

(2014) 10 KL CK 0307

In the High Court Of Kerala

Case No : Writ Appeal No. 1297 of 2014 and W.P. (C) No. 22957 of 2014

State of Kerala

APPELLANT

Vs

A. Beevi Kannu

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g)
Essential Commodities Act, 1955 — Section 2, 3, 7(3), 9(4)

Citation : AIR 2015 Ker 109 : (2014) 4 ILR 885 : (2014) 4 KHC 673 : (2014) 4 KLJ 756 : (2014) 4 KLT 973

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J; A.K. Jayasankaran Nambiar, J

Bench : Full Bench

Advocate : P.I. Davis, Senior Government Pleader, Advocate for the Appellant; K. Jaju Babu, Senior Advocate, M.U. Vijayalakshmi, Brijesh Mohan and Jikku Seban George, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. This Full Bench has been constituted to answer the reference made by a Division Bench dated 24/09/2014. The Division Bench while hearing the writ appeal against an interim order passed by learned Single Judge dated 01/09/2014 as modified by order dated 19/09/2014 referred following two questions to be answered by Larger Bench:

"i) Whether under sub-clause (8) of Clause 45 of the Kerala Rationing Order, 1966, there can be any circumstance under which the suspension of licence can be directed, pending enquiry or is it mandatory to grant an opportunity before ordering suspension under sub-clause (8)?

ii) Whether the Division Bench in Kumaranellur Cooperative M. Society's case (supra) lays down the Correct Law?"

The brief facts of the case for answering the reference are as follows:

"The respondent/writ petitioner was a Retail Foodgrain dealer. An inspection was conducted in the shop on 20/08/2014 and on 21/08/2014, an order was issued by the Commissioner of Civil Supplies suspending the license of the writ petitioner in exercise of power under Clause 45(8) of the Kerala Rationing Order, 1966. The order was challenged by the licensee in WP (C) No. 22957 of 2014. One of the grounds taken by the licensee in the writ petition was that Ext. P3 order was issued without giving any notice or opportunity whereas Clause 45(8) requires that suspension of a dealership can be ordered only after giving an opportunity. Learned Single Judge passed an interim order directing the respondents to restore the license provisionally subject to final decision in the writ petition. The State is in appeal against the interim order passed by learned Single Judge."

2. Sri. P.I. Davis, learned Senior Government Pleader, in support of the reference order contended that it is not mandatory in each and every case that opportunity be given before ordering suspension. He submits that the second part of sub-clause (8) of Clause 45 begins with non-obstante clause "notwithstanding anything mentioned in sub-clause (1) which clearly indicate that without there being an opportunity, suspension can be issued. He further submits that in the second part of sub-clause (8) the last sentence i.e., "If considered necessary he may suspend the appointment of the authorised retail distributor temporarily pending enquiry." makes the clear intention of Legislature that power of temporary suspension has been granted pending enquiry. He submits that meaning and purpose have to be given to the above provision which make it clear that suspension can be ordered without opportunity on a temporary basis. He submits that the Division Bench judgment which has been relied on by learned counsel for the petitioner in *Kumaranellur Cooperative M. Society v. V.B.K. Menon* 1985 KHC 420 : 1985 KUC 177, does not lay down the correct law. He submits that the Division Bench did not advert to the last sentence as quoted above contained in second part of sub-clause (8). He submits that the use of non-obstante clause in second part of sub-clause (8) clearly overrides the mandatory requirement of giving notice in the main proviso to sub-clause (8) of Clause 45. He submits that the power of temporary suspension has been conferred on the authorities with a design and purpose. The power has been given with an object and the Statute has to be interpreted in a manner to advance the object of provision.

3. Learned Senior Counsel Sri. Jaju Babu appearing for the writ petitioner submitted that Clause 45(8) requires order of suspension to be passed after opportunity of hearing, hence no exception can be made in ordering a suspension without notice. Opportunity of hearing is a must. He submits that the Division Bench judgment in *Kumaranellur Cooperative M. Society's* (supra), lays down the correct law. He further submits that the second part of Clause 45(8) beginning with non-obstante clause confines to the powers given to the authorities additionally as compared to sub-clause (8) second part which cannot be read in any manner to exclude the opportunity. He submits that Clause 45(8)

does not contain any specific provision excluding notice in a case of suspension. Hence giving of notice before suspension is a must. Learned counsel for the parties have placed reliance on various judgments of Apex Court and this Court, which shall be referred to while considering the submissions in detail.

4. Before we proceed to consider the issues as noted above, it is relevant to note the relevant statutory provisions governing the field. Kerala Rationing Order, 1966 has been issued in exercise of power under Section 3 of the Essential Commodities Act, 1955 for maintaining supply of certain essential commodities and to secure equitable distribution and availability at fair prices. Clause 45 of the Rationing Order provides that "for the purpose of distributing rationed articles, the District Supply Officer may, by order, appoint in respect of any area any person as authorised retail distributor in respect of any rationed article". Clause 45(7) provides that "every authorised retail distributor shall give all reasonable facilities at all times to the District Collector or any Officer of the Civil Supplies Department not below the rank of a Rationing Inspector or any audit officer attached to the Civil Supplies Department or the Commissioner of the Corporation or the Municipality or the Executive Officer of the Guruvayoor Township or the Executive Officer of the Panchayat as the case may be, within whose jurisdiction the authorised retail depot is situated to inspect the stocks and/or accounts in the shop".

5. Clause 45(8) with which we are concerned in the present case provides as follows:

"(8) If the District Collector or any officer of the Civil Supplies Department not below the rank of a Taluk Supply Officer finds that the authorised retail distributor has contravened any of the provisions of this Order, or any of the directions issued thereunder or on receipt of the report from any of the officers referred to in sub-clause (7) or on his own inspection of the stocks and accounts in a shop finds any shortage or excess in the quantity of rationed articles or any irregularities in the accounts or detects non-compliance with any of the directions, issued by the competent authorities or contravention of the provisions of any order issued by a competent authority under Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955), which is for the time being enforced he may after giving the authorised retail distributor any opportunity of stating his case and an opportunity of hearing him in person and for reasons to be recorded in writing, amend, vary, suspend or cancel his appointment and/or order forfeiture of the whole or any part of the amount deposited by the authorised retail distributor as security under sub-clause (5).

Notwithstanding anything contained in this sub-clause, he may order the realisation of an amount equivalent in value to the cost of the quantity of rationed articles found to be short or in excess and the cost of any quantity of rationed articles misappropriated by falsification of accounts and all sums collected in excess by way of transport charges handling charges, profit etc. and gained by the authorised retail distributor due to incorrect fixation of price or any

other defect in calculation when the mistake is subsequently detected at the time of inspection. If considered necessary he may suspend the appointment of the authorised retail distributor temporarily pending enquiry:

Provided that the power of cancellation of appointment shall be exercised only by the authority competent to make the appointment or a higher authority."

6. The main provision of Clause 45(8) indicates that the District Collector or any officer of the Civil Supplies Department has the power to suspend or cancel or vary the appointment or, order forfeiture of the whole or any part of the amount deposited by the authorised retail distributor as security under sub-clause (5), after giving the authorised retail distributor an opportunity of stating his case. That means an opportunity of hearing in person may be given. The second part of Clause 45(8) begins with words "notwithstanding anything contained in this sub-clause". Thus in the second part it is provided that notwithstanding anything contained in sub-clause (8) the District Collector or any officer may order realisation of an amount equivalent in value to the cost of the quantity of rationed articles found to be short or in excess and the cost of any quantity of rationed articles misappropriated by falsification of accounts and all sums collected in excess by way of transport charges, handling charges, profit etc. and gained by the authorised retail distributor due to incorrect fixation of price or any other defect in calculation when the mistake is subsequently detected at the time of inspection. If considered necessary, he may suspend the appointment of the authorised retail distributor temporarily pending enquiry.

7. The aforesaid provision contains different nature of orders to be passed by the District Collector, notwithstanding the power which are mentioned in first part of sub-clause (8) of Clause 45 and the amended part is suspend or cancel the license. We hasten to add that the second part of sub-clause (8) relates to various other orders which can be passed apart from those contemplated in first part of sub-clause (8). The second part is obviously regarding "realisation of any amount" which has to be arrived at after due enquiry and opportunity.

8. Now we come to the last sentence of second part of Clause 45(8) which falls for consideration before this Bench i.e. "if considered necessary he may suspend the appointment of ARD temporarily pending enquiry". At the last sentence of second part of sub-clause (8) beginning with words "notwithstanding anything contained", the Legislature has consciously designed and included the above clause with clear intention that parties cannot override anything contrary to sub-clause (8). As noted above, the main provision of sub-clause (8) mandates a notice and opportunity of hearing before suspending a license. The above power of suspending license temporarily pending enquiry, is a power additionally given with a purpose and object and is not to be abrogated. The suspension as mentioned in sub-clause (8) whether it is a suspension or cancellation, the final decision should be taken after notice and opportunity to the parties concerned, whereas, the power of suspension temporarily pending enquiry is a power given for a different purpose and object. It is also relevant to note that before

exercising the power of suspending temporarily pending enquiry, attention has to be given to the words "if considered necessary" meaning thereby that, the suspension temporarily pending enquiry has to be resorted, not as a matter of course but rather the said power is to be exercised after consideration and if found necessary. We have to interpret this Clause to mean that to exercise the power of suspension temporarily pending enquiry, no notice is required to be given. Otherwise the very purpose of enacting the above provision becomes redundant and the said Clause is to be ignored being without any purpose. It is a well settled principle of statutory interpretation that every part of the Statute has to be given the meaning and purpose. Legislature does not waste a word or does not use a word unnecessarily.

9. Learned counsel for the appellant has placed reliance on various judgments of the Apex Court where "notwithstanding" clause has come for consideration. The first judgment which has been relied on is Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, . The Apex Court in the above judgment had an occasion to consider the principle of statutory interpretation. It was held in paragraph 27 as follows:

"27. It has been said in the course of the argument that, notwithstanding the absence of such reservations in the new Act, it must be assumed that the advocates of the Supreme Court have become entitled to practice in any High Court only subject to the Rules and regulations of that Court or, as the High Court put it "Section 2 does not confer an uncharted freedom on the advocates of the Supreme Court to practice in any High Court in any way they like, but only puts them, in each different High Court, on a par with the advocates of that Court, where they must submit to the same terms and conditions as bind those advocates." Otherwise, it was said, the Supreme Court advocates would be "let loose" to practice in all Courts freed of all obligations to observe the rule and regulations of those Courts and the result would be confusion and chaos. Therefore, it was urged, the Rules of the Calcutta and Bombay High Courts, which preclude advocates of those Courts from acting on the original side of their jurisdiction or from pleading without the intervention of an attorney, are binding upon Supreme Court advocates as well. We see no force in the argument which seems to proceed on a misconception. The right of an advocate to practice, as we have seen, normally Comprises the exercise of his two-fold function of acting and pleading without the intervention of anybody else. Any rule or condition that prevents him from exercising one of those functions is plainly a cutting down of his right to practice and, affecting as it does the substance of his right, is in its operation, quite unlike the rules and conditions of practice under which all advocates normally carry their business in Courts. No one suggests that a Supreme Court advocate is, by becoming entitled to practice in the High Courts, freed from all obligation to conform to the rule of practice and regulations as to costume and such other matters, according to which the profession of law must be exercised in the various High Courts. There is a vital distinction between such rules and regulations and the rules which seek to cut down the substance of an

advocate's right to act and to plead by excluding him from the exercise of the one or the other of those two functions. The Bar Councils Act recognises this distinction by expressly reserving the power of the High Courts of Calcutta and Bombay to exclude or impose restrictions upon the right of advocates to plead and to act on the original side, whereas no similar reservation has been considered necessary in respect of the power to make rules and regulations of the former type, because they were not regarded as derogating from the substance of the statutory right to practice. Suppose, for instance, the Calcutta High Court made a rule that no person other than those mentioned in Rule 2(1), Chapter I of the original side Rules (i.e. practising barristers in England, N. Ireland etc.) will be entitled to appear and plead on its original side, could it reasonably be suggested that such a rule was only a matter of "internal administration" and, as such, would bind all advocates practising in that Court even apart from Section 9(4)? Any rules which prevent an advocate from acting on the original side or appearing on that side without the intervention of an attorney constitute a serious invasion of his statutory right to practice, and unless the power to make such rules is reserved in the Statute which confers the right they cannot prevail against that right."

10. Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, , was again a case where the principle of statutory interpretation, in the context of non-obstante clause in Section 15A(1) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, came up for consideration. In paragraphs 67 and 68 following was laid down:

"67. A Clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a Section in the beginning with a view to give the enacting part of the Section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum.

68. It is well settled that the expression "notwithstanding" is in contradistinction to the phrase "subject to", the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of Section 15 with sub-section (1) of Section 15A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal."

11. In R.S. Raghunath Vs. State of Karnataka and another, , the Apex Court has

considered the scope and ambit of interpreting the non-obstante clause. Following was laid down in paragraphs 11 and 12:

"11. In *Aswini Kumar Ghose v. Arabinda Bose* it was observed as under: (SCR pp. 21 -22)

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."

It was further held that: (SCR p. 24)

"Nor can we read the non-obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out, the enacting part of Section 2 covers all advocates of the Supreme Court, the non-obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a Statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. *Posteriores leges priores contrarias abrogant* (Broom's Legal Maxims, 10th edn., p. 347)."

(emphasis supplied)

In *Dominion of India (now the Union of India) v. Shrinbai A. Irani*, it was observed as under: (AIR pp. 599-600, para 10)

"While recognising the force of this argument it is however necessary to observe that although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the Section, the non-obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

(emphasis supplied)

In *Union of India v. G.M. Kokil*, it was observed as under: (SCC p. 203, para 11)

"It is well-known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

In *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* the scope of non-obstante clause is explained in the following words: (SCC p. 477-78, para 67)

"A Clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a Section in the beginning with a view to give the enacting part of the Section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."

On a conspectus of the above authorities it emerges that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

12. Further, the influence of a non-obstante clause has to be considered on the basis of the context also in which it is used. In *State of W.B. v. Union of India* it is observed as under: (SCR p. 435)

"The Court must ascertain the intention of the Legislature by directing its attention not merely to the Clauses to be construed but to the entire Statute; it must compare the Clause with the other parts of the law and the setting in which the Clause to be interpreted occurs."

It is also well settled that the Court should examine every word of a Statute in its context and to use context in its widest sense. In *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* it is observed that: "That interpretation is best which makes the textual interpretation match the contextual." In this case, Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of Statutes

held thus: (SCC p. 450, para 33)

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A Statute is best interpreted when we know why it was enacted. With this knowledge, the Statute must be read, first as a whole and then Section by Section, Clause by Clause, phrase by phrase and word by word. If a Statute is looked at, in the context of its enactment, with the glasses of the Statute-maker, provided by such context, its scheme, the Sections, Clauses, Phrases and words may take colour and appear different than when the Statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each Section, each Clause, each Phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a Statute and no word of a Statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place." If we examine the scope of Rule 3(2) particularly along with other General Rules, the context in which Rule 3(2) is made is very clear. It is not enacted to supersede the Special Rules."

12. In *Smt. Geeta Vs. State of U.P. and Others*, the Apex Court had an occasion to consider the amendments made in U.P. Kshettra Panchayats and Zila Panchayats Act, 1961 and the effect of 2007 amendments made therein. In the amendment made in 2007, non-obstante clause was used and interpreting the said non-obstante clause following was laid down by the Apex Court in paragraphs 38 to 45:

"38. Interpretation of non-obstante clauses has come up for consideration before this Court in a large number of decisions. In *Aswini Kumar Ghose v. Arabinda Bose*, a Constitution Bench of this Court speaking through Patanjali Sastri, C.J. observed that: (AIR p. 377, para 27)

"27.... the non-obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment." But His Lordship made it clear that: (*Arabinda Bose case*, AIR p. 377, para 27)

"27.... The enacting part of a Statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously."

39. Again in another Constitution Bench judgment of this Court in *Dominion of India v. Shrinbai A. Irani, Bhagwati, J.* observed at AIR para 10 as follows: (AIR pp. 599-600)

"10.... although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the Section, the non-obstante clause need not necessarily and always be co-extensive with the operative part,

so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

(emphasis added)

40. In *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* this Court stated that: (SCC pp. 477-78, para 67)

"67.... the expression "notwithstanding anything contained in this Act.... is more often than not appended to a Section in the beginning with a view to give the enacting part of the Section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause... the enactment following it will have its full operation...."

(emphasis added)

41. Further, this Court in *A.G. Varadarajulu v. State of T.N.*, observed that: (SCC p. 236, para 16)

"16. It is well settled that while dealing with a non-obstante clause under which the Legislature wants to give overriding effect to a section, the Court must try to find out the extent to which the Legislature had intended to give one provision overriding effect over another provision."

42. The Bench in *A.G. Varadarajulu* case referred to the principle in the Constitution Bench decision in *Madhav Rao Jivaji Rao Scindia v. Union of India* ***6 wherein this Court held that: (*A.G. Varadarajulu* case, SCC p. 236, para 16)

"16.... the non-obstante clause [was] a very potent clause intended to exclude every consideration arising from other provisions of the same Statute or other Statute but "for that reason alone we must determine the scope" of that provision strictly. When the Section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the Statute generally, it is not permissible to hold that it excludes the whole Act and stands alone by itself."

(***underlined for emphasis)

43. This Court also held in *ICICI Bank Ltd. v. SIDCO Leathers Ltd.* that the wide amplitude of a non-obstante clause must be kept confined to the legislative policy and it can be given effect to, to the extent Parliament intended and not beyond the same and that in construing the provisions of a non-obstante clause,

it was necessary to determine the purpose and object for which it was enacted (see pp. 465-66).

44. In *Central Bank of India v. State of Kerala* this Court reiterated that while interpreting a non-obstante clause the Court is required to find out the extent to which the Legislature intended to give it an overriding effect.

45. In view of such consistent opinion expressed by this Court on the purport and meaning of non-obstante clause we are of the view that the operation of a non-obstante clause in Section 7(3) of the amended Act shall be subject to the intent of the Legislature, and must be interpreted in line with the scheme of the Act and the purpose for which it was enacted."

The above pronouncement of the Apex Court has categorically laid down that every word in a Statute has to be looked into for interpreting the non-obstante clause used in the Section or provision. It has further been held that use of non-obstante clause in a Section or Clause is primarily used to improve the overriding effect to other provisions which do not see eye to eye. Following the above statutory interpretation, we have no doubt that in second part of Clause 45(8) the only interpretation of the words "if considered necessary he may suspend the appointment of the authorised retail distributor temporarily pending enquiry" is that the said power can be exercised notwithstanding anything contained in first part of Clause 45(8) i.e. suspend after giving the ARD an opportunity. Taking any other interpretation shall be making the provision redundant.

13. A judgment of learned Single Judge in *All Kerala Retail Dealers Association v. Taluk Supply Officer*, 1997 KHC 387 : 1997 (2) KLT 406 : 1997 (2) KLJ 405 has been placed before us. Learned Single Judge had an occasion to interpret the same Clause (Clause 45(8)) in the said case. The writ petition was filed by an Association of Retail Dealers seeking a direction restricting the respondent from initiating any action against the petitioner. One of the contentions raised by the petitioner was that suspension cannot be ordered without giving an opportunity of being heard to the petitioners. The learned Single Judge considered Clause 45(8) and has laid down in paragraphs 11 and 12 as follows:

"11. The counsel for the petitioner relied on the decision reported in *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, . It has been held that "were the Statute is silent about the observance of principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive, it should be followed by the authorities unless it is excluded by express words of Statute or by necessary implication. The petitioner on its strength contends that when the first part of Clause 45(8) expressly provided for the observance of principles of natural justice and when there is no express exclusion in the second part, naturally observance of the principles of natural justice is mandatory as the statutory silence does not imply the avoidance of principles of natural justice. But, the construction of Section 45(8) makes it clear that the suspension where

principles of natural justice are mandatory directed to be complied with is a suspension which is imposed as a punishment; because the Clause provides that the Taluk Supply Officer shall "for reasons to be recorded in writing, amend, vary, suspend or cancel his appointment/or order forfeiture of the whole or any part of the amount deposited by the authorised retail distributor as security. So, it is a final order affecting adversely, the licensee. That is why the compliance of the principles of natural justice is expressly provided in that part of sub-clause 8 of Clause 45. The second part is commencing with the word "notwithstanding. Therefore, it has an independent existence from the first part and it is further provided that "If considered necessary he (Taluk Supply Officer) may suspend the appointment of the authorised retail distributor temporarily pending enquiry". The "non-obstante clause" and the suspension specifically provided "pending enquiry" are sufficient enough to exclude the application of audi alteram partem rule "by necessary implication."

12. The learned Addl. Advocate General appearing for the respondents invited my attention to the ruling reported in Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, , which had arisen out of suspension of licence of a food grain dealer. In the Punjab Foodgrains Dealers Licensing and Price Control Order, 1978, there was provision for cancellation or suspension of licence. The main clause provided that without prejudice to any action that may be taken against him, the licencing authority may, by an order in writing cancel or suspend licence insofar as relates to foodgrains in respect of which contravention has been made. By a proviso, it was made clear that such an order shall not be made unless the licensee has been given a reasonable opportunity of being heard. This is almost equal to the first part of Clause 45(8) of Kerala Rationing Order. The Punjab order contained a second proviso that the licencing authority may suspend the licence without giving a reasonable opportunity to the licensee of stating his case. This is almost equal to the second part of Clause 45(8) of the Kerala Rationing Order which commences with a "non-obstante" clause. The said ruling justifies the suspension without giving a reasonable opportunity. Of course, there is a difference in the structure of the rule. Proviso always carve out exception from the main rule. Here there is no proviso as in Punjab Rule. But, as I have already pointed out, it commences with a "non-obstante" clause. Therefore, it has to be read independently from the first part. Therefore, it is permissible that an order of suspension "pending enquiry" can be issued without affording an opportunity."

The learned Single Judge observed that the second part of Clause 45(8) has to be read independently from the first part. It was held that it is permissible that order of suspension pending enquiry can be passed by giving an opportunity of hearing. We fully endorse the view taken by learned Single Judge in the aforesaid case.

14. Reliance has also been placed on the Apex Court judgment in Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, . In this case Clause 11

of Punjab Foodgrains Dealers Licensing and Price Control Order, 1978 came up for consideration which provides for cancellation or suspension of license. The main proviso under Clause 11 provided that suspension of a license can be ordered by the authorities provided that no order can be passed unless the licensee has been given a reasonable opportunity of stating his case. The said proviso was followed by another provision where the power of cancellation of license was given for a period not exceeding 90 days during pendency of the Contempt of Court proceedings. Thus the second proviso was considered and it was held that it is not an arbitrary or uncontrolled power. It is useful to quote paragraphs 8 to 11 of the judgment which reads as under:

"8. It is plain upon the terms of sub-clause (1) of Clause 11 of the Order that it deals with the substantive punishment of cancellation or suspension of a licence. The power of cancellation or suspension of a licence of a foodgrains dealer under sub-clause (1) of Clause 11 of the Order is, however, subject to the limitation contained in the first proviso. The power of cancellation or suspension of a licence is, therefore, not exercisable by the licensing authority until it affords a reasonable opportunity to the licensee of stating his case. This necessarily entails the holding of an inquiry into the question of the alleged breach. The making of an inquiry into the breach of licence conditions by a foodgrains dealer is a time-consuming process which may many a time verily frustrate the purpose and object of the Order. The State Government was evidently of the opinion in the light of the experience gained in the recent past, that for effective control and regulation of the trade in foodgrains, it was necessary and expedient that the licensing authority should be clothed with powers to suspend a licence on the spot when it detects contravention of any of the terms and conditions of the licence or any of the provisions of the Order. Otherwise, a foodgrains dealer after committing flagrant breaches of the terms and conditions of his licence and the provisions of the Order, may, with impunity, carry on his trading activities without any check or control.

9. The power of suspension conferred by the second proviso to sub-clause (1) of Clause 11 of the Order is by way of an interim measure, pending the holding of an inquiry as to whether there is any breach which must result in cancellation of the licence. It is true that the suspension of licence is a drastic measure, if taken without affording to the dealer a reasonable opportunity of stating his case, but it is a measure of social control in the interests of the community. The power of suspension is a necessary concomitant of the power to grant a privilege or a licence. By reason of Clause 3 of the Order, no dealer can engage in the business of purchase and sale of foodgrains except under and in accordance with the terms and conditions of a licence issued by the licensing authority in that behalf. The dealers are free to carry on their trade or business in foodgrains, subject to their complying with the terms and conditions of their licence and the provisions of the Order. But, if they commit a breach, they must face the consequence that their licence may be cancelled or suspended under sub-clause (1) of Clause 11 of the Order. They must face the further consequence of suspension of their licence

during the pendency or in contemplation of the proceedings for cancellation of the licence, if the breach is of such a nature that it must result in the cancellation of a licence. As already stated, the power of suspension is a necessary adjunct of the power to grant a licence. In view of the acute shortage of foodstuffs in the country, the Government is bound to take all effective steps to implement the provisions of the Act and the various orders issued under Section 3 thereof, from time to time. The conferral of the power of suspension of the licence of a foodgrains dealer under the second proviso to sub-clause (1) of Clause 11 of the Order during the pendency or in contemplation of the proceedings for cancellation of his licence, is an important step taken by the Government to subserve the object of the legislation and is in public interest. It cannot be said that the second proviso to sub-clause (1) of Clause 11 of the Order does not satisfy the test of reasonableness. It seeks to strike a proper balance between the freedom of trade or business guaranteed under Article 19(1)(g) and the social control permitted by Clause (6) of Article 19 of the Constitution. It is, therefore, difficult to hold that the second proviso to sub-clause (1) of Clause 11 of the Order is of an excessive nature beyond what is required in the interests of the general public.

10. There is no warrant for the submission that the second proviso to sub-clause (1) of Clause 11 of the Order confers upon the licensing authority unguided, uncontrolled and uncanalised power to suspend a licence and is, therefore, void by reason of Article 14 of the Constitution. It is urged that the impugned orders of suspension in these cases are for a period of 89 days, and the licensing authority would, as in the past, pass fresh orders of suspension ad infinitum completely paralysing the business of the petitioners. There is no substance in the contention that repeated orders of suspension of a licence can be passed under the second proviso in respect of the same breach. The second proviso expressly states that the licensing authority may suspend a licence for a period not exceeding 90 days. It, therefore, fixes the period of suspension. From its very terms, it is obvious that there cannot be repeated orders of suspension of a licence under the second proviso in respect of the same breach. Normally, the order of suspension under the second proviso to sub-clause (1) of Clause 11 of the Order after the expiry of the period of 90 days, would automatically lapse. However, if the licensee commits another breach, after the expiry of the period of suspension, there is nothing to prevent the licensing authority to suspend his licence afresh.

11. On a fair reading of the second proviso to sub-clause (1) of Clause 11 of the Order, it cannot be said that it commits to the unrestrained will of the District Food and Supplies Controller, who is the licensing authority, the power of suspension of a licence. It does not confer arbitrary and uncontrolled power because the suspension can only be for specified reasons and the second proviso lays down the circumstances or grounds on which the power may be exercised. Such guidelines are expressly and specifically stated. In the first place, the power of suspension is not exercisable unless there is a breach and the breach is of

such a nature that it must entail cancellation of the licence. The substantive provision contained in sub-clause (1) of Clause 11 of the Order provides for the power of cancellation or suspension, if any dealer commits any contravention of the "terms and conditions of his licence or any provision of this Order". The first proviso is in the nature of a limitation on the power contained in sub-clause (1), and there can be no cancellation or suspension of a licence unless the licensee is afforded a reasonable opportunity of stating his case. The proper function of the second proviso is to carve out an exception to the first proviso. It dispenses with the requirement of affording a reasonable opportunity to the licensee in case of suspension of his licence during the pendency or in contemplation of the proceedings for cancellation. It must, however, be read along with the main enacting provision in sub-clause (1), and, if so construed, the power of suspension during the pendency of an inquiry cannot be exercised unless there is contravention of any of the terms and conditions of the licence or any of the provisions of the Order. Secondly, it provides for a reasonable safeguard, in that it limits the period of suspension. The period of suspension would necessarily depend upon the nature of the breach, and in no case, can it exceed 90 days. During this period, the licensing authority is expected to complete the inquiry and take a decision as to the cancellation or otherwise of the licence. Thirdly, as a check upon possible injustice that might result from an improper exercise of the power of suspension of a licence by the licensing authority under the second proviso, there is an additional safeguard to a dealer by way of an appeal to the Director, Food and Supplies, under Clause 13 of the Order. This Court has repeatedly laid down that where the discretion to apply the provisions of a particular Statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. It would, therefore, appear that the second proviso to sub-clause (1) of Clause 11 of the Order furnishes sufficient guidelines for the exercise of the power of suspension of a licence during the pendency of or in contemplation of the proceedings for cancellation thereof, and it does not suffer from the vice of arbitrariness and is, therefore, not violative of Article 14 of the Constitution. On the contrary, as already indicated, it affords reasonable safeguards."

15. There is one aspect of the matter which needs to be noted. The Kerala Rationing Order, 1966 is a statutory order which has been framed by the State in exercise of Essential Commodities Act, 1955. The object of the order is to maintain the supply of foodgrains by securing their equitable distribution and availability at fair price to general public. The policy adopted is to carry on the act of distribution as per the Government Scheme and distribution is regulated and controlled by statutory provision. The provisions under the Rationing Order are not only for the benefit of the ration dealer rather the principal beneficiary of these provisions is the public in general. The power is given to the District Authorities or to the Civil Supplies Department. Taking into account the purpose and object of second part of sub-clause (8) of Clause 45, there may be an emergent situation where authority has to immediately suspend or close the

shop and take such action which may prohibit the dealer not to supply further commodities. In the event it is held that in each and every case notice is to be given, the purpose and object in drafting the second part of sub-clause (8) of Clause 45 shall be defeated. The last line of second part has been thus added with some purpose and putting the interpretation that no notice need be issued will defeat the purpose and object.

16. In the Kumaranellur Cooperative M. Society's case (supra) the Division Bench had an occasion to consider Clause 51 of the Kerala Rationing Order which is *pari materia* to Clause 45. Clause 51 deals with the appointment of authorised wholesale distributor and provisions of Clause 45 and 51 are similar. The Division Bench held that the power of suspending the licence of a wholesale dealer under both sub-clauses (8) and (9) of Clause 51 require an opportunity of hearing before passing the order. In the said case the order of suspension was held to be void being in violation of the statutory requirement and principles of natural justice. The Division Bench in the said case had not considered the second part of Clause 45(8) and as a general preposition it was laid down that for exercise of power under Clause 45(8) and (9), an opportunity of hearing is a must. We cannot subscribe to such wide ratio as laid down by the Division Bench. The ratio in the above Division Bench judgment is also followed by a Single Judge of this Court in *Chacko v. Taluk Supply Officer and Others* 2010 (1) KHC 461 : 2010 (2) KLT SN 153. The learned Single Judge in paragraph 5 has also interpreted Clause 45 to the effect that under Clause 45 there cannot be any suspension without opportunity. The judgment of learned Single Judge insofar as laying down the ratio that no suspension can be ordered pending enquiry without notice cannot be approved for the same reason as has been indicated above.

17. In *Abdul Azeez Kunju v. District Supply Officer* 1999 KHC 587 : 1999 (3) KLT 303 : 1999 (2) KLJ NOC 31, the learned Single Judge has noticed both the parts of sub-clause (8) of Clause 45 of the Order, 1966 and has held that temporary suspension without notice pending enquiry is permissible. We approve the view taken in the above judgment. It is useful to note paragraphs 2 and 3 of the judgment which read as under:

"2. Counsel for the petitioner submitted that before taking drastic steps for cancellation of ARD no notice was given to the petitioner. Learned Government Pleader submitted that as per Clause 45(8) of the Rationing Order the authority has got the power to suspend the appointment of the Authorised Retail Distributor temporarily pending enquiry if the authority is satisfied and it is considered necessary to do so without notice. The relevant clause is extracted below:

"If the District Collector or any officer of the Civil Supplies Department not below the rank of a Taluk Supply Officer finds that the authorised retail distributor has contravened any of the provisions of this Order, or any of the directions issued thereunder or on receipt of the report from any of the officers referred to in sub-clause (7) or on his own inspection of the stocks and accounts in a shop finds

any shortage or excess in the quantity of rationed articles or any irregularities in the accounts or detects non-compliance with any of the directions, issued by the competent authorities or contravention of the provisions of any order issued by a competent authority under Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955), which is for the time being enforced he may after giving the authorised retail distributor any opportunity of stating his case and an opportunity of hearing him in person and for reasons to be recorded in writing, amend, vary, suspend or cancel his appointment and/or order forfeiture of the whole or any part of the amount deposited by the authorised retail distributor as security under sub-clause(5).

Notwithstanding anything contained in this sub-clause, he may order the realisation of an amount equivalent in value to the cost of the quantity of rationed articles found to be short or in excess and the cost of any quantity of rationed articles misappropriated by falsification of accounts and all sums collected in excess by way of transport charges handling charges, profit etc. and gained by the authorised retail distributor due to incorrect fixation of price or any other defect in calculation when the mistake is subsequently detected at the time of inspection. If considered necessary he may suspend the appointment of the authorised retail distributor temporarily pending enquiry:

First part of the Clause says that if the District Collector or any officer of the Civil Supplies Department not below the rank of a Taluk Supply Officer, finds that the authorised retail distributor has contravened any of the provisions of the Order or any of the directions issued thereunder he may after giving the authorised retail distributor an opportunity of stating his case and for reasons to be recorded in writing amend, vary suspend or cancel his appointment and take other measures for forfeiture of whole or any part of the amount deposited by the authorised retail distributor. It is therefore, evident from the above mentioned first part of Clause 45(8) that the District Collector or any Officer of the Civil Supplies Department now below the rank of Taluk Supply Officer has to give notice to the authorised retail distributor to state his case before amending, varying suspending or canceling his appointment. The Authority has to record reasons while passing orders for amending, varying, suspending, or canceling the appointment.

3. Learned Government Pleader submitted that due to the non-obstante clause, the authority has got the power to temporarily suspend the appointment pending enquiry without notice. Non-obstante clause evidently refers to sub-clause (8) of Clause 45 with regard to realisation of amount equivalent in value to the cost of the quantity of rationed articles misappropriated by falsification of accounts. We are to read the last sentence of sub-clause (8) of Clause 45 with the non-obstante clause, which would be as follows:

"Notwithstanding anything contained in this sub-clause, if considered necessary he may suspend the appointment of the authorised retail distributor temporarily pending enquiry."

Non-obstante clause, therefore, evidently takes away the notice and an opportunity to the authorised retail distributor. In this case, authorised retail distributor is dealing in essential commodities. Therefore, there may be emergent situations when the authorities cannot wait by issuing notice and then record reasons. It is under such circumstance, I am of the view, authorities have got the power to suspend the appointment of the authorised retail distributor temporarily pending enquiry. At the same time, notice will have to be given to the authorised retail distributor before passing final orders. However, for keeping the licence under suspension no prior notice is necessary due to non-obstante clause."

In view of the forgoing discussions we answer the above noted two questions in the following manner:

"(1) Under sub-clause (8) of Clause 45 of Order 1966 there can be temporary suspension pending enquiry and it is not mandatory to give a notice or opportunity as contemplated in first part of Clause (8) for ordering temporary suspension pending enquiry. The Division Bench judgment in Kumaranellur Cooperative M. Society's case (supra) does not lay down the correct law. In view of our above answer, we do not find any justification to keep the writ appeal pending since the writ petition is already pending consideration before the learned Single Judge and apart from that, there are other factual issues which need to be gone into by learned Single Judge. In the above view of the matter, we dispose of the appeal. Let the matter be placed before the learned Single Judge to decide the writ petition at an early date. The Writ Appeal is disposed of accordingly."