

(1982) 07 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No's. 1122 to 1128 of 1982

Senthilve and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-07-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1983 Mad 316 : (1983) ILR (Mad) 43 : (1983) 96 LW 327 :
(1983) 2 MLJ 368

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : I. Subramaniam, for the Appellant; S. Jagadeesan, for Govt. Pleader,
for the Respondent

Judgement

1. The petitioners in these writ petitions are retail dealers. In the year 1973, the Government promulgated the Tamil Nadu Kerosene (Regulation of Trade) Order 1973, in exercise of the powers conferred on it u/s 3 of the Essential Commodities Act, 1955. The order came into force on the 14th Nov., 1973. The order was promulgated for ensuring an equitable distribution of kerosene at fair price. The order provided for appointment of wholesalers and retailers and earmarking the areas of supply for each of them. Under the provisions of the order no person shall start afresh or carry on business as a wholesaler except in accordance with the terms and conditions of a licence issued by the licensing authority. In order to carry on the business as a dealer in the sale of kerosene, a person has to get himself registered as such by the licencing authority. The registration once granted will continue to be in force until it is cancelled by the licencing authority. Clause 5 (8) of the Order provides that the registered dealer shall conform to such directions and instructions as may be issued by the Commissioner or Collector of the district concerned or the licencing authority from time to time. Clause 18 provides for cancellation of a licence or registration certificate issued under the Order for contravention of conditions of licence or

registration certificate or statutory order. The proviso states that no order shall be made under this clause unless the licensee or registered retailer has been given a reasonable opportunity of stating his case in writing against the proposed cancellation or suspension.

2. While so, on 3-9-1979, the Government issued G. O. Ms. 234. By the said G. O., the Government introduced a scheme of distribution on family cards through the public distribution system and directed that family cards not exceeding 500 may be allotted to retail registration certificate holders who solely depend on kerosene business alone for their livelihood. So far as the Madras city is concerned the Government order stated that separate orders would be issued.

3. Aggrieved by the said G. O. some of the retailers, who do not depend wholly on kerosene trade, filed two writ petitions which were dismissed by Mohan, J. at the stage of admission by his order dated 23-12-1980. The writ petitioners then filed W. As. 14 and 15. These writ appeals along with a batch of writ petitions were disposed of by a Bench of this Court by its common judgment dated 1-12-1981. Three contentions were raised before the Bench on behalf of the retail dealers who were not depending solely on the kerosene trade. (1) The impugned G. O. had to be struck down in so far as it restricted the supply to private retail registration certificate holders in the district who depend only on the sale of kerosene for their livelihood on the ground that it was discriminatory. (2) The effect of the G. O. amounted to a complete deprivation of the petitioners' business in kerosene by an executive fiat and on a ground which was not relevant to the distribution of kerosene on equitable basis or at fair price. (3) If the Government wanted to introduce a new system of distribution other than that found in the Order of 1973, they should have promulgated an Order in exercise of the powers u/s 3 of the Essential Commodities Act, and that it was not open to the Government to deprive any retail dealer who had also got registration under the licencing authority of their legitimate claim for doing business or for supply of kerosene. The Bench accepted the last of the contentions and came to the conclusion that the restriction authorising the private retail dealers who depend only on the sale of kerosene for their livelihood was not warranted by the regulation order as such and that if the Government wanted to introduce a new system of distribution of kerosene a new order should have been promulgated in exercise of their powers under S. 3 of the Essential Commodities Act.

4. In similar circumstances, two persons holding retail registration certificates had also filed W. Ps 7090 and 7091 of 1981, challenging the validity of G. O. Ms. No. 234 dated 3-9-1979 and the consequential order in Roc. 5112769 of 1980 dated 14-8-1981 so far as they were concerned. The latter order was passed by the Taluk Supply Officer, Sivagiri, directing the stoppage of supply of kerosene to 34 private retail dealers including the petitioners. These writ petitions were heard by Ramanujam, J. and disposed of by the judgment dated 8-12-1981. The learned Judge followed the judgment of the Bench in W. As. 14 and 15 of 1981

and connected writ petitions and allowed the writ petitions. The learned Judge directed that the petitioners should be supplied the quantity of kerosene in proportion of the quantity allotted to the Sivagiri Taluk, and the proportion would be the quantity supplied to the petitioners previously as against the quantity allotted to the Sivagiri Taluk before the filing of the writ petitions. The learned Judge further gave a direction that the family cards attached to the petitioners should be restored to them.

5. Thereafter, these writ petitions have been filed by the various writ petitions for identical relief viz., challenging the order of the Taluk Supply Officer, Sivagiri, directing the stoppage of supply of kerosene to them. It may be stated that the petitioners in all these writ petitions do not depend solely on kerosene trade for their livelihood. In the affidavit originally filed in the support of the writ petitions, the petitioners attacked the validity of G. O. Ms. 234 dated 3-9-1979, and also relied upon the Bench decision in W. As. 14 and 15 of 1981.

6. In W. As 14 and 15 of 1981 and the connected writ petitions, the validity of G. O. Ms. No. 234 Food Department dated 3-9-1979 came up for consideration. The G. O. happened to be issued because the Commissioner of Civil Supplies had sent a report to the Government of Tamil Nadu stating that consequent on the reduction in allotment of kerosene to the State of Tamil Nadu by the Government of India from Feb., 1979, there was scarcity of kerosene in Tamil Nadu resulting in its sale at a price higher than that fixed and a situation of non-availability for general customers and that with a view to ensuring a minimum uninterrupted supply of kerosene at the fixed price to the customers, it was necessary (1) that kerosene should be supplied under public distribution system on family cards throughout the State; (2) that to each private retail registration certificate holders in the district who depend only on sale of kerosene for their livelihood, family cards not exceeding 500 might be attached for supply of kerosene to the card holders, and (3) that in Madras city, the private kerosene retailers who were exclusively dealing in kerosene and handcartmen might be allowed ad hoc supply of kerosene at the rate of 100 litres per day on an ad hoc basis for sale outside the public distribution system. The G. O. provided for distribution of kerosene through the public distribution system on family cards throughout the State and for attaching 500 family cards to each of such private retailers in kerosene in the districts who solely depend on kerosene business alone for their livelihood. The Government also directed that in respect of supplies in the Madras city separate orders would be issued. It was contended on behalf of the kerosene dealers who were not solely dependent for their livelihood on the sale of kerosene that the Government order in so far as it restricted the supply of kerosene only to registration certificate holders in the district who depended only on the sale of kerosene for their livelihood was discriminatory and that in any event such a G. O. could not be passed in exercise of the executive power of the State. The Bench by its judgment dated 1st Dec., 1981, allowed the appeals and the writ petition. The Bench did not deal with the question whether the classification of retail dealers into two categories, viz., those who solely depended on sale of

kerosene for their livelihood and handcartmen on the one hand and the other retailers who carried on trade in kerosene along with other commodities. The Bench took the view that if the Government wanted to introduce a new system of distribution of kerosene, a new order should have been promulgated in exercise of their power u/s 3 of the Essential Commodities Act and it would not be open to them to make an executive order contrary to the system provided under the orders promulgated in exercise of the power conferred under S. 3 of the Essential Commodities Act. The Bench also observed that the restriction authorising the private retailers who depended solely on the kerosene trade for their livelihood was not warranted by the regulation order as such. In the circumstances the Bench struck down the G. O. This decision of the Bench was followed by Ramanujam, J. in W. Ps. 7090 and 7091 of 1981 which were disposed of by the learned Judge on 8-12-1981.

7. While so, the Government issued G. O. Ms. 978 Food and Co-operation dated 29-12-1981. By the said G. O. they have amended Clause 3 of the Tamil Nadu Kerosene (Regulation of Trade) Order 1973, thereby empowering the Government, the Commissioner of Civil Supplies, the Collector or the licencing authority to direct kerosene wholesalers to supply kerosene only to specified classes of retailers and further directing that the wholesalers shall abide by such directions. Pursuant to the said amendment, the Government issued directions to the kerosene wholesaler in the district that henceforth they should supply kerosene only to the following categories of retailers - (a) retailers operating under the public distribution system i.e., the fair price shops run by the Tamil Nadu Civil Supplies Corporation and Co-operatives; and the private retailers holding kerosene retail registration certificates and who are exclusively dealing with kerosene for their livelihood and were attached with family cards not exceeding 500 for distribution of kerosene to the card holders, and (b) handcartmen holding retail registration certificates and are doing street vending in kerosene.

8. But for the amendment of the Tamil Nadu Kerosene (Regulation of Trade) Order 1973, by G. O. Ms. No. 978 Food and Co-operation dated 29-12-1981 and the directions issued by the Government to wholesalers following the amendment, these writ petitions would only have to be allowed, following the judgment of the Bench in W. As. 14 and 15 of 1981, and that of Ramanujam, J. in W. Ps. 7090 and 7091 of 1981.

9. Mr. Jagadeesan, the learned Government advocate, argued that the Bench judgment in W. As. 14 and 15 of 1981 proceeded on the basis that the Government had no power to restrict the supply of kerosene to retail registration certificate holders who depended for their livelihood only on the sale of kerosene on the basis of an executive fiat. He further emphasised upon the observations of the Bench that if the Government wanted to do so they could do it by issuing a fresh order. The defect pointed out by the Bench while disposing of W. As. 14 and 15 of 1980 has now been cured by the Government by issuing the amendment of

the Tamil Nadu Kerosene (Regulation of Trade) Order.

10. On the other hand, Mr. I. Subramaniam contended that inasmuch as G. O. No. 234 has been struck down and inasmuch as this Court had given a directive to the Government to supply kerosene even to such of those retail registration certificate holders who do not mainly depend upon kerosene trade, the Government were bound to continue supply of kerosene to such retailers as well till their retail registration certificates were cancelled. The amendment relied upon by the Government advocate had no restrictive operation and would not affect the rights of the petitioners. Further, Mr. I. Subramanniam argued that the amended provision as well as the directions issued pursuant to the amendment by the concerned authority were invalid and hit by arts, 14 and 19(1)(g) of the Constitution of India. The amended Clause 3 (5) of the Order does not give any guidelines on the basis of which the Government, the Commissioner, the Collector or the licencing authority can specify the classes of retailers to whom the wholesalers can supply kerosene. Further, there is no justification for classifying the retail registration certificate holders into two categories, viz., those depending solely on kerosene trade for their livelihood and those who trade in kerosene along with other commodities. The Government have issued retail registration certificates even to persons who do not solely depend upon kerosene trade for their livelihood. Under the control order they are entitled to carry on trade in kerosene till the registration certificates are canceled under the provisions of the Order. The stoppage of supply would mean in effect a deprivation of their right to carry on business on the basis of the registration certificate issued to them. This would amount to a violation of Article 19(1)(g) of the Constitution.

11. There is no force in the contention of Mr. I. Subramaniam, that the amendment as well as the consequent directions issued by the appropriate authority pursuant to the amendment have no retrospective operation and that consequently the writ petitioners would be entitled to a continued supply of kerosene as before by reason of the fact that G. O. Ms. 234 had been struck down by a Bench of this Court and by reason of the further fact that Ramanujam, J., in W. Ps. 7090 and 7091 of 1981 had directed that kerosene should be continued to be supplied to registration certificate holders other than those who solely depend upon kerosene trade and handcartmen in certain proportion. If the amendment and the directions issued pursuant to the amendment are filed (valid?), then certainly it would be open to the authorities to discontinue the supply from the date on which the directions have been issued to the wholesalers. I am therefore of the view that there is no merit in the contention that the amendment as well as the directions issued are not retrospective. In fact, para 2 of the draft directions clearly states that the directions should come into force forthwith and not from any anterior date. I therefore overrule the first of the contentions of Mr. I. Subramaniam.

12. The next contention of Mr. I. Subramaniam falls into two limbs. The first limb

of the argument is that the amended Cl. 3 (5) itself is invalid and arbitrary and violates Article 14 of the Constitution inasmuch as it does not contain any guidelines for specifying the classes of persons to whom the whole-salers can supply kerosene. The object of the trade control order is to maintain supplies of kerosene and to secure its equitable distribution and availability at fair price. Accordingly, the order provides for licensing of kerosene. The dealer is defined as a person engaged in the business of purchase, movement, sale, distribution or storage for sale of kerosene whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes (i) wholesalers, (ii) retailers, (iii) importers, (iv) casual traders, (v) commission agents, (vi) brokers, (vii) del credere agents, (viii) auctioners or any other mercantile agents by whatever name called who are engaged in such business by themselves or on behalf of any principal but does not include an industrial undertaking which is engaged in the refining of kerosene and which is registered licensee under the Industries (Development and Regulation) Act, 1951 (Central Act LXV of 1951). Casual trader is defined in Explanation 1. Under Explanation II any person who is in possession of 20 litres or more of kerosene at any time shall be presumed to be a dealer. Clause 2 (c) defines a retailer as a dealer who purchases his requirements from a licensed wholesaler and sells in quantities less than 20 litres in any one transaction and includes any person selling kerosene from any shop, vehicle or by delivery in any manner to consumers and includes all dealers who are not wholesalers. A wholesaler is defined in Clause 2 (p) as a dealer who sells to other dealers and bulk consumers or others and includes any person or institution selling kerosene in bulk exceeding 20 litres at a time. Clause 3(1) states that no person shall start afresh or carry on business as a wholesaler except under and in accordance with the terms and conditions of a licence issued in this behalf by the licencing authority. Sub clause (2) of Clause 3 enables the licencing authority to specify, from time to time, the place or area within which only the dealer can purchase, store, move or sell kerosene and the quantity up to which he may purchase, store, move, distribute or sell at a time or during a specified period. Clause 3(3) deals with the factors which the licencing authority should have in mind while laying down the conditions referred to in Clause 3 (2). Thereafter, sub-clause (5) to Clause 3 has been introduced which confers power upon the Government, the Commissioner, the Collector or the licencing authority to direct the wholesalers to supply kerosene only to specified classes of retailers and the wholesalers shall abide by such directions. Clause 5 deals with registration of retail dealers. It states that no person shall on or after the commencement of the order carry on business as a retailer, unless he has been registered as such under this order by the licensing authority and such registration shall continue to be valid unless canceled or suspended. Sub-Clause (6) of Clause 5 contemplates a retailer carrying on business in more than one place. Sub- Clause (7) of Clause 5 enables a wholesaler also to obtain a separate registration certificate as retailer. Sub-cl (8) of Cl. 5 provides that the registered retailer shall conform to such directions and instructions as may be issued by the Commissioner or Collector of the district concerned or the licensing authority

from time to time. Cl. 6 empowers the Government to refuse to grant license or registration certificate or renew licence, after giving the party concerned an opportunity of representing his case and for reasons to be recorded in writing. Clause 18 provides for suspension or cancellation of licence or registration certificates for a contravention or an attempt to contravene or abet the contravention of the provisions of the order or of any of the conditions of the licence or registration certificate, subject to the condition that before a licence or a registration certificate is canceled or suspended a reasonable opportunity is given to the dealer to state his case. Clause 19 provides for cancellation of licence or registration certificates in cases where a licensee or holder of a registration certificate has been convicted by a Court of law in respect of any of the Essential Commodities Act.

13. The above are some of the main provisions of the Kerosene Trade Control Order. Under the order any person who holds a registration certificate as a dealer will be entitled to carry on trade in kerosene, and he will be entitled to do so unless his registration certificate is either canceled or suspended in terms of the provisions of the order or is not renewed. I have already referred to the definition of the dealer which takes in all persons engaged in the business of purchase, movement, sale, distribution or storage for sale of kerosene, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration. Clause 5 does not prescribe any particular qualification for a person to obtain a retail registration certificate. Once a person is granted a retail registration certificate, he will be entitled to the supply of kerosene by the wholesalers. It is, in this context, the validity of the amended sub-clause (5) of Cl. 3 has to be considered. It is unnecessary for the purpose of this case to consider the larger question whether by reason of the fact that a registration certificate has already been granted to a retailer, the Government cannot change its policy and evolve a new public distribution system which may conduce to an equitable and fair distribution of kerosene to the consumers at reasonable prices. For the purpose of this case it will be sufficient to consider whether sub-clause (5) of clause 3 as it stands can be sustained.

14. It is now settled law that a legislation which does not contain any provision which is directly discriminatory may offend against the guarantee of equal protection if it confers upon the executive or administrative authority an unguided or uncontrolled discretionary power in the matter of application of the law for where the selection is left to the absolute and unfettered discretion of the authority without anything to guide or control its action the difference in treatment solely rests on arbitrary selection by that authority. The following principles have been laid in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, , as regards the rule of guidance to be followed by the Legislature: - (1) If the statute itself or the rule made under it applies unequally to persons or things similarly situated, it would be an instance of a direct violation of the constitutional guarantee and the provision of the statute or the rule in question would have to be struck down. (2) The enactment or the rule

might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the Legislature vests an discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate. In such circumstances, the very provision of the law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded by Art. 14(3). The above rule would not apply to cases where the Legislature lays down the policy and indicates the rules or the line of action which should serve as a guideline to the authority. Where such guideline is expressed in the statutory provision conferring the power, no question of violation of Art. 14. could arise, unless it be that the rules themselves or the policy indicated lay down different rule to be applied to persons or things similarly situated. Even where such is not the case, there might be a transgression by the authority laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of a violation of Article 14, but as really being beyond its power. (4) It is not however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself. Such guidance may be obtained from or afforded by the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well known facts of which the Court might take judicial notice or of which is appraised by evidence before it in the form of affidavits. In fact, the Supreme Court has gone to the extent of holding that if a statute does not lay down the principles for the guidance of the licencing authority in the matter of granting or cancelling or refusing licence it would constitute an unreasonable restriction upon the freedom of business.

15. Tested in the light of the above principles I am of the opinion that sub-cl. (5) of Clause 3 confers an unguided power on the authorities. It does not lay down any guidance on the basis of which the authorities specified in sub-clause (5) may specify the class of retailers to whom the wholesalers may be directed to supply kerosene. In fact, sub-clause (5) itself is inconsistent with the other clauses in the Act, particularly the provision under which a person had to obtain a registration certificate for carrying on retail trade in kerosene and also the definition of a dealer in Clause 2 (o) of the Kerosene Trade Control Order. There is nothing in the policy of the Control Order which would justify the introduction of sub-clause (5) to Clause 3 conferring an uncontrolled and unguided power upon the authorities to specify classes of retailers to whom wholesalers can supply kerosene particularly when the other provisions of the Control Order bring in every person within the ambit of the definition of a dealer and enable him to

obtain a registration certificate to carry on retail trade in kerosene. I am therefore of the view that sub-clause (5) does not lay down any principle or policy for the guidance of the authority in specifying the classes of persons to whom the wholesaler may supply kerosene and therefore the said sub-clause (5) offends Article 14 of the Constitution.

16. There is equally great force in the contention of Mr. I. Subramaniam, that there is no justification for the issue of consequential directions making a distinction between such of these registration certificate holders who solely depend for their livelihood on kerosene trade and handcartmen who vend kerosene in the street on the one hand and other registration certificate holders who trade in kerosene along with other commodities. The learned counsel further contended that the object of the Kerosene Control Order was to maintain supplies of kerosene and to secure its equitable distribution at fair price. To effectuate this object it would not be necessary to classify the registration certificate holders into two different categories as stated above. In other words, according to the learned counsel there is no nexus between the object that is sought to be achieved by the Kerosene Control Order and the classification sought to be made. Further, under the provisions of the Kerosene Trade Control Order, such registration certificates can be suspended or canceled only in the manner provided therefore and so long as the certificates are not so canceled or suspended the registration certificate holders would be entitled to a supply of kerosene. The effect of the amendment and the directions flowing therefrom would result not only in depriving the petitioners of their fundamental right to carry on trade in kerosene but would also amount to a cancellation If the registration certificate otherwise than in terms of the provisions mentioned in the control order. According to the learned Government Advocate, in view of the amendment of the Tamil Nadu Kerosene Control Order, it cannot be said that the directions issued by the appropriate authority to supply kerosene only to fair price shops, co-operative societies, retail registration certificate holders, who are exclusively dealing in kerosene for their livelihood and handcartmen holding registration certificate only are invalid. The learned Government advocate relied upon two decisions of the Supreme Court in *Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another*, and *Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others*,

17. It is now settled that Article 14 prohibits class legislation and not reasonable classification. In order to pass the test of permissible classification of two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differential which distinguished persons or things that are grouped together from others left out of the group, and (2) that, that differential must have a rational relation to the object sought to be achieved. A classification may be reasonable even though a single individual or object is treated as a class by himself or itself, if there are some special circumstances or reasons applicable to him or it alone and not applicable to others.

18. It is, therefore, necessary to consider how far the classification between retailers who solely depend for their livelihood on kerosene trade, and handcartmen who vend kerosene in the street on the one hand and other registration certificate holders who trade in kerosene along with other commodities, can be justified. On the face of it, there is no justification for making any difference between the two classes of the cases. It has therefore to be seen whether the respondents have made out any nexus between the classification and the object sought to be achieved by the trade control order.

19. In the counter-affidavit filed on behalf of the respondents, it is stated in para 6 that all these petitioners have other means of livelihood than kerosene trade. Apart from this, the counter-affidavit does not contain any explanation as to why the respondents consider it necessary to make a distinction between kerosene retail registration certificate holders who depend for their livelihood solely on kerosene trade and handcartmen on the one hand and kerosene retail registration certificate holders who trade in other articles or who have other means of livelihood. There is also no whisper in the counter-affidavit why such classification is necessary to give effect to the objects of the kerosene trade control order, viz., maintaining supplies of kerosene and securing its equitable distribution at fair price. In other words, it has not been attempted to make out in the counter-affidavit that there is a nexus between the two categories of registration certificate holders and the objects sought to be achieved by the provisions of kerosene trade control order. As rightly pointed out by Mr. I. Subramanian I am unable to find any justification at all for such a distinction being made between such of those registration certificate holders, who exclusively deal in kerosene and handcartmen who vend kerosene in the street and other registration certificate holders. In fact, the Bench in the judgment dated 1st Dec., 1981 in W. A. 14 and 15 of 1981 and connected writ petitioners has observed as follows:

"Nobody could have any grievance if the Government wanted to introduce as a policy the public distribution system on family cards throughout the State. That is with reference to the concerned, the Government had not given any reason for choosing these dealers who depend solely on the sale of kerosene for their livelihood and the handcartmen and depriving the business to the other dealers who also deal in other commodities in addition to kerosene. It is this aspect which the learned counsel very vehemently pressed into service and contended that either the impugned Government order is void as ultra vires of the power under the order of 1973, or discrimination and violative of Article 14 of the Constitution."

I am aware of the fact that after making this observation the Bench allowed the writ appeals on the ground that the Government had no power to issue G. O. 234 without issuing an Ordinance therefore. It is for the reason that, though the Bench made the above observation, the Bench did not rest their decision on the ground of discrimination, that the question has necessarily to be decided in this

batch of writ petitions. Apart from the above, the learned Government advocate did not place any other material before me to justify the classification. Nor was he able to point out with reference to the counter-affidavit any ground which would justify the action of the Government in choosing those registration certificate holders who were solely dependent for their livelihood of kerosene trade and handcartmen for preferential treatment and depriving the business to the other dealers who also deal in other commodities or having other means of livelihood in addition to the trade in kerosene. I am therefore of the view that the amendment as well as the directions issued pursuant to the amendment, are violative of Article 14 of the Constitution of India and have to be struck down to the extent that they restrict the supply of kerosene by the wholesalers to only such of these retail certificate holders who trade exclusively in kerosene and to handcartmen and not to those who carry on trade in kerosene along with other commodities or have other means of livelihood.

20. The two decisions cited by the learned Government advocate viz. *Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another*, and *Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others*, are not applicable to the facts of this case. The question that arose for consideration in both the cases was whether the consumer co-operative societies form a distinct class by themselves. In the first case the Supreme Court held that the M. P. (Food stuffs) Civil Supplies Public Distribution Scheme 1981, formulated by the State Government under sub-cl. (d) of Cl. 2 of the M. P. Foodstuffs (Distribution) Control Order, 1960, introducing a new scheme for running of Government fair price shops by agents to be appointed under a Government scheme giving preference to co-operative societies, in re-placement of the earlier scheme of running such fair price shops through retail dealers appointed under Clause 3 of the Order, is not violative of Arts. 14 and 19(1)(g) of the Constitution. This was a case where the Supreme Court took the view that consumer co-operative societies form definite classes by themselves and the concessions granted to them ultimately benefit persons of small means and promote social justice in accordance with the directive principles and there was an intelligible differentiation between the retail dealers who were nothing but traders and consumer co-operative societies. The Supreme Court also held that the scheme only envisages a rule of preference and the formulation of the scheme does not exclude the retail traders from making an application for appointment as agents.

21. The second case also arose with reference to the amendment of the M. P. Food Stuffs (Distribution) Control Order, 1960 by the State Government. In that case, also, the Supreme Court held that if the Government took a policy decision to prefer co-operative societies for the appointment as their agents to run fair price shops it could not be said that there was any discrimination. The Supreme Court further held that there certainly was a reasonable classification and a nexus with the object intended to be achieved, which was a fair and assured policy of rations to the consumer and the preference to be shown to co-operative

societies did not create a monopoly in their favour and was not discriminatory. In the latter case, the Supreme Court also interpreted the word co-operative society to mean a consumer co-operative society. It is significant to note that before the Supreme Court the State Government assured that if any society other than a consumer co-operative society has been allotted a fair price shop, steps would be taken for cancellation of such allotment. The Supreme Court further observed-

"No one can doubt the positive and progressive role which co-operative societies are expected to and do play in the economy of our country and most surely in the fair and effective distribution of essential articles of food."

I am therefore of the view that the two decisions of the Supreme Court which related only to co-operative societies, particular consumer co-operative societies are not applicable to the facts of the present case.

22. I have already stated, in the present case, the classification of two classes of retail registration certificate holders is not related in any manner to the object of maintaining equitable supply and distribution of kerosene at fair price. In any event, the respondents have not satisfied me either through argument presented in Court or by averment made in the counter-affidavit, how there is such a nexus between the classification sought to be made between two classes of retail registration certificate holders and the objects sought to be achieved by the kerosene trade control order. I, therefore, hold that the amendment and the consequent direction issued restricting the supply of kerosene to dealers, who solely depend for their livelihood on kerosene trade and handcartmen as opposed to retailers who carry on kerosene trade along with other commodities or who have other means of livelihood are violative of Article 14 of the Constitution and are liable to be struck down. I do so accordingly.

23. In the view that I have already taken, it is unnecessary to consider the other contention raised by Mr. I. Subramanian that the effect of the amendment and the consequent direction has resulted in a cancellation of the registration certificate issued to the petitioners and there has been a violation of the principles of natural justice.

24. In the result, the order dated 14-8-1981, is quashed and the writ petitions are allowed in so far as the petitioners are concerned. The respondents will continue to supply kerosene to the petitioners in proportion to the quantity allotted to the respective taluk and the said proportion will be the quantity supplied to the petitioners previously as against the quantity allotted to the said taluks before filing of the writ petitions. No costs.

25. Petitions allowed.