
(1979) 04 CAL CK 0002
In the Calcutta High Court

Pijush Kanti Basak and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-04-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 19(0), 19(1)(f), 19(1)(g)
Essential Commodities Act, 1955 — Section 3
Industries (Development and Regulation) Act, 1951 — Section 18G, 2, 25

Citation : 83 CWN 764

Hon'ble Judges : A.K. Mookherji, J

Bench : Single Bench

Advocate : S.C. Deb, S.L. Shroff and P.R. Mondal, for the Appellant; A.P. Chatterji, B.R. Patranabis and S.C. Ukil, for the Respondent

Judgement

Amiya Kumar Mookherji, J.—Common questions of law and facts involved in these nine Rules. Accordingly, these were heard together. This judgment shall dispose of a bunch of nine writ Petitions. The petitioners have been carrying on the business as licenced cement dealers in the district of Burdwen. Licences were issued to them by the Director of Food and Supply under the West Bengal Cement Control Act, 1948. Sometime in the month of June, 1978 the Government of West Bengal proposed to entrust the West Bengal Essential Commodities Supplies Corporation Ltd. hereinafter referred to as the ECSC, a State Government Undertaking, the entire quota of free sale cement allotted to the State of West Bengal, from 1st of October 1973 for marketing in the State. The purpose and object of controlling the distribution of the cement was to ensure that genuine consumers get their supplies without payment of any premium and at the controlled rate. To give effect to the said decision of the Government, applications in the prescribed forms were invited by the ECSC from the public for appointment as a dealer in imported and indigenous cement. The existing dealers were also asked to submit applications in the said form. Directives were issued by the Managing Director of ECSC and by the Dy. Secretary, Government of West Bengal, Food and Supply, to the District

Magistrates of all the districts and the Dy. Commissioner of Police informing them that it was the accepted State policy for selection of cement dealers under ECSC to appoint all the existing cement licenced dealers as dealers under the new arrangement if there are no adverse police or administrative reports against them. A list of existing licensed dealers including the name of the petitioners were sent by the said Managing Director to the District Magistrate. Thereafter, on or about the 28th September, 1978 the Cement Controller, New Delhi issued telegrams to all the manufacturers and/or producers of cement that in exercise of the powers conferred on him by the provisions of the Cement Control Order, 1967 they were directed that from October, 1978 they shall not despatch any cement under "free sale category" to any of their stockists in the 13th States/ Union Territories beginning of 1st October, 1978. On and from October, 1978 despatches under "free sale" will hereinafter be called "public sales category" in the aforesaid 13th States and Union Territories. Public sales will be made to these parties who are issued release order in their favour under the authority of the cement Controller. By the said instruction the cement controller has prohibited the manufacturers of cement from delivering any "free sale cement" to their stockists. But the entire free sale cement now named public sales has to be despatched in terms of the release orders that may be issued by the cement controller. In the State of West Bengal, ECSC has been entrusted with the marketing of cement who would distribute cement through cement licenced dealers. Release orders are now being issued solely in favour of the said ECSC who has decided for the time being to allot 55 tonnes of cement to each dealer per month. The petitioners went to the office of the respondent No. 4 at the cement sales office and there, found the list of cement dealers appointed in the district for the Burdwan under the new arrangement. From the aforesaid list, it appears that out of existing 85 cement licenced dealers in the Asansol Sub-division of Burdwan, only 17 dealers have been appointed and the names of the rest of the dealers numbering 68 have been deleted. The petitioners names have also been deleted from the said list of persons entitled to deal in cement as cement licenced dealers inspite of the fact that the petitioners have duly applied with the prescribed form to the appropriate authority. They are holders of valid cement dealers licences. It is alleged there are no adverse police reports against them. It is stated by the petitioners in the petitions that the method of taking over and conferring of the monopoly right of distribution and supply of cement to ECSC has been done by an executive instruction without any authority of law. The authorities are acting in colourable exercise of powers trying to confer the monopoly in the supply and distribution of cement to a State Government run Corporation without there being any sanction in law The Cement Control Order 1967 does not give any indication either in clauses 4 and 5 or anywhere else in the said order of any policy or principle for guiding the competent authority for choosing the allottees or fixing the quantum of allotment to the persons chosen by him. The authorities have failed to exercise their discretion and have acted most arbitrarily and in abuse of powers conferred on them by depriving the petitioners the cement dealership under the new arrangement without disclosing

to them any reason and basis for the same. According to the petitioner there are no adverse police reports against them. As the petitioners are not aware of any adverse reports or the same has been disclosed to them nor any explanation has been asked for, nor any show cause has been issued to them, regarding the purported report, if any, it is alleged that the authorities have been politically influenced and have acted on extraneous consideration not relevant to the purpose and object of the said taking over. Being aggrieved, the petitioners moved this Court under Art. 226 of the Constitution and obtained the present Rules and interim orders restraining the respondents not to give further effect to the impugned order.

2. An affidavit-in-opposition has been filed on behalf of the respondents 1-3 and 7-10 by Subendu Ray, Sub-divisional Officer, Asansol wherein it is stated that prior to taking over of cement distribution by the ECS Corporation, there was an acute shortage of cement supply in the cement market of West Bengal. This scarcity of cement had been felt since April, 1967 and except on one or two occasions of transitory nature, it prevailed throughout the period i.e. from April, 1977 till September, 1978. During the last 8 years it will be found that cement was not easily available in the market of West Bengal and there are constant public complaints that cement was being sold in Black market. Most of the cement that come to West Bengal are manufactured in factories situated in Bihar, Orissa, Madhya Pradesh and Tamilnadu. It is now known to the Government that the dealers in collusion with the suppliers had great contribution in the matter of creating occasional scarcity condition for cement in West Bengal. Studying all these aspects, the Government of West Bengal had decided that unless there was a neat distribution system of cement in the market of West Bengal, the chronic disease viz. scarcity of cement could not be cured. It is under that situation that the Government of West Bengal had taken the decision to take up distribution of cement throughout the State and consequently the said Corporation has been entrusted with the duty on approval of the Government of India. In order to ensure steady supply of cement in West Bengal as well as to establish the proper system for distribution of cement of different categories of consumers, the Government of West Bengal for sometime past had been considering to take up distribution of cement from the cement companies. The purpose for this taking over is two fold, first to ensure cement supply to different government departments and Public Sector Undertakings so that all development projects undertaken by the State Government for welfare of the people of the State may go on uninterrupted ; secondly to set up an effective machinery to curb the widespread blackmarketing in the cement markets in the State and to distribute cement to the people according to their need. Those persons against whom adverse police or administrative reports were found, they were excluded. Those persons who do not have any godown together with financial viability were also excluded. It is denied that monopoly right of distributor and supply of cement has been granted to the corporation. What has been done is that, the corporation will be the distributing agency on behalf of the producers and

manufacturers of cement, but the sales to the public under the public sales category will be done through the licenced dealers as before. It is not that the corporation has taken over the trade in sale of cement under the public sales category. There is no intention on the part of the corporation to interfere with private trade and commerce in cement. What is being done is that, the allotment of cement is being canalised through the Corporation to the dealers instead of direct from the manufacturers to the dealers. This is not act of monopoly either on the part of the Central Government or of the Corporation but is a reasonable restraint on the trade in order to ensure accountability and prevent blackmarketing. A district list has not yet been finalised. The petitioners could not be allowed to continue as cement dealers without being selected as such by the Corporation.

3. On behalf of the corporation an affidavit-in-opposition has been filed by Sunil Chandra Guha, Commercial Manager, wherein it is stated that M/s. Kara Kumar Munnalal was involved in Asansol P.S. case No. 94(7)/74 u/s 6 of the Cement Control Act, 1948. The petitioner, however, were acquitted by the Court.

4. Mr. Deb, appearing on behalf of the petitioners contended that creation of monopoly or canalisation of distribution of cement is without any authority of law. Provisions of section 18G of the Industries (Development and Regulation) Act, 1951 had not laid down any power in the Central Government or the State Government to take away the entire business of distribution of cement and to grant a monopoly in favour of the State Government or the State owned corporation or in favour of any other person or persons. Under the aforesaid provisions of the said Act, it is submitted, the government can lay down the rules and regulations for controlling the price or for regulating by licences, permits, etc. for storage, transport, distribution etc. of cement or to sell the same to the specified person or persons or authority; but they had no power to prohibit the sales or purchase by persons in whose favour licences have already been issued and to allow distribution of cement by wholly different agencies. In any event, it is contended that, there is no power or authority under the Cement Control Order, 1967 whereby the Government can take over or monopolies the entire business of distribution of cement from the licencees. Clause 4 of the order does not give any power to the Central Government or the Cement Controller to create any monopoly. There is no provision in the Order of 1967 whereby the sole producer or a dealer or a distributor may be appointed. It is urged that special legislation for creation of monopoly in any trade is required. Schedule 7 list 3 of item 21 of the Constitution confers power both on the State and the Central Government to create monopoly. The same must be done by a legislative body making an Act by following the proper procedure as laid down in the Constitution. Clause 4 of the Cement Control Order is not a law by which regular trading can be totally stifled or a monopoly can be created. It is of limited scope for ensuring the smooth running of the normal trade for controlling the price or for regulating the trade by licences and permits. Law to regularise normal trade can not be used for creation of monopoly. This is a total abuse of powers of the

executive. By creation of a monopoly, a specific law has to be passed by Parliament or State Legislature. There is no such law in the instant case. Reliance was placed upon an unreported Bench decision of this Court in *State of West Bengal v. Jajodia Mercantile Company*. Appeal No. 130 of 1978 decided on August 1, 1978.

5. In *Jajodi Mercantile Company's* case, the respondent No. 1 a partnership firm was carrying on business as distributor inter alia paraffin wax including match wax in the State of West Bengal. The said goods were supplied to the firm by *Burmah Shell Oil Storage and Distributing Company of India Ltd.* who in its turn used to get supply from *Assam Oil Co. Ltd.* Paraffin wax order was promulgated u/s 3 of the *Essential Commodities Act 1955*. The said order contains provisions for appointment of a competent authority by gazetted notification. Director, Cottage and Small Scale Industries, West Bengal was authorised to exercise the powers and perform the functions of the competent authority for the whole of the State of West Bengal. By a letter dated 29th December, 1977, the competent authority intimated the respondent No. 1 about the appointment of the respondent No. 4 the *West Bengal Small Industries Corporation Ltd.* as the sole dealer under the said order for the purpose of supply of paraffin wax to the actual user with effect from 1st December, 1977. It was contended on behalf of the respondent No. 1 that the State could not create monopoly in any trade or business by a mere executive order where a law relating to the control of the said business and/or for distribution of supply of the goods concerned is existing. There was no provision for appointment of any sole dealer under the said order. The court held that the paraffin wax order did not provide for creation of a monopoly in the matter of distribution of trade of a paraffin wax. The court found that the State Government has created a monopoly by an executive order and not by any law. Accordingly the order of the appointment of the respondent No. 4 as the sole dealer in the matter of distribution of paraffin wax was declared illegal.

7. Mr. Chatterji, appearing on behalf of the respondents contends that the present change in the distribution of cement has been made in order to ensure stoppage of premiums and to ensure that all licenced dealers appointed under *West Bengal Cement Control Order* do get equal quantities of cement at regular intervals. According to Mr. Chatterji it is not correct to say the State wants to take over the trade or any monopoly is being sought to be created. What is being done is that, distribution is being canalised through ECSC and the dealers will have to take deliveries of cement from ECSC instead of from the manufacturers direct. Reliance was placed by Mr. Chatterji on the decision of the Supreme Court in *Harisankar Bagla v. State of Madhya Pradesh* (AIR 1954 S.C. 495) and *Glass Chatons Importers and Users' Association Vs. Union of India* (UOI), .

7. In exercise of the powers conferred by section 18G and section 25 of the *Industries (Development and Regulation) Act 1951* the Central Government promulgated the *Cement Control Order 1967*.

Clause 4 of the said order reads as follows :--

The Central Government may, by order require any producer to sell cement to such person or class of persons or to transport the cement to such destinations by such mode of transport and on such terms and conditions, as may be specified in the order. "Producer" has been defined as "any person who manufactures cement".

8. The petitioners are not the producers of cement. They are dealers appointed under the the Cement Control Order 1948. So it is not correct to say that the Government has taken over or monopolised the entire distribution of cement from the licencees. The licencees were never the distributors. Previously the dealers had direct, contact with the producers or manufacturers of cement and they used to get the supply at a fixed quota determined by the Cement Controller and to sell the consumers at a fixed rate determined by the State Government. In the present system, instead of getting the supply direct from the producers, the licenced dealers are required to get the supply from ECSC, a State Government Undertaking. It is well settled that a monopoly cannot be created without any law. Now, in the present case it is to be determined whether a monopoly right has been created upon the Corporation and by creation of such monopoly right petitioners" right to carry on trade as cement dealers has been affected or taken away by such action of the Cement Controller. Petitioners" rights to carry on trade as licenced dealers have not been infringed in any way whatsoever. The producers might have been aggrieved by the impugned order as they are prevented from selecting dealers and trading with them directly according to their own choice and on such terms and conditions as they like.

9. Paraffin"s case which has been strongly relied upon by the petitioners, in my opinion, has got no application to the facts and circumstances of the present case. In that case, the dealership was taken away by creating a monopoly in favour of West Bengal Small Industries Corporation Ltd. and as a result the dealers were entirely ousted in the field of trade. Accordingly, this Court struck down the order creating sole dealership of Paraffin wax to the West Bengal Small Industries Corporation Ltd. In the instant case neither the dealership of the petitioners nor the business of the producers of cement have been taken away by the impugned order. Only the distribution of cement has been canalised through the State owned corporation for the benefit of the public at large. These are regulating distribution of the cement for which powers have been conferred in section 18G of the Industries (Development and Regulation) Act, 1951.

10. In Harisankar Bagla"s case, clause (3) of the Cotton Textiles (Control of Movement) Order, 1948 was challenged. Under that clause the trade was required to take a permit from the Textile Commissioner to enable him to transport textile. The Supreme Court held that 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.

11. In *Class Chalon's* case paragraph 6(h) of the Imports Control Order was challenged on the ground that it violated Art. 19(1) (g) of the Constitution. Under the authority of that paragraph the Central Government or the Chief Controller may refuse to grant a licence or may direct any other licencing authority not to grant a licence if the lecenicing authority decided to canalise import and distribution thereof through special or specialised agencies from channels. The Supreme Court held that, if canalisation of imports is in the interest of, the general public, the refusal of import licence to applicants outside the agencies or channels decided upon, most necessarily be held also in the interest of the general public. The Court, therefore, held that paragraph 6(h) did not violate Art. 19(1) (g) of the Constitution. The provision of canalisation, however, has been laid down in paragraph 6(h) of the Import Control Act itself and it is true that no such provision is to be found in section 4 of the Cement Control Act. So it is to be determined whether powers conferred upon section 4 include the power of canalisation.

12. In *Shree Meenakshi Mills Ltd. Vs. Union of India (UOI)*, , in exercise of powers conferred under clause 30 (i) (b) of Cotton Textiles (Control) Order, 1948 a notification was made by which no producer of yarn for civil consumption shall sell or deliver any such yarn produced by him except to such person or persons and subject to such conditions as the Textile Commissioner might specify. The same notification contained another direction under powers conferred by clause 30(1) (a) of the 1948 Order that every producer of yarn for civil consumption shall sell or deliver such yarn only to 5 channels of distribution mentioned therein on the basis of the direction that might be issued from time to time by the Textile Commissioner. These 5 channels are (a) the nominees of the State Government (b) the Handloom Promotion Council, Madras (c) The Cotton Textile Export Promotion Council, Bombay (d) Federation of Hosiery Manufacturer's Association of India, Bombay and (e) any other person as may be nominated by the Textile Commissioner in this behalf. It was contended that the impugned orders requiring the producers to deliver yarn only to 5 channels of distribution mentioned therein created monopoly in favour of specified persons, and therefore, there was violation of Art. 19 (1) (f) and (g) of the Constitution. The 5th channel of distribution viz. "any other person as may be nominated by the Textile Commissioner" was attacked on the ground that there was no classification and it conferred arbitrary power of choice. The Supreme Court upheld the validity of the Notifications and observed that the distribution control is intended to ensure availability of yarn at reasonable or fair price. Profiteering hoarding, cornering are the evils to be eliminated. Black marketing as the expression goes is to be weeded out in this manner. Elimination of persons who have hoarded or cornered or are unscrupulous in distribution is intended in public interest. This is a reasonable restriction in the interest of the general public and is contemplated in Art. 19(0) of the Constitution.

13. In *Bhatnagars and Co. Ltd. Vs. The Union of India (UOI)*, the importers resorted to malpractices leading to speculation and fluctuation in prices. The

Government, therefore, canalised distribution of goods by inviting traders for the grant of import licences. The Supreme Court held that it was open to the Government in national interest to intervene and regulate the distribution in a suitable manner.

14. In *Mannalal Jain Vs. The State of Assam and Others*, the Assam Food Grains (Licencing and Control) Order, 1961 conferred power on the authority to have regard to Co-operative Societies in the grant of licences. The Supreme Court held that such preference did not create a monopoly. The Co-operative Societies in village were held to be in a better position for maintaining or increasing supplies and for securing equitable distribution and availability at fair prices in accordance with village economy.

15. Canalisation order have been upheld by the Supreme Court as reasonable within Art. 19(6) of the Constitution in *Daruka & Co. v. Union of India*, AIR 1973 S.C. 271. In that case the Supreme Court held that dominant purpose of the scheme which was challenged in the case was canalisation and not to acquire the business or goodwill of traders in favour of the Corporation. Relying upon the *Glass Chaton's* case the Court said that the scheme of canalisation was not acquisition of right to carry on trade but it meant only the recognised agency could carry on trade.

16. In *Dava Gohil Vs. Joint Chief Controller of Imports and Exports*, , the question of canalisation of the trade was again taken up by the Supreme Court. The Supreme Court held that the choice of the State Trading Corporation and the granting to it of quotas was neither beyond the powers conferred upon the licencing authorities under clause 6(h) of the Export Control Order nor was otherwise open to objection.

17. Reliance was placed by the petitioner upon an unreported decision of Rajasthan High Court in *Sunder Narayan v. Union of India* (Civil Writ Petition No. 648/78) decided on 23rd October, 1978.

18. In that case the petitioners challenged the action of the respondent Nos. 1 to 4 by which the Collector has issued an order to the effect that the quota of cement for the period October to December 1978 shall be allotted to the Co-operative Societies and it shall be distributed to the consumers only through Co-operative Societies. It was contended on behalf of the petitioners that in view of the distribution policy of the Government, the petitioners and other stockists have been completely eliminated in the distribution of cement to the general public as such distribution is to be made now through the Cooperative Societies alone. The Cement Controller of India has issued an order on 25th September, 1978 directing all the producers of cement not to despatch any cement under free sale category to any stockist in Rajasthan after 1st October, 1978. Thus all the present stockists of cement have been eliminated from the cement trade, though the terms of their licences were yet to expire.

Clause (g) of the Rajasthan Cement Control Order 1974 defines "stockist" as

under :

Stockist means a person, who deals in cement involving the purchase, sale and storage for sale of cement but does not include a manufacture of cement.

19. Clause 14 of the Rajasthan Cement Control Order was substituted which provided "no licensee shall acquire cement for sale except under the authorisation issued by the State Government or the Collector within the local limits of whose jurisdiction the place of business of the licensee is situated. The Court was of opinion that the Government could not create monopoly rights in favour of the Co-operative Societies excluding the present licenced holders as a class. The amended clause was held to be valid and the authority prescribed under the said clause was directed to consider the applications of all the licences on merits. The order creating the monopoly rights to the Co-operative Societies was, however, struck down.

20. In my opinion, the above decision of the Rajasthan High Court has got no application to the facts and circumstances of the present case. In Rajasthan's case the "stockist" were completely eliminated in the cement trade. Not only distribution but the Co-operative societies were permitted to sell the commodity direct to the consumers as a result the licencing stockists were wholly ousted. In the instant case the licenced cement dealers" have not been eliminated in the cement trade. They are entitled to carry on their business of selling cement to the consumers but under the New State policy they were required to apply for fresh licences.

21. So, it is manifestly clear that the impugned order of Controller of Cement passed u/s 4 of the Cement Control Order by which the producers were asked to sell cement to the ECSC, a State Government Undertaking, the entire quota of free sale cement allotted to the State of West Bengal, did not create a monopoly in favour of the ECSC, but canalised the distribution of cement in the State of West Bengal through the said Corporation and that power is within the powers conferred upon the Cement Controller u/s 4 of the Act.

22. It is next contended by Mr. Deb, that clause 4 of the Cement Control Order 1967 is violative of Arts. 14, 19(1) (f) and (g) of the Constitution inasmuch as the powers conferred upon the Controller are unguided and absolute. No criteria, no standard, neither any method nor any circumstances, have been laid down for exercise of such powers under clause 4. No provision for any appeal, revision or review has been provided for, against the orders passed by the Cement Controller under clause 4 of the said order.

23. Where no rule or principle to guide the Cement Controller is provided for in the Order or where no check or control by higher authorities is intended, the Cement Controller is to be guided by the provisions of section 18G of the Industries (Development and Regulation) 1951 as well as by clause 4 of the Cement Control Order. The rules or principles for guidance are first, equitable distribution, and second availability at fair prices. The price has been fixed under

the Order. The price at which the producer will sell that has also been fixed and the maximum price at which cement may be sold by a dealer is to be fixed by the State Government. Moreover, the Cement Controller has got no power to grant or refuse any licence. It is true that no appeal has been provided for in the order but if an order of the Cement Controller is found to be arbitrary, malafide or without jurisdiction, the remedy is available to an aggrieved party to challenge the said order of Controller under Art. 226 of the Constitution. So, in my opinion, clause 4 of the Cement Control Order 1967 does not offend Art. 14, 19(1) (f) and (g) of the Constitution.

24. It is next contended by Mr. Deb that the authorities cannot override the statutory licencing power by any policy of the State. Procedure has been laid down in the West Bengal Cement Control Act 1948 as to how a person has to be given a licence or how his licence has to be suspended or cancelled. Existing dealers who hold valid licences under the said Act, their right of trading could not be affected by any executive action. The District Authorities have flouted even the declared State policy. A large number of existing dealers most of whom have police cases against them have been appointed dealers.

25. It is contended by Mr. Chatterji, appearing for the respondents that in 1951 the Industries (Development and Regulation) Act was passed and the said Act was enforced throughout India with effect from May 8, 1952. u/s 2 of the said Act, Parliament declared that it was expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. "Cement" was one of the industries specified in the First Schedule. After the said declaration, it is submitted, that the State Legislature has lost jurisdiction to legislate on the scheduled industries and under Art. 162 of the Constitution the extent of executive power extends only to subjects on which State Legislature has power to legislate. The State Government cannot exercise any executive power of control over the scheduled industries subsequent to 8th May, 1952. Necessarily, the licencing provisions made under West Bengal Cement Control Act, with a view to exercise control over its distribution etc. have lost their force after 8th May, 1958. At present distribution of cement is controlled by the Cement Control order issued by the Central Government u/s 18G of the Industries Development Act. Under Clause 4 of 1967 Order, ECSC has been nominated to which the manufacturing company is required to deliver its cement so far as West Bengal is concerned and ECSC will appoint dealers throughout West Bengal. It is argued that ECSC is not bound by any of the provisions in making appointments of dealers.

26. Under Entry 33 of list 3 of 7th Schedule to the Constitution the State Government is competent to legislate trade and commerce in, and the production and supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products. The grant of licence is also concerned with the production, supply and distribution of

the products of any industry declared u/s 2 of the Industries (Development and Regulation) Act (vide *Bishnupada Kunkri v. District Controller, Food & Supply*, 1976 (2) C.L.J. 499). The Cement Control Order 1967 does not lay down any procedure for licencing. An order under clause 4 of the Cement Control Order 1967 passed by the Controller of Cement asking the manufacturers to supply cements of the West Bengal quota to ECSC has nothing to do with granting of licences to the cement dealers under the Cement Control Act, 1948. That Act has neither been repealed nor amended. In my opinion, it has not lost its force after 8th May, 1952 as contended by Mr. Chatterji. Under the Cement Control Act 1948 applications for licence shall have to be made to the Director of Consumers Goods, West Bengal or to any officer authorised in writing in this behalf by the said Director. ECSC, a State Government Undertaking cannot exercise power of granting licences under the West Bengal Cement Control Act 1948. The Cement Control Order 1967 does not confer any such power on the ECSC for granting licence to the Cement Dealers. The Director of Consumers of Goods cannot delegate its power to ECSC who is not an officer of the State Government. The petitioners who are the existing licence holders could not be compelled to apply for fresh licences to ECSC by an executive order. Unless petitioner's licences are either suspended or cancelled by any authority of law, their licences must be held to be valid and subsisting as such the existing licence holders are not required to apply for fresh licences. They are entitled to carry on their business under the existing licence.

27. In the result, these nine Rules are made absolute in part. The order passed by the Cement Controller under clause 4 of the Cement Control Order, 1967 entrusting the West Bengal Essential Commodity Supply Corporation Ltd. as the sole distributor of cement in West Bengal is held to be valid. Clause 4 of the Cement Control Order is *intra vires*.

28. Let a Writ of Mandamus be issued commanding the respondent Nos. 2 and 3 to issue directions upon the respondent No. 4 to supply appropriate quota of cement to the petitioners on the basis of their existing licences until the expiry of the said licences or their licences are cancelled in accordance with law. There will be no order as to costs.

This order, however, shall not prevent the petitioners to apply for renewal of their licences in accordance with law.

Let the operation of the order remain stayed for a period of two weeks from date as prayed for by Mr. Arun Prakash Chatterji learned advocate appearing on behalf of the Essential Commodities Supplies Corporation.