
(1984) 10 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 603 and 1277 of 1984

Foremost Dairies Ltd. and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-10-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 245, 301, 302
Essential Commodities Act, 1955 — Section 3, 3(1), 3(2), 5
Evidence Act, 1872 — Section 106

Citation : AIR 1986 Raj 116 : (1985) 1 WLN 43

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Advocate : M.C. Surana, R.S. Purohit, for the Appellant; N.L. Jain, General and Dalip Singh, for Dairy Federation, for the Respondent

Final Decision : Dismissed

Judgement

N.M. Kasliwal, J.—Both the above writ petitions are disposed of by one single order as identical questions of fact and law are involved in both the cases.

2. In order to appreciate the contentions raised in these cases I would refer to the pleadings made in S.B. Civil Writ Petition No. 603/1984.

3. This petition has been filed by M/s. Foremost Dairies Limited, a public limited company registered under the Companies Act, 1956 (hereinafter referred to as "the Company") and by petitioner No. 2, who is a share-holder of the company. Originally the writ petition was filed on June 12, 1984, challenging the Rajasthan Milk (Export Control) Order, 1984 dated May 9, 1984, published in the Rajasthan Gazette Part IV (Ga) dated May 10, 1984, which was brought into force with immediate effect and was to cease to be in force on the first day of September, 1984. After the filing of the writ petition, the State Government has issued similar notifications from time to time extending the period up to September 30, 1984 and now up to October 31, 1984. The petitioners have placed on record Ex. 3, the Rajasthan Milk (Export Control) Order, 1984 published in Rajasthan

Gazette dated May 10, 1984 and also an order dated August 31, 1984, whereby the validity of the aforesaid Export Control Order was extended up to September 30, 1984 (Annexure 8). In view of the subsequent extension order Annexure 8 issued during the pendency of the writ petition, the petitioner got the original writ amended. The petitioners have challenged the validity of Annexures 3 and 8 on various grounds and have prayed that the same be quashed and the respondents be directed not to interfere in the collection of milk by the petitioners at various places in Dholpur District and export of milk by the petitioner from Rajasthan. to their factory situate at Saharanpur (U.P.).

4. In order to appreciate the legal controversy raised in the case, it would be proper to state the facts in brief which have been alleged in the writ petition filed by M/s. Foremost Dairies Limited.

5. The case of the petitioners in this case is that the Company is having its head-office at Delhi and factory located at Saharanpur (U.P.). The petitioners are engaged in the trade of manufacturing Ghee, Milk Butter, Baby Food and other milk products and for, this purpose they have their purchase centres of milk in various places in India including the District of Dholpur in Rajasthan. Important purchase centres are located at Dholpur, Mania, Morena, Saipau and Rajakhara and residents of nearly 120 villages are supplying milk on the above 5 centres. The Company was collecting on an average 10,000 litres of milk per day in the District of Dholpur @ Rs. 3.80 per litre. The Company after collecting the milk from the above mentioned centres chilled the same at the premises of M/s. Upendra Cold Storage and Ice Factory, G. T. Road, Dholpur, who is working as contractor for the company for the chilling of the milk and thereafter the Company transports the milk to Saharanpur at its factory premises for the purpose of manufacturing the various milk products as mentioned above.

6. The State of Rajasthan issued the Rajasthan Milk (Export Control) Order, 1984 on May 9, 1984 (hereinafter referred to as "the Export Control Order") acting in exercise of the powers conferred u/s 3 of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act") read with general order of Government of India, Ministry of Agriculture and Irrigation (Department of Food) published under GSR No. 800 dated June 9, 1978. The above Export Control Order's Clause (3) puts a total prohibition on export of milk by any person other than the Rajasthan Co-operative Dairy Federation Limited, Jaipur (hereinafter called the Rajasthan Federation") with their units at various places in the State of Rajasthan. Clause 3 of the above order reads as under: --

"3. Prohibition of export of milk. No person other than the Rajasthan Co-operative Dairy Federation Limited, Jaipur, with their units at various places in the State, shall export milk " out of any place from the State of Rajasthan, to any other State or Union territory."

The result of the above order is that it created a virtual and total monopoly of the export of milk in favour of the Rajasthan Federation with their units at

various places in the State.

7. I shall now take up the various grounds alleged and raised during the course of arguments by the learned counsel for the petitioners.

8. It was contended by Mr. Surana, learned counsel for the petitioners, that the Export Control Order (Ex. 3) has been issued in exercise of the powers conferred by Section 3 of the Act read with the order published under GSR No. 800 dated June 9, 1978. It is contended that it was beyond the scope and power of the State Government to issue such Notification under GSR No. 800. The State Government in its reply has taken the stand that the Notification was issued in exercise of powers conferred by Section 3 read with order GSR 800 dated June 9, 1978, and also enabling provisions of Circular GSR 168(E) dated March 13, 1973 and with the prior permission of the Central Government. So far as GSR No. 800 dated June 9, 1978 is concerned, which has been placed on record vide Annexure 10, it shows that the Central Government had delegated powers to the State Government also for the matters specified in Clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of Sub-section (2) of the Act and the Export Control Order in question does not fall within the ambit of any of the clauses mentioned above regarding which the power has been delegated to the State Government vide GSR No. 800. However, the State Government has taken the stand and placed reliance on GSR 168(E) dated March . 13, 1973, whereby the Central Government had directed that the powers conferred on it by Sub-section (1) of Section 3 of the Act to make orders to provide for the matters specified in Clause (g) of Sub-section (2) thereof shall, in relation to food stuffs be exercisable also by a State Government. Clause (g) of Sub-section (2) of Section 3 of the Act reads as under: --

"(g)-- For regulating or prohibiting any class of commercial or financial transactions relating to food stuffs or cotton textiles, which in the opinion of the authority making the order, are, or if unregulated, are likely to be, detrimental to the public interest;"

9. In the face of the above circumstances the argument of the learned counsel for the petitioners is that in the impugned Export Control Order there is no mention of GSR 168-E but on the contrary there is a mention of GSR No. 800 dated June 9, 1978 only and which goes to show that the State Government had not exercised its powers under GSR 168E. It is contended that non-mention of GSR 168-E conclusively goes to show that the State Government had not exercised its power under Clause (g) of Sub-section (2) of Section 3 of the Act and as the State Government had no power to prohibit the export of milk by the delegated powers uider GSR No. 800, the impugned Export Control Order being ultra vires the powers of the State Government should be quashed. Mr. Surana in this regard placed reliance on the following observations made in Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

"Public orders, publicly made, in exercise of a statutory authority cannot be.

construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in the mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

10. He also placed reliance in support of the above contention on *Suraj Bhan Pande Vs. State of U.P. and Others*, *The State of Uttar Pradesh and Others Vs. Suraj Bhan Pande*, and *Sujan Singh Matu Ram Vs. The State of Haryana*,

11. Learned Advocate General and Mr. Dalip Singh, appearing on behalf of the respondents, on the other hand, contended that mere wrong citation of the Government order will not invalidate the Export Control Order. The crux of the matter is that GSR 168(R) dated March 13, 1973, had conferred the powers on the State Government to issue such Export Control Order and if such power is available to the State Government under the above GSR 168-E then no fault can be found in the Export Control Order in question. They placed reliance in this regard on *Afzal Ullah Vs. The State of Uttar Pradesh*, *Gur Pratap Singh Bedi Vs. State of Punjab and Another*, and a decision of learned single Judge of this Court in *Misri Lal v. State of Rajasthan*, (S.B. Civil Writ Petn. No. 783/79) Reported in AIR 1980 NOC 121 (Raj) and *Nathu Ram v. State of Rajasthan*, (S.B. Civil Writ Petn. No. 785/1979) (both decided on August 24, 1979) some extracts of which have been reported in AIR 1980 NOC 121 (Raj).

12. I have given thoughtful consideration to the arguments advanced by learned counsel for the parties.

13. The validity of Export Control Order must be seen by reference to the question whether the State Government had the power to issue such order. A mere Wrong mention of GSR in the impugned Export Control Order would not affect the validity of such Export Control Order and the validation must be tested on the basis whether the State Government had been delegated with such powers under the Essential Commodities Act or not at all to issue such Export Control Order. If GSR 168(E) dated March 13, 1973, would not have been in existence, then the State Government had no competence to issue the Export Control Order in exercise of any powers delegated under GSR 800 but in the present case the Central Government had issued GSR No. 168(E) dated March 13, 1973 published in the Gazette of India Extraordinary Part II under which in exercise of the powers conferred by Section 5 of (he Act, the Central Government had directed that the powers conferred on it by Sub-section (1) of Section 3 of the Act to make orders to provide for the matters specified in Clause (g) of Sub-section (2) thereof shall, in relation to food stuffs be exercisable also by the State Government. The State Government, in these circumstances, was fully competent to issue the impugned Export Control Order in exercise of its powers under Clause (g) of Sub-section (2) of Section 3 of the Act.

14. I shall now discuss the cases cited at the bar on the aforesaid point.

15. Commissioner of Police, Bombay Vs. Gordhandas Bhanji, is a case where the respondent Goverdhan Das Bhanji wanted to build a cinema house on a plot of land at Andheri in Bombay. The Commissioner of Police, Bombay was the person competent to grant or refuse the permission. The Commissioner of Bombay Police refused the permission on the ground that public of the locality agitated ? .id also because there was already one Cinema theatre at Andheri. It appears that the respondent Goverdhan Das went on applying again and again and the Commissioner of Police granted the permission on July 14, 1947. This sanction occasioned representations to Government presumably by the public, who were opposing the scheme. The Commissioner wrote to the respondent on September 19/20, 1947 and directed him "not to proceed with the construction of the cinema pending government orders." Shortly after on September 27/30, 1947, the Commissioner sent to respondent the following communication: --

"I am directed by the Government to inform that the permission to erect a cinema at the above site granted to you under this office letter..... dated July 16, 1947, is hereby cancelled."

The Supreme Court considered the question whether this was a cancellation by the Commissioner on his own authority acting in the exercise of some power which was either vested in him or of which he bona fide believed himself to be possessed, or whether he merely acted as a post-office in forwarding orders issued by some other authority. Their Lordships held that they had no hesitation in reaching the conclusion that this was not an order of cancellation by the Commissioner but merely intimation by him of an order passed and made by another authority, namely the Government of Bombay. An attempt was made before their Lordships by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of the Government. In the above background the observations extracted above were made in the above case. It is thus, abundantly clear that the above authority is totally inapplicable to the controversy raised in the present case and renders no assistance to the petitioners.

16. In *Sujan Singh Matu Ram's case* (AIR 1968 Punj & Har 363) (supra), powers had been delegated to the State Government by Notification GSR 906 dated June 9, 1966. It was held that the order purporting to merely prohibit the sale, storing and offering for sale any of the commodities mentioned therein, in powder form or mixtures, not falling under any of the clauses referred to in the said Notification u/s 5 of the Act cannot be justified under Clause (g) of Sub-section (2) of Section 3 of the Act which power has not been delegated to the State Government. It was further held that u/s 5 of the Act no general delegation is permitted but the Notification whereby a delegation is made must specify the matters in relation to which the powers may be exercised by the State Government.

17. Thus, in the above case no Notification at all had been issued delegating powers to the State Government under Clause (g) of Section 3(2) of the Act and it was rightly held that the order could not out-step the power delegated to the State Government by Notification No. GSR 906. No question was raised in the above case that the State Government was competent to issue the order under some other GSR issued by the Central Government which was wrongly left to be mentioned.

18. In *Suraj Bhan Pande Vs. State of U.P. and Others*, the learned single Judge held that the Genuel Government actually omitted Clause (g) of Sub-section (2) in the Notification affecting the delegation. The same Notification dated June 9, 1966 was the subject-matter of consideration which was considered by the Punjab High Court in *Sujan Singh Matu Ram's case* (supra). A special appeal against the aforesaid decision of the learned single Judge was filed in Allahabad High Court which has been reported in *The State of Uttar Pradesh and Others Vs. Suraj Bhan Pande*, The judgment of learned single Judge was upheld by the Division Bench and it was observed:

"The power to pass an order of the nature of the impugned order is not within the specific power under Clause (d) of Sub-section (2) of Section 3; it is within the general power under Sub-section (1) of S. 3; this general power was not delegated to the State Government under the Notification and hence the U. P. Food-grains (Restriction of Hoarding) Order, 1966 was ultra vires the delegation."

It is thus clear that in the case before Allahabad also there was no order like GSR 168(E) conferring powers on the State Government under Clause (g) of Sub-section (2) of Section 3 of the Act." The above authorities as such render no assistance at all to the petitioners.

19. On the other hand, it was held in *Afzal Ullah Vs. The State of Uttar Pradesh*, as under: --

"It is true that the preamble to the bye-laws refers to Clauses A(a), (b) and (c) and J(d) of Section 298 and these clauses undoubtedly are inapplicable; but once it is shown that the impugned bye-laws are within the competence of the Municipality, the fact that the preamble to the bye-laws mentions clauses which are not relevant, would not affect the validity of the bye-laws. The validity of the bye-laws must be tested by reference to the question as to whether the Board had the power to make those bye-laws. If the power is otherwise established, the fact that the source of the power has been incorrectly or inaccurately indicated in the preamble to the bye-laws, would not make the bye-laws invalid."

20. In *Gur Pratap Singh Bedi Vs. State of Punjab and Another*, their Lordships of the Supreme Court held that the order in question was good and was supportable on the strength of Rule 5.32(c) although in the order Rule quoted was 5.32 simpliciter. Even though the State Government had shown remissness in denying that the main order was passed under Rule 5.32 still their Lordships held that on a closer and comprehensive study of the papers it was apparent that what was

meant was that the Government passed the order under Rule 5.32(c) and not under Rule 5.32(b). It was further observed that this carelessness cannot certainly found an argument to invalidate the order.

21. M.C. Jain, J. in *Mishri Lal and another's case* (AIR 1980 NOC 121 (Raj)) (supra) took a view in similar circumstances while dealing with the validity of Rajasthan Milk (Export Control) Order, 1979 that non-mention of enabling notified order in control order does not affect the authority of the State Government to promulgate it and it will be deemed that the order has been issued in exercise of all enabling powers vested in the State Government. I am in perfect agreement with the view expressed by M.C. Jain, J. in the above case.

22. In *Narain Dass Daulat Ram Vs. State of Haryana and Another*, also it was held that the Notification dated March 13, 1973, authorises the State Government to issue orders under Sub-section (1) of Section 3 of the Act in relation to Clause (g) of Section 2 thereof. It was also held that it was clear that the Government of Haryana had exercised this power while issuing the Notification dated May 24, 1978. In the first place, the mere omission to mention the Notification dated March 13, 1973, in the impugned Notification is immaterial and will not render it ultra vires and secondly, the specific mention in the impugned Notification that it was being issued in exercise of all powers enabling the Government of Haryana in this behalf to do so will effectively negative the objection.

23. Mr. Surana, however, contended that in spite of the objection taken in the writ petition, the State Government is repeatedly mentioning GSR No. 800 and is not making a mention of GSR No. 168(E) in the subsequent Notifications extending the period of the Export Control Order up to September 30, 1984, and thereafter to October 31, 1984 and this clearly shows that the State Government does not want to exercise its powers under GSR 168(E). I see no force in this contention as well. Once it is held that the power to issue order under Sub-section (1) of Section 3 of the Act in relation to Clause (g) of Sub-section (2) thereof stands delegated to the State Government vide Notification No. GSR 168(E) dated March 13, 1973, it cannot be held that the impugned Export Control Order is ultra vires the authority of the State Government.

24. In the result, I find no force in the first submission made by Mr. Surana.

25. As a limb of the first argument it was contended by Mr. Surana that even if it may be assumed that the State Government had power to issue the impugned Export Control Order in exercise of its powers delegated under GSR 168(E) the Export Control Order having not been issued with the prior concurrence of the Central Government was invalid and ultra vires the powers of the State Government. It was submitted that it was incumbent for the State Government to obtain prior concurrence of the Central Government before issuing any order under GSR 168(E) dated March 13, 1973. Proviso to the above GSR 168E reads as under:--

"Provided that before making an order providing for the matters specified in the aforesaid clause, the State Government shall obtain the prior concurrence of the Central Government."

It is submitted that the petitioners had taken a specific plea in the writ petition that the impugned Export Control Order has been issued without the prior concurrence of the Central Government. It is also submitted that no document has been placed on record by the State Government to show that prior concurrence of the Central Government was taken before issuing the impugned Export Control Order. It was also argued that during the course of argument the respondents have placed on record a letter of Government of India, Ministry of Agriculture to the Resident Commissioner (C.A.D.) Government of Rajasthan dated September 15, 1984, by which the Central Government has conveyed the ex post facto approval to extend the period of enforcement of the Rajasthan Milk (Export Control) Order, 1984 up to September 30, 1984. It is submitted that the above letter itself shows that no prior concurrence of the Central Government was obtained before issuing the impugned Export Control Order and according to the learned counsel for the petitioners no ex post facto approval can be given in such matter. Reliance is placed on *Panjumal Khan Chand Vs. State of M.P. and Others*, and *Shibshankar Dokania Oil, Rice and Flour Mills, Barharwa Vs. State of Bihar and Others*,

26. On the other hand, it was argued by the learned Advocate General that the notification issued regarding the Export Control Order makes a mention that the same had been issued with the prior concurrence of the Central Government and in any case, the concurrence of the Central Government can be sought even ex post facto as done in the present case and reliance is placed on the following observations in *State of Andhra Pradesh and Another Vs. Potta Sanyasi Rao and Others*,

"There is nothing in Section 5 to limit the power of delegation in favour of the State Government only to the commodities specified in Section 2(a) or to those commodities declared essential u/s 2(a)(xi) up to the date of delegation. Delegation u/s 5 is a general delegation and will inure in favour of exercise of power by the State Government with respect to commodities declared essential by the Central Government from time to time u/s 2(a)(xi) even subsequent to the order of delegation. It is not necessary that every time the Central Government declares an essential commodity it has also to pass an order of delegation u/s 5 with regard to that commodity. Reading Section 5 and Section 3 together there is no warrant for the view that the power of delegation is confined to essential commodities specified under the Act and such others as may be declared by the Central Government up to the order of delegation. Delegation of power to the State Government to act u/s 3 is not restricted to any specified essential commodity as such. It will be sufficient in law if on the date the State Government duly empowered u/s 5, makes a notification u/s 3 with regard to an essential commodity within the meaning of Section 2(a) including the residuary

Clause (xi) thereof. All that is required is that the commodity, on the date of the order of the State Government, answers the description of the clauses in Section 2(a) of the Act. The fact that a commodity is declared essential after the order of delegation does not affect the exercise of power by the State Government u/s 3 of the Act. The High Court is, therefore, not right in narrowly construing the order of delegation u/s 5 of the Act. The Licensing Order is, therefore, not invalid on the ground that the tyres and tubes were declared to be essential commodities by the Central Government after the order of delegation u/s 5 of the Act."

27. Mr. Dalip Singh, learned counsel for the Dairy Federation further submitted that the pleadings made by the petitioners in the writ petition in this regard were totally vague. In Clause (g) of the grounds it was simply mentioned that there had been no application of mind by the Central Government on this aspect of the matter at all and as per the petitioners' knowledge even in fact no prior concurrence had been taken from the Central Government as envisaged in GSR 800 of June 9, 1982, issued by the Ministry of Agriculture and Irrigation (Department of Food) Government of India, New Delhi. It is submitted that in reply to the above para, the respondent No. 3 the Dairy Federation had denied the contents and had submitted that the petitioners be asked to place the material on record from which he has derived the knowledge. It was submitted that on such a vague pleading, the issue regarding prior concurrence of the Central Government cannot be gone into and this being a disputed question of fact cannot be decided in these proceedings.

28. In this regard I find no force in the submission made by the learned Advocate General and Mr. Dalip Singh. The petitioners had taken a plea that to their knowledge even in fact no prior concurrence had been taken from the Central Government. The Court had also given an opportunity to the respondents to place any order or communication by which prior concurrence might have been given by the Central Government before issuance of the impugned Export Control Order. Such concurrence, if any, was within the special knowledge of the respondents and once the factum of prior concurrence by the Central Government was disputed by the petitioners, the burden lay on the respondents to produce the same before the Court. That apart, the letter dated September 15, 1984, produced on behalf of the respondents themselves unmistakably goes to show that in fact no prior concurrence was given by the Central Government but it was given only ex post facto. In the above letter it was also mentioned as under:--

"You are further requested to take care to obtain prior approval of the Government of India in future."

29. Thus, there can be no manner of doubt that while extending the validity of the Export Control Order up to September 30, 1984, vide Annexure 8 no prior concurrence was taken before August 31, 1984, when the same was issued and only ex post facto approval was obtained on September 15, 1984. The question,

however, (that) remains to be determined is whether ex post facto approval can be given and whether it would fulfil the condition of prior concurrence as mentioned in GSR 168(E). It is no doubt correct that in the two cases of Panjumaal Khan Chand Vs. State of M.P. and Others, and Shibshankar Dokania Oil, Rice and Flour Mills, Barharwa Vs. State of Bihar and Others, relied upon by the learned counsel for the petitioners a view has been taken that prior concurrence in such cases is incumbent. However, in all these cases the question of ex post facto approval was not there. In Panjumaal Khanchand's case (supra) a Division Bench of that Court allowed the petition on the short ground that the impugned memorandum dated February 28, 1968, having not been issued without (with?) prior concurrence of the Central Government as required u/s 5 of the Essential Commodities Act, 1955 read with GSR 1111 and GSR 1508 of the Central Government, was without authority of law.

30. In Shibshankar Dokania Oil, Rice and Flour Mills, Barharwa Vs. State of Bihar and Others, a Division Bench of that Court negated the contention of the learned Additional Advocate General that the Court should presume about the regularity of the official acts. It was held that this was a rebuttable presumption. When the main ground of attack throughout had been about the non-existence of an order of concurrence by the Central Government it was futile on the part of the State Government to take shelter of presumption regarding the official act. It was then on the basis of the material on record produced in the above case, it was held that it was difficult to hold that before the procurement order was made Central Government's concurrence had been obtained, which was one of the conditions of delegation as well as the requirement of Section 3(2)(f) as amended by Bihar Act No. 9 of 1978. Their Lordships thus observed that the result will be that it has to be held that procurement order having been made without prior concurrence of the Central Government is invalid and ultra vires.

31. Thus, so far as the position that prior concurrence is necessary, I am in agreement with the view taken in the above two cases but the question still remains whether such approval or concurrence can be given ex post facto or not by the competent authority. This would depend on the nature of the exercise of the power, the object, its effect and various other circumstances connected with the Notification in question. The Supreme Court in State of Andhra Pradesh and Another Vs. Potta Sanyasi Rao and Others, had held that delegation of power to the State Government to act u/s 3 was not restricted to any specified essential commodities as such. It would be sufficient in law if on the date the State Government duly empowered u/s 5 makes a Notification u/s 3 with regard to an essential commodity within the meaning of Section 2(a) including the residuary Clause (xi) thereof. It was further observed that all that is required is that the commodity on the date of the order of the State Government, answers the description of the clauses in Section 2(a) of the Act. The fact that a commodity is declared essential after the order of delegation does not affect the exercise of power by the State Government u/s 3 of the Act. It was further observed that the High Court was, therefore, not right in narrowly construing the order of

delegation u/s 5 of the Act. The Licensing Order was, therefore, held not invalid on the ground that the tyres and tubes were declared to be essential by the Central Government after the order of delegation u/s 5 of the Act. In the present case, the Export Control Order has been issued by the State Government as in its opinion, it was necessary so to do for the maintenance and increase of supplies and distribution in the State of Rajasthan of milk, a commodity essential to the life of the community. It was further mentioned in the preamble that the State Government was satisfied that it was necessary for this purpose to ban the export of milk outside the State of Rajasthan. In Clause 5 of the Order no person other than the Rajasthan Co-operative Dairy Federation Limited Jaipur with their units at various places in the State were allowed to export milk from the State of Rajasthan to any other State or Union territory. Such order was thus in substance affecting the persons, who were producing milk within the State of Rajasthan and affected mainly the residents within the State of Rajasthan. The concurrence of the Central Government in respect of such Export Control Order was merely of a formal nature. Such concurrence thus, having made even ex post facto, though before the expiry of the total period i.e. September 30, 1984, can certainly fulfil the requirement of the prior concurrence of the Central Government. In view of these circumstances, the orders in the present case cannot be invalidated as ex post facto approval of the Central Government has been obtained.

32. There is another difficulty arising in the present case. So far as the validity or invalidity of Annexure 8 is concerned, it has merely remained academic as the period had been extended up to September 30, 1984. That period has already come to an end and nothing would bear in the case as a result of holding the validity or otherwise of such order now. So far as the latest notification, which has extended the period up to October 31, 1984, is concerned, there is no pleading nor any material on record to decide one way or the other whether prior concurrence of the Central Government had been taken or not before issuing the extension order. A Gazette notification dated October 1, 1984, published in Rajasthan Gazette Extraordinary Part IV (G) has been produced by Mr. Surana learned counsel for the petitioners and it makes a mention of GSR 800 dated June 9, 1978 and also that the State Government further extended the validity of the Export Control Order up to October 31, 1984 with the prior concurrence of the Central Government. The question of prior concurrence and ex post facto concurrence both being questions of fact cannot be decided without any pleadings or material with regard to this Notification dated October 1, 1984 which in fact is now affecting the parties. It would not have been necessary for this Court to decide regarding the validity of Ex. 8 which had extended the period up to September 30, 1984 as the same had become a dead letter on the date of pronouncement of judgment in the present case, but the learned counsel for both the parties had insisted and had argued at great length, the questions raised in the present case as the same are frequently arising every year when similar orders are issued by the State Government in the month of May or June.

Thus, taking in view these special circumstances and the fact that, if any, writ petitions are filed challenging such orders they cannot be disposed of before the expiry of such orders, I considered it proper to decide these questions once for all as the same are frequently cropping up every year.

33. It was then contended by Mr. Surana that the impugned Export Control Order is violative of Articles 14 and 19 of the Constitution of India. In this regard it was submitted that the impugned order fails to achieve its object of maintaining and increasing the supply of milk in Rajasthan because while it purports to put a ban on the export of milk outside the State of Rajasthan, it virtually achieves just the reverse of the same by enacting Clause 3 and at the same time permitting the Rajasthan Cooperative Dairy Federation Limited to export milk without any limit and without any consideration of the needs of the residents of Rajasthan to any place outside Rajasthan. It is further contended that the order also fails to achieve its object because it bans the export of milk but permits the export of Mawa, Paneer, etc. and also permits manufacture of dry milk, milk powder and condensed milk and allows its export in unlimited quantity. The order is also bad because of lack of guidelines even for the purpose of export and because it nowhere lays down that the needs of the people of Rajasthan shall have to be met before permitting the export. It is thus submitted that the order does not serve the public interest in any manner. It neither assures the producer a reasonable price of his produce nor it assures the consumers milk at any fixed or reasonable price at all. Reliance is placed on *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*,

34. It was also submitted by Mr. Surana that the petitioners had alleged in the writ petition that the respondents were exporting nearly 2 lacks litres of milk. The Managing Director, Dairy Federation had admitted in Annexure 7 that they were exporting 2.5 Lacs litres to 3 Lacs litres per day to Delhi. It was submitted that as against the above huge quantity of milk exported by the Dairy Federation, the petitioners were exporting a nominal quantity of 10,000 litres of milk per day from Dholpur District where the respondents had no machinery for collection or procurement of milk. The exemption thus granted in favour of Dairy Federation alone completely violated the above objective of increasing and maintaining milk supply in Rajasthan and for which purpose a total ban was put on the export of milk. The Rajasthan State Dairy Federation in this regard has taken the plea that the Export Control Order has been issued in the public interest. The Union Territory of Delhi have a vast population and under the contract the answering respondent is supplying milk to it. Delhi is also receiving milk from adjoining States of Punjab and Haryana and Uttar Pradesh. This regulated supply of milk to Delhi in no way comes in the way of answering respondent discharging its duties towards the consumers in Rajasthan. The yield of milk declines in the summer seasons and take time to pick up then depending on several factors including the timely or late monsoon as most of the milch animals migrate from Rajasthan to adjoining State in summer season. This year due to late advent of monsoon, the animals had not come back so need was

greater for imposing ban on the export of milk from Rajasthan.

35. The State in its reply has stated that by promulgating the Export Control Order only reasonable restrictions have been placed in public interest on the export of milk by individuals, corporations or companies for their own benefits, but has granted exemption to Dairy Federation which is a State concern controlled by the State and this Federation will not misuse the exemption granted in its favour and will keep in view the requirement of the residents of Rajasthan. It has been further pleaded that the object in promulgating the order was to maintain and increase supply and distribution of milk in the State of Rajasthan. The Dairy Federation supplied mftk and milk products in Rajasthan through its own depots situated all over the State of Rajasthan and for the separate Regulations exist. The individual firms and companies cannot be equated with the Government supplying agencies and co-operative societies. It has also been pleaded that the Dairy Federation is a concern of the Government and a co-operative society of (sic) the government can create monopoly in its favour or in favour of its own agencies and for that purpose the Government can place reasonable restrictions in public interest. It has been further pleaded that the export of milk of every kind has been banned while no ban has been imposed on dry milk or milk powder or condensed milk. This classification is based with the object to maintain the milk industry in Rajasthan. The order has been made taking in view the factors that the period of operation of the order is during dry season as in this period the milk supply decreased due to the migration of the milch animals, non-availability of fodder, dry season etc. The object of the order is to maintain the price of milk and not to allow them to inflate. The petitioners can also manufacture the exempted Articles in Rajasthan but they cannot be allowed to export milk out of Rajasthan.

36. I have given my careful thought to the argument advanced by learned counsel for all the parties and the pleadings made by the parties in this regard.

37. There is no dispute that the life of the impugned Export Control Order is a temporary one. Initially the Export Control Order, which was published in the gazette dated May 10, 1984, was brought into force with immediate effect and was made to cease (to be?) in force on the 1st day of September, 1984. So the life of such order was from May 10, 1984 to August 31, 1984. Subsequently, it was extended up to September 30, 1984 and now up to October 31, 1984. The preamble of the order shows that it has been issued as the State Government was of the opinion that it was necessary so to do for the maintenance and increase of supplies and distribution in the State of Rajasthan of milk, a commodity essential to the life of the community. It remains undisputed that in larger portions of the State of Rajasthan there is scanty rainfall and the milch cattle migrate to areas outside Rajasthan especially in the months of May, June and July. The fluid milk is essential for the society as a whole- and especially for the children. Several districts in Rajasthan also come in the grip of famine every year and that also creates a problem of fodder to the milch cattle. That apart,

milk is to be supplied to the vast majority of residents of Delhi and for this purpose milk is supplied from the neighbouring States of Rajasthan, Punjab and Haryana and Uttar Pradesh. Taking all these factors in view, if a ban is put on the export of fluid milk from Rajasthan for a temporary period, the same cannot be said to be an unreasonable restriction on the trade or business of the petitioners or any other citizens carrying on such business or trade. The ban has not been put on the petitioners alone but on all the persons and no discrimination has been made or distinction has been carved out amongst persons of the same class. So far as the Dairy Federation is concerned it stands on a different footing altogether as it is substantially controlled by the State Government and is an authority or agency of the Government itself. The Dairy Federation being a co-operative society in the public sector and substantially controlled by the State Government, it can be reasonably expected that it would take care of the needs and welfare of the residents of State of Rajasthan for supplying of milk during this period before exporting the extra quantity of milk outside the State of Rajasthan to Delhi or otherwise. The admission of the Managing Director of the Dairy Federation that 2.50 lacs litres of milk is exported outside Rajasthan does not in any manner lead to the conclusion that there was scarcity of the milk to be supplied to residents within Rajasthan. Admittedly, the petitioners are manufacturers of ghee, milk powder, baby-food and other milk products and no prohibition has been put for manufacturing the above products within the State of Rajasthan. The only ban put is on taking the fluid milk out of Rajasthan for a temporary period which is dependent mostly on the nature and its calamities. I see no force in the contention of Mr. Surana that the summer season should not have been extended up to September, 1984 or October, 1984. I see force in the contention of the learned counsel for the respondents in this regard that monsoon in Rajasthan had arrived at much late in this year and if on that account the extension is made up to October 31, 1984, it cannot be struck down on the ground of unreasonableness or mala fide exercise of power. I also find no force in the contention of Mr. Surana that the order is in violation of the freedom of trade guaranteed under Article 301 of the Constitution of India. Article 302 of the Constitution of India provides that Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest, It is unnecessary to burden this judgment with case law, as the validity of the Act and orders made thereunder has been upheld by various High Courts in India as well as the Supreme Court. *M.C. Jain, J. in Mishri Lal and others*'s case (AIR 1980 NOC 121 ((Raj) (supra) has also held that Clause 3 of the Rajasthan. Milk (Export Control) Order, 1979 was a valid piece of legislation. In view of these circumstances, I find no force in these writ petitions and the same are dismissed with no order as to costs.