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**(1960) 02 CAL CK 0023**

**In the Calcutta High Court**

**Case No :** Civil Revision Case No. 1996 of 1959

Satchidananda Mukherjee and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

**Date of Decision :** 23-02-1960

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 19(6)
Essential Commodities Act, 1955 — Section 3, 5
Income Tax Act, 1961 — Section 5

**Citation :** 64 CWN 521

**Hon'ble Judges :** Sinha, J

**Bench :** Single Bench

**Advocate :** Apurbadhan Mukherjee and Arun Kumar Dutta, for the Appellant;Nirmal Chandra Chakravarty and Sushil Kumar Banerjee, for the Respondent

## Judgement

Sinha, J.—In this application there are sixty petitioners. They all carry on business as retail dealers in soft coke in the Subdivision of Barrackpore in the District of 24-Parganas. The petitioners were granted licenses in form "B" under the West Bengal Soft Coke Distribution Order, 1947 now replaced by the West Bengal Soft Coke Distribution Order, 1955 (hereinafter referred to as the ''Order''). Until 18th May, 1959 the Sub-divisional Controller, Food and Supplies, Barrackpore, passed an order to the effect that the petitioners and all retail dealers in soft coke possessing licenses in form "B" should no longer import soft coke direct from the collieries by road, but that they shall draw their supplies from a number of wholesale dealers who have been appointed for that purpose. According to the petitioners, this has prejudiced them, inasmuch as their profits have been cut down, resulting in total stoppage of their business. They have accordingly made this application for the issue of a writ in the nature of mandamus or prohibition restraining the respondents from enforcing the said order. On behalf of the respondents it was pointed out that the petitioners are retail dealers, to whom licenses in form "B" have been issued, valid upto 31st

March, 1960. Previous to the order passed by the Sub-divisional Controller, Food and Supplies, Barrackpore, dated 18th May, 1959 retail dealers in soft coke, including the petitioners, were permitted to draw their supplies direct from the collieries by road, because the position of wagon supply was very bad. It is stated that in September, 1959 the supply of wagons improved, with the result that it was no longer necessary or expedient to allow retail dealers to indent from the collieries direct, by road. It is said that wholesale dealers have been now appointed, as contemplated by the said order, and the retail dealers have been directed to draw their supplies from such wholesale dealers. It is further said that the margin of profit has been carefully calculated, and although the introduction of wholesellers cuts into the profits hitherto enjoyed by the retailers, there is still a sufficient margin of profit and it is denied that the petitioners have been compelled to close their business. Before me, a point has been taken that paras. 13, 18 and sub-paras. 2 and 3 of para. 7 of the order are not within the power of delegation conferred by the Government of India upon the Government of West Bengal, and that the provisions of the order whereby power has been conferred upon the "Director" and the "District Magistrate" to do various acts under the said order, are bad, for reasons which will be presently mentioned. It is urged that the order is violative of the fundamental rights of the petitioners to carry on business under Article 19(1) (g) of the Constitution. In this particular case, the impugned order has been passed by the Sub-divisional Controller of Food and Supplies, Barrackpore, in exercise of the power delegated to him by the District Magistrate. It is argued that the power of delegation or authorisation is bad and, therefore, the order itself is void. It is necessary to state the genesis of the West Bengal Soft Coke Distribution Order, 1955. The Essential Commodities Act, 1955, being Act No. X of 1955 was promulgated on or about 1st April, 1955 and it is not disputed that it is still in operation. Section 3 of the said Act grants power to the Central Government, if it is of the opinion that it was necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability at fair prices, to make an order providing for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) of section 3 of the said Act, gives certain headings which are illustrative of such power. Clause (c) provides for the control of prices at which any essential commodity may be bought or sold. Sub-clause (d) provides for regulating by licenses, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. Clause (e) provides for the prohibition or withholding from sale of any essential commodity ordinarily kept for sale. Section 5 of the said Act provides that the Central Government may, by notified order, direct that the powers to make an order u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such State Government or such officer or authority subordinate to the State Government, as may be specified in the direction. It appears that by S.R.O. No. 1299 dated 10th June, 1955, notified at pages 1068 and 1069 of the Gazette of India dated the 18th June, 1955, Part II,

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section 3, the Central Government delegated power to the State Government. In exercise of that power, the State Government, by Order No. 2215SD dated 7th October, 1955, published in the Calcutta Gazette dated 20th October, 1955 Part I pages 4263-4267, promulgated the West Bengal Soft Coke Distribution Order, 1955. Under paragraph 3 of the said order, "Director" means Director, Consumer Goods, Department of Food, Relief and Supplies, West Bengal, and includes any person authorised by the said Director in writing to perform all or any of the functions of the Director under the said order. The expression, "District Magistrate" includes any person authorised by the District Magistrate in writing to perform all or any of the functions of the District Magistrate under the said Order. Paragraph 4 of the Order prohibits the carrying on in any area, where the Order comes into force, the sale of soft coke or carrying trade in it, unless by a person who is in possession of a valid license issued under paragraph 5 and paragraph 7, and except in accordance with the conditions specified in the said license. Paragraph 5 lays down that all applications for the issue of a license or renewal thereof, within the Calcutta area shall be made to the Deputy Director, Consumer Goods (Fuels), and in respect of any other area to the District Magistrate having jurisdiction in such area, in the prescribed form. Clause 3 or para. 7 is important and is set out below:--

A retail dealer or any person acting on his behalf shall purchase soft coke only from a wholesale dealer duly licensed under paragraph 6 of the said order except in the case where the Director or the District Magistrate, as the case may be, may allow a retail dealer to purchase soft coke from other sources.

Para. 13 lays down that every licensee must comply with any special or general direction issued in writing by the Director or the District Magistrate as the case may be, for securing proper distribution of soft coke or for carrying out the purposes of the said Order. In order to decide the first point taken in this case it is necessary to consider the instrument of delegation whereby the Central Government has delegated power u/s 5 of the Essential Commodities Act, to the State Government. That delegation is contained in the notification, being SRO No. 1299 dated 10th June, 1955 published in the Gazette of India dated 18th June, 1955, Part I, Section 3 at pages 1068-1069. By that notification powers to be exercised by the Central Government under clauses (c), (d), (e), (f), (h), (i) and (j) of clause 3(2) of the said Act were to be exercised, inter alia, by the State Governments of all Part A States, in respect of the distribution of coal received within the State from time to time against quotas fixed by the Central Government. The West Bengal Government, in exercise of the power so delegated to it, promulgated the West Bengal Soft Coke Distribution Order, 1955. Subsequently, by S.R.O. No. 1185 dated the 2nd April, 1957 a further Order has been issued by the Central Government delegating to the State Government, power in respect of distribution of coal received within their respective jurisdictions otherwise than against the Central Government''s quota. The West Bengal Soft Coke Distribution Order, 1955 does not however purport to be made under this notification, as indeed it could not be, having been passed prior to the

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publication of this notification. However, no point has been taken before me that the soft coke which was being indented by the petitioners was not covered by S.R.O. No. 1299. The point of delegation has been propounded before me as follows: It is said that the Essential Commodities Act confers powers of delegation upon the Central Government, and such delegation can be made to any State Government or an officer or authority subordinate to the State Government. Therefore, the Central Government could make a delegation, either to the State Government of West Bengal, or directly in favour of the District Magistrate or even the Sub-divisional Controller of Food and Supply, Barrack-pore. The fact is, however, that the Central Government has delegated power to the State Government of West Bengal. It is argued that the State Government being a delegate has no power to re-delegate, on the principle of Delegatus non potest delegare. That this principle is well-established there can be no doubt. In my opinion, however, we have not here any application of that principle. In considering this point we will have to see as to what power is given to the Central Government, which it is said to have delegated. I think that the matter really comes under the scope of clause (d) of subsection (2) of section 3 of the said Act, which grants power to the Central Government to promulgate orders regulating the supply and distribution of an essential commodity by the issue of licenses or otherwise. This power has been delegated to the State Government in respect of an essential commodity, namely, coal. In exercise of this power, the said Order has been promulgated by the State Government. In other words, as long as the delegation lasts, the State of West Bengal may promulgate an Order which will contain provisions for the regulation by licenses or otherwise, of the distribution, acquisition, use or consumption etc. of coal, including soft coke. This is what it has purported to do by promulgation of the Order of 1955. By that Order, the State Government has not re-delegated its power to the District Magistrate etc., of making such an Order. The Director or the District Magistrate as the case may be, are officials who are to carry out the provisions of the Order. Their functions relate to the working out of the provisions of the Order. Thus, the Director or the District Magistrate may issue a license as specified in the Order, or give directions for securing the proper distribution of soft coke, and so forth. These officials are not concerned with the making of an order under the Essential Commodities Act, but for carrying out the provisions of an order made thereunder. It is, therefore, not correct to say that there has been any re-delegation of the power which has been conferred u/s 5 of the Act to the State Government.

2. The second and the third points taken, may be conveniently dealt with together. It is propounded as follows: As I have stated above, the persons who are entrusted by the Order to carry out its provisions, by the issue of licenses or otherwise are the Director or the District Magistrate. But in both cases, the power is not confined to the Director of Consumer Goods or the District Magistrate of a District. By the definition clauses (b) and (c) of para. 3 of the Order, "Director" means the Director, Consumer Goods, Department of Food,

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Relief and Supplies, West Bengal, and includes any person authorised by the said Director in writing to perform all or any of the functions of the Director under the Order. The word "District Magistrate" includes any person authorised by the District Magistrate in writing to perform all or any of the functions of the District Magistrate under the said Order. It is argued that while it may be a reasonable restriction upon the fundamental right of the petitioners to carry on business in soft coke, to impose conditions, namely that no business could be carried on except with a license etc. issued by important officials like the Director or the District Magistrate, it is wholly unreasonable that these officials can authorise any and every person to carry out their functions. It is argued that such provision makes the West Bengal Soft Coke Distribution Order, 1955 violative of the provisions of Art. 19(1) (g) of the Constitution and is not saved by Art. 19(6), inasmuch as the provisions of the Order do not amount to a reasonable restriction. The phrase "reasonable restriction" has been interpreted by various decisions of the Supreme Court. In Chintamon Rao v. State of Madhya Pradesh (1) AIR (1959) S.C. 118, Mahajan, J., said as follows:--

The phrase ''reasonable restriction'' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word ''reasonable'' implies independent care and deliberation, that is choice of a course which reason dictates Legislation which arbitrarily or excessively invades the right cannot be said to contain quality of reasonableness and unless it strikes a proper balance between freedom guaranteed in Art. 19(1) (g) and the social control permitted by clause (6) of Art. 19 it must be held to be wanting in that quality.

3. That being the general proposition- we come to the particular facts of this case. The argument is that power given to the Director or District Magistrate may be upheld, but under the Order they can authorise any person they choose, to carry out their functions, and this is an unreasonable restriction. The nearest case upon this point is a judgment of the Appeal Court, Khagendra Nath De Vs. District Magistrate of West Dinajpur, . This was a case under the West Bengal Security Act, 1950, being Act XIX of 1950. That Act, inter alia, provided that the State Government, if satisfied with respect to any particular person that he was doing or was about to do or likely to do any subversive act, was entitled to make an externmem order. In exercise of this power the petitioner, Khagendra Nath Dey, was ordered to leave the District of West Dinajpur. He thereupon made an application, inter alia, challenging section 38 of the Security Act which runs as follows :--

The State Government may, by notified order, direct that any power or duty which is conferred or imposed by any provision of this Act upon the State Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also by any officer or authority subordinate to the State Government

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4. Harris, C.J. dealing with this point stated as follows:--

One of the powers conferred by the Act is the power of making an externment order and clearly by section 38 of the Security Act Government can delegate that power to any officer or authroity subordinate to the State Government. Officers or authorities subordinate to the State Government may be officers or authorities of a high standard or they may be officers or authorities of comparatively lowly kind... The Commissioner of Police for the City of Calcutta, or a Superintendent of Police in the mofussil is, I think, clearly an officer or authority subordinate to the State Government and so is a Sub-Inspector...A habildar is a lowly and humble officer of Government. He certainly is a servant of Government and I do not think that the term "officer" has any precise meaning. In any event it seems to me that section 38 is framed in such a manner as would permit Government to delegate their powers to officers who, I think, would be wholly unfitted to be entrusted with the power of making any such orders.

5. In that case, it was argued that we must not assume that Government would delegate its powers to some humble officer or authority who, or which, could not be regarded as fitted to exercise such power. The learned Chief Justice pointed out that the Court was not presuming that the Government would abuse its powers by appointing some one not fitted to make the order. If the Government so delegates its powers to a humble class of officers subordinate to Government, it may not be abusing its authority. It would be exercising a right which the Act actually gave it. It would not be doing something to circumvent the Act, on the contrary, it would be doing something which it was entitled to do under the Act. The learned Chief Justice also mentioned that in the Preventive Detention Act, 1950 delegation of power was only to senior and responsible officers, but u/s 38 of the Security Act, persons authorised to make the order might be an officer of Government, whatever his rank, status, knowledge or experience might be. The learned Chief Justice concluded as follows :--

It appears to me that a section which entitled Government to delegate its powers to any officer subordinate to it, irrespective of whether that officer is fit to make such order, is to my mind a procedure which is wholly unreasonable and that being so, this Court must hold that section 38 is ultra-vires, as being beyond the powers given to the State by clause (5) of Art. 19 of the Constitution.

6. It would be observed that the present case is still worse. While in the Security Act, the delegation could be to a Government officer, there is no such restriction in the Order of 1955. So far as this Order is concerned, the Director or the District Magistrate as the case may be, may in writing authorise "any person" to exercise all his function under the Act. In a Supreme Court decision, Pannalal Binjraj v. Union of India (3) (1957) S.C.A. 66 the Court was dealing with section 5(7-A) of the Indian Income Tax Act, which empowered the Commissioner of Income Tax, or the Central Board of Revenue to transfer the income tax file of an assessee from one place to any other place in India. This was challenged on the ground that it was violative of Art. 14 of the Constitution and was discriminatory.

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It was held that the power of transfer was vested under the impugned section, not in minor officers but on top ranking authorities like the Commissioner of Income Tax and the Central Board of Revenue. This power was therefore discretionary and not necessarily discriminatory. Abuse of power cannot be easily assumed where the discretion is vested in such high officials. The principle laid down there would not be applicable to the facts of this case because here, the order entitled the Director or the District Magistrate to exercise large measures of discretion in the licensing etc., of dealers in soft coke but all such powers may be delegated to "any person", irrespective of status and capacity to discharge his functions. As I have pointed out, it may even be delegated to a non-government servant. The power of regulating all dealings in an essential commodity like coal, is a power of such magnitude that it is plain to see that it would be wholly unreasonable to allow this power to be exercised by any and every person whom the Director or the District Magistrate might be pleased to clothe with authority. In my opinion, this provision of law cannot be declared to be a reasonable restriction and must be struck down.

7. The only question that remains to be decided is as to whether, as a result of this interpretation, the whole Order is bad or whether the authority given to the Director or the District Magistrate to delegate their functions to any other person should be declared as bad. Giving the matter my anxious consideration, I think that it would be quite sufficient to say that the definition of the words "Director" and the "District Magistrate" as given in clauses (b) and (c) of para. 3 of the Order, in so far as they include persons other than the Director, Consumer Goods, Department of Food, Relief and Supplies, West Bengal or the District Magistrate of a District, is bad, but that the Order in so far as it confers upon the Director or the District Magistrate respectively, does not offend the test of constitutionality. In the present case, the impugned order has been made by the Sub-divisional Controller of Food and Supply, Barrackpore as a result of the delegation made to him by the District Magistrate, 24-Parganas by order dated 28th February, 1959 published in the Calcutta Gazette dated March 5, 1959. By this order, the District Magistrate, 24-Parganas has, in purported exercise of his powers conferred on him by clause (c) of para. 3 of the said Order, authorised all Sub-divisional Controllers of Food and Supply Department in the 24-Parganas to perform the functions of the District Magistrate under the said Order in their respective subdivisions. The delegation is bad.

8. For the reasons mentioned above, I must hold that this order of delegation is bad and, therefore, the order of the Sub-divisional Controller, Food and Supply, Barrackpore, dated 18th May, 1959 must be struck down as being made by a person without authority. This Rule is accordingly made absolute and there will be issued a writ in the nature of certiorari quashing the said order and also a writ in the nature of mandamus directing the respondents not to give effect to it, or any order or orders in continuation thereof or in relation thereto. This will not however, prevent the respondents Nos. 1 and 2 from making or promulgating such order as they may be entitled to, in accordance with law. There will be no

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order as to costs.

9. The operation of this order shall remain stayed for six weeks. Let a copy of this judgment be sent to the Legal Remembrancer, Government of West Bengal.

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