

(1966) 02 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ No's. 591, 629, 656 to 659, 730, 744, 796, 833, 867, 885, 886 and 887 of 1965 and Civil Miscellaneous Writ No's. 6, 7, 23, 24, 28, 37 to 45, 63, 64, 76, 87, 88, 90, 93, 94, 95, 107 and 133 of 1966

Kriparam Ganeshilal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-02-1966

Acts Referred:

Constitution of India, 1950 — Article 14, 301, 304
Defence of India Act, 1971 — Section 48
Rajasthan General Clauses Act, 1955 — Section 6
Rajasthan Gram and Barley (Prohibition of Export) Order, 1965 — Section 27

Citation : AIR 1967 Raj 90

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : C.L. Agarwal, Hastimal Pareekh, S.K.M. Lodha, C.M. Lodha, J.S. Saluja, G.M. Lodha, J.S. Rastogi, R.N. Bishnoi, S.R. Arora, K.M. Lodha, J.K. Jain, Amritlal, Dalpat Raj, R.P. Goyal, S.S. Mineria and R.D. Gupta, for the Appellant; M.M. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners in the 39 writ petitions before us are grain dealers carrying on business at various places in Rajasthan and they seek writ, order, or directions in the nature of mandamus against the State of Rajasthan and other respondents for ordering them to permit the petitioners to export from out of Rajasthan quantities of foodgrains equivalent to that supplied by them to the various Collectors in accordance with the provisions of Clause (3) (a) of the Rajasthan Gram and Barley (Regulation of Distribution) Order, 1964, (hereinafter for the sake of convenience to be referred to as the "Gram--Barley Order. 1964"). As the writ petitions raised identical questions they can conveniently be disposed of together.

2. In a nutshell the case set up by the petitioners is that when they sold to the

Collectors the quantity of grain equivalent to what they proposed to export out of Rajasthan and for which they obtained necessary certificates from the Collectors under the Gram-Barley Order 1964, they acquired an indefeasible right to export the grain and the respondents were thereby put under an obligation to allow them to do so and as the respondents were not respecting that obligation, according to the petitioners, they were entitled to the relief prayed for. Before we enter into facts and deal with the several contentions raised before us it will be convenient to set out the relevant provisions of the Control Orders for a proper understanding of the case advanced by the petitioners

3. It is a matter of history that Indian economy came under heavy stress during the second world war and the situation thereby created led to introduction of controls of commodities essential to the life of the community. The orders regulating supply and distribution of foodgrains were made under the then Defence of India Rules. Even after the second world war came to an end the controls were continued in some form or the other under the Essential Supplies (Temporary Powers) Act, 1940 This Act which was of temporary duration came to be replaced by Essential Commodities Act, 1955. Our economy showed some improvement in the years that followed this Act and there was relaxation of controls though with the Essential Commodities Act, 1955, the Government retained its powers to impose the controls at any time Then came the emergency created by the aggression committed by a neighbouring country on our Himalayan frontiers. This put our economy under still heavier strain, and to meet the emergency the Defence of India Act, 1962, was enacted by the Parliament and also pursuant to the declaration of emergency by the President under Article 358 of the Constitution some fundamental rights including one under Article 19 of the Constitution were suspended during the period of emergency which unfortunately is still continuing. In exercise of the powers under the Defence of India Act the Central Government made the Defence of India Rules 1962 Rule 125 empowers the Central Government or the State Government for the purposes of 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, to issue orders providing for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles, things and trade and commerce therein and in exercise of these powers the Government was empowered to provide for issuing of licences, permits, or otherwise for the production, manufacture, treatment, keeping storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever Thus during the period of emergency the Government can claim to have powers both under the Essential Commodities Act, 1955, and under the Defence of India Act, and the rules thereunder to impose controls over essential commodities. Section 3 of the Essential Commodities Act, 1955, empowers the Central Government to issue orders for maintaining or increasing supply of any essential commodity or for

securing their equitable distribution and availability and u/s 5 the Central Government could delegate its powers to the State Government or any officer. In exercise of these powers delegated to it by the Central Government the Government of Rajasthan made the Gram-Barley Order, 1964, on 7th May 1964. This order was suspended so far as it related to gram either whole or split through the Rajasthan Gram (Prohibition of Export) Order, 1964, which came into force on 20th October 1964. This last mentioned order remained in force only till 23rd December 1964. The Gram Barley Order, 1964, was amended from time to time and we need not go into the details of the several amendments but the Gram Barley Order, 1964, as was in force in August 1965, the relevant time for the instant cases, came into force on 9th April 1965. It will be sufficient to say that to start with the only restriction on a person desiring to export gram or barley was that the quantity that he wanted to export should not have exceeded 25 per cent of the quantity held in stock at the commencement of the Order. The first amendment introduced some change in the percentage and since 9th April 1965 the matter was governed by Clause (3) (A) of the Gram-Barley Order 1964, which runs as under:

"3-A. Regulation of distribution of Gram-(1) No person shall sell or cause to be sold either directly or through his agent or servant or any other person acting on his behalf, gram, either whole or split, to any other person for the purpose of export outside the State of Rajasthan, unless he has sold or offered for sale, to the Collector or any other officer authorised by him in this behalf, a quantity of gram equal to the quantity which he intends to export (2) The quantity intended to be exported outside the State of Rajasthan under Sub-clause (1) shall not be exported or caused to be exported without first selling an equal quantity to the Collector or any other officer authorised by him in this behalf, as required under Sub-clause (1) and without obtaining certificate to that effect from the Collector or any other officer authorised by the Collector in his behalf."

According to this clause a person who has sold to the Collector any quantity of gram was authorised to export an equal quantity of gram outside Rajasthan on obtaining a certificate to that effect from the Collector or any other officer authorised by him in this behalf. Like gram, the other coarse grains were also subjected to regulation of distribution by the Rajasthan Coarse-Grains (Regulation of Distribution) Order, 1964. In August 1965 the material provisions of that Order were exactly like that of Gram-Barley Order, 1964. Thereafter they have the same history, and what we might say hereinafter in respect of Gram-Barley Order, 1964, will apply mutatis mutandis to that Order. Clause (3) (A) in both of them was in identical terms. By a notification No. F. 1 (3) Food/ Sup/65 dated 31st December, 1965, the Government of India in exercise of its powers u/s 3 of the Essential Commodities Act, 1955 repealed the Gram-Barley Order 1964, as also the Rajasthan Coarse-Grains Regulation of Distribution Order, 1964. However before these two control orders were repealed, the State Government in exercise of its powers under Rule 125 of the Defence of India Rules and with the prior concurrence of the Central Government made the

Rajasthan Gram and Barley (Prohibition of Export) Order 1965 (hereinafter to be referred as the Export Prohibition Order, 1965). Clause (2) of the Order runs as follows:

"(2). Ban on export of Gram and Barley--"As from the date of commencement of this Order, no person shall without obtaining the prior permission in writing of the State Government in this behalf, export or cause to be exported either directly or through his agent or servant or any other person acting on his behalf, Gram and Barley either whole or split or in any other form outside the State of Rajasthan.

Provided that nothing herein contained shall apply to the export of barley under and in accordance with the military credit notes."

Clause (3) of this Order provided that the Gram Barley Order, 1964. shall remain suspended during the period of operation of the present Order Thus the fate of the Gram Barley Order. 1964. was that from 10th December. 1965, it came to be suspended and then it was repealed on 31st December, 1965. The Export Prohibition Order. 1965. was amended on 31st December, 1965, and after the amendment Clause (2) now reads as follows:

(2). Ban on export of Gram and Barley: As from the date of commencement of this Order, no person shall export or cause in be exported either directly or through his agent or servant or any other person acting on bis behalf. Gram and Barley either whole or split or in any other form outside the State of Rajasthan;

Provided that nothing herein contained shall apply to the export of Barley under and in accordance with the military credit notes.

Provided that the State Government may permit any person to export out of the State to any other deficit State such quantities of gram or barley a do not exceed the limits agreed upon between the State Government and the Central Government".

As we have already observed, on 31st December, 1965, the position in respect of coarse-grains was the same as that for gram and the relevant order issued on 81st December, 1905, is identical with the Export Prohibition Order 1965. It is the impact of this new order on what was done by the petitioners under the Gram Barley Order, 1904. that falls for consideration in the cases.

4. Mr. C.L. Agarwal, who led the arguments on the side of the petitioners, submitted that the petitioners represented by him had supplied, in accordance with Clause (3) (A) of the Barley-Gram Order, 1964, to the Collector gram as per statements submitted by him in writ petition No. 730 of 1965; Messrs. Shankerlal Jagannath v State, writ petition No. 591 of 1965; Messrs Kriparam Ganeshilal v. State, and writ petition No. 885 of 1965: Messrs Gaurilal Mangilal v. State. According to these statements he submits, the quantity of grain equivalent to the one that was sought to be exported out of Rajasthan was supplied to the Collector between 11th August 1905 and 18th August 1965 and that the certificates had been issued by the Collector, which were Exs. 4.5 and 6 in the

case of Messrs. Shankarlal Jagannath and Ex. 1 in the case of Messrs. Kriparam Ganeshi Lal and Exs. 7 and 8 in the third case of Messrs. Gaurilal Mangilal. The grievance of Mr. Agarwal is that on the basis of these certificates the grain dealers concerned were entitled to export the grain to various destinations outside Rajasthan. However, on instructions from the Food Commissioner Rajasthan the Collector asked the railway authorities not to transport the grain in question and according to these instructions eventually the grain was not transported. Mr. Agarwal contends that these so-called instructions were without the authority of law, and the respondents were not at all justified in prohibiting the export in this manner. He accordingly submits that he is entitled to the relief of mandamus against the respondents. As regards the situation created by the repeal of the Rajasthan Gram-Barley Order, 1964, and the enactment of the Export Prohibition Order, 1965, Mr. Agarwal submits that the petitioners acquired the right to export the grain under the repealed order and consequently by operation of Section 6 of the Rajasthan General Clauses Act, 1955, that right still survived and could be enforced. He further submits that the Rajasthan Government being only a delegated authority and not the legislature itself could not make a subsidiary piece of legislation as could be retrospective in operation, or could be retro-active so as to affect the past transactions which created rights in favour of a party. According to him we should not consider this law in a manner as would take away the rights vested in the petitioners by the repealed law. As a matter of construction Mr. Agarwal maintains that the new order did not apply retrospectively at all. In the alternative he submitted that the certificates that were issued in favour of the petitioners still enure to their benefits as Clause (2) of the Export Prohibition Order, 1965, contemplates that export to deficit States can be permitted by the Government. Apart from the above. Mr. Agarwal strenuously argued that the Government's action was animated with malice against the present petitioners. He submits that according to the reply of the Government in Pabudan's case, i.e.. Writ Petition No. 833 of 1965. the Export Prohibition Order. 1965. was passed only with a view to defeat the writ petitioners already filed by the grain dealers. The upshot of his submission is that the Government first, without the authority of any law. put an embargo on export, and then to cover up their wrong enacted the Export Prohibition Order. 1965, which was a mala fide act of the Government. Mr. Agarwal submitted, on the basis of market rates of grain as published on 9th, 10th and 11th August 1965 in the Rajasthan, that though the gram in the market sold at more than Rs. 80/- per quintal the dealers supplied gram to the Collector at almost half the rates in the hope that they would be able to make up the short fall in price by the export that they were going to make of the equal quantity and would also be able to make some profit, but the Government has unjustly (usurped?) the benefits from the petitioners and instead of fulfilling its obligation towards them has enacted the Export Prohibition Order, 1965, with the avowed object to defeat the rights of the petitioners. This according to Shri Agarwal was sufficient to strike down the Export Prohibition Order, 1965. Lastly he pleaded that the Government would certainly lie allowing exports, and if instead of giving this

facility to others the Government first gave priority to the petitioners, Shri Agarwal would not grudge the action taken by the Government in putting the embargo. Mr. Agarwal placed reliance on *The Strawboard Manufacturing Co. v. Gutta Mill Workers' Union*, AIR 1953 SC 95, *G.P. Stewart v Brojendra Kishore*. AIR 1939 Cal 628, *Modi Food Products Ltd. v. Commissioner of Sales Tax, U. P.*. ATR 1950 All 35; *B. Krishna Rai v State of Mysore*, AIR 1903 Mys 203; *M. L. Bagga v C. Murhar Rao*, AIR 1956 Hyd 35; *Calicut-Wynad Motor Service (Private) Ltd. v. State of Kerala*, AIR 1959 Ker 347 and *The Income Tax Officer v. M.C. Pannoos*. AIR 1906 Ker 5.

5. Shri Hastimal, who argued next to Shri Agarwal submitted in addition to what Shri Agarwal argued that the position under the Export Prohibition Order, 1965 as regards the imposition of ban on export was not very much different from what it was under the erstwhile orders According to him while the ban was all along there in the, several control order: only there was difference in the mode of retaxation of that ban. According to him this should not matter. Accordingly Mr. Hastimal argued that as there were certificates already issued by the Collector under Gram-Barley Order, 1964, they should be considered to be permits by the State Government under the Export Prohibition Order, 1965, and thus the petitioner should still be permitted to avail of the benefit of the certificates. Mr. Hastimal maintains that the earlier permits were not rendered invalid by the subsequent change in the law. To supplement what Shri Agarwal submitted about the retrospective legislation Shri Hastimal drew our attention to some passages from Maxwell on Interpretation of Statutes. Chapter VIII, Section 4, which we will refer a(the appropriate stage, and he also cited two cases, viz., *Mst. Rafiquennessa v. Lal Bahadur Chetri*. AIR 1964 SC 1511 and *Ramchander v. Ramappa*, AIR 1954 Hyd 158 (KB). In addition he submitted that Export Prohibition Order, 1965, was violative of Article 14 of the Constitution inasmuch as no guiding principles were provided in it for regulating the grant of permits Shri Hastimal maintains that as the Export Prohibition Order, 1965, does not show as to whom and how the permits are to be granted by the State Government there is possibility of abuse of power. He placed reliance on *Dwarka Prasad v. State of Uttar Pradesh*. AIR 1954 SC 224, to support his submission Lastly Shri Hastimal submitted that the Export Prohibition Order, 1965, was hit by Articles 301 and 304(1)(b) of the Constitution as the restrictions imposed by the Export Prohibition Order, were according to him, reasonable According to him there is great disparity between the prices of gram ruling in Rajasthan and those outside so much so that there is a difference of Rs. 80/- to Rs. 100/- per quintal. Ho therefore, argues that if exports are banned then it will hamper even distribution of grains throughout India. Shri Hastimal thus submits that the ban was not reasonable in the circumstances.

6. Shri J.S. Saluja, who followed Shri Hastimal adopted the arguments made by his predecessors and submitted that the Export Prohibition Order, 1965, violated Article 301 of the Constitution in that it imposed restrictions on the flow of free trade throughout India which were not reasonable

7. Shri S.K.M. Lodha who spoke next placed reliance on Section 27 of the Rajasthan General Clauses Act and argued that the certificates given to the dealers under Clause (3) (A) of the Gram-Barley Order, 1964, were saved as the provisions of that order were repealed and then re-enacted by the Export Prohibition Order, 1965. Shri Lodha, besides the cases cited by Shri Agarwal and Shri Hastimal, placed reliance on *Income Tax Officer v S.K. Habibullah*, AIR 1962 SC 918.

8. Shri C.M. Lodha, who was the last to argue submitted that by selling grain to the Collector the petitioners had acquired a statutory right of export and this right cannot be affected by the subsequent changes in the law.

9. The other remaining learned counsel adopted what was argued by Shri Agarwal.

10. The writ petitions have been opposed on behalf of the State of Rajasthan and other respondents. The learned Government Advocate, who argued the case on their behalf submitted that article 19 of the Constitution having been suspended by the declaration of emergency by the President, the petitioners cannot legitimately complain of any infringement of the same, if any. He submitted that the Export Prohibition Order, 1965, has to be construed according to its terms and whatever might have been the position prior to its coming into force no export of the foodgrains could be made thereafter except by a permit from the State Government. According to the learned Government Advocate Section 6 of the General Clauses Act was of no help to the petitioners as the right was not created or conferred by the Gram-Barley Order, 1964, but independently of it the petitioners had it either under the Constitution or under the general law. It was never the intention of the Gram-Barley Order, 1964, the Government Advocate submits, to create rights but it purported to impose only restrictions on the rights, if any. As regards the various cases cited by the learned counsel for the petitioners the learned Government Advocate submitted that the matter has to be examined on the tenor of the impugned order though he has nothing to say against the principles enunciated in those cases. About Shri Hastimal's contention relating to the alleged violation of Article 14 of the Constitution the learned Government Advocate submitted that the Export Prohibition Order, 1965, did not confer arbitrary powers on the State Government. According to him the parent Act enunciated the policy and the discretion given to the Government in the matter of issuing of permits was to be exercised within the framework of the policy. As regards the pleas about the violation of Article 301 or 304 of the Constitution the learned Government Advocate submitted that the matter stands concluded by a decision of this Court, reported in *Surajmal Roop Chand and Co. Kota v. State of Rajasthan*, (1965 Raj L W. 429). Then as regards the alternative position taken by Shri Agarwal that the permits could still be issued by the State Government for export of grain to deficit States, the learned Government Advocate made a statement at the bar that the Government of India and the State Government have not yet decided as to what foodgrains and in what

quantity have to be sent from Rajasthan to any of the deficit States of India

11. The learned Government Advocate expressed his inability to assure the petitioners represented by Shri Agarwal that if and when the permits for export would be issued preference would be given to them on account of their having supplied grain to the Collector.

12. The learned Government Advocate strenuously challenged the correctness of Shri Agarwal's submission about the imputation of malice or mala fides to the Government in issuing the Export Prohibition Order, 1965. He joined issue with Shri Agarwal on the interpretation that he sought to put on the reply filed on behalf of the State in Pabudan's case. He pointed out that the entire position was explained to the Government of India by the State Government in soliciting their concurrence to the issue of Export Prohibition Order, 1965, and it was mentioned in that context that the State was faced with scarcity conditions, and that the difficulty has arisen on account of the several writ petitions. This was, according to him, only with a view to making a case for issuance of the orders to meet the difficult situation created by scarcity conditions.

13. As observed by us earlier the crux of the matter is as to how the Export Prohibition Order, 1965, operates on what was done under the Gram Barley Order, 1964. The passage relied on by the learned counsel for the petitioners from the Maxwell on Interpretation of Statutes, 11th Edition, at page 204 is as follows:

"Upon the presumption that the legislature does not intend what is unjust rests the leading against giving certain statutes a retrospective operation. Nova Constitution futuris formam imponere debet, non praeteritis. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect be clearly intended. It is a fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

But at page 205 it is stated that if the thing is plainly retrospective it must be so interpreted. The same rule of construction appears to have been adopted in India.

14. It was observed in AIR 1964 SC 1511, as follows:

"Where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective, unless the provision in question relates merely to a procedural matter. The legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which over ride and materially affect the terms of contracts between the parties, but unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights

are likely to be affected. Retrospective operation of a statutory provision can be inferred even in cases where such retrospective operation appears to be clearly implicit in the provision construed in the context where it occurs."

15. The other cases to which our attention was invited reiterate the same principles in slightly different language and we consider it unnecessary to make a detailed reference to those cases. It is also well settled that a subordinate legislative body like the Government in the present case has to act within the framework of the parent Act which defines its powers, and unless the parent Act empowers the subordinate body to make law with retrospective effect it cannot be permitted to do so.

16. Then Section 6 of the ,Rajasthan General Clauses Act also does not contain any inflexible rule about the rights under the repealed law being inviolate so as not to be affected by a repealing law. Like the Central Act it inter alia enacts that where any Rajasthan law repeals any enactment hitherto made or hereafter to be made then unless a different intention appears the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment. So what is important to see is whether there is any different intention in the subsequent legislation. The various rules of interpretation have to be applied only when the language of the piece of legislation under consideration is found to be ambiguous. Where the language of the law is free from ambiguity and capable of only one meaning then there is hardly any necessity of resorting to the various rules of interpretation pointed out by the learned counsel. It is usual the difficulty is not so much in stating or enunciating them as in applying them to a particular situation.

17. Let us now turn to the language of Clause (2) of the Export Prohibition Order, 1965, itself. The preamble of the Order provides that this was being issued for the purpose of maintaining the available supplies of gram and barley in the State of Rajasthan, and in this background Clause (2) of the Order provided that as from the date of commencement of this Order no person shall export or cause to be exported either directly or through his agent or servant or any other person acting on his behalf gram or barley either whole or split or in any other form outside the State of Rajasthan. Then it is left to the State Government to permit any person to export these commodities to any other deficit State in such quantities as do not exceed the limits agreed upon between the State Government and the Central Government This Order in express terms provides that this ban is to be operative "as from the date of the commencement of this Order." Therefore, it is idle to contend that this operates from a back date. Therefore, in its clear terms the Export Prohibition Order, 1965, is only prospective and not at all retrospective. Then it prohibits one and all from exporting the commodities outside Rajasthan This will apply to every person even though he has a certificate from a Collector under the Gram-Barley Order, 1964. The ban enacted by the Export "prohibition Order. 1965, to our mind, is absolute and the doors are shut for everybody and they will be opened only for

those who obtain a permit from the State Government and which will be necessary for legalising such export. Apart from this it is remarkable that the Gram-Barley Order, 1964, which was issued by the Central Government under the Essential Commodities Act, 1955, was repealed by another order under the Essential Commodities Act, itself on 31st December, 1965, as already observed. The Export Prohibition Order 1965, was issued in exercise of powers under a different statute viz., the Defence of India Act, 1962 and the rules made thereunder. As such it cannot be inferred that the legislature intended that the things done under the other enactments were still to remain unaffected. The Defence of India Act, 1962, provided in Section 48 thereof that the provisions of that Act or any rule made thereunder, or any order made under any such rules shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Therefore, for judging the effect of the Export Prohibition Order 1965, which was issued under Rule 125 of the Defence of India Rules 1962, we have to keep in view the provisions of Section 43 of the Defence of India Act. The certificates, if any that the several petitioners may have taken from the Collectors under the provisions of the Gram-Barley Order, 1964, were nothing but instruments within the meaning of Section 43 of the Defence of India Act and those instruments could be of no help against the clear enactment by Clause (2) of the Export Prohibition Order, 1965. In the circumstances we are unable to accept the arguments advanced by the petitioners that they can still avail of the certificates, if any, granted by the Collectors under the Gram-Barley Order, 1964, which is no longer in force.

18. This is the clear result of the operation of Clause (2) of the Export Prohibition Order, 1965. As already observed this order is not retrospective and could not have furnished an advance basis for the Government to issue instructions and thereby impose a ban on exports of foodgrains in question in August, 1965. The action of the Government does not appear to have been under the authority of any law and if the matters stood at that, an appropriate writ, order or direction would have been justified in the case but by the time the writ petitions have come up for hearing, the legal position has undergone a material change as discussed above. The petitioners may pursue their other legal remedies against the Government, but in the exercise of our extraordinary jurisdiction we cannot now command the Government to allow the petitioners to export the grain as they desire to do.

19. Mr. Agarwal submitted that the Export Prohibition Order 1965, should be struck down as the Government were animated with malice against the petitioners. We are unable to accept this contention as sound. In the first place the action that is sought to be impugned is not any executive act of the Government, but a piece of legislation enacted by the State of Rajasthan in exercise of its powers under Rule 125 of the Defence of India Rules with the prior concurrence of the Central Government. Its avowed object is to maintain the available supplies of gram and barley in the State of Rajasthan. The petitioners

form a very small fraction of the vast population, who are to be affected by the ban imposed on exports by the Export Prohibition Order, 1965, and we find it exceedingly difficult to draw the inference that this embargo was intended to harm only the present petitioners. It is likely to remain in force for a considerable time, and we are not persuaded to think that the Government were prompted by malice against the petitioners in making it. We have also perused the reply of the State in D.B. Civil Writ No 833 of 1965: *Pabu Dan v. State of Rajasthan*, and are satisfied that the Government presented the general situation created by the famine conditions as also the writ petitions filed by the petitioners. This is hardly sufficient for holding that the Government were out to harm only the petitioners and not to impose the ban for conserving the available supplies within the State.

20. We also do not find any substance in Mr. Hastimal's contention that the Export Prohibition Order, 1965, is violative of Article 14 of the Constitution in that it places unguided discretion in the hands of the Government. In the case cited by him i.e., AIR 1954 SC 224, their Lordships of the Supreme Court were considering the provision in Coal Control Order about the discretion given to a Coal Commissioner and the provision of the Constitution that came up for consideration directly was Article 19 thereof and their Lordships held that the powers given to the Coal Commissioner were not reasonable. Their Lordships examined the matter at length in *Harishankar Bagla v. State of Madhya Pradesh*, AIR 1954 SC 465, and in dealing with the validity of the Cotton Textile Control Movement Order, 1948, observed as follows:

"The policy underlying the Order is to regulate the transport of cotton textiles in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate the policy. The conferment of such a discretion to the Textile Commissioner under Clause 3 of the Order cannot, therefore, be called unregulated or arbitrary and is not invalid on that ground further, if there is any abuse of power, there is ample power in the courts to undo the mischief."

The Coal Commissioner's case, AIR 1954 SC 224 was cited before their Lordships in *Harishankar Bagla's* case, AIR 1954 SC 465 and their Lordships after considering the provisions of Uttar Pradesh Coal Control Order pointed out that there was a clear policy underlying the Cotton Textile Control Order, which was to ensure even distribution of the commodity in the country and make it available at fair price to all and as such grant or refusal of a permit was to be governed by this policy, and the discretion given to the Textile Commissioner was to be exercised in such a way as to effectuate that policy. What has been said about the exercise of discretion by the Textile Commissioner in *Harishankar Bagla's* case, AIR 1954 SC 465 applies with equal force to the exercise of discretion by the Government under the Export Prohibition Order, 1965. Moreover, as pointed out by their Lordships in *Matajog Dubey v. H.C. Bhari*, AIR

1956 SC 44, abuse of power is not to be readily inferred when discretion has been vested in the Government as distinguished from a minor functionary. We therefore, reject this contention.

21. The next contention of Mr. Hastimai, as that of Mr. Saluja that the Export Prohibition Order, 1965, contravenes the provisions of Article 301 or 304 of the Constitution for that matter is equally devoid of force. The matter stands concluded by a bench decision of this Court in *Surajmal's case*, 1965, Raj LW 429 to which one of us was a party. The following observations from that case may be quoted with advantage:

"A citizen of India cannot claim absolute-freedom of trade under Article 301 of the Constitution and he shall have to accept some kind of regulatory control, either of the Union or State Government in the interest of the community at large. The opening words of Article 301 themselves suggested that the freedom guaranteed under this Article shall be subject to the other provisions of Part XIII of the Constitution. Under Article 302 of the Constitution. Parliament has a power by enacting law to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another, or within any part of territory of India, as may be required in the public interest

Looking to the preamble of the Defence Act, 1962, this piece of legislation was enacted with a view to provide special measure to ensure public safety and interest and the power conferred on the Union or the State Government under Rule 125 to issue order of this nature is subjected to the subjective determination of such an authority about the necessity or expediency regarding the maintenance or increase of supplies of services essential to the life of community or for securing the equitable distribution and availability of foodgrains at the fair price. The power under Rule 125 shall, therefore, be deemed to be used only for the public interest. If any restriction is imposed on the movement of the grain or other commodity in the exercise of the powers conferred by the Defence of India Act or the Rules made thereunder, then it cannot be said to be violative of Article 301 of the Constitution as it shall be deemed to be imposed under the Act of Parliament in public interest."

22. Turning now to the argument of Shri S.K.M. Lodha that by virtue of Section 27 of the General Clauses Act the certificates issued by the Collectors to the petitioners, under Clause (3) (A) of the Gram-Barley Order, 1964, can be deemed to have been issued under the Export Prohibition Order, 1965, it is sufficient to say that the result envisaged by Section 27 of the General Clauses Act will follow only when there was no repugnancy between the repealed law and the new law, and secondly it is difficult to hold that the repealed order was just re-enacted by the new order. As already observed by us in *Gram-Barley Order*, 1964, which was issued under the Essential Commodities Act, 1955, was repealed by an order under that Act and it cannot in the circumstances be said that the order issued under the Defence of India Rules was a continuation of that earlier Control Order.

23. At any rule what we have observed above regarding the force and effect of Section 43 of the Defence of India Act, 1962, will be sufficient to repel this contention as well. Then a permit issued by a Collector cannot be taken to be the same thing as a permit to be issued by the State Government under the Export Prohibition Order, 1965. The two authorities being not the same there will be a clear inconsistency on that account as well between the issuing of a certificate and that of a permit by the State Government in conformity with the requirements of the proviso to Clause (2) of the Export Prohibition Order, 1965.

24. Apart from everything what is remarkable is that Clause (8) (A) of the previous Order embraced only the sales for the purposes of export and did not strike at export of the foodgrains from Rajasthan as such, e.g., if a person wanted to take away the foodgrains for genuine and charitable gift outside Rajasthan that would not be covered by Clause (3) (A) of the Gram Barley Order, 1964. On the other hand, Clause (2) of the Export Prohibition Order, 1965, strikes at export of these foodgrains as such irrespective of the purpose of export. This again confirms our view that the two orders were not the same, and as such the provisions of the earlier order cannot be deemed to have been merely re-enacted but the latter order is in a way a new law on the subject of export in general.

25. While we do not find any substance in the arguments of the learned counsel for the petitioners, we cannot help saying that the petitioners have been subjected to a harsh treatment by the Government officers, and they were not justified in imposing a ban in August 1965 without the semblance of any authority under the law to do so. The problem could have been tackled administratively with some imagination. While the Government should be anxious to carry out the policy underlying the Essential Commodities Act, or for that matter under the Defence of India Act, it should at the same time see that the legitimate grievances of individual citizens are remedied. It is regrettable that it has not been possible for the respondents to assure the petitioners that on account of their supplying grain to the Government at less than market price consideration will be shown to them at the time of exercising powers under the proviso to Clause (2) of the Export Prohibition Order, 1965, by giving them preference over others. Were this assurance forthcoming, as Shri Agarwal submitted, the petitioners' feelings would have been assuaged, and the problem would have been solved. We express the hope that the Government will still consider the matter properly and see if it is possible to mitigate the petitioners' genuine hardship.

26. With these observations we hereby dismiss all the writ petitions, but leave the parties to bear their own costs.