

(1968) 07 KL CK 0021

In the High Court Of Kerala

Case No : Writ Appeal No's. 260 and 261 of 1967 and 1, 22 to 26, 28, 34, 38, 47, 48 and 52 to 60 of 1968

K.C. Pazhanimala and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 245
Essential Commodities Act, 1955 — Section 3(2), 3(6), 5

Citation : AIR 1969 Ker 154

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;M. Madhavan Nair, J;K. Sadasivan, J

Bench : Full Bench

Advocate : S. Easwara Iyer, in No. 260/67, K.R. Kurup, in No. 261/67, K. Velayudhan nair, N.R.K. Nair, K.J. Joseph and T.K.M. Unnithan, In NO. 1/68, G. Viswanatha Iyer, in No. 22/68, G. Viswanatha Iyer, in No. 23/68, E.P. Poulose, in No. 24/68, G. Viswanatha Iyer, in No. 25/68, K. Chandrasekharan, T. Chandrasekhara Menon, K. Vijayan and N.N. Sugunapalan, In No. 26/68, K.R. Kurup, in No. 28/68, K.S. Sebastian, in No. 34/68, T.C. Karunakaran, P.K. Shamsuddin, V.M. Kurien, P.J. Mathew, A.I. Mohammed Basheer and K.K. Gangadharan, In No. 38/68, S. Easwara Iyer, L. Gopalakrishnan Potti and E. Subramoney, In No. 47/68, S. Easwara Iyer, L. Gopalakrishnan Potti and E. Subramoney, In No. 48/68, K. Kuttikrishna Menon and A.P. Chandrasekharan, In No. 52/68, T.C. Karunakaran, P.K. Shamsuddin and P.J. Mathew, In No. 53/68, K. Chandrasekharan and T. Chandrasekhara Menon, In No. 54/68, S. Easwara Iyer, L. Gopalakrishnan Potti, C.S. Rajan and E. Subramoney, In No. 55/68, K.R. Kurup, in No. 56/68, K. George Varghese, Thomas V. Jacob and P.C. Joseph, In No. 57/68, K. George Varghese, Thomas V. Jacob and P.C. Joseph, In No. 58/68, T.L. Viswanatha Iyer, in No. 59/68 and T.L. Vishwanatha Iyer, in No. 60/68, for the Appellant; A.G. (for Nos. 1 to 3) and C. Sankaran Nair, (for No. 4) In No. 260/67, General (Nos. 1 to 3) In No. 261/67, General (Nos. 1 and 2) In No. 1/68, General (Nos. 1 to 3) In No. 22/68, General (Nos. 1 to 3) In No. 23/68, General (Nos. 1 to 3) In No. 24/68, General (Nos. 1 to 5) and C. Sankaran Nair, (for No. 6) In No. 25/68, General (Nos. 1 to 3) and C. Sankaran Nair, (for No. 4) In No. 26/68, General (Nos. 1 to 3) In No. 28/68, General (Nos. 1 to 3) In No. 34/68, General (Nos. 1 to 3) In No. 38/68, General (Nos. 1 to 3) and C. Sankaran Nair, (for No. 4) In No. 47/68, General (Nos. 1 to 3) and C. Sankaran Nair, (for No. 4) In No. 48/68, General (Nos. 1 to 3) In No. 52/68, General (Nos.

1 to 3) In No. 53/68, General (Nos. 1 to 3) and C. Sankaran Nair, (for No. 4) In No. 54/68, General (Nos. 1 to 3) and C. Sankaran Nair in No. 55/68, General (Nos. 1 to 7) In No. 56/68, General (Nos. 1 to 3) and C. Sankaran Nair in No. 57/68, General (Nos. 1 to 3) and C. Sankaran Nair, (for No. 4) In No. 58/68, General (Nos. 1 to 3) and A.G. (Nos. 1 to 3) In No. 60/68, for the Respondent

Final Decision : Allowed

Judgement

Krishnamoorthy Iyer, J.—These appeals directed against the decision of Gopalan Nambiyar, J. involve a common point of law which relates to the validity of the Kerala Paddy (Restriction on Milling) Order, 1967. The learned Judge upheld the validity of the Order overruling the several objections raised by the appellants.

2. The Kerala Paddy (Restriction on Milling) Order, 1967 has been issued by the Government of Kerala in exercise of the powers conferred by sub-section (1) read with clauses (d), (i) and (j) of subsection (2) of Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955). The said provisions read:

"3, Power to control production, supply, distribution, etc. of essential commodities:--

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the Defence of India or the efficient conduct of military operations it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide-

(a)

(b)

(c)

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;

(e)

(f)

(g)

(h)

(i) for requiring persons engaged in the production, supply or distribution of, or

trade and commerce in any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(i) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, and the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed, and of any books of accounts and documents which in his opinion would be useful for, or relevant to, any proceedings under this Act and the return of such books of accounts and documents to the person from whom they were seized after copies thereof or extracts therefrom as certified by that person in the manner specified in the order have been taken."

Section 5 of the Essential Commodities Act, 1955, which deals with the delegation of powers to make orders u/s 3 by the Central Government reads:

"5. Delegation of powers. -- The Central Government may, by notified order, direct that the power to make orders u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction be exercisable also by -

(a) such officer or authority subordinate to the Central Government; or

(b) such Government or such officer or authority subordinate to a State Government, as may be specified in the direction."

3. The Order G. S. R. 1111 dated 24th July, 1967, issued by the Central Government u/s 5 of the Essential Commodities Act, 1955 and amended by the Central Government by G. S. R. 284 dated 9-2-1968 is reproduced below:

"Delegation of Powers by the Central Government.

ORDER

New Delhi, the 24th July, 1967.

G. S. R. 1111. -- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in supersession of the Order of the Government of India in the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) No. G. S. R. 906, dated the 9th June, 1966 (as subsequently amended), the Central Government hereby directs that the powers conferred on it by sub-section (1) of Section 5 of the said Act to make orders to provide for the matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii), and (j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions-

(1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf;

(2) that before making an order relating to any matter specified in the said

clauses (a), (c) or (f), or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government; and

(3) that in making an order relating to any of the matters specified in the said clause (1), the State Government shall authorise only an officer of Government."

The Kerala Paddy (Restriction on Milling) Order, 1967 was issued by the Government of Kerala on 20th September, 1967, in view of the delegation of power made by the Central Government under G. S. R. 1111. As already stated G. S. R. 1111 quoted above contains also the amendments incorporated by G. S. R. 284 dated 9-2-1968 and since those amendments have no direct impact in considering the validity of the Kerala Paddy (Restriction on Milling) Order, 1967 it is not necessary to reproduce G. S. R. 1111 before its amendment by G. S. R. 284. Though the Kerala Paddy (Restriction on Milling) Order 1967 is purported to have been issued by the Government of Kerala in exercise of the powers conferred by Sec. 3, sub-sec. (1) read with sub-sec. (2) (d) (i) and (i) of the Essential Commodities Act, 1955, before us it was sought to be sustained only u/s 3(2)(d) of the Essential Commodities Act, 1955 and it was freely conceded by the learned Advocate-General that Section 3(1) read with S. 3(2)(i) and (ii) will not help to promulgate the Kerala Paddy (Restriction on Milling) Order, 1967.

4. The appellants before us are owners of rice mills in the State. Before the learned Single Judge one of the original petitions was by a person who applied for permission to mill his paddy and whose application was returned. The order returning the application was set aside by the Single Judge on the ground that the said order is arbitrary and against the terms of the impugned order and the original petition was allowed. The said order has become final.

5. On behalf of the respondents a contention was raised that the appellants are not persons aggrieved by the provisions of the Kerala Paddy (Restriction on Milling) Order, 1967 and are therefore not competent to maintain the petitions under Article 226 of the Constitution and the appeals have to be dismissed on that ground. The ground in the form in which it was argued before us was not raised before the learned Single Judge. The locus stand! of the appellants to maintain the petitions should to a very large extent depend upon the provisions of the impugned order and the reliefs sought for by the petitioners. In most of these petitions the prayer is for the issue of a writ of certiorari or any other appropriate writ declaring the Kerala Paddy (Restriction on Milling) Order, 1967, invalid, inoperative and null and void. There is a prayer in all the petitions for the issue of a writ of mandamus compelling respondents 1 to 3 not to insist upon the production of permit for hulling paddy in the mills owned by the appellants.

6. The submission of the learned Counsel appearing for the appellants was that clauses 3, 6 and 7 of the impugned Order directly affect the mill owners from carrying on the hulling of paddy in the rice mills established by them in

accordance with the provisions of Central Act 21 of 1958, they are persons aggrieved and have locus standi to maintain the petitions under Article 226 of the Constitution. We are of the view that the appellants are directly affected by the provisions of clauses 3, 6 and 7 of the impugned Order and have therefore sufficient interest to challenge the impugned Order. It has now been held by the decisions of the Supreme Court that the High Court has got very wide powers under Article 226 of the Constitution to issue directions and writs of the nature mentioned therein not only for the enforcement of fundamental rights but also for any other purpose. It is also clear from those decisions that the petitioner approaching the Court should be one who has a personal or individual right in the subject matter of the petition (and?) that any person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. Their Lordships of the Supreme Court observed in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, at p. 1047:

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *The State of Orissa Vs. Madan Gopal Rungta*, this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be in the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. The question, therefore, is whether in the present case the petitioner has a legal right and whether it has been infringed by the contesting respondents."

The same principle is expressed in the decisions in *State of Punjab Vs. Suraj Parkash Kapur etc.*, and *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . In the latter case their Lordships of the Supreme Court observed at page 833:

"This Court held in the decision cited (AIR 1912 SC 1044 at p. 1047) (supra) that "ordinarily" the petitioner who seeks to file an application under Article 228 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a

proprietary interest: it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an Act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof."

In this connection arguments were advanced at the Bar as to the meaning of the expression "person aggrieved". Their Lordships of the Privy Council had to consider the scope of the words "person aggrieved" in *Attorney-General of the Gambia v. N'Jie* 1961 2 All ER 504 at p. 511 and they observed:

"The words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy-body who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests."

The Court of Appeal in *Maurice v. London County Council* 1964 1 All ER 779 at p. 782 quoted with approval the observations of the Privy Council made in 1961-2 All ER 504. In our view the meaning given to the words "person aggrieved" has to be applied to the expression "person prejudicially affected". We have therefore no doubt to hold that the several appellants are persons who are aggrieved because of the enforcement of the impugned order. The objection of the maintainability of the petitions filed under Article 226 of the Constitution has only to be overruled.

7. Now we shall deal with the contentions raised by the appellants. The first contention was based on Section 3, subsection (6) of the Essential Commodities Act, 1955, reading thus:--

"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."

The submission on behalf of the appellants was that the impugned order was not laid before both Houses of Parliament after it was made at any time and therefore the order cannot take effect. The learned Single Judge disposed of that contention in favour of the respondents thus:--

"The learned Advocate-General contended that the laying before Parliament is ordained by clause (6) of Section 3 only in respect of an order covered by clause (a) of Section 5 of the Act, and not one covered by clause (b) thereof. On the language, juxtaposition, and co-relation of the sections I am in agreement with this contention. The consequence of requiring Central Government's Orders made u/s 3 being laid before Parliament, but not those made under delegated powers by the State Government, may be anomalous. But the remedy is not by judicial legislation (vide the publication by the Indian Law Institute: Administrative Process under the Essential Commodities Act p. 89). There is also

authority in this Court which is binding on me that laying before Parliament, ordained by a statutory provision, without providing any default for disobedience, and without even any limitation of time within which it is to be done, is only directory and not mandatory, (vide 1960 Ker LJ 1319). The impugned order was promulgated on 20th September, 1967 and it cannot be said that there has been an infraction of Section 3(6) of the Act, in not laying it before Parliament so far."

We agree with the conclusion reached, by the learned Single Judge that on account of the failure to conform to the provisions of Section 3. Sub-section (6) of the Essential Commodities Act, 1955 the: impugned order is not invalid. But we do not agree with the reasoning of the learned Judge that Section 3, sub-section (6) is inapplicable to the case of an order made by the State Government or any other authority under delegated powers. The legal effect of the failure to conform to the provisions of Section 3(6) of the Essential Commodities Act, 1955 was considered by a Full Bench of this Court, in *State of Kerala v. Annam*. 1968 Ker LT 390 1969 Ker 38) (FB), where Madhavan Nalr, J., speaking for the Court observed;

"It is obvious that, by its expression, the sub-section does not make the laying before the Parliament a condition precedent to the validity of the Order: nor does it annul the Order if it is not laid before the Parliament within a specified time. A law once brought to force normally continues in force till it is determined by a statutory provision therefor. To interpret the expression in the subsection "as soon as may be" to mean "within a reasonable time", as counsel would have it, would make the duration of the law uncertain and therefore cannot be accepted."

We are therefore of the view that the violation of Section 3(6) of the Act does not render the impugned order invalid, though we disagree with the view taken by the learned Judge that Section 3(6) is not applicable to an order passed by any authority in exercise of the power u/s 5(b) of the Act.

8. The next submission on behalf of the appellants was that the impugned Order is a piece of colourable legislation. The handle for such a contention is furnished by the reason given in paragraph 3 of the counter-affidavit filed by the State for the impugned order. Paragraph 3 of the counter-affidavit filed in O. P. 3510 of 1967 which has given rise to Writ Appeal No. 260 of 1967 is in these terms:

"The Government have been getting complaints about hoarding and black-marketing activities on the part of Rice Mills. The provisions for controlling Rice Mills under the Rice-Milling Industry (Regulation) Act, 1958 (Central Act 21 of 1958) were found to be inadequate for the purpose of preventing hoarding and black-marketing activities on the part of Rice Mills. It was felt by the Government that in the interests of the general public and to ensure availability of rice to the public at reasonable prices and to prevent hoarding and black-marketing stricter control was necessary over Rice Mills."

Because of the above passage it was argued that the object of the order in dispute is to control the rice mills and since for the said purpose Central Act 21 of

1958 has been enacted, the impugned order really encroaches the field occupied by the Central Act. But the learned Advocate-General submitted that the purpose of the impugned order is not the control of the rice mills but to ensure a fair distribution of rice and paddy by preventing hoarding and black-marketing of rice and paddy. The fact that a particular object is stated in the counter-affidavit will not compel us to examine the validity of the impugned order only in that background. In *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, at p. 963 it was pointed out by their Lordships of the Supreme Court that:

"While considering the validity of the law the Court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained."

If the impugned order is considered to be a measure to prevent hoarding and profiteering in paddy and rice as was pointed out by the learned Advocate-General and for maintaining and increasing the supplies of rice and paddy and for securing their equitable distribution and availability at fair prices as is indicated by the preamble of the impugned order we do not find any reason to hold that the impugned order is in any way invalid merely because of the reason given by the State in their pleadings. The plea that the impugned order is a piece of colourable legislation is misconceived. The doctrine against colourable legislation is in essence a question of the power of legislature to enact the law in question. In explaining the doctrine their Lordships of the Supreme Court observed in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, at p. 379:

"The doctrine of colourable legislation does not involve any question of "bona fides" or "mala fides" on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power."

9. In *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, at p. 421 their Lordships of the Supreme Court followed the decision in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, and observed:

"The challenge to the validity of a Statute on the ground that it is a colourable piece of legislation is often made under a misconception as to what colourable legislation really means. As observed by Mukherjea, J., in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, at p. 11= *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, :

"the idea conveyed by the expression "colourable legislation" is that although apparently a Legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise."

This observation succinctly and effectively brings out the true character of the contention that any legislation is colourable legislation. Where a challenge is made on this ground, what has to be proved to the satisfaction of the Court is that though the Act ostensibly is within the legislative competence of the Legislature in question, in substance and in reality it covers a field which is outside its legislative competence,"

The impugned order was issued by the State Government as a delegate of the Central Government empowered by Section 5 of the Essential Commodities Act, 1955. In passing the impugned order the State Government did not purport to act as a delegate of the State legislature or in its own executive sphere. It was made by the State Government in exercise of its power to make subordinate legislation on behalf of the Central Government. The order issued is therefore an act of the Central Government. No question of any conflict between Parliament and the State Legislature can therefore arise in such a situation. It was pointed out in *Bankidass Moolraj and Another Vs. State of Rajasthan and Others*, at p. 109:

"When there is a conflict between the two provisions in two Legislative Lists, the problem of interpretation really arises as the Courts have to define the boundaries of different legislatures and for dealing with such a problem doctrine of pith and substance has been evolved. But these considerations do not arise where one has to deal with the question of legislative competence of the Parliament. The various entries which empower the Parliament to legislate are in that situation taken to be supplementary to each other. In such a case there is really no conflict between the several entries."

10. As its preamble shows Central Act (21 of 1958) has been passed to regulate the rice milling industry in the interests of the General public. It is intended to regulate the working of rice mills to provide reasonable facilities for development of hand-pounding industry and to provide employment for rural population. The purpose of the impugned order is entirely different. If the impugned order is intra vires of Section 3 of the Essential Commodities Act, 1955, we are not convinced of any reason to hold that the purpose of the impugned order is the same as the object of the Central Act (21 of 1958) and the former is therefore invalid. The Essential Commodities Act, 1955, is relatable to Entry 33 in List III of the Constitution while Act (21 of 1958) which is entirely for a different purpose is under the legislative power in Item 52 in List I of the Constitution. Since the impugned order is issued under the Essential Commodities Act, 1955, and its object is as indicated in its preamble it would be inappropriate to hold that the object of the impugned order is the same as that of Act (21 of 1958) even though it indirectly interferes with the working of the rice mills established under Central Act (21 of 1958). The object of the impugned order falls within the object of the Essential Commodities Act, 1955, and it is not intended to control in any way the working of the rice mills. It is intended to prevent hoarding and black-marketing in paddy and rice by regulating the conversion of paddy into rice

through the process of milling. We therefore overrule the plea that the impugned order is a piece of colourable legislation.

11. If so, the only question that can arise is whether the delegate acted within its authority conferred by the Essential Commodities Act, 1955, when it issued the impugned order. We have to see whether the basis of the statutory power conferred by the statute has been transgressed by the rule-making authority. We are of the view that in passing the impugned order the State Government did not exceed its authority. But the question whether the impugned order falls u/s 3(2) (a) of the Essential Commodities Act (1955), and is bad for want of concurrence of the Central Government has to be considered.

12. The next plea of the appellants was that the impugned order does not fall within sub-clause (d) of sub-section (2) of Section 3, but can only be .-justified under sub-clause (a) of sub-section (2) of Section 3 of the Essential Commodities Act, 1955, and since the prior concurrence of the Central Government required has not been obtained, the impugned order is invalid. Clauses (a) and (d) of sub-section (2) of Section 3 of the Essential Commodities Act, 1955, read thus:

"(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption, of any essential commodity;"

13. The learned Judge would find that milling paddy is a process of "production" of rice within the meaning of clause (a) and is also comprehended by the expressions in clause (d) especially the expression "use" therein. Since the learned Judge found that there was concurrence of the Central Government for the impugned order, he did not specifically enter a finding whether the impugned order comes within clause (a) or (d) of subsection (2) of Section 3 of the Essential Commodities Act. The learned Judge observed thus:

"It may be that when there is a clash or conflict between Central Government and the State Government in regard to the delineation of their respective jurisdictions under clauses (a) and (d) of Section 3 (2) of the Act, a greater scrutiny and a clearer demarcation of the jurisdictions may be called for. But where, as in this case, the Central Government, is content to endorse the stand taken by the State Government such a course seems unnecessary."

14. It was from Ext. R-I letter dated 26th August, 1967 from the Central Government to the State Government that the learned single Judge concluded that there was prior concurrence of the Central Government for the impugned order. The impugned order is dated 20th September, 1967. It is therefore necessary to refer briefly to the circumstances which prompted the Central Government to send Ext R-I letter. The affidavit filed by the Deputy Secretary to Government (Food Department) dated 30-11-1967 in O. Ps, 3397 and 3510 of

1967 states Ext. R-I would operate substantially as concurrence of the issuance of the Kerala Paddy (Restriction on Milling) Order, 1967. Ext. R-I purports to be a reply to the request of the State Government to the Central Government for delegation of powers u/s 3(4) of the Essential Commodities Act, 1955. To appreciate this aspect of the case, we think it necessary to quote the relevant portion of Ext. R-I as follows:

"It is, however, considered that the proposed delegation of power to the State Government u/s 3(4) of the Essential Commodities Act, would not be legally in order as the control of milling operations cannot be deemed to come under the category of "production and supply" of an essential commodity.

I am to add that the purposes for which delegation of power u/s 3(4) has been requested for can be achieved by powers already delegated to the State Government under sub-section (2) of Section 3 of the Act as well as under the provisions of the Rice Milling Industry (Regulation) Act. Section 3(2)(d) of the Essential Commodities Act provides for the regulation by licences for storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. Section 3(2)(f) of the Act provides for powers to require any person holding any stock in essential commodity to sell the whole or a specified part of It to the Central or State Government. These powers are wide enough for the present purposes of the Kerala Government.

Under Section 3(2) of the Essential Commodities Act, it is possible to issue orders for the purpose of controlling the rice mills, which the State Government has in view. The Madhya Pradesh Government has issued an order by which rice millers have been prohibited from milling paddy without permits. In Maharashtra a person (which, no doubt includes a rice miller) has been debarred from acquiring or purchasing foodgrains from any person for the purpose of sale or storage for sale or milling except under an authorisation. These State Governments have utilised the powers u/s 3(2) of the Essential Commodities Act for the purpose of controlling rice mills.

In view of the position explained above, the State Government may kindly consider utilising the powers u/s 3(2) already available to the State Government for the purpose of achieving their objectives of controlling rice mills. Copies of the orders issued by the Madhya Pradesh and Maharashtra Governments are also enclosed for the convenience of the State Government."

15. The copies of the orders issued by the Governments of Madhya Pradesh and Maharashtra have not been produced in. court for our perusal. It is seen that Ext. R-I is written by Shri S. Sen, Under Secretary to the Government of India.

16. Condition (2) in the order G. S. B. 1111 dated 24th July, 1967 reads:

"That before making an order relating to any matter specified in the said clauses fa), (c) or (f), or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under

the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government;"

17. It is not disputed that there was no prior concurrence of the Central Government as such to the impugned order. Then the only question is whether Ext R-I satisfies condition (2) of G. S. R. 1111. Ext. R-I is only a communication from the Under Secretary to the Central Government. The prior concurrence necessary is that of the Central Government and for the order to be issued. Even if it is possible to construe Ext R-I as an authorisation to the State Government to issue an order on the lines of the orders Issued by the Madhya Pradesh and Maharashtra Governments, it is not even averred in the affidavit that Ext R-I is on those lines and those orders also were not placed before us for verification. There is a further difficulty In that Ext R-I is not issued in the name of the President hi whom the executive functions of the Central Government is vested. In these circumstances, we are unable to agree with the learned Judge that there was prior concurrence of the Central Government for the impugned order. Ext. R-I cannot even be construed as evidence of general approval by the Central Government of the impugned order. It is too much to infer any general approval by the Central Government when it is admitted that the Central Government was not even aware of the contents of the order before it was notified by the State Government. Further Ext. R-I only points out that there is power in the State Government to act u/s 3 and it is not stated therein that it is Open to the State Government to resort to Section 3(2)(d) of the Essential Commodities Act, 1955 to pass the impugned order.

18. It therefore becomes necessary for us to decide whether the impugned order falls within Sections 3(2)(a) or Section 3(2)(d) of the Essential Commodities Act.

19. The preamble of the impugned order only shows that it was for maintaining and increasing the supplies of rice and paddy and for securing their equitable distribution and availability at fair prices. The first question to be decided is whether the effect of the impugned order is to regulate by licences or permits the production or manufacture of any essential commodity. Rice is an essential commodity. Conversion of paddy into rice through the rice mills is production or manufacture of rice. The term production can only mean making goods available for human wants. To constitute manufacture there must be a transformation of that article into another article which is commercially different from the one which was converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. In market rice is a different commodity from paddy and therefore when there is a conversion of paddy into rice through rice mills there is either production of rice or manufacture of rice from paddy. The object of the impugned order is therefore to control the same for the purpose of making paddy and rice available to the community at fair prices. The impugned order therefore falls u/s 3(2)(a) of the Essential Commodities Act. It was argued on behalf of the State that the purpose of the impugned order is to regulate by licences or permits the use of any essential

commodity. According to the State, paddy is used for manufacturing rice through mills and what is sought to be regulated by the impugned order is the same use. The expression "use" is a word of very wide significance. The expression in Section 3(2)(d) is not use and consumption but use or consumption. The two expressions therefore connote different meanings. In Murray's New English Dictionary the word "use" is defined as

"act of employing a thing for any (especially a profitable) purpose; the fact, state, or condition of being so employed: utilization or employment for or with some aim or purpose, application or conversion to some (especially good or useful) end."

It therefore shows that if the impugned order is to regulate the use of paddy then the order comes u/s 3(2)(d) of the Essential Commodities Act. The object of the regulation whether it is u/s 3(2)(a) or 3(2)(d) is to all intents and purposes the same. It cannot be disputed that there is a good deal of overlapping between the several clauses in Section 3(2) of the Essential Commodities Act, 1955 and the attempt of the Court should be to avoid, as far as possible any conflict between the various clauses. What is sought to be prevented by the impugned order is the production or manufacture of rice from paddy through mills. The use of paddy for the purpose of converting into rice is not sought to be prevented by the impugned order. There is no restriction or regulation imposed in the matter of converting paddy into rice by hand-pounding. But the regulation by the impugned order is the production or manufacture of rice by milling paddy. This is more in the nature of manufacturing rice from paddy by the process of milling. In such circumstances this can more appropriately come only u/s 3(2)(a) and not 3(2)(d) of the Act. If the impugned order will fall under Sections 3(2)(a) of the Essential Commodities Act, 1955, then prior concurrence of the Central Government is necessary. We have already held that Ext. R-I will not satisfy the requirement of prior concurrence which is a condition imposed by G. S. R. 1111 dated 24th July, 1967. IE so, the impugned order is invalid.

20. In the result, we allow the appeals setting aside the decision of the learned Judge. The Original Petitions filed by the appellants are hereby allowed. There will be no order as to costs.