(1987) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1418 of 1986 etc.

The District Collector, Chittoor and Others	APPELLANT
Vs	
The Chittoor District Groundnut Traders Association and Others	RESPONDENT

Date of Decision : 11-02-1987

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1)
Essential Commodities Act, 1955 — Section 3, 3(1), 3(2), 3(3B), 3(5)
Evidence Act, 1872 — Section 115

Citation : AIR 1988 AP 317

Hon'ble Judges : K. Bhaskaran, C.J;Anjaneyulu, J

Bench : Division Bench

Advocate : A.G, for the Appellant; B. Subbashan Reddy for Central Govt., E. Ayyappa Reddy and T. Anantha Babu, for the Respondent

Judgement

Anjaneyulu, J.—The State Government of Andhra Pradesh anti the concerned Officers, are the appellants in sill the Writ Appeals. Cross-objections in Writ Appeals Nos. 1419, 1421 and 1423 are filed by the petitioners in Writ Petitions Nos. 11104, 10482 and 10479/86 respectively Writ Petition No.16728/86 is filed by Maankar Trading Company Adoni. It, will be convenient to dispose of all these appeals. Cross-objections and the Writ Petition together, as common questions arise for consideration.

2. The Writ Appeals are filed by the State questioning the correctness of the Judgment and order of our learned brother. Rama Rao J. holding that the directions issued by the State Government, acting under Clause 12(2) of the Andhra Pradesh Schedule Commodities Dealers'' (Licensing & Distribution) Order. 11)82 (for short. the 1982 order) as violative of Articles 19(1)(g) and 301 of the Constitution.

3. The Cross-objections filed by the Writ petitioners above referred question the correctness of the order of the learned single Judge refusing to entertain the

claim for payment of compensation on the ground that disputed questions of fact are involved. In the Writ petition filed the petitioners seek directions to the respondents 1 to 4 in the writ petition to pay to the -petitioners the price calculated at the market rate prevailing in the locality on the date of sale. for the various quantities of groundnut oil supplied, to the 2nd respondent with interest at 12 % p.a. from the date on which the amount became payable to the petitioners. Before adverting to the specific contention urged by the parties, we may briefly refer to the relevant facts.

4. We are concerned with the year 1983 to 1985. At the relevant time, there was free trade in the groundnut seeds and oil. There was neither a ''ban nor restriction on the movement of groundnut seeds and groundnut oil From the State of Andhra Pradesh to the other States. There was no price control either. While so, in May, 1983 the Government found that the prices of groundnut oil had been shooting up in the State of Andhra Pradesh and that adequate quantities of oil were not available in the market. The Government found that groundnut oil dealers in the State were exporting groundnut seeds and oil to other states where favourable trade conditions existed causing thereby shortage of the commodities within the State. The Government felt that it should step-in to control the price and also the movement of the commodities.

5. Attention of the licensing authorities and the Collectors was drawn by the Government in a letter dated 17-5-1983 to the above situation. The Collectors and the licensing authorities were told that they should exercise powers under Cl. 12(2) of the 1982 Order and thereby ensure that groundnut seeds and oil are not moved out of the State. The Collector of each District was instructed to ensure that all the groundnut seeds, peds and oil produced, in the District are sold within the District and the State and are not moved out of the State. Instructions were also issued to impose a kind of voluntary levy by holding discussions with the millers. The Government further stated that oil millers and dealers should be warned to ensure that the prices are maintained around Rs.14/- per Kg. of oil in the retail market and if the millers do not co-operate the Government would have to consider serious measures against them.

Pursuant to the aforesaid instructions of the Government, action was taken by the Collectors and the licensing authorities to prevent movement of groundnut seeds and oil to outside States from the Districts. The millers and dealers were also called for entering into a dialogue with the authorities. Based on these deliberations, a Memorandum was issued by the Government on 6-12-1983 agreeing to remove the restriction on the movement of groundnut seeds and oil subject to the trade making available to the Government certain quantities of oil as quid pro quo for permitting the millers to export groundnut seeds and oil to other States. It was pointed out that a consensus was arrived at that a minimum quantity of 5,000 tons of groundnut oil would be made available by the millers and dealers at Rs.13,000/- per ton. In view of the above a reement broadly reached between the Government on the one hand and the millers and dealers on the other the Collectors were instructed to take delivery of the quantities specifically indicated district- wise in an Annexure to the Memorandum. As taking delivery of the oil would depend on the availability of storage space etc., the Collectors were instructed to permit Government of the commodities of the millers and dealers giving an undertaking to deliver the quantity of oil whenever required by the Government. The millers and dealers were required to deliver whenever called upon to do so to the Andhra Pradesh State Civil Supplies Corporation Limited, at Rs.13/- per Kg. ex-mill, including taxes. The millers were told that they would be called upon to deliver the groundnut oil only when the prices in the open market go beyond Rs.17/- per Kg. On the basis of the above undertakings. the oil millers and dealers were permitted to move the commodities to outside States. The millers and dealers were required to deliver one ton of groundnut oil in respect of three tons of groundnut oil exported outside the State similarly one ton of groundnut oil has to be delivered in respect of 5 tons of groundnut seeds exported outside the State. The Government issued further instruction in Memorandum dt. 1-5-84. concerning the procedure to be followed. The aforesaid policy concerning the movement of groundnut seeds and oil was followed in the years 1983- 84 and 1984-85.

On 21-6-85 the Government issued a further Memorandum and it is this memorandum that it is impugned in all the writ petitions filed by the petitioners. This memorandum reiterated that broadly the same policy would be followed for the year 1984-85. It was stated that wherever it is not possible to take delivery of the oil in view of the prevailing open market prices, the oil miller--, and dealers might be permitted to move groundnut oil and seeds outside the State after obtaining from them necessary undertakings. The Government observed that the millers and dealers shall execute these undertakings without fail as and when demanded by the Collectors. It is further observed that the oil stocks supplied would be taken delivery of from the millers and dealers as and when the open market prices of groundnut oil goes beyond Rs.17/- per Kg. and the oil thus delivered would be sold through fair-price shops at Rs.14.25 per Kg. The policy as enunciated in the Memorandum dt. 21-6-85 was followed fort he year 1984-85.

Through the Memorandum dt. 6-12-85 the Government informed the Collectors and the millers that the policy followed in the past years concerning the movement of seeds and oil would be followed for the year 1985-86. The Collectors were, therefore, directed to follow the same policy during the year 1985- 86 until further orders.

Following the above understanding reached between the Government on the hand and the millers and dealers on the other hand, transport permits were issued permitting the export of seeds and oil to outside States subject to the conditions above stated. Undertakings and or agreements were obtained from the millers and dealers in various districts that they would deliver the oil whenever required. The millers and dealers declared in the undertakings that in the event of their failure to deliver the oil they would be liable for action under the provisions of the 1982order and also in accordance with any other law that may be in force. Information filed would indicate that the millers in various districts gave undertakings in the year 1983-84 in respect of 22.018 M.S. of groundnut oil, of which 2,5 4 MTs. were delivered leaving the balance to be delivered yet at 19,504 MTs. It would appear that between 1-1 1-1984 and 31-10-.1985 the millers and dealers in the various districts of the State gave undertakings in respect of 24,924 MTs. of oil against the quantity of seeds and oil permitted to be exported. During the period 1-1 1-1985 to 26- 7-1986 the millers and dealers in the various districts of the State gave undertakings in respect of 24,872 MYS of oil against the quantity of seeds and oil permitted w be exported and deliveries were taken only in respect of 1,000 MTs.

On 6-7-1980 the millers and dealers were required to deliver groundnut oil against the undertaking failing which they were told that the Mandal Revenue Officer would take appropriate action. By this time the miners and the traders seemed to have obtained advice that the State Government is not competent to impose restriction on the rnovement of groundnut seeds and groundnut oil and to impose conditions governing the transport-of the same. Writ Petitions were here before, filed challenging the validity of the directions issued by the State Government to deliver groundnut oil in accordance with the undertakings obtained earlier. The challenge basically was that clause 12(2) of the 1982 Order does not confer power on the State Government to ban the transport or to impose restrictions on the transport of groundnut seeds and groundnut oil to outside States and that the agreements and/or undertakings obtained by ''the Government were unenforceable in law. Consequently the petitioners sought writs of certiorari to quash the memo dt. 21-6-1985 issued by the State Government. Some of the petitioners also sought directions that they must be paid at the rate of Rs.18.20 per Kg., of groundnut oil.. supplied against the actual price of Rs.13/- per Kg. paid.

As already observed, the learned single Judge allowed the Writ Petitions and aggrieved by the orders of the learned single Judge, the State is in appeal.

We have heard the learned Advocate- General for the State, Shri E. Ayyapureedi and Shri B. Subhanshan Reddi for the respondent-writ petitioners and Shri K. Jagannadha Rao, senior standing counsel for the Union Government.

The basic contention of thee learned Advocate-General is that the State Government has the power to issue the directions under Cl. 12(2) of t''he 19&2,Order. It is urged that the State Government has the authority under S. 3(1) of the Essential Commodities Act, 1955 (Act No. 10 of 1955) (for short, ''the Act'') in view of the delegation of the power by the Government of India through notification bearing No. GSR 800, dated 9th June 1978. It is contended that the State Government did not purport to impose any ban on the movement of groundnut seeds and groundnut oil and the impugned orders were passed by the State Government for regulating the supply and distribution of groundnut seeds and groundnut oil, which are essential commodities. It is pointed out that the scheme relating to the issuance of permits for the transport of groundnut seeds and groundnut oil to outside States was devised after mutual discussions with the representatives of the Trade and Industry. Learned Advocate-General drew attention to the correspondence placed on record which would unmistakably indicate that the State Government and its officers held discussions with the representatives of the Oil Trade and Industry and with their express consent orders ,were issued for delivering groundnut oil in respect of transport permit issued. Learned Advocate-General claimed that the undertakings and or agreements filed by the miners and dealers, who secured permits. were voluntary. It is urged that the respondent- writ petitioners were far from justified in questioning the orders issued by the State Government having expressly consented to the same stand obtained the advantage of permits issued for transporting groundnut seeds and groundnut oil to out side States. Learned Advocate General urged that the arrangements entered into did not have the effect of interfering with the free trade in groundnut seeds and groundnut oil. Learned Advocate-General also pointed out that apart from Cl. 12(2) of the 1982 Orders, condition No., 12 of the licence issued to the respondent writ petitioners enabled the State Government to issue directions regarding the purchase. sale or storage f6r sale of scheduled commodities. Having regard to the facts and circumstances, learned Advocate-General contended that the action taken by the State Government could not be held to be violative . 19(1)(g) and Art. 301 of the Constituiton. Further submitted that none of the petitioners referred any loss in supplying groundnut oil to the State at the rate of Rs.13,000/- Rs.13.25 per metric tonne, and the claim of some of the respondent writ petitioners f or reimbursement of the loss was untenable. Learned Advocate-General cited authorities in support of his propositions to which we shall refer a little later.

Shri Ayyapureddi, learned counsel for respondent writ petitioners covered a wide field and urged the following contentions :

(i) The impugned memo of the Government dt. 21-6-85 is not in accordance with the provisions of the Act. It is not a control order referable to Section 3(2)(f) read with S. 3(3-B) of the Act. the 1982 Order is only an order issued under S. 31(2)(a) of the Act for mere licensing purposes of the commodities. It is not and it was never intended to be an order providing for procurement and levy of essential commodities.

(ii) For procurement of any essential commodity fixation of procurement price is a condition precedent and such fixation has to be done in accordance with Section 3(3-B) of the Act. This was not done in the present case.

(iii) Clause 12(2) of the 1982 order provides only an incidental and supplemental power to the State for the implementation of the schedule commodities order or any other control order. It does not by itself confer independent power on the State or the licensing authority to procure any essential commodity.

(iv) If clause 12(2) is to be given a literal interpretation, it will be conferring arbitrary and unguided powers on the State and has to be struck down as unreasonable under Art. 19(1)(g) of the Constitution.

(v) There is no right whatsoever to the State Government under any of the provisions of the 1982 Order to ban the transport of scheduled commodities to markets outside the State. There is no law and order or rule which enables the State Government to interfere with the right of dealers to transport and sell to any market in India under the constitutional guarantee specified in Article 301 of the Constitution.

Conditional permission is not a regulation but is restriction and that can be done only by law and not by issuing executive instructions as was done in the present case.

(vi) The State is not entitled to trade in permits. It is opposed to public policy. No demands can be made by the State to deliver commodities as a quid pro quo for permitting the transport of the commodities to outside states.

(vii) The scheme devised by the State Government was never in public interest. It turned out to be counter productive right from the beginning.

(viii) The scheme was contrary to the directions of the Central Government and the actions taken and orders issued by the concurrence of the Central Government. We will first examine the contention of the learned advocate General that the action taken by the State Government and the orders passed in connection with the transport of groundnut seeds and groundnut oil are the exercise of the powers delegated by the Central Government to the State Government under S. 3(1) of the Act and consequently the respondent-writ petitioners are not entitled to question the steps taken by the State Government."

The Essential Commodities Act. 1955 is a Central enactment providing for the regulation on trade and commerce in. and the production. supply and distribution of certain specified essential commodities. Control prices of the scheduled commodities and regulation of inter-State trade and commerce in the commodities are governed by the Essential Commodities Act. S. 3 of the Act conferred power on the Central Government to issue orders providing for regulating or prohibiting the production. supply and distribution thereof and trade and commerce therein. The exercise of these powers by the Central Government under sub-sec. (1) of S. 3 of the Act covered a very wide field and in exercising these powers the Central Government has to bear in mind the repurcussions on inter-State trade and commerce. The powers have to be exercised in such a way that the constitutional guarantees provided by Article 19(1)(g) and the free interstate trade and commerce under Art. 301 of the Constitution are not violated except in accordance with the provisions of the Constitution. Section 5 of the Act provided that the Central Government may, by notified order, direct that the power to make orders under S. 3 shall. in relation to such matters. and subject to such conditions, if and as may be specified in the condition. be exercisable also by.

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government as may be specified in the direction.

(1) Obviously provision is made for delegation of power to the State Government so that in appropriate circumstances the State Government may exercise the same powers as are vested by the Act in the Central Government subject, however. to such conditions as may be imposed by the Central .Government while delegating the power.

(2) By a notification of Government of India. Ministry of Agriculture & Irrigation (Department of Food) bearing No. GSR 800. dt. 9th June 1978 certain powers are delegated. by the Central Government to the State Government subject to the conditions stated in the notification. It will be relevant to extract the notification for ready reference;

"G. S. R. 800 - In exercise of the powers conferred by S. 5 of the Essential Commodities Act. 1955 (10 of 1955). and in supersession of the order of the Government of India in the late Ministry of Agriculture (Department of Food) No. GSR 316 (E). dt. the 20th June. 1972 the Central Government hereby directs that the powers conferred on it by subsection (1) of Section 3 of the said Act to make orders to provide for the matters specified in Cls. 1(b). (c). (d).. (fi. (h), (i), (ii) and (J) of sub-see. (2) thereof shall, in relation to food stuffs be exercisable also by a State Government subject to the conditions -

1. That such powers shall be exercised by a State Government subject to such directions. if any, as may be issued by the Central Government in this behalf;

2. That before making an order relating to any matter specified in the said clauses (a). (C) or (f) or in regard to distribution or disposal of food stuffs to places outside the State or in regard to regulation of transport of any food stuff, under the said cl. (d), the State Government shall also obtain the prior concurrence of the Central Government; and

3. That in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorise only an officer of Government."

A scrutiny of the above notification would show that the Central Government did not delegate all the powers vested in it under S. 3(1) of the Act but chose only to delegate the powers in relation td foodstuffs and in respect of matters specified in cls. (a). (b). (c). (d), (e). (f). (h), (i). (ii) and (J) of sub-section (2) of S. 3 of the Act. While the powers conferred by sub-sec.(1) of S. 3 of the Act on the Central Government are very wide and general in character. sub-see. (2) of S. 3 illustrates some of the matters that may be provided for by the Central Government without prejudice to the generality of the powers conferred by sub-see. (1). The matters illustrated in clauses (a) to (j) of sub-sec. (2) are merely illustrative and not exhaustive. Through the aforesaid notification dt. 9th June. 1978''the Central Government delegated to the State Government the power to make orders under S. 3(1) only in respect of matters specified in sub-see. (2) under the various clauses. The Central Government did not delegate to the State Government the wide and general power to pass any order under S. 3(1) for regulating or prohibiting the production. supply and distribution of the specified essential commodities and trade and commerce therein. It may be further noted that the delegation of power is only in relation to foodstuffs and is subject to certain important conditions specified in the notification. The first limitation is that the delegated powers shall be exercised by the State Government subject to such directions, if any. as may be issued by the Central Government in this behalf. The second limitation is that before making an order relating to any matters specified in cls. (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under Cl (d). the State Government shall also obtain the prior concurrence of the Central Government.

6- 18. Having regard to the above terms of the notification delegating power to the State Government, it would in our opinion, be impermissible to read into the notification the delegation of the general power u/s 3(1) of the Act. It is only a limited power to pass orders under S. 3(1). as above mentioned. that is delegated by the Central Government to the State Government. In the normal course the miners and dealers in the State of Andhra Pradesh are entitled to sell the groundnut seeds and groundnut oil in any part of the country under the most favourable trade conditions. It cannot. however, be denied that limitations or reasonable restrictions can be placed on the industry in exercise of the powers conferred by S. 3 of the Act. Such limitations and reasonable restrictions which may be imposed should not violate the constitutional guarantees provided in the matter of trade and commerce. The matters specified in Cl. (f) of sub-see. (2) of S. 3 squarely govern the situation brought about in the present cases. We may extract clause (f) of subsection (2) of S. 3 of the Act

"(f) for requiring any person holdin,-, in stock, or engaged in the production. or in the business of buying or selling. of any essential commodity-

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him. or received by him. or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him. to the Central Government or State Government or to an officer or agent of such government or to a Corporation owned or controlled by the Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1 :- An order made under ,this clause in relation to foodgrains, edible oilseeds or edible oils, may having regard to the estimated production, in the concerned area, of such foodgrains, edible oil seeds and edible oils fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of. such quantity on a graded basis, having regard to the aggregate of the area held by. or under the cultivation of. the producers.

Explanation 2 :- For the purpose of this clause, "Production" with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar : "A perusal- of -Cl. (f). extracted -above would undoubtedly indicate that the action taken and the orders passed by the State Government in regard to the export of groundnut seeds and groundnut oil to outside States squarely fell within the terms of clause (fi of sub-see. (2) of S. 3 of the Act. The notification dt. 9th June. 1978. above referred, undoubtedly delegated the power of the Central Government to the State Government to issue orders in respect of matters specified in clause (f) of sub-section (2). However, the notification further provides that before making an order relating to the matters specified in clause (f), the State Government shall obtain the prior concurrence of the Central Government. Without the prior concurrence of the Central Government, the State Government will not be in a position to exercise the powers in respect of matter specified in clause (f). The requirement relating to the prior concurrence of the Central Government in relation to matters specified in Cl. (f) is entirely understandable because any orders issued by a State Government imposing restrictions on the movement of the scheduled commodities would have reflections in other States, both in regard to the price and in regard to the quantities available for distribution. Matters have to be scrutinised not merely from the point of view of the State imposing restrictions but bearing in mind the conditions of trade and industry and the demand and supply of the concerned commodity in other States. This is a function of the Central Government. Unless the Central Government is satisfied that it will be in the interests of all concerned, it may withhold concurrence to a State unilaterally imposing restrictions on the free movement of essential commodities. The Centre is concerned with the over all position relating to the entire country. It was for this reason that while delegating the power to a State Government to pass orders in respect of matters specified in Cl. (f) a limitation is provided that such power shall not be exercised by the State Government without obtaining the prior concurrence of the Central Government. The main contention of the respondent-petitioners is that the impugned orders issued by the Government cannot take the form of orders under S. 3(1) read with Section 3(2)(f) of the Act as the prior concurrence of the Central Government was not obtained. It is stated that the State Government acted unilaterally in firstly imposing a total ban on the movement of the groundnut seeds and groundnut oil to outside States and later on in permitting the movement subject to conditions. Learned counsel for the respondent-Writ Petitioners urged that the exercise of the power by the State Government in this regard is squareiv beyond the scope of the power delegated by the Central Government through notification dt. 9th June. 1978. We are inclined to agree with the learned counsel in these submissions.

19. Learned Counsel for the respondent-, Writ petitioners, Sri Ayyapa Reddy, further stated that the Central Government was unwilling to impose any restrictions on the free movement of groundnut seeds and groundnut oil. It is stated that on the contrary the Central Government wanted free movement of groundnut seeds and groundnut oil between the States without imposing any restrictions either as regards the quantity to be transported. or in regard to the price. Learned Counsel -for the respondent-Writ Petitioners submitted that the learned single Judge scrutinised the correspondence between the State Government and the Central Government in this regard and our attention is invited to the following finding recorded by the learned single Judge :

".... The correspondence between the Central Government and State Government discloses that with reference to projected restriction sought to be placed by the State Government, the Central Government was positively averse to restrictions on export of groundnuts and groundnut oil."

20. Sri K. Jagannadha Rao, learned Standing counsel for the Central Government, affirmed the above position. Learned standing counsel stated that the correspondence indicated that the Central Government was unwilling to the State imposing any ban, whether full or partial, on the transport of groundnut seeds and groundnut oil. In any event, learned standing counsel submitted the Central Government did not give any concurrence to the action taken by the State Government in the above regard.

21. Pursuant to the orders of the State Government the millers and dealers were payable at the rate of Rs.13.250/- per Metric Tonne of groundnut oil delivered in Hyderabad city and Rs.13.000/- per Metric Tonne for deliveries outside Hyderabad. Shri Ayyapureddi contends that the fixation of the above price is wholly arbitrary and contrary to the specific terms of S. 3(3-B) of tile Act. Sub-sec. (3-B) of S. 3 of the Act is in the following terms:

"3(3-B) where any person is required, by an order made with reference to Cl. (f) of sub- sec. (2) to sell to the Central Government or a State Government or to an officer or agent of such Government or to a corporation owned or controlled by such Government. any grade or variety of food grains. edible oil- seeds or edible oil relating to which no. notification has been issued under sub- Sec. (3-A) or such notification having been issued under sub-sec. (3-A) has ceased to be in force they shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-sec. (3), an amount equal to the procurement price of such foodgrains edible oil-seeds or edible oils, as the case may be specified by the State Government, with the previous approval of the Central Government having regard to-

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains edible oilseeds oredible oils,

(b) the general crop prospects;

(c) the need for making such grade or variety of food grains. edible oil-seeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumer; and

(d) the recommendations, if any of the agricultural prices commission with regard to the price of the concerned grade or variety of foodgrains, edible oil seeds or edible oils."

If the order of the State Government requiring the millers and traders to sell groundnut oil to the State Government is held to be an order within the terms of S. 3(2)(f), then it is clear that the procurement price of the groundnut oil payable by the State Government shall have to be determined with the previous approval of the Central 3overnnient having regard to the criteria specified in sub-section (3-B). It is not denied hat in the present case the price fixed by the Government as payable in respect of groundnut oil delivered was not fixed with he previous approval of the Central Government and much less having regard to he criteria specified.

22. It is further urged by the learned Counsel for the respondent-petitioners that ''he impugned orders made by the State Government were of a general nature and :he orders should have therefore, been notified in the Official Gazette as required by S. 3(5) of the Act. It is submitted that the orders in question were not so notified in the Official Gazette.

23. Learned Advocate-General, however, contends that in the facts and circumstances of the case it must be held that the State Government has the power to make the impugned orders and the State Government has also concurrence of the Central Government for the issuance of the orders. We have already referred to the contention of the learned Advocate-General that the orders were made by the State Government under S. 3(1) of the Act. It is claimed that pursuant to the power delegated under S. 3(1). the State Government issued the 1982 order dt. 5th May. 1982 with the prior concurrence of the Government of India. Learned Advocate-General points out that the aforementioned order issued by the State Government with the concurrence of the Government of India contained powers to issue directions in Cl. 12. This clause is in the following terms :

12. Powers to issue direction : (1) The Govt. the Commissioner. the Collector or the licensing authority may issue instructions or directions on all matters, covered by the provisions of this order and all dealers shall comply with the same.

(2) Without prejudice to the generality of the foregoing power such directions may be issued to any dealer that all or any of the commodities mentioned in Schedule 1 to this Order may be sold to only such persons or institutions in such quantities and at such intervals as the Commissioner, Collector, or the licensing authority may by general or special order direct."

Our attention is invited to sub-cl. (2) of Cl. 12 in support of the plea , that the

State Government has the power to issue directions contained in the impugned memo. It is pointed out that the power conferred on the State ,Government by Cl. 12(2) is of a very wide nature and in exercise of this power the state Government was entitled to direct the miners and traders to deliver a part of the groundnut oil for public distribution in the State and it is for the State Government to determine the quantities. the persons to whom deliveries should be effected and at what price. Inasmuch as the Central Government gave prior concurrence to the 1982 order which contained Cl. 12, learned Advocate-General contended that the State Government must be held to have necessary power-to direct the sale of groundnut seeds and groundnut oil to designate authorities within the State. It was pointed out that the price was fixed by mutual consultation. According to the learned Advocate-General. the State Government issue the directions continue in the impugned memo in exercise of the powers contained in Section 12(2). We are unable to accept the submission of the learned Advocate-General. As we have indicated. the notification dt. 9th June. 1978 clearly contained directions to the State Government that it shall not exercise power to make orders in respect of matters specified in Cls. (a). (c). (d) or (f) of sub-sec. (2) of S. 3 without the previous concurrence of the Central Government. Undoubtedly, the orders of the State Government firstly imposing a total ban and later on imposing restrictions on the export of groundnut seeds and groundnut oil outside States and-the further directions to deliver groundnut oil to specified authorities in the State at the specified price come within the limitations as per the notification. The impugned orders issued by the State Government relate undoubtedly to matters specified in S 3(2)(f) of the Act and the State Government could not have made these orders without the previous concurrence of the Central Government. There is a clear violation of the requirements of S. 3(3-B) and also, 5. 3i5) of the Act. We cannot accede to the plea of the learned Advocate-General that Cl. 12(2) gave unfettered discretion to the State Government to unilaterally act in the matter of imposing restrictions on the free movement of groundnut seeds and groundnut oil and requiring millers and dealers to deliver specified quantities of groundnut oil as a quid .pro quo for obtaining permits to export oil to outside States. If the provisions contained in Cl, 12(2) of the 1982 Order should be interpreted widely as learned Advocate-General invites us to do, then the provisions run counter to the specific provisions contained in S. 3(2) and S. 3(3-B) and S. 3(-s) of the Act. Although the language of Cl. 12(2) cannot be held to have conferred uncanalised and uncontrolled power on the Government.

24. Learned Advocate General invited our attention to the decision of the Supreme Court in K. Ramanathan Vs. State of Tamil Nadu and Another, . In that case the State Government of Tamil Nadu promulgated Tamil Nadu Paddy (Restriction of Movement) Order 1982. Clause 3(1) of the order provided that no person shall transport. move or otherwise carry or prepare or attempt to, transport, move or otherwise carry, or aid or abet in the transport movement or otherwise carrying of paddy outside the State by road, rail or otherwise except

under and in accordance with the conditions of a permit issued by an authorised officer. Thereafter, on June 20, 1983 the State Government made a further amendment to the 1982 order placing a complete ban on the transport, movement or otherwise carrying of paddy outside Thanjavur District and some of the taluks of South Arcot District and Tiruchunapaili District. It may be pointed out that the State Government exercised the powers to make the 1982 Order and also to make the subsequent amendments with the prior concurrence of the Government of India. The power of the State Government in imposing the ban, is above mentioned. was questioned. The Supreme Court upheld. the orders that the State Government on the ground that the orders made were in exercise of the delegated power conferred on the State Government under S. 3 of the Act by notification No. GSR 800. dt. 9th June, 1978 issued by the Central Government under S. 5 of the Act. The Supreme Court held that the source of the power to make the orders is sub-section (1) of Section 3 of the Act. In our opinion. the facts of the aforementioned case are totally distinguishable. It must be borne in mind that the ban on the movement of paddy outside Tanjavur District etc. was brought about by the State Government after obtaining the prior concurrence of the Central Government and t he levy order promulgated has the statutory force. In the present case it is not denied that there is no levy order made by the State Government imposing restrictions on the transport and movement of groundnut seeds and groundnut oil to outside States. If. as is the position in the Tamil Nadu case. the State Governnient issued a levy order with the concurrence of the Central Government. the matter would have been entirely different. Tamil Nadu Government acted in terms of the delegated authority under notification dated 9th June. 1978 and obtained the prior concurrence of the Central Government to make the levy order. In our opinion. the aforesaid decision of the Supreme Court, far from supporting the contention of the learned Advocate-General. supports the plea that unless, a levy order is made with the prior concurrence of the Central Government pursuant to the delegation of the powers through notification dt. 9th June. 1978 the State Government cannot impose ban or restrictions on the movement of essential commodities.

25. We may point out that even in the State of Andhra Pradesh there are such levy orders made by the State Government with the prior concurrence of the Central Government. See for instance the Andhra Pradesh Rice Procurement (Levy) Order, 1984. dated 25th January, 1984. This order was issued by the Government of Andhra Pradesh with the prior concurrence of the Central Government. See also the Andhra Pradesh Paddy (Restriction on Movement) Order, 1983, dated 11th October, 1985. This order was made again with the prior concurrence of the Central Government. See also the Andhra Pradesh Paddy and Rice (Requisitioning of stocks) Order, 1966. This order was made on 29th June, 1966 with the prior concurrence of the Central Government. If Cl. 12(2) of the 1982 Order confers power on the State Government to make orders in respect of matters specified in S. 3(2) (f) etc. There is no reason why the State Government should have made separate levy orders in the years 1983 and 1984

with the prior concurrence of the Central Government. Having regard to the above. We are unable to accept the contention of the learned Advocate- General that acting strictly under Cl. 12(2) of the 1982 order without making any levy order with the prior concurrence of the Central Government the State Government is empowered to make the impugned orders in the present case.

26. Learned Advocate-General invited our attention to the decision of the Supreme Court in Laxmi Khandsari and Others Vs. State of U.P. and Others, . it was pointed out that the validity of clause 8 of the Sugarcane (Control) Order 1966, which is more or less in terms identical to Cl. 12 of the 1982 order has been upheld and the restrictions imposed in stopping power crushers for a limited period were held to be valid by the Supreme Court. We may quote below clause 8 of the Sugar Cane (Control) Order, 1966 which was the subject matter of consideration by the Supreme Court in the abovementioned case.

"8. Power to issue directions to producers of Khandasari sugar, power crushers. Khandasari Units crushers and co-operative societies : -

The Central Government may. from time to time by general or special order. issue directions to any producer of Khandasari sugar or owner of a power-crusher, Khandasari unit or crusher of a co-operative society, society regarding the purchase of sugarcane or sugarcane juice, production. maintenance of stocks, storage, price, packing, disposal delivery and distribution of sugarcane, sugar, gul, jaggery and rab or khandasari sugar or the period of hours to be worked."

Pursuant to the delegation of powers by the Central Government the Cane Commissioner. Government of Utter Pradesh issued a notification dated 9th October 1980 stopping the crushers for the period 10th October to 1st December, 1980 to reduce shortage of sugar and ensure a mere equitable distribution of this commodity. The power of the Government to issue the aforesaid notification acting under clause 8 of the Control Order, was questioned. The Supreme Court held the notification holding that Cl. 8 of the Control Order enabled the State Government, pursuant to delegation of power by the Central Government, to issue the impugned notification. Learned Advocate- General claims that Cl. 12(2) of the 1982 Order, which is made with the prior concurrence of the Central Government is Pari material with clause 8 of the Sugarcane (Control) Order and consequently the State Government was entitled to issue the directions relating to the movement of groundnut seeds and groundnut oil. We are unable to agree. A perusal of the Sugarcane (Control) Order. 1966 would clearly indicate that every minute detail was provided by the Control Order without leaving matters to be decided unilaterally by the state Government "Price" was defined in the Order under Cl. 2(g-) as meaning the minimum price fixed by the Central Government. from time to time. for sugareane delivered to sugar factories and Khandasari units. Cl. 3 of the Order dealt with the minimum price of sugarcane payable by producer of sugar. Clause 4 of the Order dealt with minimum price of sugarcane payable by producers of khandasari sugar. There is proviso to clause 4 that no person shall sell or agree to sell sugarcane to a producer of kandasari sugar or his agent, and no such producer or his agent shall purchase sugarcane at a price lower than that under clause 4. Clause 6 of the Order dealt with the power to regulate distribution and movement of sugarcane. Clause 7 of the Order dealt with the power to license power-crushers. khandasari units and crushers and to regulate the purchase of sugarcane. It would be seen that every important detail concerning the production. distribution and the price. is determined by the Sugar Cane (Control) Order itself. The State Government had no power to independently deal with any of these matters. Viewed in this context, the power conferred by clause 8 of the Sugarcane (Control) Order to issue directions to producers of khandasari sugar or owner of power crushers, khandasari units or crushers or the agents of such producers or owners or co-operative societies, must be held to relate to the power to issue directions not inconsistent with the specific provisions of the Control Order. Clause 8 of the 1966 Order cannot be interpreted as conferring absolute power on the State Government to issue directions at its own sweet will and pleasure. That power under clause 8 is controlled and governed by the self-contained provisions of the Sugarcane (Control) Order. 1966. We are, therefore. Unable to accept the submission of the learned Advocate-General that the aforesaid decision of the Supreme Court supported the exercise of unilateral power by the State Government under Cl. 12(2) of the 1982 Order without issuing a separate levy order with the prior concurrence of the Central Government.

27. Learned Advocate-General then claimed that the scheme devised by the State Government was accepted by the millers and traders and the price fixed at Rs.13.000/- per Metric Tonne for procuring the oil from the millers and dealers had the express acquiescence of the industry. It is, therefore, urged that the respondent-petitioners can have no grievance against the steps taken by the Government. The argument of the learned Advocate- General has to be rejected for more reasons than one. In the first place it would be wrong to consider the agreements as voluntary. The letters. dated''t7-5-83 addressed by the Government to the Collectors referred to in Para 5 supra) contains a peremptory order of the Government directing the Collectors to exercise powers under Cl. 12(2) of the 1982 Order and ensure that groundnut seeds and groundnut oil are not moved out of the State. The memorandum dated21-6-1985'' issued by the Government (referred to in para 7 supra) contains a direction that the millers and dealers shall execute the undertaking without fail as and when demanded by he Collectors. Could it he said that in the face of the firm attitude taken by the Government. the millers and traders could have raised a dissenting voice protesting against the action proposed by the Government? Any such dissent on the part of the millers and traders would have produced obvious results. The State Government could have rejected the request of the industry to issue permits to export groundnut seeds and oil to outside States as the industry would not accept the demands of the State Government. Indeed, the posture taken up by the Government, was that it would not even permit the movement

of the commodities inter-district within the State. If the trade should defy the Government, it would have suffered disastruous results in the sense that the millers and dealers would have been obliged to sell the commodities either within the district or within the State of Andhra Pradesh under hopelessly unfavourable trade conditions. The bargaining power of the Government is loaded with high voltage and the millers and traders constitute a weak section who would not dare to defy the orders of the State Government. The so-called agreements executed by the millers and traders and the undertakings are given at the behest of the State Government and can, by no means, be considered to be voluntary instruments executed by the millers and traders. Indeed a perusal of the documents would show that the agreements and undertakings were drawn up by the Government and the millers and traders were asked to sign and hand over the documents to the Collectors, if they want permits for transport of groundnut seeds and groundnut oil. A specimen of an undertaking executed in favour of the Collector, Guntur, was placed before us. This undertaking contains variety of stipulations in favour of the Government and concludes saying that "this undertaking is voluntarily executed in favour of the Collector, Guntur". We have no doubt that the agreements, undertakings and other documents executed by the millers and traders were not, voluntary and were executed to otherwise avoid catastrophic results to the millers and traders. Such agreements have to be necessarily regarded as opposed to public policy and are hit by S. 23 of the Contract Act. We may refer to the decisions of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, Civil Appeal No. 1969/86 dt. 26-9-1986 where in the Supreme Court held .that agreements entered into between parties between whom there is gross inequality of bargaining powers could be viewed with circumspection. Indeed, agreements ''entered into by employees with employers having tremendous bargaining power agreeing to the termination of the services of employees by giving three months'' notice, are held to be void under S. 23 of the Contract Act. We must also point out that the agreements and undertakings are, as we have already pointed out above. contrary to the provisions of the Essential Commodities Act and, therefore, such agreements and undertakings must necessarily be held to be unenforceable. These agreements and undertakings cannot raise a plea of estoppel against the respondent- petitioners.

28. Learned counsel for the respondent petitioners raised a plea that the so-called agreements do not conform to the requirements of Art. 299 of the Constitution and should. therefore. be disregarded. Learned Advocate-General. on the other hand, claimed that these agreements are not entered into with the members of the trade and industry in the exercise of the executive power of the State. The agreements are referable to the statutory powers exercised by the Government and the agreements need not, therefore, conform to the requirements of Art. 299 of the Constitution. We do not consider it necessary to examine this question in retail as we have otherwise held the agreements to be

unenforceable for the reasons stated above.

29. We may then refer to the contention of the learned Advocate-General that the State Government is entitled to give necessary directions pursuant to condition 12 of the licence and the millers and traders, who are licensees, are under an obligation to comply with the directions in view of condition No. 12. Learned Advocate-General contends that the directions issued by the State Government supportable with reference to condition No. 12.

30. Condition No. 12 of the licence issued for purchase sale, storage for sale of scheduled commodities under the 1982 Order provides that the licensee shall comply with any direction that may be given to him by the State Government or the licensing authority in regard to purchase, sale or storage for sale of scheduled commodity. n our opinion the obligation of the licensee -to, comply with the directions extends only to such directions as are lawfully given in the exercise of powers under the Essential Commodities Act and the 1982 Order. The aforesaid condition does not oblige the licensees to comply with any directions, unless such direction can be legally supported. In view of our finding that the 1State Government has no power to issue .directions of the kind in the present case. it cannot be held that there is any violation of condition No. 12 of the licence issued to the licensee. Non-compliance with these directions does not entail any consequence to the licensee.

31. Learned counsel for the respondent- petitioners invited our attention to a number of decisions in support of his contention that the impugned order of the State Government and the steps taken to impose restrictions on the free movement of groundnut seeds and groundnut oil violated the petitioners'' fundamental right under Art. 19(1)(g) of the Constitution. Our attention has also been invited to numerous decisions in support of the plea that a provision like Cl. 12(2) of the 1982 Order giving uncanalised and uncontrolled power to the executive smacked of arbitrariness offending Article 14 of the Constitution. Attention has also been invited to decisions supporting the plea that it is not open to the State Government to fix the procurement price at its ipso dixit and a levy order containing the procurement price fixed in terms of S. 3(2)(f) of the Act is a condition precedent before the State can enforce procurement of essential commodities. Authorities have also been cited that prior concurrence of the Central Government is necessary before steps are taken. under the Essential Commodities Act to regulate distribution of commodities and such a concurrence must be in writing. We do not consider it necessary to refer to the catena of decisions, painstakingly referred by Shri Ayyapureddy, as we have come to the conclusions that the absence of a levy order with the prior concurrence of the Central Government in terms of S. 3(2)(f) of the Act is fatal to the entire exercise of the. State Government. Clause 12(2) of the 1982 Order. in our opinion, did not rescue the operations of the State Government. We accordingly hold that the impugned memo No. 52220/CS. IV/84 dt. 21-6-1985 concerning the year 1984- 85 and also Memo No. 51012/CS. IV2/85-3) dated 6-12-1985

concerning the year 198-S-86 are violative of S. 3(2)(f), S. 3(3-B) and S. 3(5) of the Act. We also hold that the impugned memos are violative of Arts. 14 and 19(1)(g) of the Constitution. We also hold that Cl. 12(2) of the 1982 order does not confer power on the State Government to issue directions regulating the movement of essential commodities and to fix procurement price unilaterally without a specific levy order issues by the State Government with the prior concurrence of the Central Government.

32. In view of our above findings, we do not consider it necessary to examine further the contentions urged by the learned counsel for the respondent petitioners that the impugned memo also violated the constitutional guarantees provided for free trade under Art. 301 of the Constitution.

33. As regards cross-objections filed by the respondents-petitioners in writ appeal Nos. 1419.1421 and 1423 of 1986 and also the writ petition No. 16728/86. we do not c5nsider it possible to determine whether the petitioners suffered any loss while complying with the directions of the State Government to supply groundnut oil at Rs.13.000/- per Metric Tonne. The contention of the petitioners that they purchased oil from outside at higher rates and supplied the same to the State Government, involves investigation of facts which cannot be undertaken in writ proceedings. It will be open to the respondent-petitioners to pursue such remedies as may be available to them to claim loss, if any, suffered by them on account of compliance with the directions issued by the State Government.

34. In the result, all the writ appeals, the cross-objections and the writ petition are dismissed. Having regard to the facts and circumstances, we direct the parties to bear their own costs. Advocate''s fee Rs.250/- in each.

35. Order accordingly.

