
(1979) 02 CAL CK 0005
In the Calcutta High Court

Radhakanta Sreemany and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-02-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Drugs and Cosmetics Act, 1940 — Section 3
Essential Commodities Act, 1955 — Section 2, 3

Citation : (1979) 02 CAL CK 0005

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : Ajit Kumar Panja and R.K. Lalla, for the Appellant; N. Guptoo, Sr. Government Pleader and S.C. Ukil, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—The petitioners in this application under Article 226 of the Constitution are three Partners of M/s. Biswanath Sreemany and Haripada Sreemany, a partnership firm having its office or principal place of business at No. 9, Ramkumar Rakshit Lane, Calcutta. The respondents are the State of West Bengal, the Milk Commissioner, the Controlling Officer, West Bengal Milk Trade Control Order. 1965 and the Milk Commissioner, the Controlling Officer, West Bengal and the Union of India. It is the case of the petitioners the petitioners carry on business of buying and selling of "Ghee". The petitioners have two godowns, i.e., at Nos. 1, Meerbahar Ghat Street and 9, Ramkumar Rakshit Lane, both in Calcutta and the petitioners procured the said "Ghee". According to the petitioners, from M/s. Lakhmidas Premji, Calcutta who imports the same from Andhra Pradesh. It is the definite case of the petitioners that the petitioners' products are all from outside the State of West Bengal and no ghee made with any milk or milk product of West Bengal were or are dealt with by the petitioners. It is further the case of the petitioners that in 1974 the petitioners were served with a notice making demand for licence for sale and dealing with ghee and the petitioners submitted a form in Form No. A purporting to be an application for

licence under the Milk Trade Control Order 1965. The petitioners, further, state that the petitioners were then under a misapprehension that the petitioners were liable to pay licence fee for doing business in ghee and by mistake paid sums of Rs. 156/- and Rs. 636/- being the licence fee for 200 Kgs. and 800 Kgs. of ghee respectively for the year 1973-74 as demanded by the respondents. The petitioners state that the petitioners paid the said amount under misapprehension. The petitioners further state that a news item appeared in the Amrita Bazar Patrika on October 21, 1974, wherein it was reported that the High Court had ruled that the order was applicable to only milk products manufactured within West Bengal and not to any product which might be imported into the State. In view of the said news the petitioners state that the petitioners informed the Respondent No. 3 being the Controlling Officer, West Bengal, Milk Trade Control Order, 1965 and Milk Commissioner, West Bengal that the petitioners were not required to take any licence under the aforesaid order in as much as all the products that were handled by the petitioners were imported from other States and not products of West Bengal. It is, further, the case of the petitioners that after the issue of the said letters no demands were made by the respondents for the year 1974-75, 1975-76, 1976-77 and 1977-78. On the 25th of April, 1978 the petitioners alleged that they received certain demand notices particulars whereof have been set out in paragraph 6 of the petition. The said demand notices were issued under the Essential Commodities Act, 1955 read with West Bengal Milk Trade Control Order, 1965. According to the said notices the respondents had demanded from the petitioners sums of Rs. 156/- and Rs. 636/- for each of the said years as the licence fees alleged to be due and payable by the petitioners. Thereafter, the petitioners made several representations to the respondents stating that the petitioners were not liable to pay any such licence fees. However, petitioners were directed to pay the amounts by the dates mentioned in paragraph 8 of the petition.

2. It is the case of the petitioners that on the 12th of October, 1965 stating to be a notification an order was published in the Calcutta Gazette Extraordinary dated 15th of October, 1965 whereunder it was stated that in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 read with Government of India, Ministry of Food and Agriculture Order G. S. R. 1154 dated 4th of December, 1968 and order No. G. S. R. 888 dated 28th of June, 1961 and subsequently amended the Governor had been pleased with the concurrence of the Central Government to pass an order which is known as West Bengal Milk Control Order, 1965. The said order indicated that it extended to demarcated areas as specified in Schedule 1 and to such other demarcated area or areas as might be specified by the Government by notification in the Official Gazette. It was indicated that the said order would come into force from the 1st of November, 1965. Regulation 2 of the said order provided the definitions and Regulation 3 was as follows :-

3. Regulation or procurement, processing, manufacture, sale or transport of milk or with products in a demarcated area. No person shall carry on the business of

procurement, processing manufacture, sale or transport of milk or milk products in a demarcated area except under and in accordance with the terms and conditions of a valid licence save and except the quantity be allowed, from time to time, by the Controlling Officer to be procured, processed, manufactured, sold to or transported without a licence.

3. Under the said order there is no definition of ghee. But there is definition of milk, milk products and milk solids. The said definitions are as follows :-

(g) "milk" means the lacteal secretion of bovine species including buffaloes :

(i) "milk products" means any products containing milk solids and includes chhana;

(j) "milk solids" means the constituents of milk excluding water;

According to the petitioners the definition of milk does not and could not include ghee with which the petitioners deal. It is the case of the petitioners that by the reason aforesaid ghee could never be considered to be a milk product within the purview of the said order. Therefore, the petitioners contended that the petitioners do not come under the Essential Commodities Act, 1955 in as much as the said product ghee has not been listed as an essential commodity.

4. The Essential Commodities Act, 1955 was an Act, as indicated to provide, in the interests of the general public for the control of the production, supply and distribution of and trade and commerce in certain commodities. Essential Commodity is defined as follows :-

(a) "essential commodity" means any of the following classes commodities -

(i) Cattle fodder, including oilcakes and other concentrates;

(ii) coal, including coke and other derivatives;

(iii) component parts and accessories of automobiles;

(iv) cotton and woolen textiles;

(iv-a) drugs;

Explanation - In this sub-clause, "drug" has the meaning assigned to it in clause (b) of Section 3 of the Drugs and cosmetics Act, 1940 (23 of 1940);

(v) food-stuffs, including edible oil-seeds and oils;

(vi) iron and steel, including manufactured products of iron and steel;

(vii) paper, including newsprint, paperboard and strawboard;

(viii) petroleum and petroleum products;

(ix) raw cotton, whether ginned or unginned, and cotton seed;

(x) raw jute;

(xi) any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh-Schedule to the Constitution;

Section 3 of the said Act only empowers the Central Government to regulate or provide for regulation for the production, supply and distribution of essential commodities. The petitioners state that under the West Bengal Milk Control Order, 1965 "Channa" has been defined as well a Milk products and milk solids. The demarcated area include in the said order is as follows :-

(a) Area under Police station Badhuria within the sub-division Bashiraht.

(b) Areas under police station Barasat, Amdanga, Habra and Deganga within the sub-division Barasat, District - 24 Parganas.

(c) Area under all police station with in the sub-division Ranaghar, District Nadia.

5. According to the petitioners, the petitioners did not carry on business within any of the places mentioned in the demarcated areas described in schedule 1 of the said order. Therefore, it is the case of the petitioners that the petitioner did not come within the mischief of the said order and no fees could be imposed on the petitioners. The petitioners further stated that the order or notification dated 24th of May, 1967 extending the area to some other areas was without any basis or any reason or no reason has been given. It is, further, the case of the petitioners that the order does not apply to many other areas and districts and also to many other items of milk products. Therefore, the petitioners contended that the classification is irrational and has no national nexus with the object sought to be achieved by the purpose of Essential Commodities Act, 1955 or the West Bengal Milk Control Order, 1965. In paragraph 14 of the sub-paragraph (a) of the petition the petitioners set out what, according to the petitioners by the well known authorities, considered to be the various constituents of milk other than water. It is not necessary to set out in the detail the said elements. The petitioners have also averred what according to the established and well known authorities are the constituents of ghee in the said paragraph. According to the petitioners ghee does not contain constituents of milk or milk solid and 99.05% of ghee contains fat only and 0-5% of the constituents of ghee is known as ghee and therefore ghee cannot be and is not a milk product within the definition of the said order. The petitioners further state that as the petitioners procured the ghee from outside there is no question of the supply or distribution or production of any products in the State being in any way affected. The petitioners, therefore, contend that the order or notice dated 5th April, 1978 demanding the licence fees for the periods mentioned in the said notices which are included in Annexure "A" to the petitioner are illegal, without jurisdiction and bad and cannot be enforced. Further, the petitioners contend that the said impositions of the amounts against the petitioners were without giving any opportunity to the petitioners and in clear violation of the principles of natural justice. In the

premises, in this application the petitioners demand that the proceedings initiated for different areas mentioned in prayer (i) and the demand notices issued on the 5th of April 1978 be quashed and the respondents be restrained from giving to the same.

6. As I have mentioned before on the 1st of November, 1965 Milk Trade Control Order under the Essential Commodities Act, 1955 was enforced in West Bengal in areas of the Schedule 1. On the 18th of November, 1965 Product Controls Order under the Defence of India Rules were enforced in West Bengal under areas demarcate in the said order. The areas under the order were different from the areas under the Milk Trade Control Order. The order is prohibitory in nature and the object is maintenance of the supplies of milk in fluid form. On the 1st of February, 1967 there was an amendment of the Product Control Order which made this order unworkable. Therefore, according to the petitioner enforcement work under the order was stopped. On the 24th of May, 1967 with the approval of the Cabinet the Milk Trade Control Order was extended to bring within its purview the areas covered to bring within its purview the areas covered by the Products Control Order and the enforcement in Calcutta and surrounding eight municipalities. On and from the 1st of March, 1972 enforcement work of the rest of the municipal areas that means 28 municipalities were taken up in respect of milk traders, channa dealers and catering establishments. On the 1st of January, 1974 all types of milk products were covered and appropriate notifications and advertisements were issued for taking out licenses by the milk product dealers, manufacturers etc. and the petitioners had applied voluntarily under the circumstances mentioned hereinbefore. On the 1st of March 1974 Bongaon and Gaighata Police Station of 24 Parganas were brought within the purview of the order. On the 8th of September, 1974 an application under Article 226 of the Constitution was moved in this Court and was numbered as C.R. 5433(w) of 1974. An ad interim order of injunction was granted and on the 21st of January, 1977 judgment was delivered in the said matter by Mr. Justice Chittatosh Mookerjee by which the application has been dismissed. It may incidentally be mentioned in order to appreciate one of the contentions urged in this application about the fees and tax that under the Milk Trade Control Order, according to the petitioners 20 inspectors had been appointed and 20 inspectors were also appointed under the Products Control Order and at present there are 40 inspectors under the Milk Trade Control Order.

7. The petitioners state that the strength has not changed since the order was originally enforced. My attention was drawn to certain definition's of ghee in The Illustrated Chamber's Encyclopedia, 1930 Edition, at page 203 where Ghee has been defined as follows :-

Ghee (Ghi), a kind of clarified butter used in many parts of India, and generally prepared from the milk of buffaloes. The fresh milk is boiled, cooled, and a little curdled milk, called dhye, is added to promote coagulation. The curdled mass is churned for half an hour; some hot water is then added, and the churning

continued till the butter forms. When the butter begins to become rancid, which is usually the case after a few days, it is boiled till all the water contained in it is expelled, and a little dhye and salt, or betel-loaf, is added; after which it is put into closed pots to be kept for use. It is widely used by the natives of many parts of India as food, medicine, or in religious ceremonies.

Similarly, in the wilson's Glossary, 1940 Ed. at page 276 Ghee has been mentioned as follows :-

GHI, (Ghi), GHEE, (H. & C.) (Ben.) GHI, GHI, (Ghi) (Mar) Clarified or oiled butter; butter boiled and then set to cool, when it remains in a semi-liquid or oily state, and is used in cooking or is drank by the natives : (the primitive GHRITA, (Ghrita), is also current in most dialects).

8. In this connection it may be appropriate to refer to the definition of "Ghee" in the Food Adulteration Act, 1954 wherein it is provide as follows :

Ghee means the pure clarified fat derived solely from milk or from curd or from the deshi (cooking) butter or from cream to which no colouring matter or preservative has been added.

9. In the affidavit-in-opposition it has been asserted that ghee is well under the purview of the impugned control order in as much as it contains fat, one of the principal milk solids. Milk fat according to the respondents is the principal constituents of milk excluding other solid nonfat available in market. Therefore, the respondents contend that the definition given in the control order that milk products mean nay products containing milk solids fully cover ghee which is pure, clarified fat from milk or other milk products, obtainable from milk only. The respondents contend that milk and milk products come within Section 2(a) (v) of the Essential Commodities Act, 1955 and therefore, "ghee" would within the purview of the said Act. In this connection the respondents have referred to the definition provided in the Food Adulteration Act and further respondents state that the facts ghee is a milk product would be explicit from average composition of ghee and milk and for this purpose the respondents have given a comparative table which is as follows :-

The fact that ghee is a milk product can be explained from the average composition of Ghee and milk as shown in the table below :-

TABLE

Average composition of Cow/Buff. Milk and Ghee.

Particulars

Water

Fat

Solid Protein

Not-fat Carbohydrate

Ash

Total Solids

(%)

(%)

(%)

(%)

(%)

(%)

Cow Milk

87.10

4.00

3.40

4.80

0.70

12.90

Buff Milk

83.60

6.50

3.90

5.20

0.80

16.40

Ghee

0.30

99.50

0.10

0.00

0.10

99.70

It is further the case of the respondents that all the constituents of ghee in milk, for instance. (i) triglycerides (neutral fat), (ii) un-specifiable matter (soluble in fat) such as vitamin-A, carotenoids, B-carotene, Santhuphyles, Lycopene, Tocophere (Vitamin - E), sterols, Vitamin - D, Cholesterol esters, 7-dehydrocholesterol, Ergosterol, Vitamin-K, Hydrocarbons, Squalens, (iii) Trace constituents, diglycerides Monoglycerides, Phospholipids, Pretenis, Free acids, (iv) water-soluble acids like formic, acatic, prohonic and lactic acids and fatty acids like butyric, carporic, obic, etc. (v) Bounded aldehydes, (vi) Moisture, (vii) dissolved gases and (viii) Minerals like Calcium, Magnesium, copper, Iron, etc. which are stated to be present in the constituents of Ghee are also present in the milk constituents of Ghee are also present in the milk constituents though their percentage compositions vary like other dairy products, and all the different constituents of ghee are from the milk or milk preparations. The respondents have also denied that any representation was made to the petitioners. The respondents, further, state that in view of the pendency of the rule being Rule No. 5433(W) of 1974 the fees and licence could not be enforced against the petitioners earlier. Therefore, the petitioners have acquired no right by any alleged latches on the part of the respondents.

10. As I have mentioned before some of these points come up for consideration before Mr. Justice Chittatosh Mookerjee in Civil rule No. 5433 (W) of 1974 (Aligarh West End Dairy a partnership firm v. The State of West Bengal and Ors.), judgment delivered on the 21st of January, 1977. There the petitioner had contended that the petitioner had a stall at New Market Calcutta and claimed that it sold Aligarh Ghee, butter, cream and cheese and also Viva Horlicks Ovaltine Bournvita Cadburys chocolates Toffees, Amul Whole Milk Amul butter and Amul cheese etc. The petitioner in that case had contended as the petitioners in the instant case before me that all these products were manufactured outside the State of West Bengal and no milk or milk solids produced within West Bengal were used or utilized for the manufactured of the products sold from the petitioner's stall at New Market, Calcutta. Therefore, the petitioner in that case before Mr. Justice Chitatosh Mookerjee urged that he Milk Control Order, 1965 was not enforceable in respect of the products sold by the said petitioner because the said products did not come within the scope of the said control order. After discussing the relevant provisions the learned Judge referred to the preamble of the Milk Trade control Order and the definition provided by Section 2(a) of the Essential Commodities Act, 1955 and Section 3 of the said Act and the other relevant sections. The learned Judge held that the West Bengal Milk Control Order, 1965 which provide that no person should carry on business or procure, process manufacture, sale or transport of milk or milk products in the demarcated areas except under and in accordance with the terms and conditions of a valid licence would come within section 3(2) (d) and therefore the application of the said order to that petition was held to be valid. Having regard to the object of the West Bengal Milk Trade Control Order, 1965 it was reiterated by the learned Judge that a licence under the relevant paragraph

was required to be obtained not only for manufacture of milk and milk product but also had to be obtained for sale and transport thereof. His Lordship came to the conclusion that arrangement for storage, transport, distribution, disposal etc. of milk and milk products would come within the purview of the order and the Act. The facts of the case with which Mr. Justice B. N. Banerjee had to deal with in the case of Nani Gopal Paul Vs. State of West Bengal, were different. Dealing with the question whether ghee could come within the purview of the Act the learned Judge had referred to the Encyclopedia Britannica, and it may be in this connection relevant to refer to the observations of the learned Judge where the learned Judge says at page 4 of this judgment as follows :-

In this connection the learned Advocate General has drawn my attention to page 486 of the Encyclopedia Britannica, Volume IV (1971 Edition). It has been stated ".....butter is the yellowish or whitish fat or cow's milk as flocculated or solidified by churning. The commercial product contains not less than 80% and as much as 85% milk fat, 12% to 16% water, about 2% salt (mostly added) and about 1% milk curd. The fat consists of glycerides or perhaps eight acids, among them allic, stearic, palmitic and butyric....

Butter has been described as an edible fat. Ghee has been described as a semi-fluid clarified form of butter. The respondents have stated before me that it is not possible to completely eliminate water from milk. Different kinds of milk solids have different percentages of water and some have more some have lesser water content. Butter which is solidified by churning should be considered as a "milk solid". Mr. Chowdhury has tried to contend before me that section 2(i) gives an inclusive definition and that channa which is not a milk solid has been treated as "milk solid" by expressly mentioning it in paragraph 2(i) of the Control Order. It may be noted that paragraph 2(a) has defined "channa" as a product obtained through acid coagulation of milk followed by draining of the whey. It is not necessary to express any opinion in this rule about the nature of channa but for the reasons already given I hold that the butter, the butter is "milk solid" because it consists of milk's creamery portion with salt and some times, colouring added. The petitioner who has been admittedly selling the said milk products was required to take out a licence in terms of paragraph 3 of the Control Order. Mr. Chowdhury submitted before me that Horlicks, Bournvita, Chocolates etc. cannot be considered as milk products. In deciding whether a particular article of merchandise sold from the petitioner's stall is a milk product or not, it should be considered whether the same contains milk solids or not, i.e., constituents of milk contained by excluding water by heating, churning etc.

The learned Judge also had to deal with the question whether the fees demanded was tax or fee and observed, inter alia, as follows :-

The petitioners submitted that the licence fee payable under paragraph 3 of the West Bengal Milk Control Order, 1965 is a tax and not a fee and that the said imposition is illegal. But the respondents in paragraph 20 of their affidavit-in-opposition have pointed out that licence fees collected under the impugned

Control Order, were never merged with the general revenue of the State. The licence fees were raised to partially meet the costs of implementation of the Order. In the above view, I hold that the licence fee under impugned order is not a tax.

The learned Judge in these circumstances discharged that rule nisi as indicated before.

11. It is in this background that the different contentions raised on behalf of the petitioner will have to be judged. The main contention was that ghee did not come either within the definition of food or milk products or milk solid and was therefore outside the purview of the order. The next contention that was urged in this case was that the classification made in respect of the products in respect of which the petitioners are being sought to be made liable to pay the licence fee was unreasonable as well as violative of Article 14 of the Constitution. In this connection reliance was placed on the decision in the case of *Diwan Sugar and General Mills (Private) Ltd. and Others Vs. The Union of India*, where Section 3 of the Essential Commodities Act, 1955 in conjunction with Clause 5 of the Sugar Control Order, 1955. In paragraph 6 of the said judgment page 630 of the report the Supreme Court observed that reading Section 3 of the said Act with the preamble, it was obvious that the object of the Act was to provide for control of the production, simply and distribution of trade and commerce in essential commodities in the interests of general public so that the supplies of the commodities might be maintained and increased and their equitable distribution secured and that these might be available to the general public at fair prices. The Supreme Court, further observed that considering the history of sugar control and the trends which appeared in the market from April, 1958 it could not possibly be said that the impugned notification did not subserve the purpose of the Act and the order. The Supreme Court was of the view that there could be little doubt that fixation of exfactory prices of sugar mills in the main surplus areas would have the effect of establishing sugar prices for the general public which was the consumer, at the fair level and make sugar available at fair prices. The Supreme Court found in the affidavit on behalf of the Government that there was need for the impugned notification to subserve the purpose of the Act. Basing his argument upon the aforesaid principle on behalf of the petitioners it was contended that in view of the averments made in paragraph 13(vi) of the petition and read in conjunction with the averments of paragraph 15 of the affidavit-in-opposition filed on behalf of the Respondent Government and bearing in mind the purpose of Section 3 of the Essential Commodities Act, 1955 as explained by the Supreme Court there was no nexus for the said control order in the manner in which it was sought to be implemented. In this connection counsel sought to rely on the relevant decisions about reasonable classification to pass the test of Article 14 of the Constitution and naturally reliance was placed on the decision of the Supreme Court in the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, where the Supreme Court reiterated the principles to be borne in mind by the courts in determining the validity of a statute on ground

of violation of Article 14 of the Constitution. The Supreme Court had observed that it was well settled that Article 14 did not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions were required to be fulfilled namely, (i) the classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from the others that are left out of the group, (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The Supreme Court reiterated that the classification might be founded on different basis, namely geographical or according to the objects or occupation or the like. That there should be nexus between basis of classification and the object of the Act under consideration and Article 14 also applied to substantive law as well as to the law of procedure. The Supreme Court hastened to observe that there was always a presumption in favour of the constitutionality of an enactment and the burden was upon one which attacked to show that there had been a clear transgression of the constitutional principles. It has further to be borne in mind that the legislature understood and correctly appreciated the need of its own people and the laws were directed to problems made manifest by experience and that its discrimination is based on adequate grounds. But the court in order to sustain the presumption of constitutionality might take into consideration matters of common knowledge, matters of common report the history of time and might assume every state of facts which could be conceived existing at the time of legislation. This principle has been reiterated by the Supreme Court in several decisions. My attention was drawn to the observations of the Supreme Court in the case of *Probhudas Morarjee Rajkotia and Others Vs. Union of India (UOI) and Others*, where at paragraph 8 of the judgment the Supreme Court was dealing with the licence under the Special Exports Promotion Scheme for Engineering goods. The Supreme Court found that there was not sufficient pleading in order to come to the conclusion that equally placed persons or things had been differently treated. Reliance in this connection was also placed on the observations of the Supreme Court in the case of *State of Nagaland Vs. Ratan Singh, etc.*, where at page 224 of the report in paragraph 30 the Supreme Court observed that people in the backward hill areas were differently placed any violation in treating the people in the backward area differently in respect of the Criminal Procedure Code from other areas. In this connection on behalf of the petitioners my attention was drawn to paragraph 14 (viii) and paragraph 16 of the affidavit-in-opposition and in the Annexures at pages 34, 39 and 40 of the petition in the instant case and it was urged in this case that in the manner of issuing and enforcing the notification in respect of the areas in which the petitioners operate and ghee being imported from outside the State of West Bengal there was no sufficient material for the Government to justify the imposition of the licence fees on the petitioners. Further, it was urged that the imposition of the licence fee was unreasonable and in this connection reliance was placed on the observations in the case of *Budhan Choudhry and Others Vs. The State of Bihar*, where at page 193 of the report the Supreme Court again

reiterated that though Article 14 forbade reasonable classification for legislation or notification in order however to pass the test of permissible classification two well known conditions must be fulfilled, that the classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group and the differentia must have rational relation to the object sought to be achieved. Counsel in this connection also drew my attention to the observations of the Division Bench of the Madras High Court in the case of *K.C. Varadachari, Partner, Madras Oil Mills and Products Vs. The State of Madras*, by the Secretary to the Government of Madras, Food and Agriculture Department, where the Court was dealing with the enhancement of licence fees leviable under Madras Manure Dealers' Licensing Order, 1949 and the question was whether there was any discrimination between Oil-millers and other manure dealers and the Supreme Court found that the Government had given a statement of the strength of the staff employed and the expenditure of the Government of the account and the Court reiterated the distinction between a tax and a licence fee. The issue of licence was to regulate particular branches of business or specified trade or occupation and other matters for grant of a licence fee might be charged to cover probable expenses which might have been incurred for the regulation of the particular trade or business or calling in respect of which the licence was required. The licence fee was not intended to raise revenue for the general purpose of the authority levying the fee. For such purpose levy should be in the shape of a tax. For these reasons licence fee must be reasonable but tax need not be reasonable. But the Division Bench observed that though ultimately the decision in each case must depend upon the particular facts of the particular case certain general tests have been formulated to decide whether a particular fee is reasonable in the circumstances and in considering that the Court must always bear in mind the distinction between the licence and tax because a licence fee was intended to reimburse the authority of amount expended for regulation of a particular business. Counsel in this connection contended that there was no such facts available and when a challenge was thrown it was for the Government to establish the facts. Furthermore, it was argued that various areas where milk was being produced in abundance namely, Burdwan and Dunkuni and there was no imposition of licence fees. Reliance was also placed on the decision in the case of *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, of the judgment the Supreme Court again reiterated the principle of classification. My attention was drawn to the case of *M.A. Rasheed and Others Vs. The State of Kerala*, where the Supreme court reiterated that the notification with which the Supreme Court was considering was passed after due care and caution on the basis of reliable and sufficient data obtained by proper investigation and enquiry and could the State Government could not be based on any matter extraneous to the scope and purpose of the relevant provision of the statute. The materials supporting the subjective satisfaction must indicate that there were reasonable grounds for believing that the prescribed state of affairs would exist and the course of action was reasonably necessary for the given purpose of equitable distributing of coconut husks at fair price. The Supreme

Court again reiterated the well known principle that where powers were conferred on public authorities to exercise the same when "they are satisfied" or when "it appears to them" or when "in their pinion" a certain state of affairs exists or on powers enable public authorities to take such action as they think fit in relation to the subject matter the Courts would not readily defer to the conclusiveness of the executive authority's opinion as to the existence of a matter of law or on upon which their validity of the exercise of the power is predicated. Judged by these standards according to the counsel for the petitioners there was no data made available to the Court by the State Government for the imposition of the fees in the manner done.

12. On the other hand, on behalf of the respondents my attention was drawn to a decision of the Nagpur High Court in the case of AIR 1952 10 (Nagpur) where at paragraph 6 of the Division Bench of the Nagpur high Court observed that as oils and oilseeds were not edible, it was necessary to specify that edible oilseeds and oils were included in the foodstuffs. From that it did not follow that the ghee which was so much consumed in this country along with meals was not included within the definition of foodstuffs, the Court was dealing with an order u/s 7 of the Essential Supplies (Temporary) Powers Act. In this connection reliance was also placed on the recent observations of the Supreme Court in the decision in the case of *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, where the Supreme Court was dealing with the validity of Mustard Oil (Price Control) Order 1977 issued on 30th September, 1977 u/s 3 of the Essential Commodities Act, 1955. It was held that the said price control order did neither offend Article 14 or Article 19(1) (f) and 19(1) (g) of the Constitution. It was observed that the Price Control Order could not be said to offend Article 14 of the ground that the impugned order treated the entire country as one unit regardless of regional variations regarding factors like the cost of procurement of raw material and freight. The Supreme Court found that there was no reliable data to support the view that dealers in different regions could be said to be so differently situated in the context of and in relation to the purpose for which the Price Control Order was issued that one common price for dealers all over the country could reasonably be described as discriminatory as against some of them. The fixation of different prices for different regions would frustrate the very object of the exercise that an essential commodity should be made available to the consumer at fair price. In the ultimate analysis the mechanics of price fixation had necessarily to be left to the judgment of the executive and unless it was patent that there was hostile discrimination against a class of operators, the procedural basis of price fixation had to be accepted in the generality of the cases as valid. The Supreme Court also held that the Price Control Order which was promulgated by the Government in order to achieve the purpose set out in Section 3(1) of the Essential Commodities Act, 1955. The fact that a legislative remedy or an administrative order passed in exercise of a statutory power was ineffective to mitigate an evil might show that it had failed to achieve its purpose, highlighting thereby the paradox of reform. But that is the price to be

paid for the trial and error inherent in legislative efforts to deal with obstinate social issues.

13. On behalf of the petitioners as I have mentioned hereinbefore the main ground of challenge was that ghee was not an essential commodity in as much as it did not come within the purview of foodstuff as envisaged in the Essential Commodities Act, 1955. For the reasons I have already indicated and in view of the nature of the definition of foodstuff under Clause (V) of Section 2 of the said Act I am unable to accept this contention. It was further contended that the impugned order of the West Bengal Milk Trade Control Order, 1965 and the notices of demand issued thereunder were illegal because ghee according to the petitioners did not come within the purview of milk products and as such, specially keeping in view the purpose of the said order and in view of the fact that the petitioners business for which licence fees were being demanded could not be said to come within the mischief of the said provision. It was, then, contended that the said order had been extended to the petitioners' business disregarding the principles of classification permissible under Article 14 of the Constitution and it was submitted that there were no materials for the State Government to extend the said order to the petitioners' business while large areas of milk producing areas had been left out of the purview of the operation of the said Act. It was, further, urged that there was no co-relation between the amount sought to be recovered as fees which were disproportionate to the services intended to be rendered and as such this could not be a licence fee and would thus be illegal. On the other hand, on behalf of the respondents, it was urged that the order in question was imposed so that there was proper distribution of milk to the districts where the milk or milk products would not flow because of the tendency of the milk products flowing to Calcutta because of the high prices available in urban areas. About the non-implementation of the licence fees to the areas mentioned by the petitioners namely, Dunkuni and Burdwan districts it was submitted on behalf of the State that in view of the injunction that had prevailed civil rule mentioned hereinbefore the survey could not be taken up earlier. The matter is under investigation and if an administrative exigency so warrant these areas would also come within the purview of the said order. In this matter it was stressed that an administration should be given certain amount of latitude in order to gather material and enforce certain provisions of any particular order. It is true that there is legitimate ground of criticism on the part of the petitioners that there are no materials in the affidavit filed on behalf of the respondents that such survey had been taken up and was in progress. But having regard to the fact that in view of the civil rule mentioned hereinbefore which was pending for a long time and in background of the knowledge how governmental activities are carried on this Court would not be unjustified in taking judicial notice of this submission though not factually not corroborated by averments made in the affidavit on behalf of the respondents. It is, also, in my opinion, the plausible plea as advanced on behalf of the respondents that unless there is some control even in respect of milk products coming from outside the

State of West Bengal in urban areas there will be the danger that the ideal of equal distribution of milk products in the whole of the State of West Bengal might be hampered and if for this certain amount of restrictions are imposed even in respect of milk products which come from outside the State of West Bengal in particular urban areas such restrictions could not be said to be foreign to the purpose of the Act and Control order and having regard to their objects. I am also unable to accept the contention that the licence fee was so disproportionate to the service sought to be rendered by the imposition of the Control order that it could be said to be unreasonable. In matters of this kind certain amount of latitude is inevitable and such matters cannot be judged with mathematical accuracy.

14. For the reasons aforesaid and specially in view of the decision of Mr. Justice Chittatosh Mookerjee in the case of Aligarh West End Dairy v. State of West Bengal in Civil Rule No. 5433(W) of 1974, in my opinion, this application must fail and is accordingly dismissed. The rule nisi is discharged. Interim order if any is vacated. There will, however, be no order as to costs. Stay asked for is refused.