

(1968) 03 BOM CK 0026

In the Bombay High Court

Case No : Special Civil Application No's. 3010, 3034 and 3035 of 1967

Prabhakar Ganpatrao Samel

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-03-1968

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19
Essential Commodities Act, 1955 — Section 3

Citation : (1969) 71 BOMLR 500 : (1967) MhLj 9

Hon'ble Judges : Patel, J;Nain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Patel, J.—These three petitions are filed by rice millers and raise important questions regarding the validity of the Maharashtra Scheduled Foodgrains (Stocks Declaration and Procurement and Disposal, Acquisition, Transport and Price Control) Order, 1966 (hereinafter referred to as the Order of 1966) and the action taken by the State Government thereunder. This Order was promulgated under the Essential Commodities Act, 1955, as amended from time to time. Shortly stated, by this Order the Government prohibited all private dealings in certain kinds of foodgrains and made it compulsory to be sold to the Government or its agent. The said Order contains 20 clauses and, as now finalised, it applies to paddy and rice, Jowar, Nagli, Pohas and Kurmuras. Clause 3 of the said Order requires periodical declarations of stocks by every person who holds more than ten quintals of the scheduled foodgrains. Clause 4 gives power to the Collector or any officer authorised by him to call for declaration of stocks. Clause 5 prevents any person or class of persons, if so directed by the Collector or any officer authorised by him, to consume, remove or sell or dispose of in any manner whatsoever such stocks of food-grains. Clause 6 gives power to the Collector to call upon any person holding stocks of foodgrains beyond his normal requirements to be sold to the Government or its officer or agent named by the Collector at a price stated by him etc. Clause 7 is a consequential clause and

provides for action to be taken in case "of failure to comply with any direction under Clause 6. Clause 8 prescribes the procedure for giving notice under clauses 4, 5 and 6. Clause 9 prevents anyone except under and in accordance with an authorisation granted by the Collector or by an Officer authorised by the Collector from acquiring any foodgrains from any person for the purpose of sale or storage for sale. Clause 9A has been added subsequently by an amendment on November 25, 1967 and imposes restrictions on the milling of paddy or rice except under and in accordance with an authorisation granted by the Collector and also prevents purchase or acquisition of paddy or rice from any person for the purpose of milling for household consumption. It also gives power to the Collector or the authorised officer to impose limitations on the quantities that could be milled in respect of any person or class of persona and also on the charges for the same. Clause 10 prevents any person other than recognised dealers from selling or otherwise disposing of foodgrains to any person except under and in accordance with an authorisation granted by the Collector or any Officer authorised by him.. It contains two exceptions: (1) in respect of sale or disposal in favour of the Government or any officer or agent nominated by the State Government or the Collector and (2) in respect of sale or disposal by an agriculturist to any other person for bona fide consumption by that person in a certain manner and to the classes of persons mentioned therein. Clause 11 enables the Collector to call upon any person having stocks of foodgrains in excess of his family requirements as stated therein, and who has acquired it under Clause 10 to sell it to the Government and deliver the same at the purchase centre that portion of his stocks which is over and above the maximum limit prescribed therein. Clause 12 prevents all persons other than recognised dealers from transporting food-grains without authorisation. Certain exceptions are provided therein consequential upon the other provisions of this Order. Clause 14 prescribes the price payable by the Government or its agent to any person who is required to sell the specified foodgrains as specified in the schedule. Clause 15 requires the Collector or the Appropriate Officer to serve notice of demand on every holder of land to sell surplus stock over and above his requirements prescribed in that clause to the Government at the price stated in Clause 14. Clause 16 gives powers of entry, search, seizure etc. to the Collector or any officer authorised by the State Government or the Collector, or any appropriate Officer or any Police Officer not below the rank of Sub-Inspector for inspecting" any stocks of foodgrains in respect of which he has reason to believe that this Order has been contravened with other consequential provisions. Clause 17 provides an exception to the effect that the Order would not apply to the stocks held by the Government and transported by certain agencies. Clause 18 gives power to the State Government subject to such conditions as may be specified in this behalf by general or special order, to exempt any person or class of persons or the public, generally in any area or throughout the State in respect of all or any of the foodgrains from the provisions of the Act and also gives it power to suspend or cancel any such exemption. Clause 19 gives a person aggrieved by an order made under the said Order the right of appeal.

2. Government appointed a working group to suggest improvement in the monopoly procurement in August 1967. After its suggestions were received, by a Resolution dated December 10, 1967, it formulated its policy under the Order of 1966. It appointed the Maharashtra State Co-operative Marketing Federation Ltd. (we will refer to it as the Federation) as its agent. It had to take delivery of all foodgrains on behalf of the State, have them milled and deliver the same thereafter to the Collectors of the Districts. For doing this it had to act in accordance with the instructions contained in the Resolution. These instructions go in minute details. The Resolution also lays down detailed instructions for the guidance of the Collectors in carrying-out the provisions of the Order of 1966.

3. The points made before us both by Mr. Paranjpe and Mr. Porus Mehta, on behalf of the petitioners, are these:

(1) That there is nothing in the Essential Commodities Act, 1955 (hereinafter referred to as the Act of 1955) which gives power to the Government to create any monopoly either in the State or in the Federation.

(2) Even if the said Act of 1955 gives power to the Government to create a monopoly of the trade in the State, in substance it has created a monopoly in favour of the Federation which is wholly improper having regard to the constitutional provisions and those of the Act of 1955.

(3) Even assuming that monopoly is created in the State Government, the agency monopoly created in favour of co-operative society is itself bad inasmuch as it has given very wide powers of making appointments of sub-agents and milling agents for carrying out the work,

(4) That this is sought to be done by means of a Resolution of the Government (Resolution of 1967) which cannot have the effect of law.

(5) The next contention in connection with the provisions of clauses 5, 6, 9, 9A, 10, 14 and 18 of the Order of 1966 is that these provisions give uncontrolled and arbitrary powers to Collectors and/or other officers without laying down any guiding principles whatsoever for their exercise and are hit by Articles 14 and 19 of the Constitution.

4. The first contention can be shortly disposed of as it depends upon the construction of the provisions of the Act of 1955. The preamble of the said Act is:

An Act to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities.

Be it enacted...

Section 3 of the Act lays down the powers in general terms as follows:

Powers to control production, supply, distribution, etc. of essential commodities:-

(1) If the Central Government is of opinion that it is necessary or expedient so to

do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein,

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

(f) for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or State Government or to an officer or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order ;

It is argued by Mr. Porus Mehta that the terms of Section 3(7) of the Act of 1955, which are general, do not indicate that any power is intended to be vested in the Central Government to have a monopoly of trading in any of the food-grains or articles referred to in the Act. It is no doubt true that there is no express power. Sub-section (2) refers to the provisions of Sub-section (1) and to its generality and makes provision for orders regarding the several matters. Inasmuch as by Clause (f) a provision is made for an order for requiring any person to sell the stock of any essential commodity to the Government or an officer or agent of such Government, it must indicate that this power is included in Sub-section (1) even without its being specifically referred to. In any event, on the construction of Clause (i) it is obvious that it is within the power of the Government to frame or make any order requiring any person to sell the stock in any essential commodity to the Government or its agent or an officer or even to such other person or class of persons. Sub-section (1) enables the State Government to prohibit trade in essential commodities by special or general order. It is not, therefore, possible to accept the contention that the order in so far as it requires every person to sell the surplus stock to the Government is not within the intendment of Section 3 of the Act of 1955.

5. Coming to the second part of the argument, the contention is that the Government has no right to give monopoly to the Federation. This contention requires that we should first examine the real nature of the Order and the functions of the Federation. Before we do this, we must consider whether it is permissible for the State Government to acquire monopoly of trade at all. In this connection we might refer to the provisions of Article 19 of the Constitution of India, which are relevant for the present discussion. Article 19 relates to right to freedom and is worded thus:

(f) All citizens shall have the right-....

(g) to practise any profession, or to carry on any occupation, trade or business.

The several rights referred to in Clause (f) are qualified by the subsequent clauses. In respect of the right quoted above, Clause (6) is relevant and is

worded thus:

Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-...

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

A plain reading of this provision clearly indicates that it is possible for the State Government to make a law by which it becomes entitled or by which a corporation owned or controlled by the State is entitled to do any trade or business etc. even to the exclusion, which may be complete or partial, of citizens or otherwise. No authority is needed for this proposition. If any authority, however, is needed, it is to be found in *Akadasi Padhan Vs. State of Orissa*, where Gajendragadkar J., speaking for the Court, while construing the provisions of Article 19(6), observed:

...The task of construing important Constitutional provisions like Article 19(6) cannot always be accomplished by treating the said problem as a mere exercise in grammar. In interpreting such a provision, it is essential to bear in mind the political or the economic philosophy underlying the provisions in question, and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem. The theory underlying the amendment in so far as it relates to the concept of State monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which Socialism accepts. The amendment clearly indicates that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of the general public, so far as Article 19(1) is concerned. Article 19(6) (ii) clearly shows that there is no limit placed on the power of the State in respect of the creation of State monopoly. It is not correct to say that the creation of a State monopoly must be justified by showing that the restrictions imposed by it are reasonable and are in the interests of the general public.

6. We may, in this connection, observe that in the petitions an attempt was made to show that it was not in the interests of the public to have imposed the restrictions of the said Order and to exercise monopoly rights by the State. However, none of those matters were pressed before us. Even otherwise the State in its affidavit has amply justified them. If, therefore, there is in reality a monopoly in favour of the State regarding the purchase of the foodgrains referred to in the said Order then the same cannot be questioned, and it must be presumed to be in the interests of the general public.

7. The first question, therefore, is whether the said Order of 1966 really creates

a monopoly in the State to make purchases of the said foodgrains. We have already summarised the provisions of this Order. We need only say that Clause 9 of the said Order of 1966 prevents anyone except under and in accordance with an authorisation granted by the Collector to acquire food-grains from any person for the purpose of sale or storage for sale. Similarly, Clause 9A of the said Order prevents anyone except under and in accordance with an authorisation granted by the Collector to acquire paddy or rice for milling and if so authorised to do the milling, it should be as per the condition of the authorisation. Clause 10 prohibits any sale of the foodgrains by any person except recognised dealers, and the proviso enables the sale in favour of the Government or any officer or agent nominated by the State Government or the Collector and sale by an agriculturist only for the limited purposes mentioned therein. These limitations are that in no case can the sale of paddy exceed twenty kilograms of Jowar; twenty kilograms of paddy and five kilograms of Nagli. Moreover, even the sale of these quantities is confirmed to a person residing in the same village of the same district for bona fide consumption by that person and members of his family; secondly, to any village artisan or other person entitled to receive foodgrains as a customary remuneration for services; thirdly, to a labourer or servant employed by him and fourthly, to such educational, philanthropic and charitable institutions as may be approved by the Collector in this behalf, subject to such conditions as he may impose, as donations in kind. Moreover, the further condition is that the sale or disposal of foodgrains under para, (i), (ii) or (iii) shall not be made by the agriculturist at any place other than his residence or a place where stocks of such foodgrains are normally stored. "Clause 15 requires the Appropriate Officer to issue notice to every holder of certain type of land to sell the surplus quantity under certain prescribed conditions. Such surplus quantity is to be computed as provided therein and the price is specified under Clause 14 which relates to fixation of the price. Clause 6 is a corresponding provision which touches other than agriculturists, who may possess excess stocks of foodgrains and who can be called upon by the Collector or any officer authorised by him to sell the same to the State Government or its agent at the specified price. A further corollary to the provision of Clause 10 is that any of those persons to whom the agriculturists are permitted to sell could be called upon by the Collector to sell to the Government or its agent the excess stocks of foodgrains over and above their personal requirements to be computed as provided in Clause 11. These sets of clauses clearly indicate that there is complete stoppage of the trade in the foodgrains specified in the Order of 1966 by any private individual and also by the agriculturists except to the limited extent. There is nothing, therefore, on the face of the Order to suggest that a monopoly is created in favour of any person other than the State Government.

8. The contention, however, is that by the Resolution dated December 10, 1967, the Government has virtually transferred its own monopoly to the Federation which, it is said, cannot be done under the Constitution. In this connection reliance has been placed both by Mr. Paranjpe and Mr. Porus Mehta on the

decisions in District Collector, Hyderabad Vs. Ibrahim and Company and Others, and in Akadasi's case already referred to above. In Akadasi's case, as we have already observed, the State monopoly is recognised and accepted. The said decision also decides that it is competent to the State to carry on the business or trade either by its own personnel departmentally or by the employment of agent. The condition, however, prescribed is that the agency must be both in name and substance and not a second monopoly under the garb of agency. So far as District Collector's case is concerned, it has really no application for the obvious reason that the Government enacted Andhra Pradesh Sugar Dealers Licencing Order, 1963 and under the garb of issuing licenses, it purported to create virtually monopoly in certain co-operative societies to the exclusion of others without there being a specific provision in respect of the same. In the present case, therefore, we have to examine the real relationship created between the State Government and the Federation.

9. At the outset, we might mention that the Federation is what is called the Apex Federation, the membership in which is essentially of several co-operative societies and individual membership is almost nil or is of a very limited extent. Further, even if an individual is permitted to become a member, that individual has no right to vote. Moreover, there is large investment of the State to the extent of 75 per cent, of the total capital. Over and above the directors elected from each district by the several co-operative societies operating in the districts, a director is also nominated by the State Government. Further in case there is any difference of opinion between the director nominated by the State and the Board of Directors, on any matter, the dispute must be referred to the State Government whose decision in the matter is final. This clearly indicates that this is a Corporation controlled by the State.

10. It is no doubt true that if there had been an. Order or law permitting this Federation to have monopoly of the, trade, that law would have been valid under the provisions of Article 19(6)(ii) of the Constitution. We agree, however, with Mr. Paranjpe that it is not possible to regard the Resolution dated December 10, 1967, as law as understood under Article 13 of the Constitution, It is possible to include in the definition of the word "law" even rules, bye-laws, regulations, notifications or orders issued under the power conferred on the Government to issue the same. However, it is not possible to hold that this Resolution is made in pursuance to the power contained either in the Act of 1955 or the impugned Order 1966. There is, in fact, no residuary clause enabling the Government to issue directions from time to time for carrying out the provisions of the Order as may be needed. If therefore, on a fair and reasonable construction of the relationship between the State Government and the Federation, we come to the conclusion that this is a monopoly of the Federation and not of the State Government, then, evidently, the delegation of monopoly to the Federation would be bad, even though it is controlled by the Government, If, on the other hand, the monopoly is in the State Government then it is entitled to choose any agent of its choice, and in that case, its action in choosing the Federation as its agent

cannot be said to be invalid.

11. This brings us to the question as to whether the relationship between the Government and the Federation is that of principal and agent. Paragraph 3" of the Resolution dated December 1.0, 1967, shows that the Federation is to act as the Chief Purchasing Agent for Government and it is entitled to appoint as its purchasing as well as milling sub-agents, and wherever feasible at village level Sowa Societies and the Co-operative Rice Mills, which are efficient and which fulfil the requisite conditions. Where such societies are not available, a direction is given to appoint Taluka and District Purchase and Sale Unions, and where this is not possible, the Federation has to effect purchases itself through its own organisation. Even so, the residuary powers are given to the Collector to organise purchasing centres on Government account, where the local sub-agent of the Federation fails to carry out the purchasing operations to the entire satisfaction of the Government. There are a large number of detailed instructions which show that even though under para. 3 there might be discretion in the Federation to appoint sub-agents in reality that is not so. It has to obtain the approval of the Collector to appoint sub-agents. Not only that, but even the personnel employed by such sub-agents has to be sanctioned by the Collector. The sub-agents so appointed by the Federation have to comply with certain conditions viz., (1) the staff that they appoint must be such as is finally approved by the District Selection Committee; (2) to make adequate financial arrangements; (3) to maintain a true and proper account of all the transactions; (4) to pass receipts and challans to be handed over to the Talathi; (5) to submit Daily or Weekly Returns as prescribed by the Federation to the Collector or his representatives; (6) to make all the deductions for purposes specified in Clause 14; (1) to make all adequate arrangements for receipt of paddy and its milling, weighment, standardisation, bagging etc. and also to store until delivery to the "Collector; (8) to maintain a Visitor's Book duly sealed, paged and signed by the Mamlatdar, where remarks passed by the officers of the Government, the Collector or his Supply staff, officers of the Co-operative Department, President and Vice-President of the Zilla Parishad etc. would be recorded and (10) to abide by any other reasonable conditions the Collector may deem fit to impose. Even in the case of Rice Mills selected for this purpose, similar restrictions have been placed. After the Federation processes the paddy and converts it into rice, it has to give written intimation to the. Collector for taking over the stocks on account of the Government. It is obvious, therefore, that what the Government has done is that instead of appointing temporary and untrained staff for the purpose of making collections of food-grains and getting the paddy milled at a large number of centres which require to be opened in view of the State monopoly, it has handed over a part of its work to its agent i.e. Federation. As soon as the paddy is processed, the Federation has to hand over the total quantity to the Collector and its ,job is done and it is for the Government thereafter to distribute the same in accordance with the scheme of rationing either to ration shops or to fair price shops. The terms of appointment could also be seen in the said Resolution.

Appendix F to the Resolution shows sixteen items of fixed rates to be paid for the services of different kinds of work involved. These are actual outgoings. It is not suggested and could not be suggested that these are not properly fixed. In this connection, it must be noted that, for a long time the Government employed traders for this purpose and the amount of expenditure must be comparable to that paid to them in the past. These amounts would go to the sub-agents; and, the commission for all the service that the Federation renders is fixed at ninety paise per quintal i.e. something less than a paise for one kilogram, a part of which it may have to share with co-operatives employed by it. It must also be remembered that where no arrangement could be made with a co-operative society, it has to make its own arrangement which would also involve some expenditure. This Resolution was produced on behalf of the State in reply to the affidavits filed 011 behalf of the petitioners, and a counter reply thereto has also been made by the petitioners. Even though this break-up was available to the petitioners, it is not the case of the petitioners that out of any of the sixteen items it is possible for the Federation to make any profit whatsoever. The Resolution lays down the details of the procedure to be followed by the Federation. We have, therefore, come to the conclusion that it is impossible to liken the present case with A kadasi's ease, where the Supreme Court came to the conclusion that the agreement between the Government and the co-operative society purported to be one of agency, in fact and substance it was a monopoly in favour of the Society, and therefore bad under Article 19(7)(g) read with Clause 6 thereof.

12. Mr. Mehta argued that such a monopoly cannot be created by a Resolution of the Government, and in support he relies upon the decisions in *State of M. P. v. Bharat Singh* AIR [1907] S.C. 1170 and *Satwant Singh v. A.P.O., New Delhi* [1967] AIR S.C. 1886. But then, as we have observed, the Government is entitled to do business in law and if it is entitled to do business, it is for the Government to choose whether it would do part of it itself or appoint its agents. What the Government purported to do by the said Resolution is to appoint its agent 011 certain terms. It is wrong to say that by the Resolution any fundamental rights of the petitioners have been taken away. The petitioners' fundamental rights have been taken away by the impugned Order under valid powers which the State Government had by virtue of the Act of 1955. These authorities really, therefore, have no bearing on the question at issue. In his turn, Mr. Paranjpe also relied upon the decisions in *Kharak Singh v. State of U.P.* AIR [1983] S.C. 1295 and *Dwarka Nath v. Bihar State* AIR [1959] S.C. 249. These two cases again relate to an executive action of the Government which affected the fundamental rights of the citizens adversely. These cases also, in our view, have no bearing on the question at issue.

13. A further qualified argument is made in this connection that, even assuming that the agreement with the Federation is that, of agency, this agreement must be consistent with the fundamental rights contained in Article 19 of the Constitution of India, and inasmuch as large powers are given to the Federation,

the agency agreement should be regarded as bad and invalid. Reference is made to the observations in Akadasi's case where Gajendragadkar J. speaking for the Court observed as follows (p. 1054) :

..."A law relating to" a State monopoly cannot, in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not....the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Article 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the said part and their validity must be judged under the first part of Article 19(6).

In every case, what is the essential feature of a business and what provisions are integrally and essentially connected with it, must depend on its own facts. Business today is of a very complex nature and not as simple as it might have been far back in the past. Very often, it may not be possible for us who have never done business to realise the complexities of business and pronounce upon the essentials or otherwise of the same, except on some broad aspects. It would, however, stand to reason to say that when it is recognised that the Government having a right to do trading is entitled to trade through an agent or do some or most of its work through its agent and not departmentally by its own servants, the terms of agency must be regarded as an essential feature of the business. In a case like this where the State collects all the foodgrains it would be open to it to make the collection through an agent; it would be open to it to have it milled through the agency of rice mills of its own choice run by co-operative societies or otherwise and it would be open to it to engage the warehouses of such persons as it chooses. It is impossible to regard any of these matters as unessential and unintegral with monopoly. Now, instead of employing each kind of agencies separately if the Government asks its Chief Agent to collect the paddy, process it and hand it over to the Government, it cannot be regarded as out of its powers to do so, and once this is accepted, the settling of the terms must be regarded as a part of it. Again, we must also observe that in the present case though it is said that large discretion is left to the Federation, in fact not much discretion has been, left to it. The discretion is subject to a number of requirements which must be complied with before any sub-agent is appointed. In our view, therefore, even if we accept the contention that the terms with the agent or the discretion that is left to an agent is justiciable, having regard to the terms of the Resolution and the terms on which the Federation is given some discretion in the matter, we hold that the terms prescribed are reasonable and they satisfy the first part of Article 19(6) of the "Constitution. In Akadasi's case the agreement was held to be invalid on the ground that though it was said to be an agency in real substance it was no agency at all.

14. In this connection, our attention is invited to para. 3 of the resolution and it is argued that preference is shown to co-operatives which is contrary to Article 14, being discriminatory. Paragraph 3 of the Resolution reads as follows:

...Government has decided that the Apex Federation should appoint as its Purchasing as well as Milling Sub-agents wherever feasible, the village Level Sewa Societies and the Co-operative Rice Mills, which are efficient and which fulfil the pre-requisites. It is anticipated that there are at least about 1000 Primary Societies in the State which can efficiently function as the Purchasing Sub-agents of the Apex Federation. Where such Primary Societies and the Co-operative Rice Mills are not available, the Taluka and District Purchase and Sale Unions would be appointed as sub-agents in their respective areas of operation. Where even this agency is not feasible, the Apex Federation has agreed to effect purchases of Paddy/Rice itself through its own organisation.

The contention is that such preference is contrary to Article 14 of the Constitution.

15. What Article 14 prohibits is class legislation. It only means that two persons similarly situated must be treated alike. Reasonable classification for legislation is permissible. The two qualifications to this power are, that, the classification must be founded on some intelligible differentia which distinguishes the group of persons or things from those that are left out, and secondly, that the differentia should have rational relation to the object sought to be achieved by the legislation.

16. Reliance has been placed on the decision in *Ramanlal v. M. S. Palnitkar* AIR [1961] Guj. 38. In this case, after the issuing of the Bombay Sugar Dealers Licensing Order, 1959, several dealers were given licenses to deal in wholesale sugar. The sugar quota allotted to the State by the Central Government used to be divided amongst the districts. The Mehsana District accordingly had its quota of sugar and the State Government and the Collector were entitled to direct the distribution and sale of sugar of the said quota. After issuing licenses to several dealers the Collector advised them to form an Association and the sugar quota used to be handed over to this Association for distribution to various dealers who were licence-holders. In about 1960 the Collector issued orders to entrust the wholesale distribution of sugar only to Co-operative Societies and he further directed that the entire quota of sugar for Mehsana District should be allotted only to Co-operative Societies for distribution to retail dealers and owners of hotels. The Court after considering the theory of classification held that in that case a just and rational relationship between the object to be achieved and the preference shown was not made out. The Court held that classifying Co-operative Societies for this purpose was not for advancing the purpose of control and the preference shown to the Cooperative Societies was wholly unjustified. On the other hand, the question as to whether preferential treatment could be given to Co-operative Societies arose in *Mannalal Jain v. State of Assam* AIR [1962] S.C. 380. The facts of this case were similar to those of *Ramanlal's* case. Clause 5(e)

of Assam Food Grains (Licensing and Control) Order, 1961 dealt with the issue of licenses for the purpose of dealing in foodgrains. This clause enumerated matters to be taken into account for the granting of a license, those being:

- (a) the stock of foodgrains available in the locality for which the license is required;
- (b) the number of persons who have applied for and those who have been granted licenses in respect of the foodgrains under this Order in the locality ;
- (c) the business ordinarily carried on by the applicant ;
- (d) the past activities of the applicant as a licensee or business man/firm ; and
- (e) whether the applicant is a co-operative society.

The Supreme Court read the clause to mean that the licensing" authority was enabled to prefer a co-operative society in certain circumstances in the matter of granting a license. In other words, there may be cases or localities where the consideration set out in Sub-clause (e) may override other considerations in the matter of granting a license. The Court said (p. 391) :

We are of the view that by reason of the position which co-operative societies may occupy in the village economy of a particular area, it cannot be laid down as a general proposition that Sub-clause (e) of Clause 5 of the Control Order, 1961, is unrelated to the objects mentioned in Section 3 of the Essential Commodities Act, 1955. There may be places or areas where co-operative societies are in a better position for maintaining or increasing supplies of rice and paddy and even for securing their equitable distribution and availability at fair prices. We must, therefore, repel the very broadly stated contention of the learned Counsel for the petitioner that Sub-clause (e) of Clause 5 of the Control Order, 1961, can have no relation whatsoever to the two objects mentioned in S. 3 of the Essential Commodities Act, 1955.

We must observe in this connection that we are not dealing with a case where a Licensing- Order is used for the ulterior purpose of creating a monopoly in a Co-operative Society or Societies. We are considering the question of appointment of agents and sub-agents by the monopoly trader i.e. the State, in doing its business. The State, therefore, must have the choice of its own agent inasmuch as the matter of agency is a matter of fiduciary relationship. In the affidavits filed on behalf of the State it is explained that this State is a deficit State. In order to encourage greater effort at foodgrains production it is necessary that the cultivator is assured of correct weighment, correct grading- and prompt payment. It is necessary that these foodgrains should be available to the public at fair and reasonable prices and that the grains collected do not pass on to hoarders and blackmarketeers. These purposes are more likely to be achieved through co-operatives than private traders. The Federation is the Apex Society of which several primary and secondary societies are members, the profits of the society are limited and normally, therefore, it would not be improper to expect co-

operative societies to cooperate with the State in the matter of purchase and sale of the essential commodities at reasonable prices within the reach of the common man. Again, the Society's affairs are open to inspection by various kinds of officers both of the State Government and of the Co-operative Department and there is likelihood of being lesser irregularities in the working of the co-operative societies than in the working of private agents. It is, therefore, impossible to hold that merely because the Federation is given the option of engaging its own sub-agents and preferably primary societies the action of the Government is discriminatory and void.

17. In this connection, we may further point out that it is not the allegation of any of the petitioners that anyone of them made any effort whatsoever to obtain any part of the work to be done on behalf of the Government from the Federation. Really speaking, therefore, none of the petitioners has got any cause to complain on this ground. Mr. Paranjpe referred us to exh. 1 which is the reply of the District Officer, Colaba, to the petitioners. The subject in this letter reads: "Receiving of Government paddy for milling". From this heading it is argued that the petitioner Prabhakar had applied for milling of paddy and it was refused to him. There is absolutely no substance in this contention. In the first place, if the petitioner had really applied for the milling work, he would have said so in his own petition. On the contrary, the petitioner has alleged that his business is mainly of purchasing and selling rice and also milling and he further stated that as the milling work was reduced, he applied to the Collector for the purchase of paddy which he intended to mill and then sell, and the Collector refused the permission. We asked Mr. Paranjpe to give us the copy of his application which he furnished to us. "We have marked this copy as exh. 14,. This copy clearly shows that this petitioner actually applied for the purchase of rice and paddy and not for a milling- job. Mr. Paranjpe, however, relied upon the decision in *Arvind Mills Ltd. v. State* (1966) 7 C.L.R. 136 and contended that even if the petitioner had no cause of action for challenging this discrimination, if he can show that there is discrimination which is unreasonable he would be entitled to apply to the Court and have it declared that the said discrimination is invalid and bad in law. With great respect, we cannot accept the principle laid down in that case, because it is contrary to the decisions of the Supreme Court and also that of this Court, In *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, the learned Chief Justice speaking for the Court observed (p. 386) :

...This argument again is not tenable. In the first place, the appellants never applied for a permit and made no efforts to obtain one. If the permit had been applied for and refused arbitrarily they might then have had a right to attack the law on the ground that it vested arbitrary and unregulated power in the textile commissioner. The appellants were not hurt in any way by any act of the textile commissioner as they never applied for a permit. They were transporting essential goods by rail without a permit and the only way they can get any relief is by attacking the section which obliges them to take a permit before they can transport by rail essential commodities.

To the same effect are the decisions in *Zoolfiqar Ali v. Official Trustee* (1966) 69 Bom. L.R. 326 and *Ganpati Bala Khavare v. The State of Maharashtra* (1968) Second Appeal No. 1186 of 1900 decided by Chitale and Nam JJ., on February 27, 1968 (Unrep.) by a Division Bench of this Court of which my learned brother was a member. These decisions are binding" on us. Unless it is shown that the petitioners were hurt either by arbitrary refusal of the permits or non-grant of it, the petitioners have no right to complain and no right to contend on the invalidity of the provisions.

18. This brings us to clauses 5, 6, 9, 9A, 10, 14 and 18 of the Order of 1966. We have already summarised the substance of each of these clauses. The objections to each of these clauses may be summarised thus. Regarding clause 5, it is said that in exercise of his powers under this clause, the Collector can prevent a person from consuming or using even a small quantity of grains; that the power is capable of being arbitrarily utilised; that there is no principle enunciated, in this clause as to when the Collector should issue a notice and that it is capable of being abused by preventing consumption of even a single grain of foodgrains. It is, therefore, wholly unreasonable and places unreasonable restrictions contrary to the provisions of Article 19 of the Constitution. The Order also does not say in what circumstances notice should be issued to a particular person and not to another person. The Collector, therefore, in practice can discriminate in an arbitrary manner different persons and therefore it offends Article 14 of the Constitution.

19. As to Clause 6 it is said that a very wide discretion is left to the Collector without any guidance as to when he should issue a notice or not. What is excess above the normal quantity has also been left undefined and it requires to be sold to the Government or its agent for whose appointment no principles have been laid down.

20. As to Clause 7, which is consequential upon Clause 6, it is argued that it goes beyond the provisions of the Essential Commodities Act, 1955, and confers a discretion upon the Collector whether or not to act under it. Even unintentional non-compliance with the notice under Clause 6 entails the consequences of search and seizure and sale of the stocks to the Government or its officer.

21. As to Clause 9, it is argued that it prohibits any person other than a recognised dealer acquiring any foodgrains either for sale or for storage for sale without laying down any guiding principles as to how the authorisation has to be effected; no form of application is provided for nor is it mentioned to whom the application is to be made. Inasmuch as it prevents any dealer from making purchases it, affects Article 19(1)(f) of the Constitution and even if the restriction is permissible it gives uncanalised power to the Collector or any other officer and, therefore, in any event it is bad under Article 14 of the Constitution.

22. The contention as to Clause 9A of the Order is that as it lays down no principles for the grant of licenses and/or fixing the quantity of hulling and fixing

the charges of milling, it offends Articles 14, and 19 of the Constitution.

23 Clause 10 is similarly attacked on the ground that it violates Article 19 of the Constitution as it places unreasonable restrictions on the right of the petitioners to sell foodgrains without authorisation and permits an agriculturist to sell only limited quantities to limited persons, thus resulting in preventing the petitioners from acquiring the property, namely, foodgrains.

24. Clause 14 fixes the price of the foodgrains as per the Schedule attached to be paid to the person who is required to deliver the foodgrains to the Government or its agent. This is challenged on the ground that it offends Article 19 of the Constitution as 110 principles are formulated for fixing the price.

25. Lastly, Clause 18 relating to the power of exemption in the State Government is attacked as violating Articles 14 and 19 on the -ground that no principles are formulated for the exercise of the powers and it is capable of being exercised capriciously and arbitrarily as the power to exempt is worded in a very wide language enabling it to exempt "any person or class of persons or the public generally".

26. So far as the argument that the Order prevents the petitioner and dealers from doing any business whatsoever and, therefore, the provisions are unreasonable, can be and has been sufficiently answered by reference to the provisions of Article 19(6) of the Constitution which exempts from the operation of Article 19(1)(g) State monopoly in any trade or business. The question, therefore, must be confined to whether the powers are really so uncanalised and the provisions are so worded as not to give any guidance whatsoever to the officers exercising their powers so as to enable them to act arbitrarily and, therefore, they must be struck down either as unreasonable or as excessive delegation.

27. The first contention of the Advocate General in reference to this part of (the argument is that, as to clauses 5, 6, 10, 14 and 18 of the Order of 1966, the petitioners have no cause to complain since no action is taken by any of the officers or the Government. It is not the petitioners' case that any notices had been issued to any of the petitioners either under clause 5 or Clause 6. None of them has been called upon not to deal or dispose of any stocks of grains that they may have nor is anyone of them asked to deliver or sell the same to the Government at a specified price. No injury, therefore, can be alleged to have been suffered by any of the petitioners. Similarly, no action has been taken under clauses 15 or 16 against any of them. No action has also been taken under clauses 7 or 11. He, therefore, contends that so far as the petitioners are concerned, they have no cause of complaint against the validity of these clauses. We have already pointed out earlier that in order that a person should have a cause to challenge the validity of any provision in a statute, he must himself be affected by it. It is not the petitioners' case that they are in any manner directly affected by any of these clauses. The petitioners, therefore, have no right to

complain as decided by the authorities referred to above viz. Harishankar Bagla's case; Zoolfiqar" All's case and Ganpati Bala Khavare v. The State of Maharashtra, Apart from this, even on merits, in our view, the petitioners cannot substantiate their contention that these clauses of the said Order are invalid.

28. This brings us to the examination of the principles governing such cases. The principles underlying Article 14 were considered by the Supreme Court in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . In this case the Court was considering the question in connection with the Commissions of Inquiry Act and dealing with the contention based on Article 14 of the Constitution. The matter was considered in details and certain principles were formulated. These principles have been subsequently reaffirmed by the Supreme Court in Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, , P.J. Irani v. State of Madras AIR [1961] S.C. 1781 and also by our Court in Govindji Vithaldas v. Mun. Corporation (1956) 59 Bom. L.R. 129 and again by the Supreme Court in K.L. Gupta and Others Vs. The Bombay Municipal Corporation and Others, . These decisions indicate that even though a statute may itself not contain the principles for the guidance of the Government or the authority prescribed, it may be valid provided that the policy and the objects disclosed in it are sufficient to afford proper guidance in the exercise of the power. The provisions of the statute may be such as to lay down the standard for the exercise of the power. The limitations subject to which the power could be exercised can be ascertained by the Court from the preamble, surrounding circumstances disclosed by well-known and notorious facts or those disclosed in the affidavits. The authority in whom discretion is vested must exercise its powers within the limits of the statute and to effectuate the policy of the Act and further its object. If the order is not in conformity with these objects or is, made with an ulterior purpose it would be struck down by the Court.

29. It is on the application of this principle that the relevant provisions were held to be valid in the cases referred to by us above. Mr. Paranjpe and Mr. Mehta, however, relied upon the decision in Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, where Clause 3 of the U.P. Coal Control Order was held to be invalid by the (Supreme Court on the ground that it gave uncanalised power which was capable of being arbitrarily and capriciously used by the officer concerned. This case has been subsequently distinguished in other cases, which we have already referred to, particularly in Harishankar Bagla's case and it is needless to make any further comment on that case, and further discussion will show that it has no application to the facts of the present case.

30. It was then argued by Mr. Mehta that an inroad is made into the above principles by the decisions in LaLa Hari Chand Sardar Vs. Mizo District Council and Another, ; Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, and Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, . The case of Hari Chand Sardar has no real bearing as it dealt with reasonableness of restrictions on freedom guaranteed by Article 19 of the

Constitution. Even so, the observations are useful for the purpose of considering the position in relation to Article 14 also. In that case, the District Council had framed the Lushai Hills District, (Trading by non-Tribals) Regulation empowering the Council to grant licenses for trading in that area by non-tribals and this question came up for consideration. A few facts necessary to appreciate the said decision are as follows:

31. A non-tribal started [trading at Aijal, Mizo district in 1957 under a temporary licence issued by the Mizo District Council. He had invested a sum of about Rs. 50,000. Such licence could, be taken temporarily, for a period of one year. However, it was renewed from time to time upto May 31, 1960. Further renewal was refused on July 11, 1960 and he was directed to remove his properties from the District by the end of July 1960 and the order also imposed a fine of Rs. 500 in case he failed to comply with the order. The Constitution by its Sixth Schedule constituted the Mizo District, formerly known as the Lushai Hills District, as an autonomous district. Paragraph 10 of that Schedule gives power to the District Council to make Regulations for the control of money-lending and trading by non-tribals. It was under this provision that the said Regulation was passed by the District Council. Paragraph 10 indicated that it could control the money-lending and wholesale business by non-tribals. In para, (1) at page 832, Shelat J. speaking for himself and the learned Chief Justice after referring to some of the cases observed:

These authorities clearly demonstrate that the fundamental rights of a citizen to carry on trade can be restricted only by making a law imposing [in] the interest of the general public reasonable restrictions on the exercise of such a right, that such restrictions should not be arbitrary or excessive or beyond what is required in the interest of the general public and that an uncontrolled and uncanalized power conferred on the authority would be an unreasonable restriction on such right. Though a legislative policy may be expressed in a statute it must provide a suitable machinery for implementing that policy in such a manner that such implementation does not result in undue or excessive hardship and arbitrariness. The question whether a restriction is reasonable or not is clearly a justiciable concept and it is for the court to come to one conclusion or the other Having regard to the considerations laid down in *State of Madras Vs. V.G. Row*, . It is also well established that where a provision restricts any one of the fundamental rights it is for the State to establish the reasonableness of such restriction and for the Court to decide in the light of the circumstances in each case, the policy and the object of the impugned legislation and the mischief it seeks to prevent.

The Court then analysed the provisions and held them invalid. As the test was not satisfied, the provisions were hit by Article 19(7)(g) of the Constitution. Bachawat J. differed from this view. This decision, however, cannot be read to hold that while interpreting the provisions which apparently appear to give uncanalised power to an authority, the Court is not entitled to look into the entire statutory provisions and also the parent Act in order to find out if there is

sufficient guidance either in the policy and the object of the statute in furtherance of which and subject to which the discretion vested in the authorities under the provision is to be exercised. It may be that in the circumstances of that case, the Court came to the conclusion that the enactment was invalid.

32. In *N. I. Caterers Ltd. v. State of Punjab* the question of the vires of Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act came up for consideration. The Court by a majority of three to two held that the said provision was invalid the reason being that the section itself did not repeal the ordinary remedy of recovery of rent and recovery of possession available to the State; that it gave an additional remedy of summary procedure, and as the authority had absolute discretion to resort to the remedy or not, the section offended Article 14. This again is not laying down any principle different from those which have been already formulated by the decisions referred to by us above, but merely an application of the same and in applying those principles the Court held that that particular provision was bad.

33. The next decision is *M/s. Devi Das v. State of Punjab*. In this case the question was whether Section 5 of the Punjab General Sales Tax Act, which gave power to the State Government to levy annually on the taxable turnover of a dealer a tax at such rates as the said Government might direct, was a valid provision. The Court held that as the Legislature has practically effaced itself in the matter of fixation of rates and it did not give any guidance either under the section or under any other provisions of the Act as to the quantum of the tax, the provision must be held to be void. The case seems to have been decided on the ground of excessive delegation. Mr. Mehta particularly relied upon the observations in para. (15) of the judgment of the learned Chief Justice which are to the following effect (p. 1901) :

The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be

carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature.

It is particularly the latter remarks which have been emphasized by Mr. Mehta. Even so, it is impossible to read the judgment that if the policy and limitations are clearly and reasonably apparent in the statute, the Court must still shut its eyes and hold that the statute is invalid. As the observations themselves indicate, it is impossible for the Legislature to conceive of all circumstances that may arise in future and make provision for all eventualities. The Court must read the provisions as a whole reasonably and fairly and consider all other matters to see if the tests are satisfied.

34. The provisions of the Order are also attacked on the ground that they offend Article 19 of the Constitution. Though we have considered the principles in connection with the application of Article 14, we have also to consider the principles of reasonableness under Article 19 for the principles are not exactly the same, because though a statute may satisfy all tests of being- valid under Article 14, it may fail to satisfy the test of reasonableness under Article 19. It is desirable to consider the principles governing Article 19 at this place so that we may be able to deal with the various clauses on both aspects and avoid repetition. Article 19(1) guarantees fundamental rights. Clause (1) guarantees the right to acquire, hold and dispose of property and Clause (g) to practise any profession, or to carry on any trade or business. Clauses (5) and (6) thereof permit the State to impose reasonable restrictions on the two freedoms in the interest of the general public. In order that the restrictions should be reasonable three tests must be satisfied. Firstly, that they must be in the interest of general public, secondly, the restrictions must have reasonable and rational connection with the object to be achieved and thirdly, that they should not be excessive, in the sense that they invade the rights in a manner or an extent not really necessary for the purpose. The reasonableness of both the substantive and procedural provisions of the law must be considered and one may inquire whether the statute provides safeguards against abuse of powers by appeal or otherwise (See *State of Madras v. V. G. Bow*; *Messrs. Dwarka Prasad v. State of U.P.* and *Han Chand Sarda v. Mizo District council*), In some cases where there is no principle laid down and no guidance given for the exercise of the power, even the right of appeal may be illusory because the appellate authority could and may act arbitrarily. That however would not be so where sufficient standards and the principles for the exercise of the power can be inferred from the statute and its objects and reasons.

35. The parent Act is the Essential Commodities Act. The object of the Act as: disclosed by the preamble and its provisions is to take measures in case of necessity, in the public interest, to see that commodities essential for community are available at fair and reasonable price. The powers u/s 3 are to be exercised

"for maintaining or increasing supplies of any essential commodity or their equitable distribution and availability at fair prices". For this purpose the State could by order provide for regulating or prohibiting the production, supply and distribution and trade and commerce therein. The circumstances existing prior to the making of the Order of 1966 are stated in detail in para. 9 of the affidavit of Mr. A. M. Khan. Apart from the fact that there is general shortage of foodgrains in the whole country, Maharashtra in particular is a deficit State. Shortage had led to high prices with the consequence of great hardship to the bulk of the population in obtaining food-grains. First, the System of distribution of foodgrains through fair price shops was started in 1956. This machinery was found to be inadequate and, therefore, in 1966 statutory rationing was introduced. This, however, could not be done for the entire State and, therefore, it had to be partial in densely populated areas like Greater Bombay, Poona, Nagpur and Sholapur. As to the rest, the foodgrains were sold through fair price shops to vulnerable sections in reasonable quantities. With a fair price shop within a radius of about three miles of every village the State has to supply foodgrains to ration shops and fair price shops. In order to meet this liability the State must obtain as much foodgrains as possible from the growers in the State. It was also further necessary that it laid down a policy so that the cultivators would have sufficient incentive in the form of stabilisation of prices and securing equitable return to them. To meet this objective it was necessary that a reasonable proportion of the surplus foodgrains in possession of the cultivators were made available to the State and allowing them, to retain some surplus. It was also necessary to see that the available foodgrains did not fall into the hands of the black marketers and hoarders. We must say that the Order does achieve this purpose.

36. We may now indicate in short the scheme of the Order of 1966. The scheme is to completely exclude private trade in the specified foodgrains. This inference arises from clauses 6, 10, 11 and 15 of the said Order. The Collector has to issue notices directing sale to the State or its agents by different class of persons including agriculturists of their surplus stock. The method of calculating the normal requirement is laid down in clauses 11 and 15 and would be applicable to other cases though not specifically provided. Consequent upon the stoppage of private trade, all transportation of food-grains is prohibited except as authorised. Clause 14 of the Order fixes the prices at which the foodgrains have to be sold to the State. It is in the light of the scheme of the Order of 1966 that the validity of the various clause has to be considered.

37. We have already indicated that none of the petitioners can have any cause of action regarding clauses 5, 6, 14 and 18 of the Order of 1966. However, as the point has been argued we will consider these contentions.

38. Clause 5 of the Order of 1966 directs that no person or class of persons shall if notified by the Collector in Form E can consume or deal with etc. any stocks of foodgrains. The relevant contention in relation to Article 14 is that it is capable of

being arbitrarily used, to prefer one person over another without there being any guiding principle in the clause. In connection with Article 19 it is said that as it does not prescribe the quantity or stock in respect of which notice can be issued or should be issued it is unreasonable as it may have the effect of preventing the person notified from even consuming the foodgrains for household purposes. Apparently, the words appear to be wide. Clause 3 requires every person to declare his stocks of foodgrains if they exceed ten quintals. It is not reasonably possible that the Collector would issue notice to one who holds less than this quantity. The stock, therefore, for the ordinary needs could not be affected. Moreover, freezing is for sale to the Government under Clause 6 where only the excess over the normal need can be required to be sold to the Government. The Collector would, therefore, have to take into account the normal needs of the individual and his family and then decide as to whether he has surplus stock of foodgrains which must be frozen. The intention is not to freeze every better quantity of the foodgrains that a person may hold. The clause, therefore, cannot be invalidated on the ground that it offends Articles 14 and 19 of the Constitution.

39. Under Clause 6 the Collector has to form the opinion that a person holds stock in excess of normal quantity for his household or establishment. The Collector is entitled to issue notice calling upon such a person to sell the excess stock to the State, or its agent. If that person is an agriculturist he has to allow reasonable additional quantity for his agricultural purposes, Stress is laid on the word "may" in Clause 6 and it is argued that it gives the Collector a discretion to act or not to act and is capable of being used discriminatively against anyone. Having regard to the scheme of the Order it seems that it is not intended to give any discretion to the Collector to discriminate between persons having such stocks, but it is intended to provide for cases where having regard to the quantity that a person may hold, no notice is required to be issued. The same, therefore, does not offend Article 14 of the Constitution. As to the fixation of the price which is to be in accordance with that, fixed by Clause 14, it will be separately considered. What we have said in respect of this clause equally applies to clauses 11 and 15.

40. Clause 7 is a consequential measure necessary in order to carry into effect the provisions" of Clause 6. The argument that the provisions of Clause 7 are not justified and are beyond the provisions of the Act of 1955 is wholly incorrect inasmuch as Section 3(2)(j) of the said Act clearly provides that the order made by the State may provide:

...for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be, committed,...

On the other hand, though the said section gave wide powers to the State to make such a provision, by Clause 7 of the Order of 1966 it provides that after

taking possession of the stocks, the Collector must sell or cause to be sold such stocks to the officer or agent specified in the notice which means further that the person whose stocks are seized is entitled to get the price of the same as fixed under Clause 14. Nothing can be fairer than Clause 7. It is not even of a confiscatory nature.

41. Clauses 9 and the first part of 10 may be considered together. The first prohibits any person purchasing or acquiring any foodgrains except under and in accordance with an authorisation for the purpose of sale or stocking for sale. The second similarly prohibits any person selling or disposing of stocks of foodgrains except under and in accordance with an authorisation. In these clauses exception is made in the case of recognised dealers who are defined to mean those authorised to run fair price shops or ration shops. In relation to Article 14 it is said that no principles are laid down for the granting of authorisation and the power, therefore, is capable of being used discriminatively. In relation to Article 19 it is argued that for the above reason and also for the reason that no form of application is prescribed, no machinery is set up for considering the applications, the restrictions on the petitioners' right, of trade are unreasonable. Clause 2(m) of the Order of 1966 defines "recognised dealer" to mean a person who is authorised by Government or by any officer empowered by Government, to run a fair price shop or ration shop and includes the holder of an authorisation issued under the Maharashtra Scheduled Foodgrains (Stocks Declaration and Procurement and Disposal, Acquisition, Transport and Price Control) Order, 1965 or under the Order of 1966. Now, the policy of this Order is to see that private trade in these foodgrains is completely prohibited. The Collector, therefore, would not grant any licence or authorisation to any private, dealer for making purchases or storage of foodgrains for sale under Clause 9 and for selling- the same under the first part of Clause 10. The provision for authorisation is made in order to empower the agents who may be appointed by the Government to make purchases on its behalf in respect of this procurement. It is obvious, therefore, that the Collector would not be able to authorise any dealer of his choice arbitrarily in order to do business. He is entitled to give authorisation for the purposes of carrying- into effect the provisions of this Order and for no other purpose. Application could be an ordinary one and therefore no form has been prescribed.

42. With the proviso to Clause 10 the petitioners are not concerned. It permits agriculturists to sell limited quantity of foodgrains at a time to another for his bona fide personal needs. Mr. Khan's affidavit clearly explains the underlying principles of this provision and it is consistent with the policy of the whole scheme. The restriction, therefore, though it affects dealers is justified by the needs of the society and is a reasonable restriction.

43. Clause 9A relates to milling. It prohibits any person from accepting, purchasing- or acquiring paddy or rice for milling from any person for milling the same for household consumption except under an authorisation. It further

provides that the authorisation prescribes the maintenance of registers etc, and the limits of quantity of milling for a person or a class of persons and also charges for the same. It is argued that as the clause does not say who should be granted authorisation and who should not, it offends Article 14 and as it authorises the restriction of milling to maximum quantity qua person or class of persons and authorises fixation of charges which may be arbitrary, it places unreasonable restrictions on the petitioners' right to trade and offends Article 19. The petitioners hold authorisations and it is clear that they have not suffered by the supposed arbitrary power. The Collector would normally grant milling authorisation to a genuine miller who is prepared to abide by the conditions. Instructions as to the principles for authorisation have been issued. No complaint can be made, therefore, on the ground that it offends Article 14. As to the other ground, the restrictions on the quantity of milling are absolutely necessary if the purpose and the objective of the Order is to be achieved. In para, 9(g) of the affidavit of Mr. Khan it is explained that uncontrolled milling might result in diversion of the surplus stock to private channels. It may also cause improper competition between different millers. As to the milling charges it is not even alleged that the charges fixed are arbitrary and cause any loss to the millers. Not a word is said about the impropriety of the same in any of the petitions. Moreover, they have to be reasonable so that consumers should be able to have rice at reasonable prices. The restriction imposed by this clause are, therefore, reasonable and do not offend Article 19 of the Constitution. Of course, the business of the petitioners is to some extent affected. But, if the restrictions are necessary in the interests of the society they must be regarded as reasonable.

44. Considering from the procedural point of view also, we are not prepared to say that the said Order offends Article 19. Schedule I) to H to the Order of 1966 prescribe only a few forms and they seem only the most essential ones for introducing some system in the matter. These, forms are for (1) declaration of stocks under Clause 3, (2) form of notice under clause 5, (3) form of notice for sale under Clause 6, (4) form of authorisation under Clause 13 and (5) form of demand notice to an agriculturist for sale under Clause 15. The last four are to be used by officers for whom standard forms are necessary to be prescribed, so that technical defects in individual orders may not be used for defeating the object of the Order of 1966. As to other matters such as making applications under clauses 9, 9A and 10 no forms are prescribed as an ordinary application was intended to be enough. Of course, there is no hearing and the officer is not required to write his reasons for the order. But then, the power of making- the order is very much circumscribed as stated by us earlier and any order that he may make to the prejudice of a person is appealable by Clause 19. This gives enough safeguard to a citizen who is affected by an order by the Collector or any other officer.

45. As to the price of foodgrains fixed under Clause 14, admittedly the petitioners are not affected by it in any manner whatsoever. They have not been asked to sell any foodgrains to the Government or its officer at a particular price,

because they have in fact no stocks. Even assuming that the petitioners could make some grievance about it, on examination of the petitions we find that there is not even a word to show that the price fixed by the State Government in Schedule B is inadequate.

46. Reliance is placed on the decision in the *The State of Rajasthan Vs. Nath Mal and Mitha Mal*, where the provision requiring that the stocks should be disposed of at prices fixed by the Government was struck down under Article 19 of the Constitution. In that case the Court came to the conclusion (page 987) that the rate actually fixed by the Government at Rs. 9 per maund was too low, for the price in the market was Rs. 17 or Rs. 18 per maund. This is part of the reasoning. In *Messrs. Dwarka Prasad's* case the Supreme Court was considering the provisions of the U.P. Coal Control Order. Clause 7 gave power to the Controller to fix the prices of coal in accordance with the formula in Clause 8, Schedule III. The Court upheld the power. Of course, there the order had prescribed a formula the reason of which it had to examine.

47. In this case, we are not dealing with the case of delegation of absolute power to an authority or officer for fixing prices. The Order itself, which has been validly made, fixes the prices of various commodities which the State purchases. The only question, therefore, is whether those prices are reasonable. The affidavit of Mr. Khan explains that the prices of various commodities have been fixed so that the State is able to provide the necessary foodgrains to the public at reasonable prices within its reach, and at the same time, pay the farmer reasonable return on his product immediately. The principles followed are: (1) prices fixed for 1966-67, (2) changes that had occurred thereafter, such as, rise in the production cost, cost of living and necessity of securing fair return to the agriculturists in the interests of justice and as incentive to them for increased production, (3) prices prevailing in the neighbouring States and (4) the overall need to maintain the price line. It is significant that no farmer has complained that the price offered is unreasonable or that it causes loss to him. "We are not satisfied, therefore, that the prices fixed are unreasonable. It is within the powers of the Legislature to provide that some prescribed authority fix the price of any essential commodity and when it is fixed the question may under such circumstances be justiciable, as held in *Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others*, where a similar clause which gave similar power to the Controller to fix the price of a commodity was upheld.

48. In the present case, having regard to the affidavits of the State, we hold that the prices fixed are not unreasonably fixed.

49. Coming to the exemption under Clause 18, which is also challenged on the same ground, we must observe that such clauses are regarded as policy clauses. Now, it is true that it does not lay down the principles or conditions under which this power can be exercised. But then, as observed by the learned Chief Justice in *M/s. Devi Das's* case the Legislature could not take account of all eventualities

and think of the circumstances that may arise in future. Discretion, therefore, has to be given to the State or some authority for exempting the application of the Order. Moreover, the larger the number of uncertainties the vaguer is the power bound to be. The power to grant exemption worded in almost the same language in the Madras Buildings (Lease and Rent Control) Act was held to be valid in Irani's case. It is clearly intended to meet unforeseen circumstances. The affidavit of Mr. Khan dated January 22, 1968 shows that the power has been actually exercised qua, areas declared to be scarcity areas i.e. areas where the crop estimate is four annas or less, by the Government Resolution dated December 16, 1967. The said Resolution also provides that where after a crop-cutting experiment it is found in an area that the crop is below six annas, such areas would also be exempted from the said Order. No other exemptions have been made thereunder. In this connection, it must be observed that even this power of exemption cannot be arbitrarily used. It is intended to be used for the purpose of effectively enforcing the principles of the impugned Order and not otherwise.

50. We are, therefore, of the view that none of these provisions of this Order is invalid for any of the reasons alleged by the petitioners.

51. In the result, the petitions fail and the rules in all these cases are discharged. We quantify the cost at Rs. 750 in each of the petitions which the petitioners will pay to the respondent-State.