

(1983) 02 CAL CK 0019
In the Calcutta High Court
Case No : F.M.A.T. No. 2679 of 1982

State of West Bengal and Others

APPELLANT

Vs

Brijmohan Gupta

RESPONDENT

Date of Decision : 28-02-1983

Acts Referred:

Calcutta Industrial Area Rationing Regulations, 1964 — Regulation 48, 48A
Constitution of India, 1950 — Article 14, 19, 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 165
Essential Commodities Act, 1955 — Section 3, 3(2)

Citation : AIR 1983 Cal 353

Hon'ble Judges : Suhas Chandra Sen, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : Arun Prakash Chatterji, Bikash Bhattacharjee and Partha Gupta, for the Appellant; Subrata Roy Chowdhury, Bholanath Sen, Somen Bose, Dipankar Gupta, Ajit Kr. Sengupta, Bhagwabati Prosad Banerji, Ruma Pal and Subrata Dutta, for the Respondent

Judgement

Sabyasachi Mukharji, J.—This appeal raises various questions about an order of suspension of a dealer appointed under the West Bengal Rationing Order, 1964 and also challenges an enquiry into certain alleged complaints as to why the dealership of the respondent should not be cancelled. Before we deal with the questions raised in this appeal, which are many and various, it will be relevant to refer to certain facts which the learned Trial Judge has noted.

2. One Brij Mohan Gupta, who was the original petitioner before the learned Trial Judge, was appointed the authorised Rationing dealer under the West Bengal Rationing Order, 1964. He is the Proprietor of a Ration Shop No. 3437 at 166/4, Prince Anwar Shah Road, Calcutta. On the 19th Dec. 1981 the officers of the Food Department, Government of West Bengal seized certain records of the said shop, being registers, books of accounts and cash memos and removed the same from the shop. The petitioner thereafter and on the same day filed a complaint before the Officer-in-charge, Lake Police Station as also the Director of Rationing,

West Bengal. It was alleged by the appellant, on the other hand, that as the officers of the appellant were coming out of the shop along with the documents, they were attacked by some people and the documents were seized from them at the point of certain weapons. Thereafter the petitioner moved an application on 20th Dec. 1981 under Article 226 of the Constitution claiming, inter alia, issue of an appropriate writ directing the respondents to act in accordance with law, not to suspend the authorised ration shop of the petitioner or delink the ration cards here from or tag such ration cards to any other ration shop, release the seized documents of the petitioner and also for cancellation of the suspension order. Thereafter, the learned Judge at the invitation of the parties appointed the Special Officer. These are the undisputed facts upon which the learned Trial Judge had proceeded and we shall have to proceed on the basis of these facts. It would, however, be relevant to set out certain annexures to the said petition. On 23rd Dec. 1981 there was a communication to the Deputy Controller of Rationing, Government of West Bengal by the Rationing Officer, Ballygunge, where it has been stated as follows:--

"This is to inform that the A. R. 3437 kept his shop closed in the evening session of 22-12-81 causing serious dislocation in supply of rations to the rationers concerned.

The A. R. sold commodities to the rationees from the A. R. Shop in the morning session of 20-12-81 without maintaining statutory register or such as D. S. R. nondrawal register etc.

It may be noted that all the valid R. Cs have been delinked from the said A. R. shop to the neighbouring shops as per order of Director of Rationing and in the interest of public concerned." Thereafter the charge-sheet was issued to the said Brij Mohan Gupta which stated as follows : "Proceeding No. 116

Whereas it has been reported, to me that a squad of Inspecting Staff of Headquarter headed by Shri R. Saha, Chief Inspector (IB) paid a visit to your A. R. shop No. 3437 in the afternoon on 19-12-81 and on physical verification of all the stock huge discrepancies in stocks at your shop were detected, a copy of the Weighment Chart duly signed by you was handed over to you but on their way back from your shop few persons led by you armed with lethal weapons snatched away from the said Headquarter Inspecting staff all the papers and documents related to your shop at the point of dagger for which a FIR was lodged at Lake Police Station vide Case No. 558 dt. 19-12-81, and

Whereas it has also been reported to me that on verification of Stock Registers of your shop with reference to the opening balance on 19-12-81 and the actual stocks found after physical verification of stocks on 19-12-81 following discrepancies were detected :

1. N. B. S. F(B) Rice

—

51 Qtl 48 Kgs.

600 gms excess shortage

2. Wheat

—

10 Qtl 81 Kgs.

000 gms excess shortage

3. Sugar

—

2 Qtl 56 Kgs.

900 gms excess shortage

4. R. S. Oil

—

7 Qtl 40 Kgs.

000 gms excess shortage

5. R. B. D. Palm oil

—

20 Qtl 15 Kgs.

000 gms excess shortage

6. M. Dal

—

18 Qtl 46 Kgs.

000 gms excess shortage

Now, therefore, you are hereby asked to show cause, if any to Sri S. K. Ghose, W. L. C. S. Special Officer, Initial Area-II, who is being appointed Enquiring Officer in this case within 7 (seven) days from the date and of receipt hereof, why action as per law shall not be taken against you and to state clearly if you want to be heard in person or through a duly authorised agent and to note as well that in the event of your failure to show cause within the stipulated period decision on the matter will be taken ex parte.

Sd: S. K. Chatterjee 22-12-81 Director of Rationing, West Bengal."

3. Before we refer to the West Bengal Rationing Order, 1964 we may refer to certain provisions of the Essential Commodities Act under which the West Bengal

Rationing Order, 1964 had been issued by the State Government. Section 3 of the Essential Commodities Act empowers the Central Government to control production, supply, distribution, etc. of the essential commodities. It provided that if the Central Government was of the opinion that it was necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing any essential commodity for the Defence of India or the efficient conduct of military operations, the Central Government might, by order, provide for regulating or prohibiting the production, supply and distribution thereof and, trade and commerce therein. Sub-section (2) empowers an order to be made, for various purposes, without prejudice to the generality of the powers conferred by Sub-section. (1). Sub-section. (2) (j) provides as follows and empowers an order to be made :

"(j) for any incidental and supplementary matters, including in particular, the entry, search or examination of premises, aircraft, vessels, or other conveyances and, animals, and the seizure by a person authorised to make such entry, search or examination,"

The above provision, however, is as it is. We shall refer to various changes that this Sub-section has suffered from time to time. The Sub-section. (2) (j) of Section 3 has suffered amendments as follows :

"Pre-1967

(j) For any incidental and supplementary matters including in particular the entering and search of premises, vehicles, vessels and aircraft (and) the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed. After Amendment Act No. 36 of 1967 :

(j) for any incidental and supplementary matters including in particular the entering and search of premises, vehicles, vessels and aircraft and the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed.....

and of any books of accounts and documents which in his opinion would be useful for, or relevant to, any proceedings under this Act and the return of such books of accounts and documents to the person from whom they were seized after copies thereof or extract therefrom as certified by that person in the manner specified in the order have been taken. After Amendment Act No. 66 of 1971 :

(j) for any incidental and supplementary matters including in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals and the seizure by a person authorised to make such entry, search or examination.

(i) of any articles in respect of which such person has reason to believe that a

contravention of the order has been, is being, or is about to be, committed and any packages, coverings or receptacles in which such articles are found.

(ii) of any aircraft, vessels, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicles or other conveyance or animal is liable to be forfeited under the provisions of this Act;

(iii) of any books of accounts and documents which in the opinion of such person would be useful; for or relevant to, any proceedings under this Ad and the return of such books of accounts and documents to the person from whom they were seized after copies thereof or extracts therefrom, as certified by that person in the manner specified in the order, have been taken."

The present section is, as we have set out hereinbefore. Section 5 of the Essential Commodities Act stipulates the Central Government may, by notified order, direct that the power to make order or issue notification u/s 3, should, in relation to such matters and subject to such conditions, if any, as might be specified in the direction, be exercisable also by such officer or authority subordinate to the Central Government, or such State Govt. or such officer or authority as might be specified in the direction. Pursuant to the authority given under the Essential Commodities Act, the West Bengal Rationing Order, 1964 was issued. Paragraph 2 of the West Bengal Rationing Order, 1964 provides the definitions. Para 3 gives authority to wholesale dealers, retail dealers and persons owning, managing or having control of establishments to supply rationed articles in rationed areas. It empowers the State Government, with a view to controlling the distribution of any rationed articles, in respect of any rationed areas or any part thereof, by an order, to appoint any department or authority under the Central or State Government or any person being a wholesale dealer, a retail dealer or owning or managing or having control of an establishment to be, as the case might require, a wholesale dealer, retail dealer or establishment proprietor in respect of such rationed article for the purposes of the said order and it further stipulates that thereupon such department, authority, wholesale dealer, retail dealer or establishment proprietor should, be entitled to supply in accordance with the provisions of the order and any regulations made thereunder such rationed articles within such rationed area or part thereof. Paragraph 3 (5) of the said Rationing Order upon which good deal of arguments have been advanced and upon which one of the points has to be decided states as follows:--

"3. (5) Whenever in the opinion of the State Government it is necessary or expedient so to do in the interests of the general public, the State Government may amend, vary, suspend or revoke any appointment made under this paragraph after making an enquiry in which an opportunity shall be given to the holder of the appointment of being heard either in person or by an agent and for reasons to be recorded in writing and in every such case the holder of the appointment shall be bound to surrender, on demand, to the State Government, the order of appointment for endorsement or cancellation, as the case may be.

Provided that, pending an enquiry into a charge against the holder of an appointment the State Government may suspend his appointment, if in the opinion of the State Government immediate suspension is necessary in the interests of the general public."

Paragraph 3-A provides that notwithstanding anything contained in para 3 a wholesale dealer or retail dealer appointed under sub-para. (1) of para. 3, not being a department or authority under the Central or State Government, should have executed and registered an agreement in the form set out in the schedule to that order. It further stipulates that they should also furnish security of such value in such manner and within such time as the State Government might direct. Paragraph 4 of the said Rationing Order stipulates that no person other than an appointed establishment proprietor, an appointed wholesaler or an appointed retailer, should, on and after the rationing date, supply or offer or attempt to supply, or knowingly permit to be supplied by any agent, employee or servant of such person any rationed article to any person in any rationed area in which such article is rationed. The other provisions deal with details of distribution of the rationed articles and it is not necessary for our present purpose to refer to them. Paragraph 16 of the said Rationing Order empowers the State Government by notification in the official gazette to make regulations for the purpose of giving effect to the provisions of the order. Pursuant to that certain regulations have been framed to which we shall refer presently. Paragraph 21 is also important and some arguments have been made on this paragraph. This paragraph empowers the State Government to inspect and enter the premises and to require any person to render any account etc. The said paragraph reads as follows :

"21. (1) Any person authorised by the State Government in this behalf may :

(a) enter any premises used or believed, to be used for the sale, distribution or storage for sale or distribution of any rationed article, non-(sic) article of the premises of any establishment and inspect any such premises and any rationed article or non-rationed article therein or thereon;

(b) require any person to make any statement or furnish any information or to produce any document or article in his possession or under his control relating to the purchases, sale, distribution or storage of any rationed article or non-rationed article and every person so required shall comply with such requisition;

(c) require any person to render any account or to produce books, accounts or other documents relating to, or believed to be relating to, the purchase, sale, distribution or storage of any rationed article or non-rationed article and every person so required shall comply with such requisition;

(d) take or cause to be extracts from or copies of any document relating to the purchase, sale, distribution or storage of any rationed article or non-rationed article which is produced under Clause (b) or Clause (c) or otherwise found in any such premises;

(e) test or cause to be tested the correctness of any weight or measure used or believed to be used in any transaction relating to the sale or distribution of any rationed articles or non-rationed articles,

(f) take or cause to be taken the weight of all or any of the rationed articles or non-rationed articles found in any such premises.

(g) search and seizure of any rationed article or non-rationed, article or any ration document or any other document relating to the purchase, sale, distribution or storage of any rationed article in respect of which he has reason to suspect that a contravention of this order or any regulations made thereunder or any direction issued under any such regulation, has been, is being or is about to be committed.

Provided that in exercising the powers under this paragraph the person so authorised, shall have due regard to the social and religious custom of the persons occupying the premises.

2. The powers exercisable under this paragraph shall not be exercised except for the purpose of securing compliance with the provisions of this order or of any regulations made thereunder or any direction issued under such requisition."

Paragraph 22 provides for delegation of powers by the State Government and sub-para (2) of para 22 stipulates that the State Government may, of its own motion or on the application of an aggrieved party, review or revise any order passed by itself or by any officer or other person to whom powers has been delegated under sub-para. (1). The Schedule I to the Rationing Order provides the form in which the agreement is to be executed. It emphasises that a new dealer if appointed is also to function in a particular manner. The form of the agreement, which is provided in the Schedule, indicates the control that the Government exercises over the dealers. Clause 2 of the agreement provides that the dealer shall obtain such rationed articles as are allotted to him against indents passed by the appropriate authority, in accordance with the provisions of the said order and the Regulations made thereunder, and shall distribute the same in the manner provided for in the said order and the regulations and obtained such other commodities as are allotted to him against indents and distribute the same in the manner specifically laid down by the Director in respect of such commodities and shall maintain proper and correct accounts thereof. Clause 3 stipulates that the dealer shall deposit the prices of all rationed articles and other commodities allotted to him against indents referred to in Clause 2 within the period of validity of such indents at such rates as may be specified by the State Government Clause 4 of the Schedule provides as follows:

"4. In the event of the ex-godown rates of any particular stock being increased subsequent to the payment for that stock at the previous rate by the dealer and before the distribution of the same to the consumers, the dealer shall make a further deposit of money in such manner, as may be prescribed by the Director in this behalf by general or special order in order to cover the amount of such

increase in the ex-godown rate of any particular stock. Similarly to the event of a decrease in the ex-godown rate of any particular stock subsequent to the payment therefore by the dealer and before distribution of the same to the consumers, the dealer shall be entitled to the refund of his deposit to the extent of the difference due to such decrease."

Clause 5 debars the dealer from keeping in his shop or godown any commodity other than those allotted to him by the appropriate authority. Clause 6 enjoins that the dealer shall distribute rationed articles and other commodities, as may be allotted to him, during such hours, as may be specified by the Director from time to time. Clause 7 enjoins that the dealer shall take adequate measures for the safe storage of rationed articles and other commodities as are allotted to him at the shop premises and shall not, under any circumstances, remove to any other place or address or store in any other place or address any stocks of the aforesaid articles or commodities without the permission in writing from the Director of Rationing Officer or any other officer authorised by the Director in this behalf. Clause 8 enjoins that the dealer shall notify any change of address of his residence to the Deputy Controller of Rationing or the Rationing Officer, within seven days of such change. Clause 9 however enjoins that the dealer shall personally supervise the management of the shop unless he is allowed by the Director or the Deputy Controller of Rationing or the Rationing Officer to manage the affairs of the shop through an agent duly appointed by him under a registered Power of Attorney.

4. Clause 15 deals with any stock of rationed, articles or other commodities remaining undisposed of with the dealer on termination of the agreement or on revocation of the appointment under the said order shall be dealt with or disposed of in accordance with the directions issued in this behalf by the Director or the Deputy Director of Rationing or the Rationing Officer and the Government shall have no liability in respect of such stock. Clause 17 provides that if the dealer fails to observe any of the terms of this agreement, the decision whereon of the Director shall be final, the agreement shall, stand automatically terminated. Certain directions have been issued to the appointed Retailers of Calcutta Industrial Area. Direction 1 (2) stipulates that there should be Board indicating stock position and registration position giving the particulars of date, name of the commodities, quantity and a separate notice regarding availability of any particular item of rationed/non-rationed article should be prominently displayed if required for the benefits of the registrants as per instructions of the Rationing Officer in this behalf. Instruction No. (3) stipulates that the appointed Retailer should maintain a Rate Board indicating date, name of commodities and Retail price etc. Instruction No. 8 enjoins that the appointed retailer should maintain all the prescribed registers and forms up-to-date and should keep them at the shop premises so that they might be available for inspection by the authorised Inspecting Officer on demand. It further stipulates that no appointed retailer shall take away the registers and forms from the shop premises except under the direction of the Rationing Officers concerned. It further enjoined that

the appointed retailer should maintain all correspondence in regard to the ration shop at the shop premises and should display the appointment letter of the shop in a glass frame at a prominent place of the shop. It enjoined that the appointed retailer should preserve all the A. R. I. Part A Registers, Daily Stock Registers, Indent Registers and Inspection Books maintained during the tenure of the shop as permanent records and should keep them at the shop premises so that they might be readily available for inspection by the authorised Inspecting Officers on demand. The appointed retailer should preserve all the Daily Sale Registers, Duplicate carbon copies of cash memos, Non Drawal Registers maintained at the shop for a period of not less than two years from the date of issue of the respective records so that they might be available for inspection on demand by the Inspecting Officers authorised in this behalf. It further provides that an appointed retailer shall not dispose of such records on or after expiry of the aforesaid period without obtaining prior permission from the Rationing Officer concerned specifically in this respect. It enjoined that the appointed retailer should maintain the Daily Sales Register preferably as and when the sales proceed and under no circumstances should be allowed to fall in arrears even for a day. The Daily Stock Register should similarly be written up daily with the figures of sale tallying with those shown in the total column of the Daily Sales Register. Direction No. 9 enjoined that the appointed retailer should submit weekly stock return on every Monday in the prescribed form along with a statement in A. R. II forms showing therein the number of cards registered with the shop and Direction No. 10 enjoined that the appointed retailer should render all facilities for physical verification of stocks of rationed/non-rationed commodities on demand by the Inspecting Officers authorised in this behalf. Other directions regarding storing of rationed articles in the shop and change of shop site and lifting and distribution of rationed/non-rationed articles and certain General Directions regarding opening hours and closing hours of shops were also given.

5. The purpose of our setting out in such details the provisions of the Rationing Order as well as the form of the agreement and clauses of the agreement as well as the directions issued to the rationed dealers is to emphasise that the dealers function in a peculiar manner vis-a-vis the Government in respect of distribution of rationed articles. They have a special accountability to the Government for the distribution of rationed article under the Rationing Order. They are appointed dealers and for that purpose and they are, in some form, agents of the Government for distribution of rationed articles. The obligation of the dealers to maintain books in a certain manner and in a certain way is that these books and documents may be easily available for verification and their duties as dealers may be verified as directed by the Government and to examine whether these are being performed or not, and could be under constant supervision of the Government on whose behalf the rationed articles are being distributed to the ration card holders in the urban areas. In this connection we have to bear in mind that this is not a case of Government dealing with a general trader in the

open market but this is a case where the Government is dealing with a dealer who in some form an agent of the Government and owes a certain amount of special accountability to the Government in respect of rationed articles. We must bear in mind this important fact in considering the various contentions urged in this case. The form of the agreement, terms and conditions of the Rationing Order and the directions indicate that the dealers appointed under the Rationing Order are really implementing the Government Scheme for distribution of rationed articles under the Rationing Order.

6. In this connection we have to note that on the 28th June 1961 G. S. R. 888 was issued in exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1965 whereby it was, inter alia, provided as follows:--

"(a) that the powers conferred, on it by Sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in Clauses (a), (b), (d) (e), (f), (h), (i), (ii) and (j) of Sub-section. (2) thereof, shall, in relation to foodstuffs be exercisable also by a State Government subject to the condition that before making an order relating to any matter specified in Clause (a) or in regard to regulation of transport specified in Clause (d) of the said Sub-section (2), the State Government shall obtain the prior concurrence of the Central Government."

This was amended by G. S. R. 1158 on the 14th August 1964. That amendment does not materially affect us. So it is not necessary to set out the said, amendment.

7. It was contended before the learned trial Judge that the records of the said shop have been seized by the Government Officers without any reasons, without any seizure list being made with a copy to the petitioner. It was further contended that the writ petitioner has been suspended pursuant to an illegal and arbitrary seizure without assigning any reason and without passing a speaking order and without any opportunity to the petitioner of being heard contrary to the principles of natural justice. It was urged that the action of the appellants (respondents in the writ petition), was motivated and meant to deprive the petitioner of its business for collateral purpose. It was contended, that the petitioner had a fundamental right under the Constitution to carry on his business guaranteed under Article 19(1)(g) and the same could not be taken away or interfered with except under due process of law and in compliance with the statutory provisions. It is further urged that under Clause (c) of para 21 (1) of the said order, which empowers such search and seizure conferred a wide and unregulated power to the authorities and was ultra vires Articles 14 and 19(1)(g) of the Constitution and the provisions of the Essential Commodities Act. It was submitted that there was no check or balance nor any safeguard in the said order against arbitrary use of such powers. It was urged that safeguards provided, in the Cr. P. C. in respect of search and seizure had not been incorporated. It was contended that the power to suspend a ration shop and to delink the ration cards consequent thereto amounted to cancellation of appointment without giving the

retailer an opportunity of being heard and without any time limit for such suspension being continued. Such power, it was submitted, conferred by para. 3 (5) and the proviso thereto of the said order imposed unreasonable restriction on the fundamental right of the petitioner and conferred upon the authorities uncontrolled and uncanalised power to suspend without any opportunity being afforded to the person concerned, even without coming to a provisional conclusion of any specific violation of the provisions of the said order. Even if the person initially suspended ultimately succeeded, he would be without any remedy during the interim period.

8. The learned Judge has also set out the case of the respondents and the factual aspect as alleged in the petition and in the affidavits. It is not necessary, in view of the points that were ultimately urged before the learned Judge and upon which the learned Judge disposed of the matter and which are also urged before us, to set out those in greater detail. The matter was heard without any Rule being issued on the merit on the invitation of the parties. The parties agreed that the parties would not go to any dispute as to facts in this case. Several decisions of the Supreme Court as well as different High Courts were cited before the learned Judge, some of which were again relied before us. We need not set out in detail those decisions but the learned Judge in his judgment has set out the principles of the decisions in the case of *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, ; *Mehta Parikh and Co. Vs. Commissioner of Income Tax, Bombay*, ; *Virendra Vs. The State of Punjab and Another*, ; *Hamdard Dawakhana and Another*, *Kalipada Deb and Another*, *Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, ; *Surajmull Nagarmull and Others Vs. The Commissioner of Income Tax*, ; *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, ; *Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc.*, ; *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, ; *Swadeshi Cotton Mills Vs. Union of India (UOI)*, ; *Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others*, ; *Srinath Singh Vs. S.K. Bhattacharjee and Others*, ; *Jagadish Lal Gupta Vs. The Director of Rationing and Others*, ; *State of West Bengal v. Kishori Mohan Saha (1978) 2 Cal LJ 285*; *S. Pratap Singh Vs. The State of Punjab*, ; *Chinta Lingam and Others Vs. Government of India and Others*, and *Collector of Customs, Madras and Others Vs. D. Bhoormall*, .

9. Discussing the principles of the aforesaid decisions, the learned Judge observed that none of the safeguards which are usually provided for search and seizure were present in Clause 21 of the present order. The learned Judge observed that under the said clause a person generally authorised, by the State Government can enter any premises or any shop or establishment of a dealer. No particular authorization was necessary for search of any particular premises. The person authorised may be an officer, the learned Judge noted, of the Government or he might be any private person.

10. The person authorised or any higher authority was not required to record any belief or opinion that it was necessary to search any particular premises. The learned Judge noted that no rule was provided or had been framed under the said order as to how a search and seizure should be conducted. There was no provision for any independent witness to be present during the operation. There was no provision for making a list, of the articles seized or attestation thereof by any witness. There was no provision enabling the person affected to have any inspection of the records or documents seized. The seizure could continue indefinitely. There was no provision for return of the seized articles. The learned judge noted that it was submitted before him on behalf of the State that in fact any officer of the Government had been authorised to conduct search and seizure and that it was the practice to make a list of the articles seized in the books maintained in the establishment which was always available to the dealer concerned. The submission on behalf of the Government was that it should be expected that the authorities would observe and maintain all necessary safeguards following the principles of equity, according to the learned Judge, introduced a novel proposition which was not, however, supported by any authority. The learned Judge observed that the fact remained that the authorities had been conducting the searches and seizures under the said order on an ad hoc basis which could not cure the lacuna in the clause. Then the learned Judge observed that certain principles had been laid down by the Supreme Court and upon those principles the learned Judge had no hesitation in holding that the provisions of Clause 21 of the said Rationing Order were unreasonable, conferred wide, uncontrolled and uncanalised powers to the authorities affecting the fundamental rights of the dealers and, as such, were violative of Articles 14 and 19 of the Constitution. The learned Judge, therefore, held that the said clause should be struck down.

11. Dealing with the consideration of the provisions of Clause 3(5) of the Rationing Order which permitted the State Government to suspend the appointment of a dealer pending an enquiry into the charge the learned Judge noted that the manner of enquiry had been laid down in the substantive part of the said clause. In making the enquiry an opportunity had to be given to the holder of the appointment, namely, the dealer of being heard, and reasons had to be recorded in writing if any amendment or variation or suspension or revocation of the appointment was made. But, before passing an interim order of suspension pending an enquiry, no opportunity was required to be given to the holder of the appointment of being heard. There was no express provision for any appeal to any authority. There was no time limit for such interim suspension according to the learned Judge and the same must continue for an indefinite period because there was also no time limit within which the substantive enquiry under the clause was required to be concluded. Under Clause 22 of the order the power to be exercised under Clause 3 could be conferred by the State Government on any officer or to any other person. The learned Judge observed that similar provisions in the Punjab Foodgrains Dealers Licensing and Price

Control Order, 1978, were held by the Supreme Court to be constitutionally valid. The Supreme Court held that the proviso permitting interim suspension of a licence without a hearing did not confer arbitrary and, uncontrolled power on the authority because the proviso, inter alia, limited the period of suspension. The learned Judge noted that the only remedy would be by way of a revision or a review to the State Government, for which no specific rule or procedure had been laid down. The learned Judge was of the view that in the proviso to Clause 3(5) of the present order there was no such safeguard. By an interim suspension a business could be paralysed indefinitely. There was no specific provision for an appeal to any higher authority. The learned Judge noted in some other cases where he observed in certain other Calcutta cases, which we have set out hereinbefore, where the vires of the Rationing Order was sustained. But the learned Judge was of the view that the aspect which had, been canvassed before the learned Judge was not emphasised in those cases. The learned Judge observed that in view of the subsequent Supreme Court decision the earlier decisions of this Court, which the learned Judge noted where the vires of the Rationing Order was sustained, might no longer be good law. But the learned Judge observed that it was not necessary for him to dissent from the said decisions as he was disposing of the matter on other grounds. Then the learned Judge dealt with the question of review but the learned Judge observed that it was a matter of record that the enquiry had been initiated against the petitioner under Clause 3 (5) following the search and seizure on materials obtained from such search and seizures. The learned Judge held that the provisions for search and seizure as laid down in Clause 21 of the order were bad and unconstitutional. The learned Judge, therefore, was of the view that the proceedings following the same must also be held to be vitiated. For the reasons as indicated hereinbefore the Rule succeeded before the learned Judge. The impugned proceedings against the petitioner including the order of interim suspension were quashed. The respondents were directed to return to the petitioner all articles seized and appropriate directions were issued but liberty was given to the respondents to proceed afresh in accordance with law. Therefore, to summarise the learned Judge's decision the conclusion of the learned Judge was as follows:--

(1) Clause 21 of the Rationing Order was ultra vires.

(2) The learned Judge was doubtful whether Clause 3(5)(b) was valid or intra vires and he has some doubt about the point but in the view he was taking on the other issue the learned judge did not express any final opinion on this aspect.

(3) The learned Judge, however, was clearly of the view that as the search and seizure in view of Clause 21 was illegal and unconstitutional the proceedings which were initiated as a result of the search and, seizure were bad and as such should be quashed.

12. The propriety of these conclusions of the learned trial judge is under challenge in this appeal.

13. Before we deal with the main points we may dispose of one of the contentions, namely, it was urged on behalf of the appellant that as the West Bengal Rationing Order had been issued under the Essential Commodities Act and as the Essential Commodities Act was in the 9th Sch. of the Constitution, the challenge to the validity of the orders issued under the Essential Commodities Act was not open to the petitioner-respondent herein. In the view the majority of the learned judges of the Supreme Court took in the case of *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, a in of the report we are unable to accept the contention that the orders issued under the Essential Commodities Act, like the Rationing Order, which is in the 9th Sch. of the Constitution also enjoy the protective umbrella and, we need not in detail discuss the detailed, arguments in view of clear pronouncement of majority of the learned Judges of the Supreme Court.

14. As the materials or the information upon which the show cause notice, in this case, was based and the order of interim suspension, pending enquiry was also passed on the basis of the information obtained from the documents which were alleged to have been searched and seized, it will be desirable to deal with the points which have been raised on the question of propriety of the "search and seizure" and the power of search and seizure under the impugned order. It was contended that the power under para 21(1)(g) of the rationing order was ultra vires the Essential Commodities Act. It was contended that the enabling Section, viz. Section 3(2)(j) provided for search and seizure on the formation of "reasons to believe" or "opinion" which incidentally meant the same thing as evidenced from the views expressed by the Supreme Court in the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . But the impugned provision, in this case, permitted search and seizure on the basis of "reasons to suspect". It was, therefore, submitted that the impugned provision went beyond the pre-condition of the enabling section. This expression "reason to suspect", in our opinion, must be under, stood, in the context of the West Bengal] Rationing Order and the purpose for: which this power of search and seizure was given. This is really an extension of the other provisions of paragraph 21 which permitted the Government to inspect and go upon the premises for the purpose of ensuring that the rationed articles were distributed properly. Therefore, as in the case of principal's right to inspect or to supervise the conduct of its agent or its dealer, even in the case of complaint or suspicion, this should be judged on that basis, unlike the right of the State in exercise of its power to ensure compliance of law by the private citizens. Therefore, in this case, the expression "reason to suspect" must be construed as to mean reason to believe that distribution is not being made in due compliance with the provisions of the Act. Apart from this, there is another aspect, viz. the directions that have been issued relating to appointment of retailers in the Calcutta Industrial Areas, being the directions No. 8 read with direction No. 10 which, we have set out hereinbefore, indicate that the retailers were bound to render all facilities for physical verification of the stocks as well as the retailers were

enjoined to maintain all prescribed registers and forms in the ration shop. These directions were issued under Regulation 48 and Regulation 48A of the Calcutta Industrial Area Rationing Regulations 1964. One of the arguments sought to be urged on behalf of the respondent to this was that this Regulation had no statutory binding force. It is doubtful, whether in view of the fact that these directions were issued under Regulation 38 and Regulation 48A of the Calcutta Industrial Area Rationing Regulations 1964 whether this argument is correct or not. But, quite apart from this it is indisputable that the retailers or the ration dealers were appointed on the basis of this Regulation. That is not disputed. Therefore, they had this kind of arrangement under which the appointment of retailer had taken place. Therefore, quite apart from the point it had been argued whether this Regulation had the statutory force or not, in our opinion, this Regulation should certainly be binding inter se between the Government and the Ration Dealers. In that view of the matter, in the context of this position, in our opinion, it would be appropriate to read with expression reason to suspect more or less in the same manner as "reason to believe" that is to say, that there must be materials to believe that due compliance with the provisions of the Rationing Order is not done by any Ration Dealer upon which alone and for which the Govt. would be entitled to carry on physical verification and search. It may incidentally be mentioned that the expression "search and seizure" is an expression the amplitude of which is not defined. There is, of course, the provision of search and seizure in various statutes. In the Rationing Order, this expression "search and seizure" is not defined. One of the dictionary meaning of the expression "search" is to examine closely or to penetrate all parts or to scrutinise. In the context of the requirements of the maintenance of books in a particular manner, the facilities of inspection to be given to the Government to ensure that its appointed dealers should comply with the law there is the power of inspection. This is really an extension of that power of inspection to search, in case a greater probe or examination is necessary. Seizure also in that view of the matter must be construed in the context that an authority appointing a ration dealer is entitled to take away any document even if the dealer is unwilling to part with that document for greater scrutiny. In that context, in our opinion, these expressions must be understood. It is argued by saying that this expression in socio-economic legislation must be construed keeping in the background the purpose of the Act and the purpose of grant of a particular power cannot be judged in the abstract. It was contended that the power of search is a drastic power. In support of this submissions, reliance was placed on the observations of the Supreme Court in the case of *The State of Rajasthan Vs. Rehman*, , Mr. Justice Subba Rao, as the learned Chief Justice then was, observed that the power of search was a drastic power. This observation, however, was made in the context of Central Excises and Salt Act, 1944 and in the context of the power whereby certain powers had been given to excise authority to search tax payers' premises. Search and seizure is certainly a power of certain magnitude but whether it would be a drastic power or not would depend in the context of a particular legislation and for the purpose for which this power is given. In any event,

whether be it a drastic power or not, such power like all powers must be used upon certain guidelines with certain checks. No power, drastic or otherwise, can be used by public authority in any arbitrary or unguided manner.

15. It was submitted, that para. 21 (1)(g) of the Rationing Order permitted search by "any person" authorised by the State Government. Reliance was also placed on the decision of the Supreme Court in the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, of the said decision it has been observed that the delegation of power to "any person" would be unreasonable. The same view was also expressed by the Supreme Court in the case of Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, and, our attention was drawn to the observations made at page 225 and page 227 of the said report. There, the Court observed as follows in para 8 of the said decision :

"The more formidable objection has been taken on behalf of the petitioners against Clause 4(3) of the Central Order which relates to the granting and refusing of licences. The licensing authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and, the only thing he has to do is to record reasons for the action he takes. Not only so, the power could be exercised by any person to whom the State Coal Controller may choose to delegate the same, and the choice can be made in favour of any and every person. It seems to us that such provision cannot be held to be reasonable.

16. No rules have been framed and no directions given on these matters to regulate or guide the discretion of the Licensing Officer. Practically the Order commits to the unrestrained will of a single individual the power to grant, withhold or cancel licences in any way he chooses and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same.

Mr. Umrigar contends that a sufficient safeguard has been provided against any abuse of power by reason of the fact that the licensing authority has got to record reasons for what he does.

17. This safeguard, in our opinion, is hardly effective; for there is no higher authority prescribed in the Order who could examine the propriety of these reasons and revise or review the decision of the subordinate officer. The reasons, therefore, which are required to be recorded are only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the aggrieved person.

18. It was pointed out and with perfect propriety by Mr. Justice Mathews in the well-known American case "Yick Wo v. Hopkins (1886) 118 US 356 at 373 (B) that the action or non-action of officers placed in such position may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other

improper influences and motives which are easy of concealment and difficult to be detected and exposed and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to every man, without the necessity of detailed investigation. In our opinion, the provision of Clause 4(3) of the U. P. Coal Control Order must be held to be void, as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by Clause (6) of the Article".

19. The Supreme Court has, however, in the case of *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, as follows :--

"16. Then we come to the question whether Sub-sections (2) and (3) of Section 41 of the Act which have been struck down by the High Court on the ground that they are unreasonable restrictions on the right to hold property and to carry on trade have been correctly struck down. The main reason which impelled the High Court to strike down Sub-section (2) was that there was no safeguard provided for search made thereunder. The High Court held that Section 165 of the Cr. P. C. did not apply to searches made under Sub-section. (2). It also held that the State Government was given the power to empower any officer to make a search under Sub-section (2) and this meant that even an officer of low status could be empowered. Consequently, the High Court struck down, Sub-section (2) on the ground that it gave arbitrary power to search which could be made even by an officer of low status. It is true that search under this Sub-section can be made by any officer empowered by Government in this behalf; but we have no reason to think that Government will not empower officers of proper status to make searches. In this very case, we find that the Government empowered an Assistant Commercial Tax Officer, a Revenue Inspector and Sub-Inspector of Police to make searches. Considering the large number of dealers who are covered by the Act, it cannot be said that these officers are of such low status that they cannot be depended upon to make a search with due care and caution. We cannot also forget that in a case of this kind the Government cannot find sufficient number of officers of what may be called high status to make searches, for dealers who may be covered by the Act may be legion throughout the State, and if such searches could only be made by high officers there could not be enough officers available to do so. The fact that the Act gives power to Government to empower any officer is therefore no reason to strike it down for, as we have said the Government will see that officers of proper status are empowered. Nor do we think that an Assistant Commercial Tax Officer or an Inspector of Revenue Department, or a Sub-Inspector of Police Department is not an officer of proper status to make searches under this provision.

17. We are also of opinion that though Sub-section (2) itself provides no safeguards and might have been open to objection on that ground, there is a provision in the proviso to Sub-section. (2) which lays down that all searches under this Sub-section shall so far as may be, be made in accordance with the

provisions of the Cr. P. C. Therefore, the provisions of the Code of Criminal Procedure, so far as may be, apply to all searches made under Sub-section. (2). It appears that in the High Court, the parties as well as the Court assumed that Section 165 of the Cr. P. C. would not apply to searches under Sub-section (2). We cannot see any warrant for this assumption. The proviso clearly lays down that all searches made under this subsection, so far as may be, shall be made in accordance with the provisions of the Code of Criminal Procedure. Thus all provisions contained in the Cr. P. C. relating to searches would be applicable to searches under Sub-section. (2) so far as may be. Some of these provisions are contained in Chap. VII but one such provision is contained in Section 165. It is true that the section specifically refers to an officer-in-charge of a police station or a police officer making an investigation. But when the proviso applies the provisions of the Cr. P. C. to all searches made under this Sub-section, as far as may be possible, we see no reason why Section 165 should not apply *mutatis mutandis* to searches made under Sub-section. (2). We are, therefore, of opinion that safeguards provided in Section 165 also apply to searches made under Sub-section. (2). These safeguards are -- (i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction, (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay, (iii) he must record in writing the grounds of his belief, and (iv) he must specify in such writing so far as possible the thing for which search is to be made. After he has done these things, he can make the search, These safeguards, which in our opinion apply to searches under Sub-section. (2) also clearly show that the power to search under Sub-section (2) is not arbitrary. In view of these safeguards and other safeguards provided in Chap. VII of the Cr. P. C. which also apply so far as may be to searches made under Sub-section (2), we can see no reason to hold that the restriction, if any, on the right to hold property and to carry on trade, by the search provided in Sub-section. (2) is not a reasonable restriction keeping in view the object of the search, namely, prevention of evasion of tax." On this basis it was sought to be submitted that the search could be conducted by "any person" authorised by the State Government. It is true that in the expression used the word "officer" has not been mentioned. But it is also true that in the notification dt. 9th June, 1978 the State Government had, in fact, authorised the officer to make the search and seizure. It was argued that the validity of the power is not to be judged in the manner the power is exercised but granted. It was further argued that the power which was granted could be misused. It was further submitted that the notification dt. 9th June, 1978 was not a notification under the Rationing Order. Secondly para 3 of the notification circumscribed the power of the sub delegates in making the order and the provisions of the rationing order, in contravention therefore was bad. It is true that the validity of a power must be adjudged on the power given and not in the manner and how the power is exercised. But it appears to us that the statute authorised to make the search in the context; and the purpose for which that authority had been given. The expression "any person" must either be a person

who is the officer of the Government or a person who is connected with the rationing department and upon whom the Government has faith or upon whom the rationing authority has, faith. Therefore, the gram of power also cannot, in our opinion, be read in abstract.

20. It was submitted that power of search and seizure would be unreasonable unless there were adequate procedural safeguards. In aid of this submission reliance was placed again on the observation of the Supreme Court in the case of *The State of Rajasthan Vs. Rehman*, wherein paras 6 and 7 the Supreme Court dealt with this. The Supreme Court also ex-pressed the same view in the case of *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, . In the case of *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, the Supreme Court was also of the same view. We shall deal with this decision later on in detail while dealing with another contention. Our attention was also drawn to the observations of Mr. Justice Arun K. Mukherjee in a Bench decision of this Court in the case of *Hindusthan Motors Ltd. v. T, N. Kaul* in Appeal No. 280 of 1970 in which I was also a party. There this court had observed in the context of power of search under Foreign Exchange Regulation Act that the safeguards u/s 165 of the Cr. P. C. were necessary to make the power of search valid. It was emphasised on the basis of these decisions that the nature of the safeguards must be judged to find out whether they were adequate enough. It was contended in this case that in the impugned power in para 21(1)(g) there was no safeguard. It was submitted that para 21(1)(g) of the Rationing Order did not require reasons to believe. We have dealt with this aspect. It was then submitted that there was no provision for recording of the reasons. It is well settled that where the exercise of power is dependent upon the existence of certain reasons whether in a particular fact such reasons exist or not is a question of fact and can always be challenged. Therefore the sine qua non of exercise of power where there are reasons and the exercise of power is dependent upon reason to believe or reason to suspect the existence of this reason is a pre-condition for the exercise of the power and that pre-condition itself having regard to the particular nature of the power in a particular context in which power is given has often been considered to be sufficient safeguard. It was submitted that there is no provision for return of the documents seized or in making copies. It is submitted that those documents and registers are required to be maintained in the Ration Shop. Therefore, inspection can always be had from the ration shop and for verification of those documents the general power of the dealer is always there to inspect his own registers even when they are taken away temporarily for the purpose of tallying with the records in the headquarters or in the office. Therefore, in our opinion, the absence of any specific power for return of documents seized or making copies thereof does not per se make the power itself bad especially in the context of the present power. It was submitted that provision relating to search as provided in the Cr. P. C. did not apply and it was submitted that this could not be implied that provision regarding search in Criminal Procedure Code cannot be construed to be

"basic canons" of criminal jurisprudence. In this context the appellant relied on the observations of the Supreme Court in the case of Collector of Customs, Madras and Others Vs. D. Bhoormall, where in the context at provisions of Sea Customs Act the Supreme Court has observed in para 26 as follows :--

"26. Large scale smuggling of gold or other goods into India may pose a threat to the economic and fiscal interests and policies of the State. Such illicit trade is often carried on by organised international smugglers in the secrecy of the underworld. The more it is organized, the less are the chances of its detection, and greater the difficulty of proving the offences relating thereto. Laws have therefore been enacted in most countries, which mark a partial or wholesale departure in mailers relating to smuggling, from the general principle of penal law, viz. that it is for the State or its Department to prove the offence against the accused or the defendant Thus in England, Section 290(2) of the Customs and Excise Act, 1952 provides that, where in any proceeding relating to Customs or Excise any question arises as to the place from which any goods have been brought or as to whether or not any duty has been paid or any goods have been lawfully imported etc., then the burden of proof shall lie upon the other party to the proceeding. In India, Parliament inserted Section 178-A by the Amending Act 10 of 1957, but it did not, in its wisdom, go as far as Section 290(2) of the English Act. Section 178-A in terms applies to "gold, gold manufacture, diamond and other precious stones, cigarettes and cosmetics." With regard to these specified goods if seized under this Act in the reasonable belief that they are smuggled goods, the burden of proof that they are not such goods shall be on the person from whose possession, they are seized. But with regard to any other goods, the rule in Sub-section (1) of Section 178-A would not apply unless the Central Government had specifically applied the same by notification in the Official Gazette. It is common ground that at the material time, no such notification applying the section to the categories of the goods in question had been issued. In respect of such goods the provisions of the Evidence Act and the Code of Criminal Procedure, do not, in terms, govern the onus of proof in proceeding u/s 167(2) of the Act. In conducting these penal proceedings, therefore, the Collector of Customs is to be guided by the basic canons of criminal jurisprudence and natural justice."

It was submitted, on behalf of the respondents that these observations upon which the appellant relied upon are wholly untenable. In any event, the provisions of Criminal Procedure Code relating to search and seizure even if they are implied had in fact not been complied with in this case, particularly those contained in Section 165 of the Cr. P. C. It is true that provisions of the Cr. P. C. had not been applied in this case nor para 21(1)(g) of the Rationing order nor other paras of the said Order enjoined compliance with the provisions of the Cr. P. C., but whether compliance with Cr. P. C. is a sine qua non for all searches or not, in our opinion, must depend upon the nature of the search contemplated by the particular provision of the Act and the things to be seized and the circumstances under which power of search is given in a particular provision. In

this case, as we have emphasised that the power of search is an extension of the power of inspection by a principal to its dealer to ensure that the duties entrusted to the dealer for fulfilling the socio-economic legislation of supply of foodstuff in a scarce area at a controlled price is duly complied with, it is to ensure that compliance -- that power of inspection of the principal or the Government to supervise -- this general expression "search" has been given in such a case. The abstract principle of the safeguard and invasion by the State of a private citizen's right does not arise as such. As we have emphasised it is the dealer's accountability to its principal that is the most important in judging the amplitude of the scope or the validity of the powers given in the Rationing Order. It is the protection of the citizens in getting proper supply of foodstuff which is primarily involved in judging the validity of these powers. So, in that context, in our opinion, we must emphasise that all powers even in respect of a dealer or an agent or an employee to be exercised by the principal or State or any authority must be exercised under such provision so that there is little scope (in all fairness there should be no scope) of power being misused. Here the power has been given to be exercised by a person to be authorised by the State Government. The power has been given to ensure only in cases where there is reason to suspect that provision of the order or Regulation made under the Rationing Order has been or is being violated. Thus in the context the power has been given and the scheme of the Rationing Order has been or is being violated, Thus in the context the power has been given and, the scheme of the Rationing Order and the Regulation to maintain certain types of books in a certain manner and the form of the agreement, in our opinion, cannot be considered to be so unreasonable simply because of the absence of compliance of Section 165 of the Cr. P. C. It was submitted that this was a case where power was being exercised not by the high officer on the contrary, the power can be exercised by "any person". It is true that power in this case can be exercised by any person but authority to give power to that, person is circumscribed by the conditions which we have mentioned hereinbefore. On behalf of the appellant it was submitted that there were certain safeguard on the power of search. In aid of this submission our attention was drawn to para 22(2) of the power of review by the State Government. We agree with the learned Advocate for the respondents that this power of review cannot apply in case of search. Indeed power of search will be useless if there is any power of review given to any authority authorising an order for search. But that by itself, in our opinion, does not make the power bad. Indeed it is difficult to imagine of any provision of law if an authority is given to an officer or to any person to search the premises, that authority or the power can be reviewed by any authority other than that authority on certain circumstances before the search and seizure takes place. Absence of any power of appeal or review or re-consideration by any authority other than the authority who is authorised or enjoined, to conduct search and inspection would not by itself make the grant of the power bad, specially in the context, of a Legislation or Regulation of this nature. It is the submission of the respondent that para 22(2) of the Rationing Order speaks of review of the orders passed by the State

Government or a delegate under certain specified paras which do not include para 21. We are in agreement with this submission of the learned Advocate for the respondents but as we have mentioned before that the absence of any power of appeal or review in the facts and circumstances of this case for search and seizure would not make the power bad.

21. Learned Advocate for the appellant drew our attention to the provisions of the Essential Commodities Act in support of his argument that the safeguards provided in the said Act would be attracted to the notifications or orders passed under the authority of the Essential Commodities Act. It is doubtful, in our opinion, whether this submission advanced on behalf of the appellant is correct or not. Further it is the submission on behalf of the respondents that Section 3(2) (j) of the Essential Commodities Act does not contain any power of search but enables the Central Government to issue an order for search and seizure. This was the substantive power. It is the submission of the respondents that one could not find any safeguard contained in the provisions of the Essential Commodities Act relating to search and seizure. It appears to us that on this point the submission on behalf of the respondents seems to be correct. But as we have taken the view that quite independently of the safeguards, if there be any, in the Essential Commodities Act, the power of search given in the West Bengal Rationing Order for the purpose for which it is given is otherwise valid, we need not rest our decision on this aspect of the matter nor is it necessary to examine this question in greater detail.

22. But the most important question is, even assuming that the search and seizure are illegal, what is the consequence of this illegal search and seizure ? On behalf of the respondent, in the case of Amal Kumar Das, which was heard, along with this case, the case of Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, was cited and which we have referred to hereinbefore. It is the submission of the respondent that there it was found that materials obtained in illegal search could be relied on in any proceeding. According to the respondent that case throws no light on the aspect as to whether proceedings arising out of an illegal search are valid or invalid. Our attention was drawn to some of the American case laws on the subject. It was on the proposition that if search was unconstitutional, in that event the materials obtained on the basis of search and seizure made in violation of constitutional provision could not be relied on in any proceeding. In this context it was emphasized that if paragraph 21 of the Rationing Order was held to be ultra vires the provision of Articles 14 and 19(1)(g) of the Constitution of India, in that event the proposition laid down by the Supreme Court would apply in full force. It was urged that there was no single authority either of the Supreme Court of India or of any other High Courts in India where it has been held that materials obtained from search and seizure made under a provision of law which is unconstitutional could be relied on or other proceeding or proceedings initiated on that basis would survive. On this aspect certain American decisions were cited before us. The question of search and seizure under the American Constitution

requires very careful and cautious handling in India.

23. The Original Constitution in America adopted in 1787 did not contain the Bilt of Rights, This was, however, remedied in the First Congress when the proposed amendment to the Constitution was made and ultimately it became effective in Dec. 15, 1791. The most significant) is the Fourth Amendment which brought about search and seizure into the constitutional sphere. Certain American cases were placed before us. It is important to bear in mind the provisions of Fourth and, Fifth Amendments to the American Constitution which are as follows :--

"Fourth Amendment

The right of the people to be secured in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Fifth Amendment

No person shall be held to answer for a capital or otherwise infamous crimp, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in times of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

24. On a plain reading of the wording of the Fourth Amendment there is no similar provision in our Constitution like Fourth Amendment though many safeguards provided in the Fifth Amendment of the American Constitution are there in the fundamental rights of our Constitution, but there is no such constitutional impunity in respect of search as has been contemplated by the said Fourth Amendment of the American Constitution.

25. In one of the books on the American Constitution by Erwin N. Griswold, "Search and Seizure" (A Dilemma of the Supreme Court), the author who was once Solicitor General of America has summarised the effect of this and he concludes that what the Fourth Amendment forbade was "unreasonable searches and seizures" and, obviously such searches and seizures depended upon the facts in each case. After discussing several cases the author summarised some of those cases and observed that those cases were essentially factual, that they led to divergent views among the Justices, and that decisions in the field were often of limited precedential value,

26. Be that as it may, this question was examined by our Supreme Court in the case of Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, , where Dr. Singhvi appearing on behalf of the appellants in that case

conceded that there was no specific Article of the Constitution prohibiting the admission of evidence obtained in an illegal search and seizure. But it was submitted by him that to admit such evidence was plainst the spirit of the Constitution which had made the liberties inviolable. In this connection, reference was made to some of the American cases which seemed to recognize the validity of that submission. Some of those cases were also referred to before us and in this connection, learned advocate appearing for the respondent, Amal Kumar Das, drew our attention to Chap. 12 of the book "Constitutional Interpretations" by Chase & Ducat, 2nd Edn., 1979.

27. The Supreme Court in the Pooran Mal's case had observed that as to the argument based on "The Spirit of our Constitution" it was better to refer to the judgment and observations of Kania C. J., in the case of A.K. Gopalan Vs. The State of Madras, C. J. observed as follows:--

"There is considerable authority for the statement that the Court are not at liberty to declare an Act void be-cause in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give that authority."

The Supreme Court was further of the opinion that if the Evidence Act of 1872, which was a law consolidating, defining and amending the law of evidence, no provision of which was challenged as violating the Constitution permitted relevancy as the only test of admissibility of evidence and, secondly, that Act or any other similar law in force did not exclude relevant evidence on the ground that it was obtained under an illegal search or seizure, it would be wrong to invoke the supposed spirit of our Constitution for excluding such evidence. The Supreme Court further observed that nor was it open to the Supreme Court to strain the language of the Constitution, because some American Judges of the American Supreme Court had spelt out certain constitutional protections from the provisions of the American Constitution. The Supreme Court was of the view that in a particular case unless there is express prohibition as to the evidence being admissible or relevant, such evidence though obtained by illegal search and seizure was admissible. Referring to the observations of the Supreme Court in the case of M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, , the Supreme Court, observed that a power of search and seizure was in any system of jurisprudence an overriding power of the State for the protection of social security and that power was necessarily regulated by law. When the Constitution makers had thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy,

analogous to the American Fourth Amendment, the Supreme Court had, no Justification to import it, into a totally different fundamental right, by some process of strained construction. Nor was it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches. The Supreme Court, therefore, concluded that neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights could the Supreme Court spell out the exclusion of evidence obtained on an illegal search.

25. As made clear by the Supreme Court that there is no scope in invoking the spirit behind the amendment, we are unable to accept the submission made on behalf of the respondents that documents obtained by illegal search, assuming that the search was illegal, would be unconstitutional or be violative of the provisions of Article 14 or 19(1)(g). But in this case we can rest our decision on a more simpler point. Here we are not concerned with the violation of any fundamental right of a citizen qua citizen as such. Here we are really concerned with exercise of powers which are held by an officer in enforcement of accountability of a dealer of Government who on being given power of inspection would undertake an inspection in the shop of the dealer to whom some articles were entrusted for distribution or for any particular purposes. It is the exercise of this power to be used for the purpose of determining suspension or terminating the dealership or for dealing with him in accordance with the provisions of this order that the question of admissibility of this evidence arises. Therefore, whether generally documents obtained by search and seizure can be relied upon in an abstract form in case of private citizen's right of property being interfered with or whether it infringes the personal freedom or other rights does not arise for our consideration and we need not express any opinion on this aspect of the matter. One of the consequences of some of the cases in respect of illegal search and seizure was that these documents had become liable to be returned -- this question is of no practical value to us; because in this case it had been contended by the respondent that certain documents were seized and taken away. It is not disputed by the appellant that certain documents were seized, and found and sought to be taken away by the appellant to their headquarters or to their office. But their case is that those documents were snatched away. Whether it was snatched away or not is a subject matter of the proceedings where an F. I. R. had been lodged. So at present we do not anticipate the decision of the criminal adjudication. But there is no question of directing any return of a document which the appellant State is not in their possession. Therefore, we are unable to accept the conclusion of the learned Judge that the search was illegal, and, as such the proceeding was illegal.

29. But in this case, there is another argument advanced. It was contended that there are two different aspects of an illegal search. One was the validity of the proceedings arising out of an illegal search and second was the admissibility of documents recovered as a result of illegal search in an otherwise valid proceeding. In this connection, our attention was drawn to the observations in

the Bench decision of this Court in the case of Hindustan Motors Ltd. v. T. N. Kaul, Appeal No. 280 of 1970, where A. K. Mukherjee, J., had observed, *inter alia*, as follows :--

"In my opinion, there are two aspects to this question. First where a search has been found to be an illegal search should the Courts order restoration of the things and papers seized ? Secondly, in such a case will the evidence collected by such searches be inadmissible in any prosecution that followed the search ? In the present case, we have not only found, that the search was conducted in violation of the procedural safeguards stipulated by the statute but also that the officer who authorised the search had *ab initio* no jurisdiction to order the search because the conditions precedent which give rise to such jurisdiction did not exist. Where the jurisdiction itself does not exist, it is futile to consider whether the safeguards are mandatory or directory. The search must be declared illegal and all proceedings arising in connection therewith quashed. In my opinion, it is inevitable from this to come to the next conclusion that all the documents and effects seized by the officers in connection with such illegal search must be restored to the appellants. The Supreme Court decisions in this point in *Leaver's* case and in the case of *Seth Brothers* are clear, unambiguous and, so direct as leave no room for hedging by implication. Indeed, in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, the Supreme Court stated in unmistakable language that if "the safeguards provided in Section 165 of the Code of Criminal Procedure were not followed anything recovered on a defective search of this kind must be returned." In the instant case there has not only been violation of procedural safeguards, but even jurisdiction has been lacking right from the beginning. There can, therefore, be no question that all papers, documents and personal effects seized in course of the illegal search must be restored to the appellants."

These observations, it was urged, related to the first aspect of the matter, which we have referred to hereinbefore, The second aspect of the matter, which was submitted, was different and there the Court had observed, relying on the American law and English law, as follows :--

"The law on this question had had an interesting history both in English law and in American law. The consistent trend of English and Scottish cases has been to admit evidence which is otherwise relevant even though such evidence has been obtained, by an illegal search. This principle has been accepted by the Privy Council in two recent decisions. One is the case of *Kuruma v. The Queen* 1955 AC 197, 203 in which Lord Goddard, C.J., delivering the judgment of the Judicial Committee said :

"The test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how the evidence was obtained."

In a more recent case, namely, *King v. Queen* (1968) 3 WLR 391, a search

warrant had been issued under the Jamaican Drugs Law authorising the search of certain premises occupied by a named person for drugs and, in the event of drugs being found, the arrest of that named person. The question arose whether the constable conducting the search was authorised by that warrant to search other persons found, on the premises. The Judicial Committee held that on the face of it the warrant did not so authorise. A further question arose as to whether the evidence obtained by the illegal search was admissible in the trial that followed. The Judicial Committee held that evidence would be admissible in the discretion of the trial Judge. Lord Hodson delivering the judgment of the Judicial Committee held that although there had been no legal right to search the accused nevertheless no injustice would be done by admitting evidence of drugs found in the possession of the accused.

The principle underlying these decisions had been enunciated very clearly in an earlier Scottish case, viz., *Lawrie v. Muir* (1950) SC (J) 19, 26, Lord Cooper observed that two highly important interests which may often come into conflict have to be reconciled to decide this point, namely, the interest of the citizen to be protected from illegal or irregular invasions of his liberties by the authorities and the interest of the State to secure that evidence bearing upon the commission of trial and necessary to enable justice to be done is not withheld from Courts of law on any merely formal or technical ground. "Neither of these objects can be insisted, upon to the uttermost..... Whether any given irregularity ought to be caused depends upon the nature of the irregularity and the circumstances under which it was committed."

The American Law on the subject has had a very interesting history and has even in recent years been passing through an interesting process of development. The starting point of this process was 1790 when the Fourth Amendment to the Constitution was enacted to provide as follows : "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated....." The answer to the question whether any evidence collected by a breach of this amendment will be admissible in evidence is not to be found in the amendment. The question arose for the first time in 1886 in *Boyd v. United States* (1886) 116 US 616. After warning the Courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon, the Court specifically declared the use of any evidence seized in course of such encroachment as unconstitutional. This principle reaffirmed by the decisions of the same court in 1914 in *Weeks v. United States* (1914) 232 US 383 received a set back in 1949 when the Supreme Court held by a majority of five to four in *Wolf v. Colorado* (1949) 338 US 25, that the Weeks exclusionary rule regarding the admissibility of evidence obtained unlawfully would not be imposed upon the States as "an essential ingredient of the right" of privacy arising out of the Fourth Amendment through the operation of the Due Process Clause. There has been, however, a swing back to the Weeks doctrine recently when, in 1961 the S. C. in *Mapp v. Ohio* (1961) 367 US 643, overruled the majority decision of the Wolf case. The position now in the United

States is quite clear that the fourth amendment is regarded not only as prohibiting unreasonable searches and seizures but also, of itself, barring the use of evidence so unlawfully obtained. This doctrine which now holds sway in the United States and is known as the Mapp doctrine is totally different from the rule followed in England. This is rather interesting in view of the fact that, historically the American doctrine can be traced to the English Bill of rights on which the Fourth Amendment was based.

So far as the present case is concerned, we do not think we are really called upon to give any decision in this aspect of the matter. How far the documents and papers seized by the respondents in the course of the searches which we have just declared illegal will be used against the appellants is a matter of mere speculation. If they are sought to be used at all the question whether such evidence procured by illegal methods should be admitted as evidence will be decided by the tribunals adjudicating those proceedings. It is not for us to state the law in anticipation."

So in that case, the Court had observed that it was not really coming to any decision on the point of admissibility of the documents recovered as a result of illegal search. It was submitted before us that the second question was not decided in the case of Hindustan Motors Ltd., but the proceedings in connection with illegal search was decided. Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, only decides the second aspect. About the first aspect, it was submitted that this is independent. But as we have found, the power to suspend and to take out proceedings is there only for the purpose if there is any reason to believe contravention of the provisions of the Act. But that power has not been exercised as yet. This question arises here only when question of interim power of suspension comes.

30. Various aspects of a similar power came up for consideration before the Supreme Court in the case of Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, . There, the Supreme Court was concerned with the Punjab Foodgrains Dealers Licensing and Price Control Order, 1978. As both sides have relied heavily on this decision, it would be relevant to set out the relevant provisions of the said Order. Our attention was drawn to Sub-clause (1) of Clause 11 of the Order. Clause 11 of the Order as amended read as follows :--

"Cancellation or suspension of licence : -- (1) If a licensee or his agent or any person acting on his behalf contravenes any of the terms and condition of his licence or any provision of this Order; then without prejudice to any action that may be taken against him, the licensing authority may by an order in writing, cancel or suspend licence in so far as it relates to the foodgrains in respect of which contravention has been made :

Provided that no order shall be made under this clause unless the licensee has been given a reasonable opportunity of stating his case;

Provided further that the licensing authority may suspend a licence without

giving a reasonable opportunity to the licensee of stating his case for a period, not exceeding ninety days during the pendency or in contemplation of the proceedings for cancellation of his licence."

There, the licences held by the petitioners in that case, who were food-grains dealers in the State of Punjab, had been suspended by orders passed by the District Food and Supplies Controllers, Faridkot and Bhatinda, for a period, not exceeding ninety days under the second proviso to Sub-clause (1) of Clause 1.1 of the Order. The orders of suspension of licence in each of these cases rested on the allegation that the licenses had committed a breach of conditions Nos. 4, 8 and 10 of the licences. The petitioners had all been served with notices under the first proviso to Sub-clause (1) of Clause 11 of the Order to show cause why their licences should not be cancelled. Some of the petitioners accepted that in the recent past their licences were suspended under the second proviso to Sub-clause (1) of Clause 11 of the Order for alleged breach of the licence conditions for having sold large quantities of wheat to dealers outside the State without disclosing the names of the purchasers in their stock registers. It, therefore, appeared that the present suspension was for repeated breaches. Those petitioners had tiled the petitions under Article 32 of the Constitution for protection of their fundamental rights to carry on trade or business as foodgrains dealers within the meaning of Article 19(1)(g) read with Article 14. The other petitioners alleged that because they had approached the High Court by way of petitions under Article 226 of the Constitution, complaining against restrictions placed on movement of wheat by rail, their licences had been suspended under the second proviso to Sub-clause (1) of Clause 11 of the Order as punitive measure. The Supreme Court was of the view that the second proviso to Sub-clause (1) of Clause 11 of the Order did not confer upon the licensing authority, unguided, uncontrolled and uncanalised power to suspend a licence and was not void by reason of Article 14 of the Constitution on ground that it dispensed with the requirement of giving reasonable opportunity before suspending the licence. It afforded reasonable safeguards, according to the Supreme Court. Dealing with this contention, the Supreme Court observed as follows (at pp. 68-69) :--

"There was 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 ninety days. It, therefore, fixed the period of suspension. From its very terms, it is obvious that these cannot be repealed 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.

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 provisions of this Order." The first proviso is in the nature of 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 ninety 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 safe-guard 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." The power of suspension, the Supreme Court noted, conferred by the second proviso to Sub-clause (1) of Clause 11 of the Order by way of an interim measure, pending the holding of an inquiry as to whether there was any breach which must result in cancellation of the licence. Upon this a good deal of argument had been advanced before us. It was urged before us that the period of suspension was limited pending the inquiry, but in no circumstances it could exceed ninety days pending the inquiry or in contemplation thereof. In the instant case before us, while the power of suspension is limited to the duration of the inquiry, but there was no limitation of fixity of ninety days or any other time at all. Therefore, it was urged that this was an unguided power for an unlimited period and as such made it bad. Firstly as we have noticed it was only during the pendency of the enquiry. Fixity of a period need not in all cases be by fixity of time. It is true that the inquiry may be prolonged But in case an inquiry is unreasonably prolonged, there is always safeguard of a person aggrieved by asking for appropriate relief from the appropriate court for completion of the inquiry. We have also to bear in mind that in this case that the pendency of the suspension is to be during the pendency of enquiry, and power of suspension has not been granted even in contemplation of an enquiry. Having regard to this, in our opinion, the provisions in the instant case before us come within the ratio of the observations of the Supreme Court and for the same reasons we must up-hold the powers of interim suspensions. For the reasons aforesaid, we are unable to accept the conclusion of the learned trial Judge that the provisions of Clause 21 of the said Order are unreasonable and confer wide and uncanalised power to the authorities concerned to affect the fundamental right of the dealers violative of Articles 14 and 10 of the Constitution.

31. The learned Judge thereafter struck down Clause 21 (c) of the Rationing Order. With respect, for the reasons which we have mentioned, hereinbefore, we are unable to accept this conclusion of the learned Judge. The learned Judge thereafter discussed several decisions and did not express any final opinion on the vires of Clause 3(5) proviso. Our attention was drawn to several decisions of this Court on this aspect. On behalf of the appellant, it was submitted that this question had constructively been concluded, by the decisions of this Court and we should follow the said decisions. We need not go into this aspect of the matter, nor is it necessary for us to refer to these decisions. The learned Judge did not expressly hold, in view of the later decision of the Supreme Court, that, Clause 3(5)(b) to be valid and whether the decisions of this Court are valid. But, as the learned Judge has not rested his decision on this aspect, we need not deal with this aspect of the matter. But, in so far as the learned Judge held that the provision of search and seizure in Clause 21 of the Rationing Order, 1964 was bad and unconstitutional, we are unable to agree with the conclusion of the learned Judge that the proceedings initiated pursuant to the show cause notice to be vitiated.

32. It must be emphasised that in dealing with this kind of provision, the real

socio-economic background, the purpose of the legislation and the purpose of gram of power must be kept in view. We have discussed the peculiar nature of the relationship between a ration dealer and the Government in respect of the rationed articles and we have examined the amplitude, scope and the validity of the power in that background. Keeping the background in view, we are of the opinion that such proceedings cannot be considered to be vitiated for the reasons which we have mentioned hereinbefore.

33. For the reasons mentioned hereinbefore, this appeal succeeds and the appeal is, therefore, allowed. The order and judgment of the learned Judge are set aside. Interim order, if any, will stand vacated after 31st March, 1983. The proceedings initiated by the show cause notice will start from 1st April, 1983. We make it, however, clear that any observation made in this judgment will not, in any way, affect the pending enquiry and all defence to the concerned dealer would remain open to him. Nor will the observations made in this judgment, in any way, affect the pending criminal proceedings initiated as a result of the F. I. R, lodged.

34. As we have mentioned hereinbefore, the learned Judge has appointed the Special Officer and the Special Officer has done some work, in the meantime. We are informed that the Special Officer has been paid, as his remuneration, 30 Gms. For all the work done by the Special Officer, up-to-date, we direct that the Special Officer should be paid 120 Gms. more by the petitioner, that is, the respondents to this appeal. In the facts and circumstances of this case, the Special Officer will stand discharged after 31st March 1988.

35. In the facts and circumstances of this case, the parties will pay and bear their own costs.

36. On payment of the usual charges, which are payable for the certified copy of the judgment, a plain copy of this judgment countersigned by the Assistant Registrar (Court) may be given to the parties.

Suhas Chandra Sen, J.

37. I agree.