

(1975) 07 AHC CK 0037
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2456 of 1972

Hari Cold Storage and Gen. Mills Co. Pvt. Ltd. and Others	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 11-07-1975

Acts Referred:

Defence of India Rules, 1971 — Rule 114, 114(2)

Citation : AIR 1976 All 72

Hon'ble Judges : K.B. Asthana, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : Chand Kishore, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, J.—In these connected petitions under Article 226 of the Constitution, common questions of law arising in identical circumstances, are involved. Accordingly, all these petitions are being disposed of by a common judgment.

Petitioners in all these cases are owners of cold storages located in the State of U. P. They carry on the business of providing cold storage facility to those who agree to pay charges for hiring space for storage of potato.

2. On 16th of March 1972, the State of U. P. purporting to exercise its powers under rule 114 of the Defence of India Rules 1971. promulgated an Order entitled U. P. Cold Storage Order 1972. This order sought to regulate the running of cold storage business by issue of licences and by obliging the cold storage owners not to levy hire charges for storage of agricultural produce at a rate higher than that specified in the second schedule of the Order (storage charges specified for storing potato were not to exceed Rs. 8/- per quintal for the entire period February to November or part thereof). Aforesaid Order was subsequently amended on 27th June. 1972, 9th February, 1973. and 20th March, 1975. By these petitions under Article 226 of the Constitution, the petitioners challenge

the validity of the Cold Storage Order 1972, and particularly, its clause which fixes the maximum hiring charges for storage of agricultural produce, inter alia on the ground that neither the provisions contained in the order fall within the ambit or scope of the powers conferred by Rule 114 of the Defence of India Rules, nor the conditions precedent for making the order existed.

3. Relevant portion of Rule 114 of the Defence of India Rules under which the impugned Order was made, runs thus:--

"114. General Control of Industries etc. (1) In this rule unless the context otherwise requires-

(a) any reference to any article or thing shall be construed as including a reference to electrical energy;

(b) the expression "undertaking" means any undertaking by way of any industry, trade or business and includes the occupation of handling, loading or unloading of goods in the course of transport.

(2) If the Central Government or the State Government is of opinion that it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt-practice or abuse of authority in respect of any such matter.

(3) Without prejudice to the generality of the powers conferred by Sub-rule (2) an order made thereunder may provide for-

(a) regulating by licence, permits or otherwise the production, manufacture, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use and consumption of articles or things of any description whatsoever;

(b) regulating or prohibiting any class of commercial or financial transactions in respect of any article or thing, which in opinion of the Government are, or if not regulated or prohibited, are likely to be detrimental to any of the purposes specified in Sub-rule (2).

..... (h) controlling the price or rates at which articles or things of any description whatsoever may be sold or hired or for relaxing any maximum or minimum limits otherwise imposed on such prices or rates.

..... (4) Notwithstanding anything contained in Sub-rules (2) and (3) an order under these sub-rules for regulating by licences, permits or otherwise the movement or transport of any foodstuffs, including edible oil seeds and edible oils or for controlling the prices or rates at which any such foodstuffs may be

bought or sold, shall not be made by the State Government except with the prior concurrence of the Central Government."

4. A perusal of Rule 114 (2) shows that the power under this rule can be exercised if certain conditions preexist, namely, that the State Government has formed an opinion that it is necessary or expedient so to do for securing either-

- (a) Defence of India and Civil Defence; or
- (b) The efficient conduct of military operations; or
- (c) The maintenance or increasing of supplies and services essential to the life of the community or
- (d) Equitable distribution and availability of any article or thing at a fair price.

5. Once the State Government forms such opinion it gets jurisdiction to make an order providing for regulating or prohibiting the following things:--

- (1) Production of any article or thing; or
- (2) Manufacture of any article or thing; or;
- (3) Supply and Distribution of any article or thing; or
- (4) Use and consumption of any article or thing; or
- (5) Trade and commerce in any article or thing; or
- (6) Preventing any corrupt practice or abuse of authority in respect of any of the aforementioned matters.

6. Rule 114 (3) then provides that without prejudice to the generality of the powers conferred by Sub-rule (2) an order made thereunder may also provide for the various matters enumerated therein.

7. It will thus be seen that a provision in an order under Rule 114 can be made only with regard to production, manufacture, supply and distribution, use and consumption and trade and commerce in an article or thing. or for preventing any corrupt practice in respect of any of the aforementioned matters.

7-A. According to the preamble of the Order, the State Government exercised its jurisdiction to make the impugned order as in its opinion it was necessary and expedient so to do for (a) securing the maintenance and increasing the supplies and services essential to the life of the community and (b) for securing the equitable distribution and availability of essential commodities at fair price.

8. When asked to elucidate, the learned Advocate-General, appearing for the State, stated that as in this case the State Government was of opinion that it was necessary to secure the maintenance and increase of supply of potato (a supply) and the service of cold storage (a service), which were essential to the life of the community, as also the equitable distribution of potato (an essential commodity)

at a fair price; that it made the impugned order providing for the use of cold storages, trade and commerce therein and for preventing corrupt practice in respect of the use thereof.

9. In order to appreciate the rival contentions of learned counsel appearing for both the parties, it will be desirable to state the circumstances in which the U. P. Cold Storage Order, as amended from time to time, came to be promulgated, as also its salient features.

10. According to the counter-affidavit of Sri S. C. Tripathi, Deputy Secretary, Agricultural Department, the Government had been receiving complaints from various quarters in the last several months with regard to the working of cold storages in the State of U. P. Certain materials and other information had also been given to the State which showed that for the past two years the cold storage owners had been charging exorbitantly for keeping potato and other agricultural produce in their cold storages. Information received by the Government also showed that there was agitation against the unreasonable demand of high prices and in that connection some representations had also been made. It was apprehended that in subsequent years also the situation was such which needed immediate attention. The State Government therefore formed an opinion that it was necessary to make an order for securing the maintenance and increase of supply of an essential commodity and its equitable distribution at fair price. Accordingly, it promulgated the Order in question. However, before promulgating the Order, the Government appointed a Committee consisting of Members of the Legislature and officials, asking it to submit a report regarding the working of cold storages and other matters connected with it. The Committee made its report regarding the rent to be charged by cold storages and finding it to be reasonable the Government fixed the maximum hiring charge accordingly.

11. Sri Yashpal Chandra, Deputy Director Potato U. P. also filed a counter-affidavit on behalf of the State. He asserted that in the past it had been found that cold storage owners were merely interested in earning profits and did not care for the quality of the food stuff stored by them. It was reported that they were not maintaining proper refrigeration conditions and were storing more potato than their licensed capacity with the result that the required temperature was not maintained and spoilage occurred. It was further observed that the agreement that was entered into between growers of agricultural produce and cold storage owners were generally vague. If something went wrong with the food stuff stored in cold storage there was no security for the concerned grower-depositor. The agreements did not contain any clause for compulsory insurance with the result that in case of break down, there were heavy losses and usually the farmers were not compensated. The Cold Storage owners also charged heavy rent in the growing district like Farrukhabad and adopted unfair means by declaring in advance that their capacity was full thereby compelling the farmers to sell their potato at a very low rate through them or to store them at exorbitantly high rate. This practice affected the regular supply of potato and

also resulted in its being available to the consumer at a price which was very much higher than the price at which it could generally be made available in case the cold storage owners were not permitted to charge such high rent. In the year 1971. in Farrukhabad and other districts, it was reported that the cold storage owners had raised the charges for storing potato from Rs. 8/- to Rs. 18/-. This rise in storage charges lumped by leaps and bounds and it gave rise to agitation creating law and order problem on a large scale which the Government authorities found it difficult to face.

12. According to the affidavits of Sri S. C. Tripathi and Yashpal Chandra, the necessity to promulgate the impugned order regulating the cold storage business arose as the Government thought that cold storage owners were charging exorbitant rent for storing potato. They did not maintain proper refrigeration conditions and indulged in certain malpractice so as to enable them to levy extortionate storage charges. This, in the opinion of the State Government, adversely affected the maintenance of supply of potato and its availability at fair price.

13. So far as the provisions in the Order are concerned clause (2) of the Order defines certain words mentioned therein. Clause (3) lays down that no person can carry on the business of storing any agricultural produce in a cold storage except under and in accordance with the terms and conditions of a licence issued under the Order. Clauses (4) to (7) lay down the manner in which the applications for licence are to be made by the persons intending to carry on the business of storing agricultural produce in cold storages, and how those applications are to be dealt with. Clause (8) lays down the statutory conditions subject to which the licence is to be granted. Clauses (9) to (11) then deal with the cancellation, expiry and renewal of licence. Clause (12) enables the licensing Officer to procure information and authorises him to enter and search any premises in which the cold storage is installed for satisfying himself that the requirements of the order are being complied with. Clause (13) provides for the keeping and maintenance of certain records and for submission of returns and statements. Clause (14) provides for an appeal against the order of the licensing authority. Clauses (15 to 17) make provision relating to issue of receipts to hirers by the cold storage owners. Clause (18) then precludes the licensee (owner of the cold storage) from levying in any period after the commencement of the order, storage charges exceeding the charges specified against each of the agricultural produce in Schedule II of the Order and for the refund of the excess charges. Clause (19) makes it obligatory upon the licensee to get the goods stored in his cold storage insured. Clauses 20 to 29 provide for certain obligations of the licensees vis-a-vis the goods which are stored in his cold storage. Clause 30 provides for the manner in which disputes regarding damages arising between the licensee and the depositor etc., are to be settled. Clauses 32 and 33 which were subsequently added in the year 1975 obliged the licensee to display at or near the main entrance of the cold storage certain information and compel him to accept goods for storage in case the space for the same is

available.

14. A resume of the facts stated in the affidavits of Sri S. C. Tripathi and Sri Yashpal Chandra as also that of the provisions contained in the impugned Order shows that impugned order is directed primarily towards regulating the business done by owners of cold storages in U. P. and one of the most important regulations in this regard is by providing for the maximum amount that a cold storage owner can charge for storing agricultural produce. The Order is not at all directed towards regulating the manner and the circumstances in which a cold storage is to be used by the persons storing potato or any other agricultural produce therein. Even if it be accepted that the State Government was satisfied that it was necessary or expedient so to do for securing the maintenance of increasing supplies and services essential to the life of the community and for securing the equitable distribution and availability of potato at a fair price, it could under Rule 114 (2). make an Order for the purposes of regulating or Prohibiting-

- (1) production of any article or thing,
- (2) manufacture of any article or thing; or
- (3) Supply and distribution of any article or thing: or
- (4) Use or consumption of any article or thing; or
- (5) Trade and commerce in any article or thing; or
- (6) Preventing any corrupt practice by or on behalf of an authority in respect of any of the aforementioned matters.

15. We further feel that Rule 114 of the Defence of India Rules, while conferring a very wide discretion on the State Government in regard to making of orders providing for the matters enumerated therein certainly contemplates that there should be a nexus between the order and the opinion framed by the State Government, which necessitates the making of it. In other words after framing a particular opinion the State Government will have jurisdiction to make such provisions which are relevant for, or are directed towards achieving that object. It may not be open to the State Government to make such provisions in the order which have no bearing on the subject-matter of the opinion, e.g., if the State Government is of opinion that it was necessary or expedient to maintain or increase the supply of sugar it may make an order providing for regulating the production, use and consumption and trade and commerce in sugar-cane which has bearing on the supply of sugar. But, for achieving that purpose it will not be open to the State Government to make an order regulating production etc.. of an article which has absolutely no bearing on the maintenance of supplies of sugar.

16. The learned Advocate-General accepts that the impugned order is not directed towards regulating or prohibiting production or manufacture of any article or thing. In our opinion the order is also not directed towards regulating

the supply and distribution of any article or thing. The Order merely aims at regulating cold storage business and has no relevance to supply and distribution of potato or any other article or thing. Since the order is directed towards regulating cold storage business it cannot be said that it is directed towards regulating trade or commerce in potato or any other agricultural produce or article or thing sought to be stored therein. However, the learned Advocate-General vehemently urged that the impugned order is essentially directed towards regulating the use of a cold storage (a thing), as also for preventing a corrupt practice in respect of its use viz., to prevent mal-practices by cold storage owners in taking advantage of their position and charging exorbitant rent for the storage of potato.

17. It is true that Rule 114 (2) permits the State Government to make an order regulating the use and consumption of an article or thing which has a bearing on the question of maintenance or increase of supplies and services essential to the life of the Community. But, use and consumption of an article or thing can be regulated only by providing for the manner and circumstances in which a person is to use and consume the same i.e., by regulating the activity of the person using the article or thing. The object cannot be achieved by regulating the activity of any other person who does not use or consume the article or thing. This immediately brings us to the question whether in a case where a cold storage owner hires out space in the cold storage, it is the owner who uses the cold storage or it is the hirer who uses the same. In our opinion a cold storage owner who hires out space for storing agricultural produce to growers or depositors, does not himself, as contemplated by Rule 114, use the cold storage. He merely carries on the business of making cold storage space and facility available to the grower or depositor. It is a grower or depositor of agricultural produce who actually uses the cold storage for the storage of potato or other agricultural produce. In this view of the matter, the order intended to be made under Rule 114 (2) could not have been directed towards controlling the business activities of cold storage owners who did not themselves use the cold storage.

18. Learned Advocate General argued that in wider sense, even an owner of cold storage who makes the storage facility available to other, can be said to use the cold storage in connection with his business. Accordingly, if such use has any relevance on the question of maintenance or increasing of the supplies essential to the life of the community, it could also be regulated under Rule 114 (2) of the Defence of India Rules. We are unable to accept this submission. The rule provides for the regulation of "use and consumption" of an article or thing. In the context, the expression "use and consumption" implies the actual physical user or consumption of an article or thing and not its use in the sense suggested by the Advocate-General. When a cold storage owner hires out space for storing agricultural produce, the storage facility or the space in the storage is used by the person who stores his produce and not by the owner who, on receipt of consideration merely makes the storage available for use by the grower or the depositor. A provision in an Order, made under Rule 114. providing for prevention

of a corrupt practice can also be directed only against the activity of a person who uses the cold storage and not in respect of the acting of a person who does not use the cold storage. Neither in the affidavits filed by Sarvasri S. C. Tripathi and Yashpal Chandra. nor in any provision contained in the impugned Order is there any indication that the order is directed towards regulating the activity of a person who uses the cold storage. The order is clearly directed towards regulating business activity of a person who was merely making cold storage facility available to a person who wanted to use the same for storing his agricultural produce. We are, therefore, of opinion that the impugned Order cannot be justified as an order providing for use and consumption of any article or thing or for preventing any corrupt practice in respect of such user.

19. Learned Advocate-General then argued that in any case, regulation of cold storage business was clearly authorised by clauses (a), (b) and (h) of Sub-rule (3) of Rule 114 of the Defence of India Rules. According to him, these clauses clearly enable the Government to make an Order providing for regulation by licence of storage of any article or thing (clause a), any class of commercial and financial transaction in respect of an article or thing (clause b) and to control the price or rates at which an article or thing may be sold (clause h). According to him the regulation specified in Sub-rule (3) could be made over and, above the regulation as contemplated by Sub-rule (2).

20. We are unable to accept the argument that Sub-rule (3) enables the Government to make an order which goes beyond the ambit and scope of Sub-rule (2). The opening words of Sub-rule (3) read thus:--

"Without prejudice to the generality of the lower conferred by Sub-rule (2). an order made thereunder may provide."

These words clearly indicate that Sub-rule (3) does not confer upon the Government any power in addition to that conferred upon it under Sub-rule (2). It merely clarifies the types of orders which can, if they have a nexus to the exercise of power under Sub-rule (2), also be made. In our opinion, an order purporting to be made under Rule 114, if it travels beyond the ambit of Sub-rule (2), cannot be justified with reference to the provisions contained in Sub-rule (3).

21. It thus appears to us that even if it be assumed that the condition precedent for making the order existed, the impugned order did not fall within the ambit of the regulations which could be made under Rule 114 (2) of the Defence of India Rules.

22. We are also not satisfied that before making the impugned order, the State Government had a clear idea about matters regarding which it had to be satisfied before making an order under Rule 114 (2) of the Defence of India Rules. Preamble of the Order recites that the State Government was of opinion that it was necessary and expedient to make the Order in order to secure the equitable distribution and availability of an essential commodity at a fair price. It was argued on behalf of the petitioners that the fixing of the cold storage charges did

not at all reflect on the ultimate price at which the agricultural produce is sold in the market. Being a perishable commodity, price of agricultural produce depends solely on its supply and demand position at a particular time. He contended that mere fixation of cold storage charges, without, in any manner determining the price at which the agricultural produce may ultimately be sold to the consumer, has no bearing on the availability of the produce at a fair price.

22-A. The learned Advocate-General appearing for the State contended that storage of agricultural produce is an intermediate stage in the process of production of an agricultural produce and its ultimate distribution or availability to the consumer. Accordingly, if the charges for storage of agricultural produce are controlled, it is bound to have a repercussion on the price at which the commodity is ultimately sold to the consumer. A provision fixing maximum charges for the storage of agricultural produce, therefore, is calculated towards making the agricultural produce available at the fair price. He, however, conceded that in this case, there was no material before the State Government on which it could form an opinion as to what should be the fair price at which potato should be made available to members of public in a particular season. He justified the Order as having an impact on its fair price, whatever it may be at a particular time. In the case of *Gaya Prasad v. Board of High School and Intermediate Education*. Civil Misc. Writ No. 4217 of 1974. decided on 12-9-1974 (All) a Division Bench of this Court observed thus:--

"It is first necessary to consider the nature of the power conferred by Rule 114 (2) leaving out those parts of Rules 114 (2) and (3) which are also material to this case. The provision may be summarised thus:--

For the purposes of securing availability of articles essential to the life of the community at a fair price the State Government may regulate their supply by controlling their prices.

How can Government make an article available at a fair price without fixing or determining the fair price? The power to control price can only be exercised by fixing the fair price of the article which is the subject matter of the regulation. In our opinion keeping the purpose of the provision in mind i. e. to make available an article at a fair price the power to regulate its supply by controlling the price necessarily involves and means fixing a fair price for the article. Therefore in the present case the Government had to fix price for the course books."

23. These observations in our opinion clearly imply that if the Government intends to exercise its power under rule 114 of the Defence of India Rules with a view to secure availability of any article at a fair price then it should apply its mind and find out as to what should be the fair price at which the article in question has to be made available and thereafter to make the Order providing for such regulations as may have a bearing on the availability of the commodity at that price.

24. Merely because regulating the manner in which an agricultural produce is to

be stored in a cold storage or fixing the maximum charge for its storage may have some bearing on the price at which the produce may be available to the consumer, it does not follow that it, necessarily, has a repercussion on its availability at a fair price. Unless the State Government has an idea as to what the fair price of the agricultural produce should be. it will not be possible for it to assess the impact of the provisions proposed to be made by it, on the question of availability of the produce at a fair price. We are, therefore, of opinion that in the absence of such a data it could not be concluded that the regulations under the U. P. Cold Storage Order had a bearing on the availability of agricultural produce at a fair price, specially when the price at which the commodity in question is to be sold to the consumer is not sought to be regulated in any manner.

25. The learned Advocate-General relied upon a decision of the Supreme Court in the case of *Diwan Sugar and General Mills (Private) Ltd. and Others Vs. The Union of India*, wherein, under similar provisions of the Essential Commodities Act, the Supreme Court upheld the action of the Government also, instead of fixing the retail price for sugar, fixed its ex-factory price. The Supreme Court held that fixation of ex-factory price of sugar, without determining the price at which it should be made available to consumer, was valid. Learned counsel argued that similarly, in this case, it was open to the State Government to fix the maximum limit of storage charges for agricultural produce without in any way considering as to what effect such charges will have on the price at which the produce will be available to a consumer and whether such price will or will not be a fair price. We are unable to accept this submission. In *Diwan Sugar and General Mills* case the learned Judges of the Supreme Court observed thus:--

"The argument under this head is two fold. It is said that in the first instance Section 3 of the Act requires that prices for consumer only should be fixed. The object of Section 3 is undoubtedly to secure essential commodities at fair prices for the general public i.e., the consumer. It is well known that there are three kinds of prices prevalent in the market for a commodity like sugar, ex-factory price, wholesale price and retail price. It is the last that the consumer has to pay. It is urged that when Section 3 provides for availability of essential commodity at fair price to the general public it means that the price can only be fixed at the stage where the consumer is the purchaser. In particular our attention was invited to clause (c) of Section 3(2) which provides for control of price at which any essential commodity may be bought or sold. Now there is no doubt that the object of the Act is to secure essential commodities for the consumer i.e., the general public at fair price; but it does not follow from this that this object can only be achieved if retail prices are fixed and that there is no other way of achieving it. In any case clause (c) of Section 3(2) which speaks specifically of control of price is very general in terms. It provides for fixation of price at which any essential commodity may be bought or sold. It does not specify the stage at which the price should be fixed. Therefore we are of opinion that the control provided under clause (c) of Section 3(2) is control at any of the three stages mentioned above. There is no reason to cut down the generality of the

words used in clause {c! so as to make them applicable only to the last stage, namely retail price. This contention therefore that Section 3 only authorises the Central Government to fix the retail price i.e., the price for the consumer fails."

26. It will thus be seen that the real ratio for upholding the fixation of ex-factory price, without fixing the retail price was that in the opinion of the Supreme Court Section 3(2)(c) permitted fixation of price at any of the three stages, namely, ex-factory price, wholesale price or retail price. In the opinion of the learned Judges such fixation of price could have an indirect bearing on the availability of sugar to the consumer also at a fair price. But what had weighed with them was that there was no reason to cut down the generality of the words used in Clause (c) of Section 3 of the Essential Commodities Act so as to make them applicable only to the last stage, i.e., the retail price. It should be noted that the Order fixed the price of sugar for sale at the factory. Here in the instant case price of potato has not been fixed.

27. Rule 114 of the Defence of India Rules is, however, different from Section 3(2)(c). of the Essential Commodities Act. Whereas Section 3(2)(c) enabled the State Government to make provision for controlling the price at which any essential commodity may be bought or sold. Rule 114 enables the concerned Government to make an order regarding equitable distribution of or availability of an article or thing at a fair price i.e., its availability at a fair price to a consumer.

28. Even if, for the sake of argument, the submission of the learned Advocate-General that fixing maximum charges for cold storage has a direct bearing on the availability of potato to a consumer at a fair price is accepted, the objective of the impugned provision obviously would be to control the price or rate at which potato may be ultimately bought or sold. Sub-rule (4) of Rule 114 runs thus:--

"Notwithstanding anything contained in Sub-rules (2) and (3) an order under these sub-rules for regulating by licences, permits or otherwise the movement or transport of any food stuffs including edible oil seeds and edible oils or for controlling the price or rates at which any such foodstuff may be bought or sold shall not be made by the State Government except with the prior concurrence of the Central Government."

29. It cannot be disputed that potato is a food stuff and according to the argument of the respondents, the storage charges have been fixed so as to make it available at a price i.e.. it may not be sold at a price higher than what is considered to be a fair price. Such an object obviously will be to control the price or rate at which potato may be sold to consumer. Accordingly, the order fixing the storage rates could not have been made without the prior concurrence of the Central Government, which in this case has not been obtained. Learned Advocate-General argued that since in this case the price at which potato may be bought or sold has not been fixed it cannot be said that the provisions were aimed at controlling the price at which the potato may be bought or sold within the meaning of Sub-rule (1). In our opinion the expression controlling the price at

which any food stuff may be bought or sold does not necessarily imply fixing the price at which the food stuff should be bought or sold. What it means is that the provision should be directed towards securing that the purchase price or sale price of foodstuff does not go above or below a certain amount. If the provision is directed towards achieving the object that potato may not be sold above a price which may be considered to be a fair price, it is certainly directed towards controlling the price at which potato may be sold to a consumer. Accordingly, the fixation of storage charges, which according to the learned Advocate-General will have a direct bearing on the fair price of potato, would be bad because prior concurrence of the Central Government had not been obtained.

30. In case the State Government wanted to get space in various cold storage available to the growers, for storage of Potato, at a reasonable rate, necessary action could have been taken under Rule 154 of the Defence of India Rules which provides that the competent authority may by order in writing require the owner of any warehouse or cold storage depot or of any premises capable of being used for storage purposes (not being premises used for residential purposes), to place at his disposal the whole or any part of the space or accommodation available in such a warehouse or cold storage depot or premises and to employ such space or accommodation for the storage of any articles or things specified in the order; and such an order may require the said owner or person to afford such facilities and maintenance of such services in respect of the storage of such article or things as may be specified. Whenever in pursuance of any such Order any space or accommodation in a warehouse or cold storage depot or premises is placed at the disposal of the competent authority the owner of such warehouse, cold storage depot or premises shall be paid therefore at such rate as the competent authority may by order made in this behalf determine having regard to the usual rates paid for like space or accommodation during 12 months immediately preceding the date of proclamation of emergency.

31. It will thus be seen that short of requisitioning the space in cold storage and taking up the responsibility of paying reasonable charges as provided in Rule 154 by the Prescribed Authority for such requisitioned space, the object underlying promulgation of the impugned cold storage Order is almost identical to that for achieving which an Order under Rule 154 could be made. In our opinion, in order to achieve the objects underlying the impugned U. P. Cold Storage Order, the respondents could have more appropriately acted under Rule 154, which they have not done in this case.

32. In view of the aforesaid discussion we are of opinion that the impugned order neither falls within the ambit of the regulations contained in Rule 114 (2) of the Defence of India Rules, nor was the satisfaction of the State Government recited therein, which was condition precedent for making the order, based on relevant material.

33. All these writ petitions, therefore, succeed and are allowed with costs. The impugned U. P. Cold Storage Order 1972 as amended from time to time is

quashed as being invalid.