

(1959) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 709, 710, 721 to 724, 1143 to 1145, 1149, 1152, 1155 to 1157, 1185, 1196, 1197, 1203 to 1205, 1242 to 1244, 1248 to 1250, 1257, 1258, 1261, 1277 of 1957 and 118, 191, 405 to 415, 466, 736 to 740, 742, 1038, 1107, 1160, 1355 and 1426 o

Sri Krishna Rice Mills, Tadepalligudem by Proprietor Sait
Bansilal (died) and Another

APPELLANT

Vs

Deputy Director (Food) Govt. of India, (office of the Joint
Director of Food), Dept. 17/270, Vijayawada 2

RESPONDENT

Date of Decision : 21-08-1959

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6), 226, 31
Essential Commodities Act, 1955 — Section 3, 3(3), 3(3A), 3(5)

Citation : AIR 1960 AP 431

Hon'ble Judges : P. Chandra Reddy, C.J.; Mohd. Ahmed Ansari, J

Bench : Division Bench

Advocate : G. Chandrasekhara Sastri, M. Bhujanga Rao, P. Sitarama Raju, P. Ramachandra Rao, R.V. Ramarao, S. Venkata Reddi, N.K. Acharya, M. Krishna Rao, K. Suryanarayana, B.V. Subramanyah, V.V. Krishnamurthi, G.V. Raghavaiah, K. Srinivasamurthi and A. Sambasiva Rao, for the Appellant; Acchru Ram and P. Ramachandra Reddi, 3rd Government Pleader, for the Respondent

Judgement

P. Chandba Reddy, C.J.—These petitions under Article 228 of the Constitution are Sled by rice millers of West Godavari, East Godavari, Krishna and Guntur Districts. They mainly raise a question relating to the validity of the Essential Commodities Act, 1955 (Act X of "1955) as amended by Acts XIII and XXVIII of 1657 (hereinafter referred to as the Act) and certain notifications and orders issued thereunder.

2. The relevant facts may be briefly stated. A notification issued by the Government of India acting under Sub-section (3-A) of Section 3 of the Act as amended by Act XIII of 1957 directed that the price at which rice or paddy shall be sold in any locality in the States and union territories in compliance with, an order made with reference to Clause (f) of Sub-section (2) of the said Section 3

shall be regulated in accordance with the provisions of the said Sub-section (3-A), having entertained the opinion that it was necessary so to do for controlling the rise in prices and for preventing the hoarding of rice and paddy in the States and union territories specified in the schedule thereto. This notification was to remain in force for a period of three months.

3. On the 10th of July 1957, the Ministry of food and Agriculture, Central Government, in exercise of the powers conferred by Section 3 of the Act, passed an order called "The Rice (Southern Zone) Movement Control Order. 1957" extending it to the States of Andhra Pradesh, Kerala, Madras and Mysore, which were constituted the southern Zone, by the said order, which came into force at once. Under the said order, it was ordained that no person shall export rice from any place within the southern Zone except under and in accordance with a permit issued by the State Government concerned or any officer authorised in this behalf by the Government subject to the condition that such exports under permit shall be regulated in accordance with the export quotas fixed by the Central Government in this behalf from time to time.

On representations made by the millers of these districts, they were given permits on 23-7-1957 to export a quota of 20,000 tons of rice to Bombay and West Bengal. This quota was distributed by the Andhra Pradesh Millers' Association between the millers of the districts of East Godavari, West Godavari, Krishna and Guntur. A further quota of 10,000 tons was allotted and permits were issued thereunder on 3-8-1957 for the month of August 1957. At the same time, the time for export of the July quota was extended to 20-8-1957 on representations received from the Association.

But the quota allotted could not be fully exported within the extended time. Thereafter, under instructions from the Central Government, the Government of Andhra Pradesh stopped the further export of rice to the States of Bombay and West Bengal and the permits, which would not be utilised by the millers, were cancelled. Meanwhile on 31-7-1957, the Ministry of Food and Agriculture published an order in the official gazette notifying that, in exercise of the powers conferred by Section 5 of the Act, the Central Government delegated to one Sri Krishnan, the Deputy Director of Food, Government of India, Vijayawada, the powers conferred on the Central Government by Section 3 of the Act to make orders providing for the matters specified in Clause (f) and for matters specified in Clauses (h), (i) and (j) in so far as they relate to Clause (f) of Sub-section (2) of Section 3 in relation to the stocks of rice and paddy held in any locality in the State of Andhra Pradesh.

This notification also was to be operative for a period of three months. By another Order of the same date, the Central Government authorised the said Sri Krishnan pursuant to Clause (iv) of Sub-section (3-A) of Section 3 of the Act to determine the average market rate of rice and paddy prevailing in any locality in the State of Andhra Pradesh.

4. This Officer in exercise of the powers of delegation called upon the various millers in the districts of East Godavari, West Godavari, Krishna and Guntur to declare their stocks and on receipt of the declarations required on different dates some of the petitioners to sell a part of their stocks to the Assistant Director of Food at prices to be calculated in accordance with Clauses (iii) and (iv) of Sub-section (3-A) of the Act. They accordingly supplied the quantities of rice mentioned in these orders and thereafter sent bills to the Deputy Director claiming prices higher than those fixed by him.

5. While the acquisition of paddy was being made at the rates calculated in accordance with Clauses (iii) and (iv) of Sub-section (3-A) of Section 3 of the Act, the Government of India thought it more satisfactory to fix ceiling prices for paddy and rice in different parts of the country. For this purpose, they issued an order dated 14-9-1957 acting under Clause (c) of Sub-section (3) of Section 3 of the Act and directing that the maximum prices at which rice and paddy specified in column 1 of the schedule to that order shall be sold in any one transaction of more than ten maunds in the districts of Krishna, West Godavari and East Godavari in the State of Andhra Pradesh, shall be as specified in the corresponding entries in column 2 of the said Schedule.

It may be mentioned here that in most of the cases what was requisitioned was boiled rice of inferior quality called Garikal, Nallarl and Akkull and the price fixed by the Deputy Director was Rs. 17-50, Rs. 17/- and Rs. 18-50 respectively per maund. The prices fixed for coarse varieties of rice were the same as those determined by the Deputy Director under Sub-section 3-A of Section 3 of the Act.

6. The officer in question continued to possess the powers delegated to him under the notifications mentioned above and thereafter also he required the millers to supply the specified quantities of rice at the maximum, controlled price. The purpose of these purchases was to export rice to deficit areas in the country. The millers complied with these directions but claimed higher prices. This the Officer could not comply with having regard to the fact that it was not within his power to enhance the prices. It may be stated here that the price control order promulgated on 14-9-1957 remained in force till the 30th of December of that year.

7. On that date, a reduction in the price of rice and paddy was effected. This order followed the same pattern as that of 14-9-1957 except with regard to the reduction of prices. By and under it, the ceiling price for Nallarl was fixed at Rs. 15,50, for Gankall at Rs. 16/- and for Akkull at Rs. 17/-per maundi This, reduction was a sequel to the recommendation of a Foodgrains Enquiry Committee appointed under Government of India resolution dated 14-6-1957 presided over by Sri Ashok Mehta.

The object of the constitution of such a committee was to have a thorough investigation into the rise in prices despite higher production and to suggest remedial measures to prevent speculative hoarding and to arrest undue rise in

prices. After an elaborate enquiry, which lasted for several months, the Committee recommended that a price ranging between Rs. 15/- and Rs. 17/- per maund of rice of second variety would be generally considered reasonable all over the country. Subsequent to this period also, paddy was requisitioned at the reduced rates.

8. Not being satisfied with the prices paid for the stocks requisitioned from them, the millers have sought the help of this court invoking Article 226 of the Constitution. Realising that this object could not be achieved unless the legality of the statutory provisions authorising the fixation of prices and the several notifications issued bearing on the requisitioning of foodstuffs is questioned, their main attack is concentrated on some of the provisions of the Essential Commodities Act as also on the relevant notifications.

At the outset, it may be mentioned that most of the petitions concern requisitions made under the Price Control Order dated 14-9-1957 and a comparatively very small number deal with transactions subsequent to 31-12-1957, while a few of them relate to rice supplied prior to 14-9-1957.

9. To appreciate the arguments advanced on behalf of the petitioners, it is useful to examine the provisions of the Act and to bear in mind the circumstances in which the statute came to be enacted. Consequent on the Second World War, the prices of several of the essential commodities were soaring even after the termination of the war. So, the Central Government as well as the State Governments were anxious to curb this tendency and to make those essential commodities, which were in short supply, available to all people at fair prices.

For this purpose, the Central Government thought it necessary to have legislative powers to control and regulate the supply of those commodities. With this aim, the Essential Supplies (Temporary Powers) Act 1946 was passed. But this expired before the Constitution III Amendment Act had become law. Therefore, an Ordinance was promulgated to take effect on 26-1-1955 making provision for regulating trade and commerce in and the production, supply and distribution of the essential commodities. This was replaced by the Act, which included articles which were left out earlier in the ordinance by reason of want of legislative authority within the definition of essential commodities.

The present Act follows the same pattern as the earlier legislation of 1946. This Act itself underwent two amendments. By Amending Act XIII of 1957, Sub-section (3-A) was added, while by another amendment (Act XXVIII of 1957) Clause (f) was inserted in Sub-section (2) of Section 3, its purpose being to enable the Government to make purchases of essential commodities which it was unable to do under Clause (t) as it existed prior to the amendment. The preamble to Section 3 embodies the legislative policy underlying the Act. It shows that it was passed in order to safeguard the interests of the general public by controlling the production, supply and distribution of certain commodities enumerated in the Act.

10. Sub-section (1) of Section 3 of the Act enacts that, if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) enumerates the various powers conferred on the Central Government, which could be exercised without prejudice to the generality of the powers conferred by Sub-section (1). The clauses, which are crucial in this enquiry, are Clauses (c) and (f) of Sub-section (2) and Sub-sections (3), (5) and (6).

Sub-section (2) says:

"Without prejudice to the generality of the powers conferred by Sub-section 1, an order made thereunder may provide;--

xxx xxx sxx

(c) for controlling the price at which any essential commodity may be bought or sold

xxx xxx xxx

(f) for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to such person or class of persons and in such circumstances as may be specified in the orders. Sub-section (3) recites:

"Where any person sells any essential commodity in compliance with an order made with reference to Clause (f) of Sub-section 2, there shall be paid to him the price therefore as hereinafter provided:

(a) Where the price can, consistently with the controlled price if any fixed under this section be agreed upon, the agreed price

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any

(c) where neither Clause (a) nor Clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of the sale".

Sub-section (5) reads as follows:

"An order made under this section shall;--

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the official gazette; and

(b) in the case of an order directed to a specified individual be served on such individual -

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing It on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood".

11. Sub-section 6 requires that every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

12. Section 5 of the Act empowers the Government to delegate its powers u/s 3 to an officer or authority subordinate to the Central Government or to any State Government or an officer or authority subordinate to a State Government as may be specified in that direction. On 5-6-1957, Section 3 was amended by introducing Sub-section (3-A) to modify the law in relation to food-stuffs.

Sub-section (3-A) runs as follows:

"(i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices, or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the official gazette, direct that notwithstanding anything contained in Sub-section (3), the price at which the food-stuffs shall be sold in the locality in compliance with an order made with reference to Clause (f) of Sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells food-stuffs of the kind specified therein and in the locality so specified in compliance with an order made with reference to Clause (f) of Sub-section (2) there shall be paid to the seller as the price therefor:

(a) Where the price can, consistently with the controlled price of the food-stuff, if any, fixed under this section, be agreed upon, the agreed price.

(b) Where no such agreement can be reached, the price calculated with reference to the controlled price if any.

(c) Where neither Clause (a) nor Clause (b) applies, the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of Sub-clause (c) of Clause (iii) the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question, in any court".

13. It is seen that the only change effected by this amendment was with regard to the fixation of price when there is no controlled price. In such an eventuality under Sub-section (3), the market price obtaining on the date of the sale shall be paid while under Sub-section (3-A) (iii) (c) it is the average market price obtaining in the locality during the period of three months immediately preceding the date of notification that should be paid. Clause (iv) only sets up a machinery for the calculation of that average price. The legislative purpose is contained in Sub-section (3-A) which serves as a preamble. We will deal with the object of enacting Sub-section (3-A) in its appropriate context.

14. By the Essential Commodities (Second Amendment) Act, 1957, the powers of the Government were enlarged enabling them to require any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or to the concerned Governments. This was necessitated by the fact that under Clause (f) of the unamended Act, the Government could only direct the stockists to sell their stocks to third persons.

15. Before we tackle the several problems posed by the Counsel for the petitioners it is convenient to dispose of the objection raised on behalf of the Government as to the effectiveness of these writ petitions. The objection is two-fold: (i) that the Central Government whose orders are assailed as being void and without jurisdiction is not unpleaded as a party and (ii) consequently even if that Government is made a party, no writ can issue against it as it is outside the jurisdiction of this court. At the outset, it may be remarked that this bears only on transactions subsequent to 14-9-1957.

The argument of Sri Achru Ram appearing for the Government may be put thus. The Deputy Director of Food, whose acts of requisitioning are challenged before us is merely performing his duties as required by his superior and no effective writ will issue, since he could not be expected to obey the commands of this court in disobedience to those of his superior officers. All questions pertaining to the validity or legality of the orders of the Central Government could only be agitated in the presence of that Government. In support of this theory, reliance is placed on a passage in *Ferns* "The law of Extraordinary Legal Remedies" occurring at page 278:

"A defect of parties respondent, either for mis-joinder or non-joinder, is subject to demurrer, and in case of non-joinder of necessary parties the writ will not issue. Where the only relief asked is such as pertains to the one made respondent, and, if he performs his duties as required by law, all relief that relator may be entitled to is thereby had, no other parties defendant are necessary, and demurrer on that ground will be overruled, but where it clearly appears that persons who have the power to perform the duty commanded are not made parties and therefore are not before the court, the writ will not be issued, for it could not reach them nor bind them, and would therefore be nugatory and unavailing".

16. To a similar effect is the passage in Halsbury's Laws of England, Second Edition, Vol. 9 page 744:

"The writ of mandamus is a high prerogative writ of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior court, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing such right; and it may issue in cases where, although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and effectual".

Again at page 772, the following passage occurs:

"A mandamus will not go when it appears that it would be futile in its result. Accordingly the court will not by mandamus, order something which is impossible of performance by reason of the circumstances that the doing of the Act would involve a contravention of law or because the party against whom the mandamus is prayed does not, for some other reason, possess the power to obey".

17. A number of rulings were cited to us, which have the same effect: viz. Mahi Chandra v. Secretary, Local Self-Government, AIR 1952 Assam 119, Amarendra Chandra Vs. Narendra Kumar Basu and Others, ; Geevprghese v. Travancore-Cochin State, AIR 1956 Trav-Co 45 and Delite Cinema and Others Vs. Rameshwar Dyal and Another,

18. The principle that is adumbrated in all these cases is that a court cannot adjudicate on the validity of an act of an authority in its absence and any person, who is likely to be affected by any decision given by a Court should be added as a party. No exception could be taken to this proposition. If really the Central Government is to be bound by any decision given by this Court, they should be made parties to these petitions.

Again, Mandamus will issue only to a person, who is under an obligation cast by the statutes of rules having the force of a statute to do a particular act. An officer cannot be directed by means of a writ of mandamus to do what he under the statute could not do and which is beyond his legal powers and a petition for directions to an officer to carry out anything which it is incompetent for him to do will be a futile one.

19. The second branch of the argument is that even if the Government of India was brought on record, it would not have made any substantial difference for the reason that a writ of this court will not run beyond the limits of the jurisdiction of this court and that, since the Government of India is in New Delhi, it is outside the purview of this court's jurisdiction. This contention is founded upon a ruling of the Supreme Court in Election Commission, India Vs. Saka Venkata Subba Rao and, , K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.,

and upon a judgment of this court in Nagcswara Rao, In re, 1958 2 AWR 257 : AIR 1958 A P 717 .

20. In Election Commission, India Vs. Saka Venkata Subba Rao and, , the Supreme Court held that the High Court of Madras could not issue a writ under Article 226 of the Constitution to the Election Commission having its office permanently located at New Delhi. In the second case, one of the questions was whether the Punjab High Court had jurisdiction to issue writs under Article 226 of the Constitution to the Income Tax Investigation Commission. That was answered in the affirmative. In negating the theory propounded on behalf of the Government that the petitioners being assesseees belonging to U. P. their assessments were to be made by the Income Tax Commissioner of the State and the mere fact that the location of the Investigation Commission was in Delhi would not confer jurisdiction upon the Punjab High Court to issue writs under Article 226 of the Constitution, this is what His Lordship Mukherjea J. (as he then was) observed:

"There are only two limitations placed upon the exercise of these powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction" that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories and this implies that they must be amenable to its jurisdiction either by residence or location within those territories".

21. 1958 2 A WR 257 : AIR 1958 A P 717 contains the same principle. It followed the two rulings of the Supreme Court and decided that the order of the General Manager, Central Railway, whose office is located in Bombay cannot be reviewed by the High Court of Andhra Pradesh on the process of certiorari, though that order was communicated to the petitioner through the Divisional Superintendent, Central Railway, Hyderabad.

22. In our considered opinion, these pronouncements do not afford much of a guidance in the pre-sent context since the acts of the Deputy Direction involved in these petitions come within the scope of another equally well-recognised principle that notwithstanding that a principal is not amenable to the jurisdiction of a High Court, a writ will issue to the agent if he seeks to perform anything which is illegal or unauthorised by law, even though he purports to perform those duties in obedience to the directions of his principal.

23. This doctrine is enunciated by the Supreme Court in A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, . The point that fell for the consideration by their Lordships was whether a writ could issue to a person appointed as Income Tax Officer on special duty by the Indian Income Tax Investigation Commission u/s 6 of the Travancore Taxation on Income (Investigation Commission) Act (14 of 1124) read with Act XXXIII of 1950. In the

year 1949, the Travancore Legislature passed an Act modelled on Act XXX of 1947 and styled, as the Travancore Taxation on Income (Investigation Commission), Act, 1124, to provide for an investigation into matters relating to taxation on income.

Section 6 of that Act prescribed the powers of the Commission and, inter alia, provided for the appointment by the Commission of an authorised official to examine accounts or documents, interrogate persons or obtain statements from persons. Shortly thereafter, the Travancore State and the Cochin State were integrated with each other and there was brought into existence the United State of Travancore and Cochin. By virtue of an Ordinance promulgated by this State, the existing laws of Travancore were to continue in force till altered, amended or repealed by competent authority.

In 1950, the Union Parliament passed an Act called the Opium and Revenue Laws (Extension of Application) Act, 1950 extending to Travancore-Cochin the Taxation on Income (Investigation Commission) Act, 1947 and Sec, 3 of that Act provided for transferring to the Central Commission for disposal all cases referred to or pending before the State Commission in respect of matters relating to taxation on income other than agricultural income.

A person belonging to the erstwhile Travancore State and who was assessed to Income Tax for 1942-43 by the Chief Revenue Authority of Travancore at the end of 1946 was intimated by the Income Tax Officer on special duty appointed by the Income Tax Investigation Commission (referred to above) that the investigation proposed to be conducted could not be confined to the two years 1942 and 1943, but that it would be necessary to investigate the assessee's income for the period from 1940 to the last completed assessment year notwithstanding the fact that the erstwhile State Commission had not specifically intimated to him that they proposed to cover the full period. The assessee thereupon filed a writ petition in the High Court of Travancore-Cochin for prohibiting the Income Tax Officer from holding any enquiry as proposed by the Income Tax Officer mentioned above.

24. A preliminary objection was taken to the jurisdiction of the High Court to entertain the writ petition on the ground that that court was not competent to issue a writ since, the 2nd respondent i. e., the Income Tax Investigation Commission was outside the jurisdiction of the Travancore-Cochin High Court and that the Income Tax Officer was only a subordinate of the Commission. This objection was overruled by the High Court and the Supreme Court concurred with the opinion of the High Court on that issue.

It is true that their Lordships observed that the authorised official had considerable powers conferred upon him in the conduct of the investigation, that he had important functions to discharge and that he was not merely a mouth-piece of the Commission or a conduit pipe transmitting the orders or the directions of the Commission even though he was an authorised agent of the

Commission. But the rule stated by their Lordships was not confined to cases where the subordinate official was called upon to discharge important functions and was clothed with considerable powers. That principle is stated in broad terms, namely, that

"if he does anything in the discharge of his functions as authorised official which is not authorised by law or is violative of the fundamental rights of the petitioner, he would be amenable to the jurisdiction of the High Court under Article 226".

The learned Judges would not assent to the proposition that merely because the authorised agent was acting under the directions of the Commission which directs his activities and as such no writ could issue against him, being of the opinion that there could be no agency in the matter of the commission of a wrong and that "the wrong doer would certainly be liable to be dealt with as the party directly responsible for his wrongful action", and that the relationship between principal and agent would only be relevant for the purpose of determining whether the principal also is vicariously liable for the wrong perpetrated by his agent. It was added by their Lordships that the agent could in no event exculpate himself from liability for the wrongful act done by him.

25. If, therefore, we reach the conclusion that any of the acts of the Deputy Director of Food are opposed to the statutory provisions or have the effect of abridging the fundamental rights guaranteed to a citizen by the Constitution, it will be competent for us to exercise the jurisdiction under Article 226 to set right the wrong that might follow in the illegal acts of the authorised officials.

26. We will now proceed to deal with the various objections impugning the relevant provisions of Section 3 as also the notification set out above. First, it is urged that Clause (c) is unconstitutional in that it is repugnant to Article 31(2) of the Constitution, which precludes the acquisition of property except for -public purposes and authorised by a law. That law should provide for such acquisition and for compensation being paid for the property taken and should also fix the amount of the compensation or specify the principles on which and the manner in which the compensation is to be determined and given.

Since Clause (c) of Sub-section (3-A) does not contain any principles for the determination of the compensation, it is not hit by Article 31(2). This argument is the result of a misconception of the scope and ambit of Clause (c). Clause (c) is unconcerned with the payment of compensation. That only vests authority in the Government to control the price at which any essential commodity may be bought or sold. It is Sub-section (3) that embodies the principles on which and the manner in which the compensation is to be determined.

That section sufficiently indicates the principles which would assist the concerned authority in the computation of the price of essential commodities. Consequently, Section 3 does not in any way infringe the mandatory provisions of Article 31(2). On the other hand, it satisfies the requisites of that Article.

27. Alternatively, Sub-section (3) is assailed on the ground that no rule or known criterion is laid down in that sub-section for the guidance of the executive to determine the price, with the result that the Central Government or its delegatee is given absolute and unchartered discretion to adopt any basis it or he likes for calculating the price. We are unable to give any weight to this argument. In the nature of things, it is not possible for the legislature to prescribe any particular method of determining the maximum prices. Local conditions differ from State to State and even from district to district and many factors have to be taken into account in arriving at the selling prices and the Legislature could not be expected to anticipate all the details.

As such, it is futile to expect any hard and fast rules to be laid down by the legislature in the matter of fixing of prices in any locality. It cannot, therefore, be postulated that unlimited liberty of action is vested in the Central Government by Sub-section (3). That apart, that consideration is irrelevant in examining the scope of the statutory provisions with reference to Article 31(2) of the Constitution. Moreover, a principle within the purview of Article 31(2) does not cease to be a principle because it results in clothing the executive with unbridled discretion. That will be material only in the context of Article 19(1) or (g) of the Constitution and does not bear on Article 31(2).

28. The two rulings, *The State of Rajasthan Vs. Nath Mal and Mitha Mal*, and *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, called in aid by Sri M. Krishna Rao to substantiate his proposition do not really lend any support to the petitioners. The question involved in the first case related to the constitutionality of Clause 25 of the Rajasthan Food-Grains Control Order, 1949. That order authorised the Controller - to freeze stocks in the possession of any trader and to compel him to sell to Government at prices to be determined by them for the purpose of Government procurement.

The first part of the Control Order was held to be valid as it concerned the availability of essential commodities and their equitable distribution at fair prices. But the other part was declared to be void as there was no limitation on the power of the agent in computing the prices of the frozen stocks and was therefore violative of Article 19(1)(g) and Article 31(2) of the Constitution. Commenting on that Clause the Court remarked:

"It appears from these Clauses that while the authorities may fix the ceiling price at which food-grains should be sold in the market by the dealers and may direct any person in possession of food grains to sell them to any other person at the price fixed under Clause 23, there is no such limitation upon the power of the Government to acquire the stocks. In other words, it will be open to the Government to requisition the stocks at a price lower than the ceiling price thus causing loss to the persons whose stocks are freezed while at the same time the Government is free to sell the same stocks at a higher price and make a profit. It is obvious that the dealer whose stocks are thus freezed will stand to lose considerably and will be unable to carry on his trade or business at the prevailing

market price. No dealer will be prepared to buy food-grains at the market price when he knows that he is exposed to the risk of his stocks being freezed any moment and the same being requisitioned at the procurement rate".

29. The ratio decidendi of that case does not govern Sub-section (3) of Section 3 of the Act, where the ceiling prices of paddy and rice have been fixed for all purposes, whether to Government agencies or to other authorised persons. Further, in the cited case, the subject matter of the enquiry was not this section but an order made by the Government u/s 3 of the Act. It is also to be borne in mind that that case was decided prior to the Constitution IV Amendment Act of 1955 by force of which the quantum of compensation fixed by any law is not justiciable. The relevant portion of the amended Article 31(2) is "no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate". Hence, the sub-section cannot be impeached on the ground that it offends against Article 31(2).

30. The other case also is easily distinguishable. That case had to consider the legality of the Uttar Pradesh Coal Control Order, 1953 issued under the authority of Section 3 of the Act of 1946. Sub- Clause (3) of Clause 4 and Clauses 7 and 8 of that order were called in question there. Clause 4(3) gave absolute power to the licensing authority to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under the order and the only thing he has to do is to record reasons for the action he takes.

That power could be exercised by any person to whom the said Controller may choose to delegate it. No rules were framed and no directions were given in those matters for the guidance of the licensing officer. It was held that such a provision was unreasonable since the order committed to the unrestrained will of a single individual the power to do all the things enumerated above in any way he liked and there was nothing in the order, which could ensure a proper execution of the power or to act as a check upon injustice that might result from improper execution of the same. For that reason, it was in conflict with Article 19(1)(g) and was not saved by Article 19(6) of the Constitution as it could not be regarded as a reasonable restriction within the ambit of the clause.

At the same time, their Lordships decided that Clauses 7 and 8 which empowered the State Coal Controller to direct by written order any person holding stock of coal to sell the whole or any part of the stock to such person Or class of persons and on such terms and prices as may he determined in accordance with the provision of Clause 8, the latter of which provided that no licensee in form B shall sell or agree to sell coal at a price exceeding the price to be declared by the licensing authority in accordance with the formula given in schedule III, were illegal, as it could not be said that the discretion that was vested in the public Officer was an uncontrolled one and that there was any unfair discrimination resulting from the exercise of such power.

That case does not afford much assistance to the petitioners. So the dictum of

their Lordships bearing on Clause 4 cannot help the petitioners. No such uncanalised discretion is given to any officer here because either the Central Government or the authority to whom some of the powers u/s 3 are delegated had to conform to the standard enun-iated in the sub-section. In repelling the argument that these clauses operated as unreasonable restrictions, their Lordships observed :

"It is certainly not open to us to substitute our own determination in the matter of fixing the prices for that of the licensing authority and provided we are satisfied that the discretion that has been vested in a public officer is not an uncontrolled discretion and no unfair discrimination has resulted from the exercise of it, we cannot possibly strike down as illegal any order or declaration made by such officer".

This part of the judgment certainly supports the respondents' case. In the proper place, we will discuss the question as to whether the Price Control Order or the prices fixed thereunder amount to unreasonable restrictions so as to contravene Article 19,

31. We will now consider the next contention that Clauses (iii) and (iv) of Sub-section (3-A) are ultra vires". The first limb of the argument is that the expression "locality" is vague and indefinite and that the Government has not specified by any notification the locality in which the delegated authority had to exercise his power under Clause (c) of Sub-section (3-A) (iii) which is amplified in Clause (iv). We feel this submission to be devoid of substance. The word "locality" is a word of known import and it does not require any definition. It is not a term of art but is an expression, which could be easily understood and there is nothing equivocal about it,

32. The other part of the argument also lacks force in that subsequently notifications have been issued extending its operation so far as this State is concerned to the districts of West Godavari, East Godavan and Krishna and later to Guntur and other districts.

33. There remains the point raised by one of the counsel, namely that since two different kinds of powers exist under sections 3 (3) (c) of the principal Act and under Sub-section (3-A) (iii) (c) and (iv) of the amended Act, the first governing all the essential commodities and the second only food-stuffs, the latter should be struck down as that would be leaving an unguided discretion to the authority concerned to choose the procedure contemplated by either of the provisions in acquiring food-stuffs. The point presented is this: u/s 3 (3) (c), the Central Government can requisition any article at the market price as on the date of the sale, whereas u/s 3-A (iii) (c) and (iv) the rate to be paid was to be computed with reference to the average market rate prevailing between 6-3-59 and 6-6-59, and, since the expression "essential commodities" embraces food-stuffs also, such widely different powers should not be allowed to exist,

34. This contention is not admissible either. Sub-section (3-A) was enacted to

meet a specific situation viz., the rise in prices and hoarding of food-grains in any locality which have a tendency to bring about artificial scarcity and thereby prevent the free flow of essential articles at reasonable prices. It is not an uncommon feature of the present times that unsocial elements try to create artificial scarcity at times in a locality either by monopolising or hoarding all the available stocks and attempting to sell them at exorbitant prices.

It is only in such a situation that Section 3-A comes into play; otherwise Sub-section (iii) (c) will have its operation in regard to all essential commodities. It may be mentioned here that this argument can have a bearing only on the acquisitions made prior to 14-9-1957 when the price controls came into being.

35. We have next to examine the question whether the Price Control Order promulgated on 14-9-1957, contravenes any of the Articles of the Constitution. It is contended by Sri Ramachandra Rao, counsel for some of the petitioners, that the order is discriminatory within Article 303 & also Article 14 of the Constitution in that it is confined to the three districts of Krishna, West Godavari and East Godavari. We may at once say that Article 303 of the Constitution is absolutely irrelevant in the context and has no bearing on the present enquiry. The only question that survives is whether Article 14 of the Constitution is in any way offended against by this order.

It should be borne in mind that the Government of India sought to control the prices of foodstuffs all over India and the order now called in question was separately issued in regard to the State of Andhra Pradesh. We were told that similar orders were promulgated by the Government of India in regard to other States also. It is also brought to our notice that this was extended to Guntur and other rice producing districts and in fact some of the petitions before us relate to stocks of rice requisitioned from millers in Guntur district. There is, therefore, no force in the complaint that the impugned order is discriminatory.

36. Even otherwise, we do not see how this order in any way infringes the principle of equality and equal protection of laws underlying Article 14 of the Constitution. It is not a class legislation discriminating against some and by curing others that falls under the prohibition but legislation which in carrying out its purpose is limited in its application and within the sphere of its operation would not come within the scope of Article 14, if it affects alike all persons similarly situated. This principle is well-settled and the statement of law contained in the judgment of Justice Matthews in *Yick Wo v. Hopkins*, (1885) 118 US 256 has been adopted by the Supreme Court in several decisions and it is unnecessary to cite it as it is not open to doubt any longer.

As pointed out by the Supreme Court on a number of occasions, Article 14 does not forbid reasonable classification for purposes of legislation. In order to satisfy the test of permissible classification, two conditions must be satisfied. There should be an intelligible differentia that distinguishes persons or things that are grouped together from others that are left out. There should also be a nexus

between that differentia and the object sought to be achieved by the enactment or the order of the Government in question.

The classification may be based on ground geographical, occupational or the like. It cannot be disputed that in Andhra Pradesh, it is the coastal districts of East Godavari, West Godavari Guntur and . Nellore that are surplus in the matter of paddy and, therefore, paddy could only be requisitioned from those districts and it could not be extended to districts which grow very little of paddy and which are in themselves deficit in that commodity. Hence, we reject this argument also.

37. It was also faintly urged that before the Central Government could invoke Clause (c) of Sub-section (2) of Section 3 of the Act, it should find that there is scarcity of food-stuffs in any of the localities in which that order would operate. There is no force in this submission either. Section 3 does not contain any such requirement. All that is required by that section is that the Central Government should be of opinion that it is necessary or expedient to do any of the things formulated in Sub-section (2). The very resort to Clause (c) implies that the Government reached the conclusion that there was necessity to introduce price control.

That necessity existed for the introduction of price control docs not admit of much doubt. The inflationary tendencies were asserting themselves and it was felt necessary by the Government to restrain them, It is alleged in paragraph 6 of the affidavit in W. P. No. 1204 of 1957 that the prices of paddy and rice in States like Bihar, Bombay and West Bengal were far higher than the prices that were ruling in the Andhra State and that the prices in Andhra State also gradually moved up when the Central Government thought it fit to step in to introduce the zonal system on 9-7-1957 and later fixed the maximum prices in its notification dated 14-9-57. To similar effect are the allegations in W. P. No, 1261 Of 1957.

"As the market rate of paddy and rice during the months of May and June 1957 were soaring high, with a view to arm themselves with power to pay the producer or dealer at the price to be calculated with reference to the average market price prevailing in the locality during the period of three months immediately preceding the date of notification to be made by them, the Union Government enacted Sub-section (3-A) in Section 3 of the Act and issued a notification thereunder dated 6-6-1957".

In this condition, it is futile to maintain that there was nothing on record to show what impelled the Government of India to act under the powers conferred by Section 3.

38. We must also point oat that there is a fallacy in the argument in that it assumes that the shortage of food-stuffs should be in the localities in which the order has its play- We cannot ignore the tact that the Government of India has to view this question from the standpoint of the whole country and that it is concerned with maintaining and increasing the supply of essential commodities

and securing their equitable distribution at reasonable prices all over the country and has to acquire foodstuffs from areas which produce them abundantly and distribute them in the localities which have a short fall in those articles.

The impugned order has complied with the terms of Sub-section (3) in that it states that the Central Government was of opinion that it was necessary so to do for controlling the price of rice and paddy in the State of Andhra Pradesh. So it is not in any way obnoxious to the provisions of Sub-section (3).

39. Another point that was sought to be made was that the order delegating the powers to the concerned Deputy Director to determine the average market rate of rice and paddy prevailing in any locality in the State of Andhra Pradesh was not published in the official gazette as contemplated by Sub-section (5) of Section 3, the terms of which have already been extracted. The short answer to that is that the determination of the prices is incidental to the acquisition or requisition of stocks pursuant to the powers conferred on such an officer under Clause (t) as amended by Act XIII of 1957. The purchase of rice or paddy involves the payment of the price and it is this that is provided by Sub-section (3-A) of the Act.

Even otherwise, we do not think that the non-publication of the order, in, any way vitiates it. It does not come within the sweep of Clause (a) which envisages only an order of a general nature affect-in" a class of persons. It could not be predicated that the delegation of powers to a subordinate officer by the Central Government is of a general nature or by itself it affects a class of persons. It may be that when the officer exercises his powers and makes orders in that behalf, they affect a class of persons.

The only consideration in that regard is whether the order would be regarded as one of a general nature or as such it affects a class of persons. (It must be mentioned that this has a bearing only on the requisitions made prior to 14-9-1957). Consequently, this argument also has to be repelled.

40. A further contention. Dressed on behalf of the petitioners, who has supplied rice before the 14th of September 1957 and which transactions are attracted by Clause (iv) of Sub-section (3-A), is that, if there are no published figures for any locality, the price calculation should be on the basis of the market price obtaining at the date of the acquisition, or if the published figures of the neighbouring locality are to be adopted, the market rate as disclosed by those figures must be paid and that the officer concerned has no power to reduce it in any way. This argument is addressed only with reference to stocks acquired from millers at Tadepalli-gudem and places round about it and those at Gudlalleru and Gudivada.

It is not disputed that there were no published figures available in respect of the markets of Tade palligudem, Gudlalleru and Gudivada, though for Tadepalligudem we have the statistics compiled by the Bureau of Economics. These statistics are based on the information obtained from the State Bank of

India wherever there is a branch of the Bank and for other stations from the Collector or the Tahsildar concerned. It appears that the prices so compiled were reported weekly to the various authorities of the State Government and the Government of India including the Directorate of Information and Publicity and the All India Radio.

We are told that in addition to this material, the market prices were being periodically published over the All India Radio and some of the newspapers for Vijayawada, Kakinada, Masulipatam etc. The Deputy Director seems to have taken into account the published figures for Vijayawada as also the statistics compiled by the Bureau of Economics & fixed the prices for Tadepalligudem area. It is also stated on behalf of the respondents and not controverted on behalf of the petitioners that the prices obtaining at Vijayawada were higher than those at Tadepalligudem, which difference seems to be attributable to want of adequate waggons, that differential being in the neighbourhood of a little over a rupee. This is made out by the statistics of the Bureau of Economics. Considering these circumstances, the Deputy Director fixed Rs. 18.50 per maund for Akkullu, Rs. 17.50 for Garikalu boiled rice and Rs. 17/- for Nallarlu boiled rice.

It is represented for the respondents that the enquiry from the established trade, the State Marketing Officer and some of the merchants led him to conclude that there was a difference of one rupee per maund between Akkallu boiled rice and Garikalu boiled rice and eight annas between Garikalu boiled rice and Nallarlu boiled rice. This does not seem, to be open to much doubt, having regard to the concession by one of the Counsel for the petitioners that the differentiation is warranted by the relative quality of the three varieties.

41. As regards Gudlavalleru and Gudivada, the market prices prevailing there had to be determined only with reference to the published figures for Vijayawada as the statistics compiled by the Bureau of Economics did not include the prices ruling in those two places. Making allowance for the fact that these places are in the interior and that they are the main production centres for rice, which accounts for the market rates being lower than those at Vijayawada, which is a large consuming centre and outlet for the export market, the Deputy Director fixed Rs. 17.39 for Nallarlu boiled rice and Rs. 17.88 for Garikalu boiled rice.

42. The criterion adopted by the officer is not questioned as it is quite explicable. But the mainstay of the argument was that the officer had merely to adopt the market rates prevailing at Vijayawada and it was not competent for him to reduce them for any of the neighbouring localities such as Tadepalligudem, Gudlavalleru or Gudivada for any reason whatsoever. He had no option but to pay the petitioners in accordance with the prices obtaining in the Vijayawada market. The petitioners' Counsel have it that this result flows from the terms of Clause (iv) of Sub-section (3-A) of the Act.

43. We cannot agree with this view. This construction is not warranted by the language of the sub-section. That sub-section requires the officer to determine

the prices with reference to the prevailing market rates, which indicates that he has to exercise discretion in calculating the prices. In doing so he has to take into consideration the prevailing market rate and not to adopt the market price. If that was the intendment of the section, it is unnecessary to have vested authority in him to determine the prices and the sub-section would have been differently worded.

Of course, the officer is not expected to fix the price arbitrarily. The price fixed by him should have relation to the prevailing market rates. Further, it is established in this case that the officer concerned had due regard to every relevant consideration such as market trends etc. The fixation of prices is not, therefore, open to challenge on that ground. So, this argument also has to be rejected.

44. There is also no substance in the point that the requisitioning of the entire stock of the petitioners is tantamount to extinction of their business. For one thing, we are told that the millers were not called upon to supply all their stocks but only a portion of them though substantial. Even otherwise, there is no question of their business being extinguished. The very purpose of the millers buying paddy and converting it into rice is to sell it. All that the officer did was to require them to sell their stocks to the persons named by him and not to dispose of them in open market. Their grievance, if any should be regarding the quantum of the price paid and not on the ground that they were compelled to sell it to specified individuals.

45. The two decisions relied on by some of the counsel for the petitioners viz. Chintaman Rao Vs. The State of Madhya Pradesh, and Anumathi Sadhukhan Vs. A.K. Chatterjee, are not in point on this aspect of the matter. The first one dealt with the question as to what are the reasonable restrictions contemplated by Article 19(6) of the Constitution and, therefore, it does not afford much of a guidance here. The Calcutta case dealt with the Rice Mills Control Order, which empowered the cancellation or refusal of a licence already issued and refusal to issue a new licence without assigning any reasons.

Discussing the validity of such an order, Bose J. observed that the order overstepped the limits of reasonableness since those provisions do not give any opportunity to the licence holders to make any representation against the action taken by the authorities concerned or to safeguard their interest against any wrongful action of the authorities. This order conferred such wide powers on the authorities concerned that they could arbitrarily and capriciously exercise it if they chose to do so. This again does not touch the question raised by the petitioners.

46. We are then left with the problem whether the Fixation of prices amounts to unreasonable restriction and is not saved by Article 19(6) of the Constitution. If any enactment is to be saved under Article 19(6) of the Constitution, the law should be conceived in the interests of the general public and the restrictions should be reasonable. The reasonableness of a law or an order has to be judged

with reference to the purpose which the enactment seeks to accomplish, the extent to which it affects the fundamental rights of an individual and the service it renders to the general public.

The law should strike a balance between the rights guaranteed under part III of the Constitution and the social demands. A statute under the guise of safeguarding the interests of the general public should not impose unduly restrictive regulations upon freedom of trade and commerce. There should be a nexus between the policy underlying the Act and the restrictions that the law seeks to levy.

47. The position in that behalf is summed up by the Supreme Court in *Chintaman Rao Vs. The State of Madhya Pradesh*, thus;

"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 intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality".

48. The Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, had to construe the cognate provisions of the Essential Supplies (Temporary Powers) Act, 1946. These sections 3 and 4 of the Act of 1946 as also the provisions of the Cotton Cloth Control Order issued on the authority of those provisions came in for scrutiny. The petitioner in that case was punished for violation of the Cotton Cloth Control Order and he assailed the Act and the Control Order as being unconstitutional and as being in infringement of Sub-clauses (f) and (g) of Article 19(1) of the Constitution.

This plea was negatived and their Lordships held that, if the transport of essential commodities were left uncontrolled, it might seriously hamper the supply of those commodities to the public. It was laid down by the Supreme Court that the Act was intended to provide for the control of trade and commerce in certain essential commodities and such a legislation could not be held to be unreasonable. It is unnecessary to multiply citations in this regard.

49. We are convinced that the Price Control Order satisfies the requisites envisaged in Clause (6) in that it has in view the interests of the public and the restrictions imposed could not be regarded as very harsh or unduly rigorous. It was justified by the purpose which the order was intended to serve. In adjudging the reasonableness of this order, we should not overlook the fact that the fixation of price is based on the market rates as determined by the Deputy Director.

It is seen that the rate of Rs. 17/- and Rs. 17.50 per maund was fixed for

Nallarlu and Garikalu boiled rice respectively for the three districts and they are the same as those determined by the Deputy Director of Food, Vijayawada. We are also told that the Central Government had before them the figures obtained from the Collectors of the respective districts and that the Union Government arrived at these figures on a careful consideration of several relevant factors. In these circumstances, we are unable to hold that this constitutes unreasonable restriction on the rights of rice millers in carrying on their trade.

50. A safeguard is also provided against the arbitrary action of the executive in the shape of Section 3(6), which requires orders passed u/s 3 to be laid before both the Houses of Parliament, (the terms of which have already been extracted). Surely, if an order has the effect of unreasonably restricting the liberty of any class of persons, it would not meet with the approval of the representatives of the people. That sub-section is designed to protect the interests of the public. For all these reasons, we are disinclined to agree with the petitioners that that order operates as an unreasonable restriction on their trade.

51. We have lastly to deal with the complaint made on behalf of the petitioners in Writ Petitions Nos. 1160 and 1426 of 1958 whose stocks were requisitioned after the 30th of December 1957 that they were paid at the rates mentioned in that Price Control Order though they bought paddy at rates mentioned in the control order dated the 14th of September 1957. In Writ. Petn. No. 1160 of 1958, supplies amounting to 34048 maunds were made on four days, namely, 11-1-1958, 21-1-1958, 27-1-1958 and 29-1-1958, while in W. P. No. 1426 of 1958, 15600 maunds were supplied on four days, namely, 12-1-1958, 29-1-1958, 4-2-1958 and 12-2-1958. There is nothing on record to indicate that the rice requisitioned on these dates was purchased prior to 30-12-1957. This was not suggested in the declaration of stocks made by the petitioners in this behalf.

We have, therefore, no means of ascertaining as to when exactly the petitioners purchased paddy and converted it into rice. In this connection, we are told that the second crop is harvested in these districts about the end of November or the beginning of December. It is not improbable that the paddy was purchased after 30-12-1957. Any how as we have already stated, it is not established that the purchases were made by the stockists before 30-12-1957.

52. Assuming that they bought paddy long before that time and converted it into rice and had not disposed of it, it would amount to hoarding for the purpose of inflating the price. It is to prevent this mischief that Section 3-A was enacted and the price controls were introduced. Obviously, they were cornering the rice in these areas with a view to sell them at exorbitant prices, if what they now say is true. That being their purpose, they cannot complain that the stocks requisitioned after 30-12-1957 were not paid at the old rates. In these circumstances, we reject this contention also,

53. We now pass on to Writ Petitions Nos. 1197 and 1203 of 1957 in which

complaint was made that, although the price was fixed (or Akkullu at Rs. 18.50 per maund, they were paid only Rs. 17.50 per maund on the ground that it was boiled rice that was sold to the Government. We think the petitioners are entitled to the rate prescribed in the control order because no distinction was made so far as Akkullu rice, which was requisitioned in these cases was concerned, between boiled rice and raw rice. We need not pursue this matter any further as the Government have agreed to pay the petitioners at the rate of Rs. 18.50 per maund of Akkullu boiled rice.

54. On his discussion, it follows that all the writ petitions, except Writ Petition Nos. 1197 and 1203 of 1957 in which the price has been modified as above, should be dismissed with costs. Advocate's fee is fixed at Rs. 100/- in each petition.