

**(1968) 11 AHC CK 0015**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 631 of 1967**

Suraj Bhan Pande

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 08-11-1968

**Acts Referred:**

Constitution of India, 1950 — Article 245, 302  
Essential Commodities Act, 1955 — Section 3, 3(1), 3(2), 5

**Citation :** AIR 1969 All 560 : (1969) 39 AWR 264

**Hon'ble Judges :** Lakshmi Prasad, J

**Bench :** Single Bench

**Advocate :** B.K. Dhaon and S.K. Srivastava, for the Appellant; Chief Standing Counsel, for the Respondent

**Final Decision :** Allowed

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## Judgement

Lakshmi Prasad, J.—This is a petition under Article 226 of the Constitution. The petitioner makes the following prayers:

(a) That a writ of certiorari may be issued to respondent No. 1 ordering it to produce the U. P. Foodgrains (Restrictions on Hoarding) Order, 1966 as amended by Notification dated February 1, 1967 and Notification No. 3528 XXIXD 63 -- 1966 dated June 1, 1967 and the same may be quashed by this Hon"ble Court.

(b) To issue a writ of certiorari ordering the respondent No. 2 to produce a copy of the charges framed by him against the petitioner u/s 3/7, Essential Commodities Act, 1955 on May 25, 1967 and the same may be quashed by this Hon"ble Court.

(c) That a writ of prohibition may be Issued to the respondent No. 2 forbidding it to continue the proceedings against the petitioner u/s 3/7 Essential Commodities Act, 1955.

(d) That a writ of mandamus may be issued to the respondent No. 2 commanding him to release the foodgrains seized from the petitioner's firm and

put in the custody of the Supurdgar, and

(e) To issue such other appropriate writ, direction or order against such of the respondents as may be deemed expedient by this Hon'ble Court

2. The petitioner is a partner in the firm known as Messrs. Ghanshyam Das Lachmi Narain which carries on wholesale business in grain at Katarniyaghat, district Bahraich. Said firm holds a licence in form "B" under the U. P. Food-grains Dealers Licensing Order, 1964. Under the U. P. Foodgrains (Restrictions on Hoarding) Order, 1966 the petitioner could hold in stock up to one thousand quintals of one type of grain and further he could hold a total quantity of 2500 quintals of all types of grains. Said Order was modified by the U. P. Food-grains (Restrictions on Hoarding) (Amendment) Order, 1967 which was published in the U. P. Gazette dated February 1-1967. According to the amended Order, the petitioner could hold a total quantity of 1000 quintals of foodgrains of all kinds and only 250 quintals of grain of any one particular type.

3. The allegation in the petition is that the petitioner got knowledge of this amended Order only on 13th March, 1967 when the Senior Marketing Inspector, Nanpara circulated a notice of even date to that effect. A copy of that notice is filed as annexure 2 to the petition. Then it is alleged that the very next day, i.e. on 14th March, 1967 the petitioner addressed an application to the Regional Food Controller, Gorakhpur through the Marketing Inspector, Bichia, district Bahraich asking for permission to hold a stock of 1000 quintals of paddy and 500 quintals of maize till April 30, 1967 and that the said application was forwarded by the Marketing Inspector with a recommendation in favour of the request made therein. Another allegation made in the petition is that the Regional Food Controller Gorakhpur had granted a permit to the petitioner on 4th February, 1967 for exporting 3000 quintals of paddy from Katarniya Ghat to Khalilabad. A copy of that permit is filed as annexure 4 to the petition. It is said that the petitioner could despatch only 1116 quintals of paddy up to 27th February, 1967 in pursuance of that permit and failed to despatch the rest because of the non-availability of railway wagons for which he had already applied. Then a reference is made to Government letter No. 7210/ XXIX d-466/64 dated December 11, 1964 which inter alia stated:

"If there is any grain with any dealer beyond 250 quintals for which Railway wagon has been indented, it should not be taken into account while taking action under the Anti-Hoarding Order. This should be treated as grain under despatch."

The petitioner then alleged that in so far as on February 26, 1967 he applied for one wagon for the despatch of paddy and another for despatch of maize and on March, 6, 1967 for two wagons" for despatch of maize for which he had obtained receipts Nos. 073265, 073266 and 073283 but the aforesaid wagons could not arrive till March 15, 1967 on which date respondent No. 3 made a raid and finding grain in stock with the petitioner more than permissible under the amended Order seized the same, he can by no means be taken to have

contravened the amended Order in view of the instructions contained in the aforesaid Government letter a true copy of which is filed as annexure 5 to the petition.

4. As a result of the report lodged by respondent No. 3 at police station Sujauli on March 15, 1967, the petitioner is being prosecuted before respondent No. 2 u/s 3/7, Essential Commodities Act, 1955. The petitioner challenges the validity of this prosecution firstly on the ground that in view of the facts stated above, the petitioner cannot be taken to have contravened the amended Order and secondly on the ground that the amended order being in excess of the power conferred by Sections 3 and 5 of the Essential Commodities Act, 1955 read with the notification issued u/s 5 of the Act by the Central Government and also being in contravention of Article 301 of the Constitution is void, inoperative and ultra vires.

5. The petition has been contested by the respondents namely, the State of Uttar Pradesh, the Sub-Divisional Magistrate, Nanpara, district Bahraich and the officer who made a raid on 15th March, 1967 and lodged a report at the aforesaid police station. A counter affidavit sworn by Ram Sunder Tewari of police station Sujauli has been filed on behalf of all the three respondents. The material allegations made in paragraphs 5 to 11 of the petition are not controverted in the counter-affidavit in a specific manner as they should have been if the respondents really intended to controvert those allegations. In regard to most of these allegations what is said in the counter-affidavit is either that they are not known to the deponent and, as such, denied or that the same are not admitted because there is nothing on the record of the criminal case pending against the petitioner to support those allegations. Even the allegation in paragraph 10 wherein reference is made to a Government letter copy of which is annexure 5 to the petition is not admitted in the counter-affidavit for the reason that the deponent of the affidavit does not know the same.

6. I have heard learned counsel for the petitioner and learned Standing Counsel representing the respondents at some length. The main contention of the learned counsel for the petitioner is that the amended order for the contravention of which the petitioner is being prosecuted is void and inoperative. He puts forth that contention for various reasons. I shall now proceed to deal with the grounds advanced by learned counsel for striking down the amended Order.

7. His first contention is that the provision in para 3 of the order in question providing for the limits of the stock to be held by a grain dealer is bad in so far as it goes beyond the provisions of the Act itself under which it purports to have been framed. As already indicated, para 3 of the Order in question says that no licensed dealer shall have in his possession at any time a quantity of any one of the foodgrains exceeding 250 quintals or of all kind of foodgrains exceeding 1000 quintals. The argument of the learned counsel is that it is only Clause (d) of Sub-section (2) of Section 3 of the Essential Commodities Act (hereinafter to be called "the Act") under which such an Order could be promulgated and that clause provides for regulating by licences, permits or otherwise the storage, transport,

distribution, disposal, acquisition use or consumption of, any essential commodity and in so far as the impugned provision is not regulatory but restrictive, it must be held to be in excess of the power or the authority under which it purports to have been issued. Sub-section (2) of Section 3 of the Act has various Clauses (a) to (j). On a perusal of these various clauses I agree with the contention of the learned counsel that the impugned provision does not appear to be covered by any of these clauses except Clause (d). Said Clause (d) no doubt confers power only for "regulating". So the question arises if the impugned provision can be held to be regulatory or must necessarily be held to be restrictive. In support of his contention that the impugned provision must be held to be restrictive or prohibitory learned counsel places reliance on the case of State of Mysore Vs. H. Sanjeeviah, . That was a case under the Mysore Forest Act (XI of 1900). Rule-making power was conferred thereunder by Section 37. Sub-section (1) of Section 37 conferred rule-making power in general terms. Its Sub-section (2) provides:

"Such rules may, among other matters,

(a) .....

(b) prohibit the import, export, collection, or moving of forest produce without a pass from an officer authorised to issue the same or otherwise than in accordance with the conditions of such pass."

By Rule 2 framed on October 13, 1952 it was provided that no person shall import forest produce into, export forest produce from, or move forest produce within, any of the areas specified in Schedule "A" unless such forest produce is accompanied by a permit prescribed in Rule 3. On April 15, 1959 the State of Mysore issued a notification adding a proviso to Rule 2 which read as follows:--

"Provided that no such permit shall authorised any person to transport forest produce between sun-set and sun-rise in any of the areas specified in Schedule "A"."

It was the validity of this provision which was the subject-matter of the decision before the Supreme Court in the case cited above. The party challenging the validity of the said proviso maintained that it was not regulatory but prohibitory and, as such, went beyond the rule-making power conferred by the Act. This contention was upheld by the Supreme Court as shall appear from the following observations made in paragraphs 5 and 6 of the report:--

"Power to impose restrictions of the nature contemplated by the two provisos to Rule 2 is not to be found in any of the clauses of Sub-section (2) of Section 37. By Sub-section (1) the State Government is invested with the power to regulate transport of forest produce "in transit by land or water". The power which the State Government may exercise is, however, power to regulate transport of forest produce, and not the power to prohibit or restrict transport. Prima facie, a rule which totally prohibits the movement of forest produce during the period of

sunset and sun-rise is prohibitory or restrictive of the right to transport forest produce. A rule regulating transport in its essence permits transport, subject to certain conditions devised to promote transport; Such a rule aims at making transport orderly so that it does not harm or endanger other persons following a similar vocation or the public, and enables transport to function for the public good. It was observed by one of us (Subba Rao, J.) in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*,

"Restrictions obstruct the freedom, whereas regulations promote it. Police regulations, though they may superficially appear to restrict the freedom of movement, in fact provide the necessary conditions for the free movement. Regulations such as provision for lighting, speed, good conditions of vehicles, timings, rule of the road and similar others, really facilitate the freedom of movement rather than retard it. So too, licensing system with compensatory fees would not be restrictions but regulatory provisions; for without it, the necessary lines of communications, such as roads, waterways and air-ways cannot effectively be maintained and the freedom declared may in practice turn out to be an empty one. So too, regulations providing for necessary services to enable the free movement of traffic, whether charged or not, cannot also be described as restrictions impeding the freedom."

It was asserted in the affidavit filed on behalf of the State in reply to the petition that the restriction imposed by the rules on the freedom of citizens to transport timber, fire-wood, charcoal and bamboos is a reasonable restriction and in the public interest, i.e. to prevent unauthorised felling of trees and bamboos and smuggling them from the State forests. It was said that checking transport of the forest produce during nights would require enormous increase in the number of checking staff of the Forest Department; that such staff will have to work in two or three shifts every day if they have to check transport of forest produce during nights also, further that such staff will have to be equipped with lanterns and warm clothing if they have to work during nights that persons who indulge in smuggling of timber find nights more convenient to avoid detection, and that smuggling of forest produce is a serious menace to preservation of forests in the State and safeguarding of the property of the State. Whether or not these are good grounds for imposing restrictions on transport of forest produce is not a matter with which we are concerned in dealing with the power of the State by rules to restrict the right to transport forest produce. The power conferred upon the State Government is merely "to regulate the transit" of forest produce and not to restrict it. If the provisos are in truth restrictive of the right to transport the forest produce, however, good the grounds apparently may be for restricting the transport of forest produce, they cannot on that account transform the power conferred by the provisos into a power merely regulatory. The High Court was, therefore, in our view, right in holding that the two provisos to Rule 2 are not regulatory in character, but are restrictive."

I have thus no hesitation in concluding that the impugned provision is not

regulatory but is in effect prohibitory and, as such, it goes beyond the power conferred by Clause (d) of Sub-section (2) of Section 3 of the Act. As already stated, no other clause of Sub-section (2) of Section 3 of the Act appears to cover it. So the inescapable conclusion is that Sub-section (2) of Section 3 of the Act does not cover the impugned provision.

8. Learned Standing Counsel has, however, maintained that it is immaterial whether or not any clause of Sub-section (2) of Section 3 covers the impugned provision so long as it can be found to be covered by Sub-section (1) of Section 3 of the Act. Section 3(1) provides:

"If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

The argument of the learned Standing Counsel is that the above-quoted provision is couched in very wide terms in so far as it clearly says that in the circumstances mentioned in it the Central Government may by order provide for regulating or prohibiting the production, supply and distribution thereof (i.e. any essential commodity) and trade and commerce therein. Thus he contends that the words "supply and distribution" are wide enough to cover "storage". He maintains that unless "storage" is regulated or prohibited, if necessary, it is not possible to maintain supply or secure equitable distribution which is the basic object of section 3. The learned counsel for the petitioner on the other hand, contends that the language of Section 3(1) howsoever wide it may be cannot be taken to include "storage". I am unable to agree with the learned counsel for the petitioner. In my view power to regulate or prohibit "storage" is clearly implied in the wide language of Sub-section (1) of Section 3.

9. Learned counsel for the petitioner then argues that advantage cannot be taken of the general provision of Sub-section (1) to save the impugned order when it is found in excess of the provision contained in Clause (d) of Sub-section (2) of Section 3 which specifically deals with the subject-matter of the impugned order and the same does not appear to be covered by any of the clauses of Sub-section (2). He also argues in this connection that in so far as Clause (d) of Sub-section (2) which deals with "storage" specifically provides only for its regulation, it must be held, if it is found that the general provision of Sub-section (1) covers "storage", that to that extent the general provision is in conflict with the special provision in Clause (d) of Sub-section (2) and, as such, the specific provision in Clause (d) of Sub-section (2) must prevail as against the general provision in Sub-section (1). In my view neither of the arguments is tenable. It is now well settled that the specific provisions such as are contained in Sub-section (2) are merely illustrative and they cannot be read as restrictive of the generality of powers conferred by Sub-section (1). In this connection reference may be made to the case of *Afzal Ullah Vs. The State of Uttar Pradesh*, . The material

observations occur in paragraph 13 of the report. Reference may also be made to the case of AIR 1945 156 (Privy Council) which is referred to with approval in the aforesaid Supreme Court case. In that case the Privy Council refers to the decision of the Federal Court which stated:--

"The Legislature having set out in plain unambiguous language in para (x) the scope of the rules which may be made providing for apprehension and detention in custody it is not permissible to press in aid the more general words in Section 2 (1) in order to justify a rule which so plainly goes beyond the limits of para (x): though if para (x) were not in the Act at all, perhaps different considerations might apply."

Their Lordships of the Privy Council with reference to the aforesaid observations of the Federal Court observed on page 160:--

"Their Lordships are unable to agree with the learned Chief Justice of the Federal Court on his statement of the relative positions of Sub-sections (1) and (2) of Section 2, Defence of India Act, and counsel for the respondents in the present appeal was unable to support that statement, or to maintain that Rule 26 was invalid. In the opinion of their Lordships, the function of Sub-section (2) is merely an illustrative one; the rule-making power is conferred by Sub-section (1), and "the Rules" 2 which are referred to in the opening sentence of Sub-section (2) are the rules which are authorised by, and made under Sub-section (1); the provisions of Sub-section (2) are not restrictive of Sub-section (1), as indeed is expressly stated by the words "without prejudice to the generality of the powers conferred by Sub-section (1)". There can be no doubt-- as the learned Judge himself appears to have thought--that the general language of Sub-section (1) amply justifies the terms of Rule 26, and avoids any of the criticisms which the learned Judge expressed in relation to Sub-section (2)."

Learned counsel for the petitioner cited a number of cases in support of the contention that in case of a conflict between a general provision and a special provision whether the two are in the same Act or are in two different Acts the special provision must prevail as against the general provision. It is unnecessary to refer to those authorities because the proposition so far as it goes cannot possibly be assailed. The question is if it has any application to the case in hand. Evidently there arises no occasion to invoke that proposition unless it be found that there is really a conflict between a general provision and a special provision. The argument of the learned counsel is that if Sub-section (1) of Section 3 be taken to provide for the restriction of "storage" then in so far as the specific provision in Clause (d) of Sub-section (2) of Section 3 provides only for regulation by licence of "storage", it must be held that there is a conflict between the general provision contained in Sub-section (1) of Section 3 and the special provision contained In Clause (d) of Sub-section (2) of Section 3 and in that view of the matter it must be held that the special provision in Clause (d) of Sub-section (2) must prevail as against the general provision contained in Sub-section (1) of Section 3. In my view the very basis for the argument is non-

existent. Sub-section (2) opens with the words "without prejudice to the generality of the powers conferred by Sub-section (1)". These words are there in Sub-section (2) obviously with a view, to avoid any conflict between what is provided in Sub-section (2) and what is provided in Sub-section (1). In his arguments learned counsel assumes that to prevent which the Legislature deliberately introduced in Sub-section (2) the words cited above. So, in fact there is no conflict and there can possibly be no conflict, having in view the opening words of Sub-section (2), between the two, namely Sub-section (1) and Clause (d) of Sub-section (2) of Section 3 of the Act and, as such, there arises no occasion to say that Section 3(2)(d) should prevail as against Section 3(1). I accordingly repeal the contention.

10. Another contention of the learned counsel is that the impugned Order being violative of Article 301 of the Constitution deserves to be struck down. He argues that Article 302 of the Constitution cannot be invoked to its aid for the simple reason that it is a subordinate legislation and not a law made by Parliament. In support of his contention he places reliance on the case of *State of Mysore Vs. H. Sanjeeviah*, . In paragraph 8 of the report following observations on which strong reliance is placed are made:--

"Article 304 which is an exception to Article 301 has no application to this case, because that Article saves certain laws from the operation of Article 301 if the law is passed by the Legislature of a State. The provisos to Rule 2 are not made by the executive Government in exercise of delegated authority. The rules have the force of law, but when made did not become part of the Act: (see Section 77 of the Mysore Forest Act)."

11. On a close examination of the point urged by the learned counsel it appears that the Supreme Court case cited above is distinguishable in so far as their Lordships while saying "the rules have the force of law, but when made did not become part of the Act" rely on Section 77 of the Mysore Forest Act which provides "All rules made by the Government under this Act shall be published in the official Gazette, and shall thereupon have the force of law." Obviously there being an express provision in Section 77 of the Mysore Forest Act to the effect that rules shall have the force of law without adding that the same when made shall be deemed to be a part of the enactment itself, it could not possibly be said on the basis of principles of statutory interpretation that rules when made in accordance with the provisions of the enactment became part of the enactment itself. Had there been no such provision as is contained in Section 77 of the Mysore Forest Act, there would have been no occasion to say as is said in the observations reproduced above, that the rules when made did not become part of the Act with the result that Article 304 (because the enactment concerned in that case was an enactment passed by a State Legislature and not by Parliament) could not be invoked to save the rules once the same appeared to be in contravention of Article 301. Here the position is different in so far as there is no provision in the Essential Commodities Act, 1955 to indicate as to what would

be the effect of the rules or Orders made thereunder. In the absence of any such express provision, the principles of statutory interpretation must apply for determining the position of Orders framed in accordance with the provisions of the Essential Commodities Act vis-a-vis the Act itself. In the case of *Willingale v. Norris* (1909) 1 KB 57 it is observed on page 64:--

"If it be said that a regulation is not a provision of an Act, I am of opinion that *Rex v. Walker* (1875) LR 10 QB 355 is an authority against that proposition. I should certainly have been prepared to hold apart from authority that, where a statute enables an authority to make regulations, a regulation made under the Act becomes for the purpose of obedience or disobedience a provision of the Act. The regulation is only the machinery by which Parliament has determined whether certain things shall or shall not be done."

Again reference may be made to the case of *Wicks v. Director of Public Prosecutions* 1947 AC 362. It is observed on page 365:--

"There is of course no doubt that when a statute like the Emergency Powers (Defence) Act, 1939, enables an authority to make regulations, a regulation which is validly made under the Act, i.e., which is intra vires of the regulation-making authority, should be regarded as though it were itself an enactment."

This being the correct legal position, it is difficult to accept the contention of the learned counsel that the impugned Order even though it may have been framed within the four corners of the Essential Commodities Act cannot be deemed to be law passed by Parliament. The Act has been passed by Parliament. The Act authorises promulgation of Orders. So the Orders promulgated within the authority delegated by the Act would be deemed to be a part of the enactment. In that view of the matter Article 302 of the Constitution must apply to save the impugned Order. There is a decision of a Division Bench of this Court also on the same point. *Shobha and Another Vs. State*, may be referred to in this connection. The material observations which occur on page 833 (of ALJ) : (at p. 31 of AIR) run as below:--

"Ours is not a case of an independent legislation. It is a case where an Order has been framed under an existing Act, i.e., the Essential Commodities Act. The Order merely carried out the purposes of that Act ..... In other words, it is in the nature of delegated legislation. There was no argument before us and in deed none was possible that there has been a delegation of legislative functions in the instant case. The position of all the Orders framed u/s defence of the Essential Commodities Act is to make those Orders a part of the Act itself. It would be a complete misconception, to treat the impugned Order as independent of the Essential Commodities Act. Inasmuch as the Essential Commodities Act has been passed under Article 302 of the Constitution and fulfils all the requirements of that provision, it was not necessary that the Parliament should have passed another Act in order to give protection to the impugned Order. The position of the impugned Order and such other Orders is analogous to that of the

rules or regulations framed under the statute which are treated to be a part of the statute itself. See *Khetsidas Girdhari Lal v. Pratapmull Rameshwar* AIR 1946 Cal 197 and *Saligram Singh v. Emperor* AIR 1945 Pat 69. It is trite that if and when the Essential Commodities Act is repealed, the impugned Order would also disappear and cannot be continued unless there is another Act passed making its continuance possible. Under these circumstances, we have no hesitation in rejecting the submission made by Mr. Saran that the Parliament has not passed any law under Article 302 of the Constitution which could give protection to Clause 3 of the Order."

Having regard to the correct legal position as discussed above I am of opinion that the contention is without any substance and must be repelled.

12. The last contention of the learned counsel for the petitioner is that the impugned Order is to be struck down for the reason that it falls outside the delegation effected by the Central Government in exercise of powers conferred on it by Section 5 by notification dated 9th June, 1966. The material portion of the notification reads:--

"In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs--

(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), (c), (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 conditions..."

The argument raised before me is that by this notification the delegation is effected in favour of the State Government of the power conferred on the Central Government by Sub-section (1) of Section 3 of the Act to make orders to provide for the matters specified in such clauses of Sub-section (2) of Section 3 as are enumerated in the extract cited above. The argument proceeds that in so far as the impugned Order is not covered by any of those clauses of Sub-section (2), it must be held that it had been promulgated outside the authority delegated in favour of the State Government. As against that, the contention of the learned Standing Counsel is twofold. His first contention is that by the notification referred to above, power to make orders not only in respect of matters specified in the various clauses enumerated in the notification has been conferred but also the general power conferred on the Central Government by Sub-section (1). The other contention is that, at any rate, the impugned Order is covered by Clause (d) of Sub-section (2). In my view neither of the contentions has any substance. The first contention, as is abundantly clear, from a perusal of Section 5 by which authority to delegate is conferred cannot be sustained. Section 5 itself says that the Central Government can delegate power to make orders only in respect of such matters as are specified by the authority effecting delegation. That being so, the Central Government never possessed authority to delegate the power

enjoyed by it under Sub-section (1) to make Orders without specifying the matters. That is why, the notification dated 9th June, 1966 by which delegation is effected takes care to specify matters in respect of which power to make Orders is delegated. There is nothing wrong if in specifying matters the Central Government chose to adopt the specifications contained in Sub-section (2). And it was also in the discretion of the Central Government not to effect delegation in respect of all the matters, specified in Sub-section (2). The Central Government actually omitted Clause (g) of Sub-section (2) in the notification effecting delegation. So, neither the language of the notification nor that of Section 5 of the Act justifies the contention raised by the learned counsel. The language of the notification clearly says that power under Sub-section (1) of Section 3 to make Orders to provide for the matters specified in certain clauses of Sub-section (2) as enumerated in the notification is being delegated. In the face of that language and also that of Section 5, it is impossible to maintain that the Central Government has by this notification delegated the general power to make Orders under Sub-section (1), In fact neither it could do so nor has it done so. I accordingly repel the contention.

13. As regards the other contention, I need only say, as I have indicated above, that the impugned Order is not covered by Clause (d) of Sub-section (2) of Section 3. It is unnecessary to repeat the reasons for that conclusion which are detailed above. I accordingly repel the contention.

14. In view of the foregoing discussion, it seems that the last contention raised by the learned counsel for the petitioner must be upheld. He has also drawn my attention to the case of *Sujan Singh Matu Ram Vs. The State of Haryana*, decided by a Division Bench of the Punjab High Court. The view expressed above finds full support from that decision of the Punjab High Court. I accordingly conclude that the impugned Order has got to be struck down for the reason that it is outside the authority delegated by the Central Government in favour of the State Government by notification dated June 9, 1966.

15. In that view of the matter, the petition must be allowed. The petition is accordingly allowed with costs. The petitioner's prosecution is quashed and the grain seized or its value if it has already been sold is directed to be restored to the petitioner.