

(1970) 03 RAJ CK 0011

In the Rajasthan High Court

Case No : First Appeal No's. 117 and 118 of 1958

Mangalji Chotelal and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-03-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 34
Constitution of India, 1950 — Article 31(2)
Essential Supplies (Temporary Powers) Act, 1946 — Section 3
Limitation Act, 1908 — Article 2, 49

Citation : AIR 1971 Raj 167

Hon'ble Judges : C.B. Bhargava, J

Bench : Single Bench

Advocate : P.N. Datt, V.S. Dave and P.C. Jain, in Appeal Nos. 117 and 118 of 1958, for the Appellant; B.C. Chatterji, A.A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

C.B. Bhargava, J.—Though these two appeals arise out of two different suits Instituted by two different persons, they are being disposed of by one common judgment because they raise common questions of law and fact. Appeal No. 117 of 1958.

2. This is a plaintiff's appeal against the judgment and decree of the Senior Civil Judge. Baran, dated 28th August, 1958. dismissing the suit for recovery of Rs. 13,200A.

3. In short, the plaintiffs case in the Court below was that the officers of the Civil Supplies Department of the State of Rajasthan procured gram from, the plaintiff from 7th April, 1953, to 3rd September. 1953, as shown in Schedule 1 attached with the plaint in pursuance of the latter part of Clause 5 regarding taking of 40% of gram @ Rs. 10/- per Md. of the Rajasthan Gram and Gram Products (Export Control) Order. 1953 published in the Rajasthan Gazette Extraordinary dated 27th March. 1953, and Jowar from 23rd January 1953 to 28th February,

1953, as shown in Schedule 2 in pursuance of clause 6 of the Rajasthan Foodgrains (Rabi) Monopoly Procurement Order, 1952, published in the Rajasthan Gazette Extraordinary dated 12th April, 1952, and wheat from 15th May, 1953 to 4th June, 1953, as shown in Schedule 3 in pursuance of clauses 4 and 5 of the Rajasthan Food-grains (Rabi) Procurement Order, 1953, published in the Rajasthan Gazette Extraordinary dated 11th March, 1953.

It is alleged that these foodgrains were procured by the State of Rajasthan from the plaintiff at prices which were much below the prices obtaining in the free market on the relevant dates as a result of which the plaintiff sustained damages. It is alleged that the aforesaid Procurement orders were ultra vires of the Constitution of India being hit by Article 31(2) thereof, because the law, that is the Essential Supplies (Temporary Powers) Act, 1946 (hereinafter called the Act) did not contain any provision for payment of compensation for the property taken possession of or acquired nor fixed the amount of compensation or the principles on which and the manner in which the compensation was to be determined and given. Some other grounds also challenging the validity of the aforesaid procurement orders were alleged but it is not necessary to mention them in detail because in this Court, the chief ground canvassed is that the procurement orders are violative of Article 31(2) of the Constitution for the reasons stated above. It is alleged that as a result of this illegal acquisition of foodgrains by the officers of the State from the plaintiff, he sustained a loss of Rs. 11.226A as shown in Schedules 1, 2 and 3. The plaintiff also claimed interest on the aforesaid amount as the State in spite of notice being served upon it under S. 89, Civil P. C. did not make that payment. Thus the suit was filed for the total sum of Rs. 13,200/-.

4. The State of Rajasthan In its written statement raised a number of pleas including the bar of limitation and the present suit being barred because of the provisions of Order 2, Rule 2, Civil P. C. It was also stated that the aforesaid procurement orders were quite valid and did not violate Article 31(2) of the Constitution because the orders contained provisions for payment of compensation and as a matter of fact fixed the amount of compensation to be paid to the plaintiff for the procurement of food-grains.

5. The learned Senior Civil Judge on the pleadings of the parties framed as many as 17 issues but for the purpose of the decision of this appeal, the following issues only need be stated:

(2) Whether Section 5 of the Rajasthan Gram and Gram Products (Export Control) Order, 1953, and Sections 6 and 7 of the Rajasthan Foodgrains (Rabi) Monopoly Procurement Order, 1952, and Section 4 and 5 of the Rajasthan Food-Grains (Rabi) Procurement Order, 1953, are void, illegal and ineffectual?

(5) Whether the plaintiff has suffered loss of Rs. 11226A by the procurement of the foodgrain shown in the plaint and is he entitled to recover this amount from the defendant?

(6) Whether the plaintiff is entitled to recover the sum of Rs. 1984/- as interest by way of damages?

(8) Is the suit within limitation?

(15) Whether the suit is barred by the provisions of Order 2, Rule 2, Civil P. C.?

6. The learned Senior Civil Judge after trial found that Clause 5 (a) of the Gram and Gram Products (Export Control) Order, 1953 was violative of Article 31(2) of the Constitution but it could not be declared so in the present case because the Central Government who had made the Order was not impleaded as a party to the suit. The Court, however, did not express any specific opinion regarding clauses (6) and (7) of the Rajasthan Food-grains (Rabi) Monopoly Procurement Order, 1952, and clauses 4 and 5 of the Rajasthan Foodgrains (Rabi) Monopoly Procurement Order, 1952, and clauses 4 and 5 of the Rajasthan Foodgrains (Rabi) Procurement Order, 1953. The Court also did not give any specific finding as to the amount of loss suffered by the plaintiff as a result of the procurement of foodgrains from it, although after discussing the statements of P. W. 1 and P. W. 2 the Court observed that the statements of these witnesses as regards the rates which they have shown per Mani for the price of foodgrains are taken to be correct because they are based on the entries made in the account-books in the regular course of business.

As regards the claim for interest, the Court held that the plaintiff was not entitled to it because he had not shown any circumstances by which he could be found entitled to recover the same as Interest by way of damages. On the question of limitation, the Court held that the suit was governed by Article 36 of the Indian Limitation Act, 1908 and thus it was barred by limitation having been filed after 38 months of the accrual of the cause of action. The Court further held that the suit was also barred by Order 2, Rule 2, Civil P. C. because the plaintiff had filed another suit prior to the present suit, that is suit No. 16 of 1956 on the same allegations when the cause of action for all the reliefs claimed in the present suit had accrued to it. As a result of these findings, it dismissed the suit with costs.

7. In this appeal, learned counsel for the appellant has contended that-

(1) It was not necessary for the plaintiff to have impleaded the Central Government as a party for getting the relief claimed in the suit because the food-grains were procured by the officers of the State of Rajasthan and damages were being claimed from it. The learned Senior Civil Judge having come to the conclusion that the relevant clauses of procurement orders were hit by Article 31(2) of the Constitution should have decreed the plaintiff's suit for damages.

(2) The suit was not barred by limitation and the lower Court was in error in holding that Article 36 of the Indian Limitation Act was applicable to it. On the other hand it is contended that the suit is governed by Article 120 or Article 96 of the Indian Limitation Act.

(3) The lower Court erred in holding that the suit was barred by Order 2, Rule 2

inasmuch as suit No. 16 of 1956 related to gram only and that also for the period when its export was not in any way restricted. In the present case by the order dated 27th March, 1953, restrictions were placed upon the export of gram and gram products and a further provision was made that any dealer intending to export gram products shall have to deliver 40% of that foodgrain to the State Government at the prices fixed in the order. So the cause of action in both the cases is quite different and Order 2, Rule 2 is not at all applicable to the circumstances of the present case.

8. So far as the validity of Clause 5 of the Rajasthan Gram and Gram Products (Export Control) Order, 1953, Clauses 6 and 7 of the Rajasthan Food-grains (Rabi) Monopoly Procurement Order, 1952, and Clauses 4 and 5 of the Rajasthan Foodgrains (Rabi) Procurement Order, 1953, is concerned, the argument is that these orders are not law within the meaning of Article 31(2) of the Constitution. The law under which these Orders were made is Section 3 or 4 of the Act which do not contain provision for compensation nor fix any compensation or the principles on which and the manner in which compensation is to be determined and given for foodgrains procured from the dealers. In this connection reliance is placed upon an un-reported Division Bench Judgment of this Court, D/-4-8-1954. (Kajor Mal v. The State of Rajasthan Writ Appln. No. 615 of 1952 (Raj)). In that case. Clause 6 of the Rajasthan Foodgrains (Rabi) Monopoly Procurement Order of 1952 was challenged on the ground that the Clauses 6 and 7 of the Order were hit by Article 31(2) and (3) of the Constitution.

Since several Important questions of public importance were raised in that writ petition, some questions were referred by the Division Bench to a Full Bench and the judgment of the Full Bench is reported as Ramjidas and Others Vs. State of Rajasthan, . However., this particular question whether clause 8 of the order was violative of Article 31(2) of the Constitution was not answered by the Full Bench because it was not referred to it. Still, the Full Bench observed in Para 13 of the judgment that-

"Clause 6 of the Order, in so far as it provides for acquisition of property, is not ultra vires of the provisions of the Essential Supplies (Temporary Powers) Act of 1946. By this reply we should not be understood to say that the Essential Supplies (Temporary Powers) Act of, 1946, as applied to Rajasthan on 17-8-50 complies with the provisions of Article 31(2), in case such compliance is necessary."

When the case again came back before the Division Bench, it was urged on behalf of the State of Rajasthan that the meaning of term "law" as used in Article 31(2) of the Constitution was wide enough to include rules, regulations or orders, and, therefore. Clauses 6 and 7 of the Procurement Order which contained necessary provisions for payment of compensation be deemed to be sufficient compliance of Article 31(2). The Division Bench, however, did not accept this contention and held that the definition of "law" as contained in Article 13 is meant for that article only because it is subject to saving clause that is "unless

the context otherwise requires". The Court, therefore, held that-

"the term "law" has been used in a restricted sense in Article 31(2) and it denotes the law enacted by legislatures. If a wide meaning is given to the term "law" in Article 31(2), the salutary check provided by Article 31(3) would become ineffective. In this view of the matter, we are constrained to hold that it was necessary under Article 31(2) that the Act should have provided for compensation for the property acquired and either the amount of compensation should have been fixed or the price at which and the manner in which the compensation is to be determined ought to have been specified in the event the Legislature intended to provide for acquisition of property for purpose of regulating fair distribution of essential commodities."

The Court, therefore, came to the conclusion that the provisions regarding regulations of the distribution of the essential commodities in so far as they relate to acquisition of property contained in Clause 6 of the Order are hit by Article 31(2) of the Constitution inasmuch as no provision as required by Article 31(2) has been made in the Act and that the making of the provisions for payment of compensation in the Order is not sufficient compliance with the requirements of Article 31(2) of the Constitution. Although in that case Clauses 6 and 7 of the Rajasthan Foodgrains (Rabi) Monopoly Procurement Order, 1952, were challenged, but the same argument applies to Clause 5 of the Rajasthan Gram and Gram Products (Export Control) Order, 1953, and Clauses 4 and 5 of the Rajasthan Foodgrains (Rabi) Procurement Order, 1953, because until then the Essential Supplies (Temporary Powers) Act, 1946, did not contain any provision as is contemplated by Article 31(2) of the Constitution of India.

9. Learned counsel also relies upon the observations of the Supreme Court in *The State of Rajasthan Vs. Nath Mal and Mitha Mal*, where the validity of Clause 25 of the Rajasthan Foodgrains Control Order, 1949, was challenged. The impugned Clause 25 was as follows:

"25. Notwithstanding anything contained in this Order, the Director, the Deputy Commissioner, the Nazim, the Assistant Commissioner, the Sub-Divisional Officer, the Senior Officer of a jurisdictional Thikana, the Enforcement officer or such other Officer as may be authorised by the Commissioner in this behalf, may freeze any stocks of food-grains held by any person, whether in his own behalf or not, and such person shall not dispose of any foodgrains out of the stock so freezed except with the permission of the said authority. Such stocks shall also be liable to be requisitioned or disposed of under orders of the said authority at the rate fixed for purposes of Government procurement."

While examining the validity of Clause 25, the Supreme Court observed:

"The same result follows if the impugned clause is examined in the light of Article 31(2). The clause by vesting the power in the authority to acquire the stocks at any price fails to fix the amount of the compensation or specify the principles on which the compensation is to be determined. The clause leaves it entirely to the

discretion of the executive authority to fix any compensation it likes and thus offends against Article 31(2)."

These observations also lend support to the contention of learned counsel and the observations made in Kajormal's case. Writ Appln. No. 615 of 1952, D/-4-8-1954 (Raj) (supra).

10. Learned Additional Advocate-General on the other hand has urged that the impugned Procurement Orders were either made by the Central Government u/s 3 (2) (f) of the Act and by the State of Rajasthan under the powers delegated to it u/s 4 of the Act and it is provided in Section 3 (2) (f) that-

"for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances as may be specified in the order."

It is urged that the orders which were issued contained provision for payment of compensation and they should be read as part of the law itself and so taken together it should be held that there was sufficient compliance of Article 31(2) of the Constitution. He has placed reliance upon two judgments of the Calcutta High Court in Atulya Kumar De and Others Vs. The Director of Procurement and Supply and Others, and Ramjiban Gurchait Vs. State of West Bengal and Others, The second case follows the first one in which it was held by a single Judge of that Court that the law in a given case must be an Act read with the Order promulgated under it. It cannot be said that the Essential Supplies (Temporary Powers) Act, 1946, read with the West Bengal Foodgrains (Intensive Procurement) Order, 1952, does not fix compensation.

No doubt, the above observations support the contention of the learned Additional Advocate General but sitting singly I am bound to follow the Division Bench judgment of this Court and that, being so I am of the view that the above-mentioned clauses of the aforesaid Procurement Orders are ultra vires of the Constitution being in violation of Article 31(2) of the Constitution. The officers of the State Government, therefore, had no authority to procure foodgrains from the, plaintiff and the said procurement shall be regarded as wrongful and whatever loss plaintiff has sustained on account of such illegal procurement shall be payable to it. It may also be mentioned that in the Essential Commodities Act which came into force in 1955, sub-section (3) to Section 3 was inserted so as to make a provision for payment of compensation in regard to the acquisition by the Central Government or the State Government of any essential commodity. Presumably this seems to have been done to remove the lacuna which existed in the Essential Supplies (Temporary Powers) Act.

11. The next question is whether the suit is barred by Order 2, Rule 2, Civil P. C., and I am of the view that it is not. Order 2, Rule 2 runs thus:

"2. Suit to include the whole claim.-

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to

make in respect of the cause of action: but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. Relinquishment of part of claim.---

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to sue for one of several reliefs.--(3) A person entitled to, more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any reliefs so omitted."

It would appear from the allegations made in Ex. A-35 of the previous suit that is suit No. 16/1956 that the plaintiff had claimed compensation for three items of gram procured from it between 17th March and 26th March, 1953 and its case was that the officers of the State were not entitled to procure any gram from it because at that time export of gram was not at all restricted on account of a notification issued by the Central Government published in the Gazette of India dated 5th February, 1953. On the other hand, the Commissioner, Civil Supplies, Rajasthan issued an order dated 10th March, 1953, to all Deputy Commissioners of Civil Supplies and all Collectors and Tehsildars giving out that the Government had decided to procure Rabi foodgrains, namely, wheat, barley, gram etc., from the rabi crop of 1953-54 by the system of levy and a ban was put on the movements of these foodgrains from one district to another. But in the present case, the procurement has been challenged on a different ground and in regard to the quantity of foodgrains procured on other dates. The cause of action in both the suits being different, it cannot be said to be barred by Order 2, Rule 2, and the learned Senior Civil Judge was not right in holding that it was so barred.

12. Now coming to the question of limitation, the plaintiff has alleged in the plaint that the suit is governed by Article 120 of the Indian Limitation Act. But it is well settled that if any specific Article of Limitation Act applies to the facts of a case, the omnibus Article 120 will not apply. So the question is as to which particular Article of the Indian Limitation Act would be applicable.

13. In this connection, learned counsel for the appellant has contended that this suit would be governed by Article 96 which is as follows:

Description of suit.

Period of limitation

Time from which period begins to run.

96. For relief on the ground of mistake.

Three years

When the mistake becomes known to the plaintiff.

The argument is that the foodgrains were delivered by the plaintiff and were also taken by the officers of the State on the mistaken notion of law that it was valid. But subsequently when the Rajasthan High Court on 4th August, 1954, declared that Clause 6 of the Rajasthan Foodgrains (Rabi) Monopoly Procurement Order, 1952, was unconstitutional, the mistake became known to the plaintiff and so the present suit having been filed on 5th July, 1956, was within limitation. In support of this contention, reliance is placed on K.S. Venkataraman and Co. Vs. State of Madras, and State of Bombay (Now Gujarat) Vs. Jagmohandas and Another, In the first case it was held that-

"Suit for refund of sales tax assessed under provision of Madras General Sales Tax Act declared to be ultra vires by High Court -- Suit was for recovery of amount paid under mistake of law --Article 96 would apply -- Plaintiff came to know of the mistake when decision by High Court was given."

However, I am afraid that in the present case it is not the plaintiff's case that it had delivered foodgrains under any mistake. Nor is this the case of the plaintiff that he discovered the mistake when the judgment was pronounced by the High Court in Kajor Mal's case. Writ Appln. No. 615 of 1952, D/- 4-8-1954 (Rai) (supra). The question as to when the plaintiff came to know of the mistake is a question of fact and in the absence of proper pleadings and reply of the defendant it cannot be decided on the material on record. I am, therefore, unable to agree that the suit would be governed by Article 96 of the Indian Limitation Act.

14. Learned counsel has also placed reliance upon Panchanan Das v. Province of Orissa AIR 1955 Orissa 57, for the proposition that the suit would be governed by Article 120 of the Limitation Act. But that case is quite distinguishable on facts.

15. Learned Additional Advocate General on the other hand, urges that either Article 2 or 36 of the Indian Limitation Act is applicable to the facts of the case. Article 2 applies to those cases where an act is done or omitted to be done in pursuance of an enactment in force for the time being. This necessarily implies that there should be a valid enactment and it should be in force at the time when the act is either done or omitted to be done. This article cannot have application to such cases where the enactment is void from its inception. As already held, the aforesaid clauses of the procurement orders were invalid, and, therefore, it cannot be said that the procurement of foodgrains was made in pursuance of any enactment in force.

16. Article 36 is an omnibus article and relates to suits for compensation for any malfeasance or misfeasance or nonfeasance independent of contract and not herein specially provided for. Being a residuary article when the case is specially provided elsewhere in the Act, this article has no application though the act complained of may be one of malfeasance. In this connection, learned Additional Advocate General relied on Kripa Ram Vs. Kunwar Bahadur, But in that case. Article 36 was held applicable because the other two articles namely Arts. 48 and

49 could not be applied because the plaintiff had no right to possession of the goods and was a mere attaching creditor. This cannot be said in the present case because, the plaintiff is entitled to possession of the, foodgrains which were unlawfully procured from it. In my view. Article 49 is the appropriate article which could apply to the facts and circumstances of this case. Article 49 runs thus:

"49. For other specific movable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same.

Three Years.

When the property Is wrongfully taken or injured) or when the detainer"s possession becomes unlawful."

In view of the finding that the food-grains were wrongfully taken from the plaintiff, it is entitled to compensation and the cause of action for such suit would arise from the time the property is wrongfully taken. Under this article a period of three years is provided for the Institution of a suit for compensation.

17. The next question which now remains to be determined is as to what amount of compensation the plaintiff is entitled to in this suit. Losses alleged to have been suffered by the plaintiff in regard to the procurement of lowar relates to the period commencing from 23-1-53 to 28-2-53, and the present suit having been filed after three years and two months of these transactions is barred by limitation and the plaintiff is not entitled to any compensation for these transactions.

18. In regard to gram, only the last three items mentioned at page 15 of the paper-book dated 16-6-53, 17-6-53 and 3-9-53 are within limitation. On behalf of the plaintiff, his Munim Dhannalal has been examined and he has stated that the rate of gram in the free market on 16-6-1953 was Rs. 15/1/-. Therefore, the plaintiff sustained a loss of Bs. 1273/15/- and Rs. 761/13/- respectively on the procurement of gram from it at the rate of Ry. 10 per maund. On 3rd September, 1953, 385 maunds of gram was taken from the plaintiff at the rate of Rs. 10/- but Dhannalal P. W. 1 has stated that the rate of gram on that date per Mani varied from 182/8/- to 183/-. The minimum rate being Rs. 182/8/-. the plaintiff is entitled to damages on the basis of that rate only. So instead of Rs. 1758/12/- claimed by the plaintiff, it is entitled to Rs. 1745/-. Thus the total amount of loss which the plaintiff sustained in regard to the transactions of gram comes to Rupees 3780/12/-.

19. The quantity and the rate at which wheat was procured on various dates from the plaintiff is mentioned in Schedule 3 at page 18 of the paper-book, From the evidence of P. W. 1 Dhannalal, it appears that the rate of wheat on 15th May. 1953, varied from 166/4/- to 168/-per Mani. The plaintiff has calculated its loss at the rate of Rs. 168/- but on the admission of P. W. 1 wheat was sold on that date at the rate of Rs. 166/4/- also. So the plaintiff is entitled to a sum off Rs.

906/- instead of Rs. 1000/- on this item. Similarly on 20th May. 1953, P. W. I has admitted that the rate was Rs. 176/4/-per Mani and so the plaintiff is entitled to a sum of Rs. 497/3/- instead of Rs. 508/12/-claimed by him. Dhannalal has also admitted that on 22nd May. 1953, rate of wheat varied from Rs. 174/4/- to Rupees 180 per Mani. So on the basis of the rate of Rs. 174/4A, plaintiff is entitled to Rs. 375A instead of Rs. 450/-, as claimed by it. Dhannalal has also stated that on 4th June. 1953. rate of wheat varied from Rs. 186/- to Rs. 192/8/-. The plaintiff claimed his amount of loss at the rate of Rs. 186/- per Mani. Therefore on this item he is entitled to Rs. 253/11/- as claimed. The total amount of loss suffered by the plaintiff in transactions of wheat comes to Rs. 5812/62 P.

20. The plaintiff has also claimed Interest on the loss suffered by it, but in the circumstances of the case, he is not entitled to any interest either under the law or in equity. Certain restrictions were placed on export of food-grains, but they were relaxed subject to certain conditions. The plaintiff applied for permit to export foodgrains and presumably derived benefit out of these export transactions. He, therefore, cannot claim any interest for the losses suffered by it on account of the procurement of foodgrains because it was subject to such condition of procurement that he was allowed to export foodgrains. Further,, the claim is for damages and no interest can be allowed on it.

21. The result, therefore, is that this appeal is partly allowed, judgment and decree of the lower Court is modified and the plaintiff's suit shall stand decreed to the extent of Rs, 5812/62 P. against the respondent. The defendant shall pay this amount to the appellant within three months from today failing which the appellant shall be entitled to interest at the rate of 6% per annum until its realisation. Because the appellant's claim has been partly decreed, therefore, both parties shall bear their own costs of both the Courts. Appeal No. 118 of 1958.

22. This appeal by the plaintiff is directed against the judgment and decree of the learned Senior Civil Judge, Baran dated 28th August. 1958.

23. The appellant filed a suit for the recovery of Rs. 17500/- as damages against the State of Rajasthan on the ground that its officers of the Civil Supplies Department procured from it 1664 Maunds 17 Seers of gram on 1st April 1953. 1000 Maunds of gram on 2nd June, 1953. 490 Maunds and 30 Seers on 15th July. 1953, 570 Maunds and 30 Seers on 16th July, 1953 and 330 Maunds of grain on 22nd October, 1953, at the rate of Rs. 10/- per maund in accordance with Clause 5 of the Rajasthan Gram and Gram Products (Export Control) Order, 1953, Issued by the Government of India, Ministry of Food and Agriculture in exercise of the powers conferred by Section 3 of the Act published in the Rajasthan Gazette Extraordinary dated 27th March, 1953, although the market rate on the aforesaid dates was Rs. 11/12/-, Rs. 14/15/-and Rs. 15/14/- respectively. It is alleged that taking of 40% of the gram under the latter part of Clause 5 at the rate of Rs. 10/- was unconstitutional being hit by Article 31(2) of

the Constitution of India because the Act did not provide for compensation for the foodgrains taken possession of or acquired and neither fixed the amount of compensation nor specified the principles on which and the manner in which compensation was to be determined and given. The suit amount also included Rs. 2465/1/- as interest by way of damages. It was alleged that prior to the institution of the suit, a notice u/s 80, Civil P. C. was served upon the defendant.

24. The suit was contested by the defendant on various grounds and it was stated that the latter part of sub-clause 5 (1) which runs as follows was not unconstitutional:

"Only of the gram or gram product Intended to be exported and applicant shall, if so required, sell the balance of 40 per cent, of the gram or gram product to the authorised officer-

(a) in the case of gram, at the rate of Rs. 10/- per maund;

(b) in the case of gram product, at the rate of Rs. 10/- per maund plus the normal charges for converting gram into the gram product in question."

It was further pleaded that the suit was barred by limitation as well as by Order 2, Rule 2, Civil P. C, Objection about the institution of the suit by the firm on the found that it was not registered was also taken. The defendant also denied that any gram was taken possession of by the officers of the Supplies Department from the plaintiff on the dates mentioned in the plaint.

25. The learned Senior Civil Judge framed as many as 18 issues in the suit but for the purpose of deciding this appeal, it is only necessary to mention the following issues:

"2. Whether the officers of the Supplies Department of the Government procured or acquired gram shown in the schedule enclosed with the plaint and if so, was it procured at a lesser rate than the market rate?

5. Whether the Rajasthan Gram and Gram Products (Export Control) Order, 1953 is ultra vires of the powers of Rajasthan and Central Government and it is illegal?

8. Whether the plaintiff has suffered the loss of Rs. 15034/15/- by the procurement of gram and is he entitled to recover this amount from the defendant?

9. Whether the plaintiff is entitled to recover the sum of Rs. 2465/1/- as Interest by way of damages?

10. Whether the plaintiff served the Valid notice u/s 80. Civil P. C.?

12. Is the suit within limitation?

15. Whether the plaintiff has already filed the suit against the Rajasthan Government as regards the procurement of the gram and he cannot bring this suit for relinquished claim under Order 2, Rule 2, Civil P. C.?

26. In this appeal, learned counsel for the appellant has raised the same contentions which had been raised in first appeal No, 117 of .1958. So far as issues Nos. 5, 9, 12 and 15 are concerned, they are common in both the appeals and the decision given in appeal No. 117 of 1956 shall also govern this appeal, it being held that the latter part of clause 5 (1) of the Rajasthan Gram and Gram Products (Export Control) Order. 1953, requiring the dealer to sell 40% of the gram or gram product at the rate of Rs. 10/- per maund is ultra vires of the Constitution and that the suit is governed by Article 49 of the Indian Limitation Act and the plaintiff is not entitled to any interest by way of damages and that the suit is not barred by p. 2, Rule 2, Civil P. C. The only question which remains to be determined in this appeal is whether any gram was taken possession of by the Officers of the Supplies Department from the plaintiff on the dates alleged in the plaint and as a result of this how much loss was sustained by the plaintiff and whether the claim is within limitation.

27. So far as issue No. 10 is concerned, the learned Judge was in error in holding that it was for the plaintiff to prove that a valid notice u/s 80 was served upon the defendant. In paragraph 7 of the plaint, it was clearly stated that on 2nd April, 1956, notice u/s 80, Civil P. C. was served upon the Slate of Rajasthan as well as the Collector Kotah, but no reply was received of these notices. The defendant in Para. 9 of the written statement admitted the receipt of the notice u/s 80 but stated that it was not in accordance with law. No reason was stated as to why such notice was not in accordance with law nor did the defendant produce the notice during the trial. In such circumstances it was for the defendant to show as to how the notice was invalid.

28. It is not disputed by learned counsel for the appellant that if Article 49 of the Limitation Act is held applicable to the suit, then the plaintiff's claim for the gram procured on 1st April, 1953, is barred by limitation. Similarly it is conceded by the learned counsel that the plaintiff has not given evidence about the loss sustained by it in regard to the quantity of gram procured from it on 22nd October, 1953. Learned counsel has, therefore, confined his claim to the gram procured on 2nd June, 1953, 15th July, 1953 and 16th July, 1953. It is stated in the plaint that 1000 maunds of gram was taken possession of from it on 2nd June, 1953, 490 maunds and 30 seers on 15th July, 1953, and 570 maunds 20 seers on 16th July, 1953. But in this connection, both Laxmichand plaintiff and Moolchand P. W. 4 Munim of the plaintiff, have stated that gram was taken from them from March 1953 to October 1953 without specifying the quantity or the dates on which it was taken from it.

Learned counsel for the appellant, however, relies upon the statement of Shankerlal D. W. 4 and the documents produced by the defendant in this behalf which according to him go to show that the same quantity of gram was taken from the plaintiff's firm as is alleged in the plaint though there is a slight difference in the dates of procurement. It has, therefore to be considered whether the statement of D. W. 4 and the other documents produced on behalf

of the defendant support the plaintiff's case in this regard. D. W. 4 has stated that on 21st May, 1953, 1000 maunds of gram in two instalments was taken possession of from the plaintiff. But no evidence has been produced by the plaintiff regarding the rates prevailing in the market on 21st May, 1953. D. W. 4 has not admitted that any quantity of gram was taken from the plaintiff on 2nd June, 1953. The document Ex. A/26 produced on behalf of the defendant also shows that 1000 maunds of gram was taken from the plaintiff on 21st May, 1953. It cannot, therefore, be said that the plaintiff has succeeded in showing that on 2nd June, 1953, 1000 maunds of gram was taken from him by the officers of the Supplies Department and that because of that taking of wrongful possession it sustained any loss.

29. As regards the quantity of gram alleged to have been procured on 15th and 16th July, 1953. D. W. 4 has admitted that the same quantity of gram was procured on 13th July, 1953, instead of 15th July, 1953, and the same quantity of gram was procured on 15th July instead of 16th July. That also finds support from Ex. A-26 produced by the defendant. There is no doubt that the plaintiff has not produced evidence about the rates of gram prevailing in the market on 13th July, 1953, but P. W. 2 and P. W. 4 have of course stated about the rates of gram prevailing in the market on 14th, 15th and 16th July, 1953. From the statement of P. W. 4 it appears that on 15th July, 1953, rate of gram was Rs. 186/- per Mani. P. W. 2 has stated that on 14th and 16th July, 1953, the rate of gram varied from Rs. 184/- to Rs. 187/-per Mani. It would, therefore, be just and equitable having regard to the statements of P. W. 2 and P. W. 4 to infer that the rate of gram on 13th and 15th July, 1953, must have been at least Rs. 184/- per Mani. That being so, the plaintiff sustained a loss of Rs. 2607/9/-and Rs. 2506/- on the quantities of gram procured from it on 13th and 15th July, 1953, as admitted by D. W. 4. On behalf of the defendant no evidence was given to rebut the evidence of P. W. 2 and P. W. 4 as regards the rate of gram in the free market on the aforesaid dates.

30. As a result of the above finding, the plaintiff is entitled to a sum of Rs. 5113/94 P. as damages from the plaintiff, but he is not entitled to any interest either before the institution of the suit or pendente lite, for the reasons mentioned in the judgment of appeal No. 117 of 1958.

31. This appeal is therefore partly allowed, judgment and decree of the lower Court is modified and the plaintiff's suit is decreed to the extent of Rupees 5113/49. The respondent shall pay this amount to the appellant within three months from today. Otherwise the decretal amount shall carry interest at the rate of 6 per cent, per annum till its realisation. As the suit has been partly decreed, both parties, having regard to all the circumstances of the case, will bear their own costs of both the Courts. Appeals partly allowed.