, Imphal and S. Amrik Singh a joint Hindu family partnership firm, carrying on business at Maxwell Bazar, Imphal relates to the export of 7,000 maunds of paddy and 3,500 maunds of rice--worth about Rs. 50,000/- on the same grounds as these petitioners also applied several times to the Hon"ble Chief Commissioner for permit, but no reply was received by them; their last application being quoted in full in para 15 of the petition where reference has been made to an earlier letter dated 23-8-1955.

As common questions of fact and law arise in the two petitions, the arguments of the learned Advocates of the parties were heard together in both these two petitions and a copy of the judgment will be placed on the record of the connected petition as well, as both these cases will be decided by this judgment.

8. Respondent 2 has not contested these petitions. On behalf of respondent 1 it has been contended that the present petitions are not maintainable in law and the allegation that respondent 1 illegally continued to enforce the Manipur Foodgrains (Movement) Control Order, 1951, in contravention of the order of the Central Government has been denied. Respondent 1 has put the petitioner to strict proof regarding the purchase of chira, paddy and rice in question at Imphal in February/March, 1955 and the allegation that the Trucks of the petitioners were stopped by the Police at Kangpokpi on 31-5-1955 in contravention of this Court's order in (A) is also denied.

9. The Essential Commodities Act, 1955 (Act 10 of 1955) received the assent of the President on 1-4-1955 and was published in the Extra-ordinary Gazette of India on 2-4-1955 and consequently it applied to this State immediately on such publication vide Section 5, General Clauses Act, 1897 (Act 10 of 1897) and according to the respondent it was not necessary to re-publish it in the local Gazette for the purpose of legal application of the Act to this State.

The allegation that the Manipur Foodgrains (Movement) Control Order, 1955 had not been legally made has also been denied and it has been contended that the said order does not prevent any person from carrying on wholesale business of any commodities and the order only restricts export of foodgrains as defined, without permit. It has also been contended that no specific regulation or bye-law is necessary to be made in the matter of issuing permit beyond the provision already contained in the said Central Order (which has been issued with the concurrence of the Central Government).

The Government of India is stated to be a necessary party in these petitions. Regarding the legal contentions raised in para 14 of the petition they are stated to have no substance in them and the allegation that respondent 1 granted monopoly to respondent 2 is also denied and it has been urged that the permits were later on issued to a number of people except the profiteering merchants, to whom they were legally withheld.

All these merchants including the petitioners were, according to this respondent,

could be given all facilities to sell their stock of rice, etc., if they had applied to respondent 2. Lastly it was contended that the petitioners' remedy did not lie by bringing a writ petition as they could properly bring a regular civil suit for enforcement of their rights.

10. The petitioners have filed additional affidavit in reply to the counter affidavit filed by respondent 1 and it has been reiterated there that every local Act is republished in the local official Gazette in every State in Indian Union and the allegation that the petitioners are profiteering merchants has been emphatically denied.

11. According to the allegation in para 20 of the petition the price of chira has now been considerably reduced in Manipur and even at such reduced price there is no buyer now at Manipur and as respondent 1 did not grant permits to the petitioners to transport his stock of chira to places outside Manipur, where there is a good demand the stock of chira that the petitioner has, is alleged to be fast decaying and it has further been alleged that it would be reduced to almost nothing within a fortnight, thus causing severe loss to the petitioner who had a right to carry on business in chira under the Essential Commodities Ordinance, 1955 as at the time when the stock was purchased the aforesaid Ordinance was in force.

As other remedies have been barred by Section 15, Essential Commodities Ordinance, 1955, the present petitions have been brought in order to enable the petitioners to exercise their fundamental right guaranteed under Article 19(1)(g), Constitution of India, In para 15 of the cause shown it has been contended that the allegations made in para 20 of the petition are not correct and as this denial raises the disputes regarding Questions of fact, the petitioner should be made to seek his remedy not by writ petition but by a regular suit.

The respondent No. 1 has not mentioned in para 15 of the cause shown that the rate of chira has not gone down nor has it been mentioned that the stock of the petitioner is not likely to deteriorate. The petitioner's affidavit filed with the petition as well as the additional affidavit in reply to the counter affidavit filed on behalf of the respondent go to establish that the petitioner's stock of chira is likely to be deteriorated and if it is not disposed of within a reasonable time the petitioner would suffer considerable financial loss.

Order 8 Rule 3, Civil P.C. lays down that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff but the defendant must deal specifically with such allegation of fact of which he does not admit the truth, except damages. Rule 4 further lays down that where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance.

Rule 5 clearly lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a

person under disability, vide "Kh. Atolchow Singh v. Hon"ble Chief Commissioner, Manipur" (B).

The petitioner's specific case mentioned in his affidavit that his stock of chira is deteriorated on account of permit not being issued to him in spite of repeated requests is, therefore, to be deemed to be correct. Similarly, in the connected petition also, it appears clear that the petitioner's stock of rice and paddy could not be disposed of because of restrictions imposed by the respondent No. 1 and so the petitioners in Writ Petition No. 29 of 1955. have also not been able to carry on their normal business.

12. In para 11 of this petition, it has been alleged that the petitioner made serious attempts to transport his aforesaid quantity of chira from Manipur to places outside Manipur and Messrs. Amrik Singh Man Singh also took trucks loaded with rice etc., upto Kangpokpi on 31-5-1955, but they were stopped by the Police in contravention of the order of this Court in (A) and so the petitioners had to wait the whole night and came back to Imphal on the morning of 1-6-1955 with the said foodstuffs loaded trucks after incurring, costs for the same.

In para 9 of the cause shown, the above mentioned allegations of the petition have been denied and it has been stated that the allegation that the trucks of Messrs. Amrik Singh Man Singh were stopped in the evening of 31-5-1955 by the Police at Kangpokpi without any lawful authority is denied. It has further been added in this para that even without the ban, as a rule the gate of Kangpokpi remains open for heavy goods traffic towards Dimapur side from 6-00 p.m. to 4-00 p.m. and after the closing of the gate at 4-00 p.m. no truck can. cross the gate.

The trucks which arrive after 4-00 p.m. are, in ordinary course not allowed to proceed further that night and as Manipur Foodgrains (Movement) Control Order, 1955 was properly passed on 31-5-1955 there was nothing illegal in the petitioner not being allowed to proceed further along with the prohibited commodities. It is, however, clear from the contents of this para that the petitioners had to incur expenses and their goods could not be disposed of.

In para 5 of the petition, it has been stated that Sri Mohan Singh Thapa purchased certain amount of rice and chira at Imphal in February, 1955 in order to do some business and make profits and he tried to transport them to Dimapur, Naga Hills District, State of Assam on the 24th February, 1955, but his vehicle was also illegally stopped at Kangpokpi even though the Essential Supplies (Temporary Powers) Act, 1955 (Act 1 of 1955) was not enforced then.

The Constitution 3rd Amendment Act, 1954, which included foodstuffs including edible oilseeds and oil in entry 33 of list III in the seventh schedule, was passed on 22-2-1955 and the Essential Commodities Act, 1955, as has already been stated came into force from 1-4-1955. In the cause shown, it has been mentioned in para 7 that the-vehicle of Mohan Singh Thapa was not allowed to

proceed as it was found plying in violation of the-provisions of the Motor Vehicles Act and Rules. This allegation was not accepted as correct in the former writ petition, vide (A) where it was observed at page 18:

The fact that the owner of vehicle No. MNS 488 might or might not have been guilty of any offence under the Motor Vehicles Act, is not material for the purpose of this case when it is proved that the rice which was being carried by the petitioner was not stopped from being taken further on that account.

13. After taking into consideration the various statements of the parties referred to above, I think, it is fully established in this case that even though the Central Government by notification No. PY/11/656(36)/54 dated 10-7-1954 directed that "as from the date of the commencement of the aforesaid order there shall be no prohibition, restriction or control on the movement of rice from any place in a State to any other place within or outside that State nor shall there be any regulation or control in any manner whatsoever in relation to the production, price etc. and in spite of the promulgation of Essential Commodities Ordinance, 1955, whereby foodstuffs were excluded from the definition of the "Essential Commodity" contained in Section 2 of the said Ordinance, the dealers of Manipur were not allowed to take foodstuffs and other grains outside Manipur beyond Kangpokpi and a number of excuses i.e. violation of Motor Vehicles Act etc., were put forward. I, therefore come to the definite conclusion that there was interference with the business of the petitioners, who were not allowed to take their goods outside Manipur before, on 31-5-1955 and even subsequently.

14. The main question which now remains for consideration is whether this interference with the business of the petitioners was justified. On behalf of respondent 1 it has been contended that the Essential Commodities Act, 1955 received the assent of the President on 1-4-1955 and was published in the Extra-ordinary issue of the Gazette of India on 2-4-1955, and was expected to have been found in the possession of all public authorities in India where regular supply of copies of such publication are made, and the publication of the Gazette of India was, according to respondent 1, sufficient to apply the Act of this State, and it was not necessary to re-publish the Act in the local Gazette for the purpose of legal application of the Act to this State.

It has been contended in para 11 of the cause shown that the Manipur Foodgrains (Movement) Control Order, 1955 under which restrictions have been imposed has been legally made. It has also contended that as the said order does not prevent any person from carrying on wholesale business of any commodity and the order restricts the export of foodgrains without authorised permit and the permits have been liberally issued, there was no necessity of any regulations or bye-law in the matter of issuing permits beyond the provision already contained in the said Central Order.

Lastly, it has been contended that the legality of the said Central Order issued in accordance with the Essential Commodities Act, 1955 and with the approval of

the Central Government cannot be challenged unless the Government of India is made a party to this petition.

15. So far as the question of publication of the order In the Manipur State Gazette is concerned, the learned Advocate for the petitioner has not been able to refer to any authority which might indicate that unless any Central Act is re-published in the State Gazette also, it will not operate in this State, even though it has been duly published in the Gazette of India.

Reliance has been placed on the Official Gazette Act, 1863 (Act 31 of 1863), but Section 1 of this Act clearly lays down that when In any Regulation or Act now in operation, or in any rule having the force of law, it, is directed that any order, notification or other matter shall be published in the official Gazette of any presidency or province such order, notification or other matter shall be deemed to be duly published in accordance with the requirements of the law if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the Gazette of India under the directions of the Governor-General of India in Council.

The Essential Commodities Act, 1955 received the assent of the president on 1-4-1955 and it is nowhere been laid down in this Act that it would operate in any State after it is re-published in the Gazette of India and so the contention of the petitioners on this point does not appear to me to be of any force. The Crown Office Act 1877 (40 and 41 Vict. Chap. 41) is not applicable here and the ruling "Harla v. Stats of Rajasthan" reported in AIR 1951 GAU 467 (C) in which the Jaipur Opium Act was passed by the Maharajah's Council of Ministers and not by the Parliament cannot help the petitioners in any manner.

16. As the Constitutional validity of the Manipur Foodgrains (Movement) Control Order, 1955 is the mam object of attack by the petitioner in the present petition, it seems necessary to set out the material provision of the order in respect of which the controversy between the parties primarily centres:

Imphal the 31st May, 1955. No. CS/3/55--In exercise of the Powers conferred by Section 3, Essential Commodities Act, 1955 (10 of 1955) and with the previous concurrence of the Central Government, the Chief Commissioner of Manipur is pleased to make the following order: Manipur Foodgrains (Movement) Control Order, 1955.

1. Short title, commencement and application.

(a)...

(b) it shall come into force forthwith and extends to the whole of Manipur.

2. Definitions.

(1) "Foodgrains" for the purpose of this order means "Rice, paddy and products" thereof.

(2) "Rice and paddy products" include chira, muri, khoi, broken rice and any article whatsoever which originally comes from paddy excepting husk and bhusi.

(3) (a) No person shall export or attempt to export any foodgrains from Manipur to any place outside Manipur, except under and in accordance with a permit issued by the State Government or any officer authorised by the State Government in this behalf.

(b) No person shall transport, attempt to transport, cause to be transported or offer for transport any foodgrains into the area of the State lying to the north of the village Kangpokpi except under and in accordance with a permit issued by the State Government in this behalf.

Provided nothing in Clauses (a) and (b) above shall apply to the export or transport of food-grains --

(i) not exceeding five seers in weight in aggregate by a bona fide traveller as a part of his luggage.

(ii) on Government account.

(iii) under and in accordance with military credit notes.

4. Any Police Officer not below the rank of Assistant Sub-Inspector and any other person authorised in this behalf by the State Government may with a view to securing compliance with this order--

(a) stop, search, etc...

(b) enter and search, etc...

(c) seize or authorise the seizure of any article...

5. If any person contravenes the provisions of this order, then without prejudice to any other punishment to which he may be liable the Court may direct:

(a) that any property in respect of which the offence has been committed or part thereof shall be forfeited to the Government.

(b)...

17. The Government of India, Ministry of food and Agriculture Order No. PY-II/656(30)/55, dated 28-5-1955 is also material and it is as follows:

Government of India, Ministry of Food and Agriculture. Order. New Delhi, the 28th May, 1955.

SRO--In exercise of the powers conferred by Section 5, Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that the powers conferred on it by Sub-section (1) of Section 3 of the said Act to provide for matters specified in Clauses (d), (h), (i) and (j) of Sub-section (2) thereof shall, in relation to the regulation by licenses, permits or otherwise the transport of

paddy, rice or any products thereof, be exercisable also by the Chief Commissioner, Manipur State, subject to the condition that before making any order relating to any matter specified in Clause (d) of the said Sub-section (2), the Chief Commissioner shall obtain the prior concurrence of the Central Government.

Sd/- A. Zaman, Joint Secretary to the Government of India.

18. The notification dated 28-5-1955 shows that respondent 1 was given the authority to also exercise the powers conferred on the Central Government by Sub-section (1) of Section 3, Essential Commodities Act, 1955 (10 of 1955) to provide for matters specified in Clauses (d), (h), (i) and (j) of Sub-section (2) and it was clearly laid down in this notification that respondent 1 was to obtain the prior concurrence of the Central Government before making any order relating to any matter specified in Clause (d) of the said Sub-section (2).

It may be noted that no mention was made of Clause (f) which provides for making an order for requiring any person holding in stock any essential commodity to sell the whole or specified part of the stock to such person or class of persons and in such circumstances as may be specified in the order, which clearly means that in pursuance of the notification dated 28-5-1955, respondent 1 could not order any dealer to sell his stock of foodgrains to respondent 2 only and to nobody else. The respondent No. 1 has alleged in para 13 of the affidavit

All those merchants including the petitioner were given all facilities to sell their stock of rice, if they had, to respondent 2 who made an offer either to purchase the rice at an outright price or at a provisional price...

The respondent No. 1 thus interprets the Manipur Foodgrains (Movement) Control Order, 1955 to enable him to exercise powers under Clause (f) of Sub-section (2) of Section 3 of Act 10 of 1955 when in fact no such powers were ever conferred on the State Government. It was suggested that these powers could generally be exercised by respondent 1, but I think there can be no substance in this argument when the Central Government failed to make a mention of Clause (f) and other clauses of Sub-section (2) of Section 3 were specifically mentioned.

I have already shown above that there was interference with the business of the petitioner and after taking into consideration the terms of the notification dated 28-5-1955, it becomes clear that this interference was illegal and unconstitutional.

19. The provisions of Section 3, Manipur Food-grains (Movement) Control Order, 1955 have been assailed on another constitutional ground and it is that it imposes unreasonable restriction on the fundamental rights of the petitioner guaranteed to them under Article 19(1)(g) of the Constitution Which is as follows:

19(1) All Citizens shall have the right--

(a)...

(b)...

(c)...

(d)...

(e)...

(f) to acquire, hold and dispose of property; and

(g) to practice any profession, or to carry on any occupation, trade or business.

20. Clause 6 of Article 19 provides that nothing in Sub-clause (g) of the said Clause (1) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

21. It has been argued by the learned Advocate for the petitioner that the provisions of Section 3, Manipur Foodgrains (Movement) Control Order, 1955 vest an unfettered discretion in the officer authorised by the State Government in the matter of granting permits and so the restriction must be deemed to be unreasonable regarding the rights of the petitioner to carry on their trade and business in accordance with the fundamental rights under Article 19(1)(g) of the Constitution. This question was examined by the Hon'ble Supreme Court in Purnendu Nath Tagore Vs. Administrator-General of West Bengal and Others, Mukherjee C.J. observed as follows at page 227:

Nobody can dispute that for ensuring equitable distribution of commodities considered essential to the community and their availability at fair prices, it is quite a reasonable thing to regulate the sale of these commodities through licensed vendors....The power to grant or withholding licenses or of fixing the prices of the goods would necessarily have to be vested in certain public officers or bodies and they would certainly have to be left with some amount of discretion in these matters.

So far, no exception can be taken; but the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority.

Vide Chintamanrao v. State of Madhya Pradesh AIR 1951 SC 38 (E) in which "reasonable restriction" was held to connote that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public.

22. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by Clause 6 of Article 19, quoted above, it must be held to be wanting in reasonableness.

23. Section 15 (Act 10 of 1955) leaves no other remedies for the petitioner, who is dissatisfied With the granting of permits u/s 3. No rules have been framed and no directions given on these matters to regulate or guide the discretion of the Licensing Officer, who has not even been made to record his reasons for refusing to grant the permit.

It was pointed out by Mr. Justice Mathews in *Yiek Wo v. Hopkins* (1886) 118 US 356 (F) that the action or non-action of officers placed in such position may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives which are easy of concealment and difficult to be detected and exposed and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to every man, without the necessity of detailed investigation.

In the present case the petitioners are stated to be at liberty to sell their stock to respondent 2, who was permitted to export on Government account under Clause (ii) of the proviso 2 of B. 3, but in view of the above-mentioned observation this restriction is clearly unconstitutional and unreasonable. As the provisions of Section 3 clearly infringe the fundamental rights guaranteed to the petitioners under Article 19(1)(g) of the Constitution, they are void and inoperative, vide also *Rabindra Kumar v. Forest Officer Govt. of Manipur* AIR 1955 GAU 49) (G).

24. The learned Government Advocate has relied on *Ram Chandra Pal Vs. Hiramba Kumar Pal and Others*, in which it was held that Section 3(1), Bengal Foodgrains (Disposal and Acquisition) Order, 1947, enacted according to Section 3(f)(i)(j) and Section 4, Essential Supplies Act, 1946 were not ultra vires, but this case is of no help to the respondents because Clause (f) of Section 3, Essential Supplies Act, was clearly mentioned there and powers to act under that clause had been given.

Similarly the case in *Atulya Kumar De and Others Vs. The Director of Procurement and Supply and Others*, ( V 40) (I) does not help the respondents as it was merely held there that the restrictions imposed by the general powers conferred by Section 3(1) upon the fundamental rights conferred by Article 19(1) (f) or (g) of the Constitution are reasonable restrictions which are in the public interest.

25. Reliance was placed on behalf of the respondent No. 1 on *Sheonath and Another Vs. The State*, in which it was held that restrictions imposed with a view to conserve the stock of rice in Sambalpur District so that the procurement policy may not be jeopardised were not unreasonable.

The ruling in Ram Prasad Sah Vs. The State, merely lays down that the State Government was entitled to fix the maximum quantity of foodgrains which a person might keep, sell or store without obtaining a licence and so these rulings also do not help respondent 1 in any way. Similarly the rulings in The State of Bihar v. Suddin AIR 1955 LAH 5704 (L), in In re In Re: Natarajan and Others, and Ramjidas and Others Vs. State of Rajasthan, are of no help to respondent 1 as the control order of Rajasthan was under 01. (f) also of Sub-section (2) of Section 3.

26. Reliance was also placed on behalf of respondent 1 on Article 369 of the Constitution, but as the period of five years has elapsed since the enforcement of the Constitution, this article cannot, in any way, help the respondents in this case.

27. On behalf of the petitioner, it has been urged that the Manipur Foodgrains (Movement) Control Order, 1955 is not valid because section (clause) 4 of that order is not in conformity with Sub-clause (j) of Sub-section (2) of Section 3, Essential Commodities Act, 1955.

28. The mere fact that no provision has been made in the order for charging of fees for permits etc., will not make the order invalid and so I see no force in this contention of the petitioner.

29. It has further been urged by the learned Advocate for the petitioner on the basis of Sub-section (6) of Section 3, Essential Commodities Act, 1955, that the Manipur Foodgrains (Movement) Control Order, 1955, is invalid because this order has not been laid before both the Houses of parliament until now, even though the order was issued on 31-5-1955. Sub-section (6) of Section 3 of Act 10 of 1955 runs as follows:

Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

30. It has not been mentioned in the affidavit on behalf of respondent 1 that the Manipur Food-grains (Movement) Control Order, 1955 has actually been laid before both the Houses of Parliament even upto this date. The learned Government Advocate, contended that the Central Government has not been made a party to the present petition and the Government of Manipur could not ascertain whether this provision of law had been complied with.

If the order challenged in this case had been made by the Central Government, then the petitioners were certainly bound to implead the Central Government as a party to this case. But the Manipur Foodgrains (Movement) Control Order, 1955 has been issued by respondent 1 and so it was on the latter to establish that the mandatory provisions of this sub-section were complied with.

It has been urged that the order would not be invalid on this ground, but this argument cannot be accepted as the provision contained in Sub-section (6) is mandatory and I think it was not necessary for the legislature to have clearly put

down in the sub-section that the order issued would be inoperative if this mandatory provisions were not complied with.

The distinction between matters that are directory and matters that are imperative is well known to us all in the common language of the Courts. The real question in all these cases is this: A thing has been ordered by the Legislature to be done. What is the consequence if it is not done? In the case of statutes that are said to be imperative, the Courts have decided that if it is not done, the whole thing fails and the proceedings that follow upon it are all void" vide Roland Burrows, "Words and Phrases, Judicially defined" 1944 3 Edn 316.

In Halsbury's Laws of England . 31 sec Edn 529, it has been observed:

A distinction is commonly drawn between mandatory and directory statutes, and it is said of the former that they must be fulfilled exactly, but the latter substantially only. The provisions which appear on the face of them to be imperative cannot without strong reason to be held to be directory.

The provisions of the order in question are defective on this ground also as prior to its actual application the Parliament could not scrutinize them.

31. I, therefore, come to the conclusion that para 3, Manipur Foodgrains (Movement) Control Order, 1955 infringes the fundamental rights of the petitioners under Article 19(1)(g) of the Constitution and so the provisions of this para are void. A writ of mandamus will be issued to respondent 1 restraining the Government of Manipur from Interfering with the business of the petitioners. The petitioners will get Rs. 100/- each as costs in both these petitions from respondent 1.