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CHINTA LINGAM & ORS.

v.

GOVERNMENT OF INDIA & ORS.

November 30, 1970

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**J. C. SHAH, G. K. MITTER, K. S. HEGDE, A. N. GROVER
AND A. N. RAY, JJ.]**

Essential Commodities Act, 1955 (Act 10 of 1955), s. 3(1) and s. 3(2)(d)—Opinion of Central Government under s. 3(1) whether must be recited in Control Order—Order whether invalid without such recital—Section 3(2)(d) whether suffers from excessive delegation—Absence of provision for appeal or revision against order of District Collector or Deputy Commissioner of Civil Supplies whether creates unreasonable restriction on the right to carry on business under Constitution of India, Art. 19(1)(f).

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Practice—Plea for which adequate foundation has not been laid in the pleadings could not be entertained.

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The appellants who were adversely affected by the Rice (Southern Zone) Movement Control Order 1957, the Southern States (Regulation of Exports of Rice) Order, 1964, and the Andhra Pradesh Rice and Paddy (Restriction of Movement) Order 1965, moved petitions under Art. 226 of the Constitution of India in the High Court of Andhra Pradesh challenging the validity of these orders. The petitions were dismissed by the High Court. In appeal before this Court by special leave as well as in a writ petition under Art. 32 of the Constitution the following contentions were advanced before this Court: (i) The said Control Orders offended Art. 303 of the Constitution in as much as they suffered from the vice of discrimination between one State and another and of preference to one State over an other; (ii) the orders were in the nature of executive instructions and did not fall within the meaning of subordinate legislation; (iii) even if they could be regarded as subordinate legislation they could not be saved under s. 303(2) in the absence of the declaration contemplated thereby; (iv) the requisite opinion of the Central Government within s. 3(1) of the Essential Supplies Act was not found in any of the orders; (v) the Control Orders imposed unreasonable restrictions on the right of the petitioners to carry on trade, as arbitrary powers had been conferred in the matter of issuing or withholding permits and there were no provisions for appeal or revision against refusal to grant a permit; (vi) s. 3(2)(d) suffers from excessive delegation.

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HELD: (i) The first three contentions could not be entertained since no firm foundation had been laid in respect of them in the pleadings.

[875 G—876 B]

(ii) There was no necessity of reciting the requisite opinion within s. 3(1) of the Act in the Control Orders. It is implicit in the recital in the Control Orders that they were being made under s. 3 of the Act, that the Central Government had formed the requisite opinion within subs-s. (1) of that section. [876 B-C]

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(iii) The permit could be granted either by the State Government or by responsible officers of the rank of the District Collector or the Deputy Commissioner of Civil Supplies. If the State Government alone

had the powers to issue the permits the challenge on the ground of unreasonableness of the restrictions would admittedly not be available. There is no bar to any of the aggrieved parties approaching the State Government by means of a representation for a final decision even if the matter has been dealt with by the District Collector or the Deputy Commissioner of Civil Supplies in the first instance and the permit has been refused or wrongly withheld by those officers. In these circumstances the absence of a provision for appeal or revision can be of no consequence. It has been pointed out in more than one decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment.

[876 D—877 B]

M/s. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh & 2 Ors. [1954] S.C.R. 803, *K. L. Gupta v. Bombay Municipal Corporation & Ors.* [1968] 1 S.C.R. 274, 297 and *Pannalal Binraj v. Union of India*, [1957] S.C.R. 233, 257, referred to.

(iv) The question whether s. 3(2)(d) suffers from the vice of excessive delegation was no longer at large. In *Bhana Mal Gulzari Mal's case* the attack on s. 3 of the Essential Supplies (Temporary Powers) Act, 1946 which was similar in terms to s. 3 of the Act on the ground of excessive delegation was repelled. It was held that the Central Government had been given sufficient and proper guidance for exercising its powers in effectuating the policy of the statute. [877 D-E]

Union of India & Ors. v. M/s. Bhana Mal Gulzari Mal & Ors., [1960] 2 S.C.R. 627, applied.

ORIGINAL JURISDICTION : Writ Petition No. 212 of 1969.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights and

Civil Appeals Nos. 1802 to 1805 of 1969.

Appeals by special leave from the judgment and order dated April 16, 1968 of the Andhra Pradesh High Court in Writ Petitions Nos. 3657 and 3658 of 1967 and 8 and 48 of 1968.

Shyamala Pappu, Bindra Thakur and Vineet Kumar, for the petitioners and the appellants.

Jagadish Swarup, Solicitor-General and R. N. Sachinhey, for respondent No. 1 (in all the matters).

P. Ram Reddy and A. V. V. Nair, for respondents Nos. 2 and 3 (in C.A. No. 1802 of 1969), respondent No. 2 (in C.As. Nos. 1803 and 1804 of 1969) and respondents Nos. 2 to 4 (in C.A. No. 1805 of 1969).

The Judgment of the Court was delivered by

Grover, J. The points involved in the writ petition and the appeals by special leave relate to the constitutionality and validity

- A of the provisions of three Control Orders issued under s. 3(2)(d) of the Essential Commodities Act, 1955 (Act 10 of 1955) hereinafter called the "act..". The validity of s. 3(2)(d) of the act itself has also been assailed.

The Control Orders which were promulgated under s. 3(2)(d) of the Act were the following :

- B (i) The Rice (Southern Zone) Movement Control Order, 1957.
- (ii) The Southern States (Regulation of Exports of Rice) Order, 1964; and
- C (iii) The Andhra Pradesh Rice and Paddy (Restriction of Movement) Order, 1965.

In the appeals the appellants had moved the High Court of Andhra Pradesh under Art. 226 of the Constitution. There the petitioners were dealers in rice and rice products such as puffed, parched and beaten rice (beaten rice is known as 'powa' while, D parched and puffed rice is known as 'Murmura'). Some of the petitioners had applied for permits to export powa, murmura and idlirava from the State of Andhra Pradesh to other States while others had applied for permits to transport one or other of the rice products to some places within Andhra Pradesh. The applications for permits were either rejected or were not disposed of by the authorities concerned. In the writ petitions the High Court E examined all the contentions raised exhaustively and repelled the attack on the constitutionality of s. 3(2)(d) of the Act as also the relevant clauses of the Control Orders.

Section 3 of the Act provides :

- F (1) 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 or for securing any essential commodity for the defence of India or the efficient conduct of military operations it may, by order, provide for G regulating or prohibiting the production, supply distribution thereof and trade and commerce therein.
- (2) Without prejudice to the generality of the powers conferred by sub-section (1) an order made thereunder may provide—
- H (a)
- (b)

(c)

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- (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

The 1957 Control Order extends to the States of Andhra Pradesh, Kerala, Madras, Mysore and Pondicherry which has been called the Southern Zone. According to cl. 3(1) no person can export or attempt to export or abet the export of rice from any place within the Southern Zone except under and in accordance with a permit issued by the State Government concerned or any officer authorised in this behalf by that Government subject to the condition that such export shall be regulated in accordance with the export quotas fixed by the Central Government. Now this control order made a division into Southern Zone or regions in the matter of export of rice. By the Control Order of 1964 the Southern Zone or regions were further divided into four specified areas i.e., States of Andhra Pradesh, Kerala, Madras and Mysore. Clause 3 of this order prohibited the export by any person of rice from any place within a specified area to a place outside that area except under and in accordance with the permit issued by the State Government or an officer authorised by that Government in that behalf. The rice was defined by cl. 2(b) to include broken rice and paddy as also broken rice and paddy products other than bran or husk. The Control Order of 1965 imposed further restrictions on the movement of rice and paddy. By clause 3 restrictions were placed on the movement of these commodities from any place in any block to any place outside that block even within the State of Andhra Pradesh.

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Mrs. Shyamala Pappu on behalf of the writ petitioners and the appellants before us made an attempt to raise the following contentions in respect of the Control Orders :

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1. All the three Control Orders offended Art. 303 of the Constitution. They suffered from the vice of discrimination between one State and another and of preference to one State over another.

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2. These orders were in the nature of executive instructions and did not fall within the meaning of subordinate legislation.

3. Even if the Control Orders could be regarded as subordinate legislation they were not saved by Art. 303(2) in the absence of the declaration contemplated thereby.

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A 4. The requisite opinion of the Central Government within s. 3(1) of the Act was not to be found in any of the Orders.

B 5. The Control Orders imposed unreasonable restrictions on the right of the petitioners to carry on trade as arbitrary powers had been conferred in the matter of issuing or withholding permits and there were no provisions for appeal or revision against refusal to grant a permit.

C Art. 301 in Part XIII of the Constituion declares that subject to the other provisions of this Part trade, commerce and intercourse throughout the territory of India shall be free. Under Art. 302 Parliament may by law impose such restrictions on freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Article 303 reads :—

D “(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving or authorising the giving of, any preference to one State over another, or making, or authorise the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

E (2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.”

G Now the Control Orders were made under s. 3 of the Act. The object essentially was to regulate the export and movement of rice and of rice and paddy products from the Southern States. These Control Orders were laid before both Houses of Parliament as required by sub-s. (6) of s. 3 of the Act. It has not been shown how this form of legislation would be mere executive instruction and would not constitute law made by Parliament within the meaning of s. 302. No foundation was laid in the pleadings H either before the High Court or in the writ petition before us as to how the restrictions which were imposed by the Control Orders were not in the public interest. It is significant that even on the

point of preference to one State over another or discrimination between one State and another State there is complete absence of pleading in the writ petition filed before us. The High Court adverted to the matter but we have not been shown that any proper or firm foundation was laid in the writ petitions before the High Court on the question of preference or discrimination within Art. 303(1). No argument, therefore, can be entertained on these matters. We are unable to see the necessity of reciting the requisite opinion within s. 3(1) of the Act in the Control Orders. It is implicit in the recital in the Control Orders that they were being made under s. 3 of the Act that the Central Government had formed the requisite opinion within sub-s. (1) of that section. This disposes of the first four contentions.

As regards the 5th point it is noteworthy that the permit is to be issued by the State Government concerned or any officer authorised in this behalf by that Government. It is common ground that the officers authorised by the State Government are the District Collector and the Deputy Commissioner of Civil Supplies. These officers cannot but be regarded as fairly high in rank who are expected to discharge their duties in a responsible and reasonable manner. In *Messrs. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh & 2 Others*⁽¹⁾ in which the provisions of cl. 4(3) of the U.P. Coal Control Order 1953 which gave the licencing authority absolute power to grant or refuse to grant any licence were struck down on the ground that a law which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities must be held to be unreasonable. There the power could be exercised by any person to whom the State Coal Controller might choose to delegate the same. The matter which has been stressed before us relates generally to the absence of any provision relating to appeal or revision in the Control Orders if the District Collector or the Deputy Commissioner of Civil Supplies refuses to grant a permit under clause 3 of the Order. In *Dwarka Prasad's*⁽¹⁾ case the delegation could be made to any one which was certainly a relevant factor in judging the reasonableness of the impugned provision. But in the cases before us the permit is to be granted either by the State Government or by responsible officers of the rank of the District Collector or the Deputy Commissioner of Civil Supplies. Indeed, Mrs. Pappu quite properly agreed that if the State Government alone had the power to issue the permits the challenge on the ground of unreasonableness of the restrictions would not be available. We consider that there is no bar to any of the aggrieved parties approaching the State Government by means of a representation

(1) [1954] S.C.R. 803.

- A for a final decision even if the matter has been dealt with by the District Collector or the Deputy Commissioner of Civil Supplies in the first instance and the permit has been refused or wrongly withheld by these officers. In these circumstances the absence of a provision for appeal or revision can be of no consequence. At any rate it has been pointed out in more than one
- B decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment; (See *K. L. Gupta v. The Bombay Municipal Corporation & Ors.*)⁽¹⁾. It may also be remembered that emphasis was laid in *Pannalal Binraj v. Union of India*⁽²⁾ on the power being vested not in any minor official but in top-ranking authority. It was said that though the power
- C was discretionary but it was not necessarily discriminatory and abuse of power could not be easily assumed. There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law.

- Lastly an effort was made to agitate the point that s. 3(2)(d)
- D of the Act suffers from the vice of excessive delegation. This question is no longer at large. In *The Union of India & Others v. Messrs. Bhana Mal Gulzari Mal & Others*⁽³⁾ the attack on s. 3 of the Essential Supplies (Temporary Powers) Act 1946 which was similar in terms to s. 3 of the Act on the ground of excessive delegation was repelled. It was held that the Central
- E Government had been given sufficient and proper guidance for exercising its powers in effectuating the policy of the statute.

In the result the writ petition and the appeals fail and they are dismissed with costs. One set of hearing fee.

G.C.

Appeals dismissed.

(1) [1968] 1 S.C.R. 274 at p. 297.

(2) [1957] S.C.R. 233 at p. 257

(3) [1960] 2 S.C.R. 627.