

The learned counsel for the petitioner submitted that Section 25(5) of the Act is violative of Article 14 of the Constitution. He has not laid any foundation in the writ petition as to how the provisions are violative of Article 14 of the Constitution nor he could substantiate the same during the course of his arguments. We decline to interfere until all the statutory remedies are exhausted."

(5) We do not find any distinguishing features in the instant petition. It is not disputed that the judgment rendered in C.W.P. No. 8495 of 1989 decided on June 23, 1989 was not assailed by the Corporation in the apex Court. The learned counsel submits that the said judgment will not operate as *res judicata* as during each assessment year a fresh cause of action arises, to the petitioner. There can be no quarrel with this proposition. We decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution for the simple reason that the petitioner-Corporation has got an equally efficacious remedy by way of appeal/revision under the Act.

(6) Learned counsel then submitted that the appeal against the order of the Assessing Authority had become time barred. If the petitioner-Corporation files an appeal against the order of the Assessing Authority within thirty days from the date of receipt of the copy of this judgment, the respondents will not raise the plea of limitation and the appellate authority will entertain the appeal and dispose of the same on merits, provided the conditions for filing the appeal are fulfilled by the petitioner. It is further directed that the appellate authority will dispose of the appeals pending before it expeditiously.

For the reasons stated above, the writ petition is disposed of as indicated above.

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S.C.K.

*Hon'ble G. R. Majithia & S. K. Jain, JJ.*

CAPT. KANWALJIT SINGH AND ANOTHER,—*Petitioners.*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 14327 of 1992.*

January 27, 1994

*Constitution of India, 1950—Art. 226/227—Essential Commodities Act 1955—Milk and Milk Products Order 1992—Milk & Milk*

*Products covered under term agriculture and as such covered under Entry 14 list II of Seventh Schedule & only State Government had power to issue control order—Validity of control order issued by Central Government in question.*

Held, that Article 246 of the Constitution of India deals with the distribution of legislative powers as between the Union and the State Legislatures with respect to different lists in the Seventh Schedule. Article 246 reads thus :—

*"246. Subject-matter of laws made by Parliament and by the Legislatures of States.*

- (1) Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in list I in the Seventh Schedule (in this Constitution referred to as the "Union List").*
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matter enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').*
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution, referred to as the 'State List').*
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List".*

The gist of the Article, in short, is that the Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in list III. The State Legislature, on the other hand, has exclusive power to legislate with respect to matters in List II, minus matters falling in Lists I and III and has concurrent power with respect to matters included in List III. The Central Government was competent to issue the impugned Control Order.

(Para 10)

M. S. Khaira, Senior Advocate with K. S. Bakshi, Advocate, for the Petitioners.

P. S. Patwalia, Advocate, for the added Respondents.

S. K. Pipat, Senior Standing Counsel with D. D. Sharma, Advocate, for the Respondent.

## JUDGMENT

*G. R. Majithia, J.*

(1) The petitioners have impugned the Milk and Milk Products Order, 1992 (for short, the Control Order) issued by the Government of India, Ministry of Agriculture (Department of Animal Husbandry and Dairying Department, New Delhi, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955,—*vide* Notification No. S.O. 405 (E) dated June 9, 1992, published in the Gazette of India Extraordinary, Part-II, Section 3, Sub-Section (ii) in this petition under Articles 226/227 of the Constitution of India.

(2) The challenge has been made to the Control Order on the ground that (Agriculture' is in Entry 14 of List II (State List) of Schedule VII to the Constitution of India, Dairying' is included in Agriculture and, as such, it is the State which can legislate on matters relating to production and sale of milk in the geographical areas administered by the State of Punjab. The right of the petitioners to sell their milk to the purchasers of their choice has been curtailed by disallowing more than one person to set up purchasing unit in a particular area termed as "Milk-shed". The price of milk purchased from the dairy farmers is less as compared to the sale price of milk in the metropolitan cities as well as other urban areas. The price of toned milk is Rs. 7 per litre in Delhi as against the price of milk paid to the dairy farmers in Punjab, which is only Rs. 3-50 per litre. All other industries are being de-licensed. The dairy industry as well as dairying is being throttled for the benefit of a few inefficient and corrupt co-operative Administrators as well as favoured dairy industries.

(3) Separate written statement one on behalf of respondents No. 1 and 2 and the other on behalf of respondent No. 3 have been filed. It is stated in the written statement filed on behalf of respondents No. 1 and 2 that initially the whole consideration for milk traders, milk product makers and the intermediaries was to make profit at the cost of the consumers as well as producers and in milk production there is flush session and lean session. The former is in the winter and the latter is in the summer. The dairy farmers had no access to market and the traders and manufacturers of milk products exploited the situation for their own advantage exploiting the respective situations about the milk supply rising in flush sessions and reducing in lean session. In this background, it was thought necessary to encourage co-operative efforts among the milk producers in order to eliminate exploitation at all levels in the matter

of production and supply of milk. It has been a conscious and deliberate policy of the Government to encourage the co-operatives in dairy sector. The co-operative movement then spread across the length and breadth of the country under the operation "Flood Programme" which provided necessary infrastructure and support services to the farmer co-operatives and their members and their economic conditions improved substantially. The dairy co-operatives had in fact improved the economic conditions of the rural masses. The Operation Flood Programme through its network of rural co-operative societies provides the farmers not only an assured market for their produce but it also serves as a vehicle for the supply of inputs and important technology, which are crucial for the sustained production of milk by small and marginal farmers. Despite the efforts made by the co-operatives, there has still been scarcity of milk in the lean session (May to August) due to biological and natural factors and the State Government had all along been dealing with it by orders issued from time to time in different parts of the country for temporary prohibition on manufacture of milk products and export of milk outside the State under Section 3 of the Essential Commodities Act, 1955 (for short, the Act). With the national Milk Order coming into existence, it has become necessary to have the Order applicable to India as a whole in order to ensure that availability of milk is not adversely affected by large scale diversion of liquid milk into more profitable products. The regulatory measures of the national Milk and Milk Products Order was therefore, found to be essential in public interest. The provisions for registration, standards, hygiene, etc. are equally made applicable to all (including the co-operative sector and Government dairies) under the Control Order. The Control Order seeks to regulate the production, supply and distribution of milk and milk products throughout the country with a view to maintain and increase the supply of liquid milk to the general public. The control Order applies only to persons who handle or are equipped to handle milk in excess of 10,000 litres per day or milk products containing milk solids in excess of 300 tonnes per annum. The Control Order does not compel the milk producers to sell milk only to a particular class. The purchasers of milk who do not fall within the purview of the Control Order are free to purchase milk from any area or from any person they like. There is no individual milk producer in the country who produces more than 10,000 litres of milk per day. The Control Order does not seek to create monopoly for any person in the business of milk and milk products. The requirement of registration and consequent control regarding purchase of milk is confined to large units only. There is

rationale in prescribing the requirement of registration of large units i.e. those units whose installed capacity for handling milk is in excess of 10,000 litres of milk per day or of milk products containing solids in excess of 500 tonnes annum. Demarcation of geographical location known as 'Milk Sheds' for the purchase or procurement of milk by large scale operators who convert it into value added milk products is essential to maintain and to increase the supply of liquid milk from that area. The milk sheds will normally be in the neighbouring areas where the units are situated and, as such, it would be necessary to make the unit owners participate in the development of production of milk in that area. The units with the demarcated milk shed areas will not be able to exploit the producers as he may not be free to bring in liquid milk from outside its milk shed areas without permission. Under the Control Order, the milk producers are free to sell milk to anyone inside and/or outside the milk shed. There is no compulsion on the producers even to become the members of the co-operatives.

(4) The Control Order is covered under Entry 33(a) of List III (Concurrent List) of the VII Schedule to the Constitution. It will be useful to reproduce the relevant provisions of the Control Order:—

"1. *Short title, extent and commencement* :—

- (1) This Order may be called the Milk and Milk Product Order, 1992.
- (2) It extends to the whole of India.
- (3) It shall come into force on the date of its publication in the official gazette.

2. *Definitions* :—In this Order, unless the context otherwise requires :—

- (a) 'Act' means the Essential Commodities Act, 1955 (10 of 1955) ;
- (b)     xxx                 xxx                 xxx
- (c)     xxx                 xxx                 xxx
- (d)     xxx                 xxx                 xxx
- (e)     xxx                 xxx                 xxx
- (f) 'Mill' means milk of cow, buffalo, sheep, goat or a mixture thereof, either raw or processed in any manner and includes pasteurised, sterilized, recombined, flavoured, acidified, skimmed, toned, double toned, standardised or full cream milk ;

- (g) 'Milk Product' means cream, *malai*, curd, yoghurt skimmed milk curd, *shrikhand*, *paneer* or *channa*, skimmed milk paneer or skimmed milk channa *cheese processed cheese and cheese spread*, *ice cream*, milk ices, condensed milk (sweetened and unsweetened), condensed skimmed milk (sweetened and un-sweetened), whole milk powder, skimmed milk powder, partly skimmed milk powder, *Khoya*, *rabri*, *Kulfa*, *Kulfi*, casein, infant milk food, table butter, *deshi* butter, *ghee* or butter oil, and includes another substance containing—on a dry weight basis not less than fifty per cent of milk solids (excluding added sugars), or any other substance declared by the Central Government, by notification as a milk product ;
- (h) 'Milk shed' means an area geographically demarcated by the registering authority for the collection of milk or milk product by the holder of a registration certificate ;
- (i) 'Milk Product' means a person owning or keeping or otherwise having control of cow, buffalo, sheep or goat for the production of milk intended for sale or for conversion thereof to any milk product ;

5. *Registration* :—

- (1) On and from the date of commencement of this Order, no person shall manufacture or carry on business in milk or any milk product nor create any manufacturing facility for the business, unless such person has made an application within ninety days from such commencement in the form specified in the First Schedule along with the prescribed fee to the registering authority for obtaining the registration certificate.
- (2) The provisions contained in sub-paragraph (1) shall apply to such person who handles or is equipped to handle, or who has in the establishment or unit under his ownership or control (or where he has more than one such establishment, all the establishments put together) installed capacity for handling milk in excess of ten thousand litres per day, or milk product containing milk solids in excess of five hundred tonnes per annum.

(3) to (10)

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xxx

xxx

6. *Registration and its renewal* :—

(1) The registration certificate issued under this Order will be valid for a period of three years from the date of issue ;

(2) to (4)            xxx            xxx            xxx

10. *Production or handling of milk or milk product* :—

(1) On or after the commencement of this order, no person to whom registration certificate has been issued under this Order shall handle, produce or deal with any item of milk or milk product in excess of the capacity specified in the registration certificate or collect milk from outside the milk shed area specified in the registration certificate unless he obtains previous permission of the Controller to do so.

(2) Where an application is made by any holder of registration certificate for manufacturing, handling, producing or dealing in milk or any milk product in excess of the quantity specified in the registration certificate or for collecting milk from outside the area specified in the registration certificate, the Controller shall give permission for such excess quantity only for a specified duration and that too after he is satisfied that it is necessary in the public interest to allow the holder of the registration certificate to do so.

(3) The Controller may *suo moto*, by order, during the specified period, permit any class or category of registration certificate holders to manufacture, handle, produce or deal in any item of milk or milk product, in excess of the capacity allowed under the registration certificate, if he considers it necessary to do so in the public interest.

(4) The Central Government may, by general or special order, issue directions to the Controller on the circumstances and the manner in which he shall exercise the powers under sub-paragraph (3).

11. *Collection of milk* :—

(1) Every holder of registration certificate shall collect or procure only from the milk-shed assigned under the registration certificate.

- (2) Within the area of the milkshed specified in the registration certificate, the collection and procurement of milk shall be made from the milk producers co-operatives of that area to the extent such co-operatives are able to supply milk.
- (3) Where the registering authority considers it necessary in the public interest, by reason of shortage of milk in the milkshed or of surplus liquid milk in an area outside milkshed area, it may permit the holder of the registration certificate to collect or procure milk from outside the milkshed, for such period, not exceeding ninety days, as it may specify in that behalf.
- (4) The collection of milk from outside the milkshed in accordance with sub-paragraph (3) shall be made only through co-operative milk federation or union, at a price mutually agreed upon, and in the absence of any such agreement, at the price at which the co-operative federation or union concerned sells milk to any other co-operative federation or the union.
- (5) The liquid milk shall not be used for making any milk product (even within the limits of capacity provided in the registration certificate) during such period as the Central Government may, by notification, in the Official Gazette specify."

(5) A bare reading of the provisions of the Control Order reveals that no person who handles or is equipped to handle or has in his establishment, or establishments, as the case may be, installed capacity to handle milk in excess of 10,000 litres per day or milk products containing milk solids in excess of 500 tonnes per day, can do so without obtaining a registration certificate/licence, he can handle produce and deal with milk or milk products only to the extent of the licensed/registered capacity as per the registration certificate and that too from within the milkshed area only specified in the registration certificate, though the Registering certificate to collect and procure milk as specified under registered limit and from outside milkshed area for a period of specified duration in the public interest. Consequently, the Control Order restricts purchase of milk and milk products by bulk purchasers upto the licensed quantity and from the licensed area.



The grievance of the petitioners is that they being the milk producers have been deprived of the right to sell milk to such persons as they may wish to inasmuch as they can only sell to the persons who are registered and who have registration certificate/licence for their milkshed areas. The petitioners have not pleaded nor have given any details of the quantity of milk which they are producing. There is no restriction whatsoever on the producers of milk, i.e. the dairy farmer, with regard to sale of milk. In fact, respondents No. 1 and 2 say in their written statement that the Control Order does not place any restrictions on the producers of milk with regard to its sale. The only restriction is on bulk purchasers, i.e. persons who are handling more than 10,000 litres of milk per day or 500 tonnes of milk products in a year. It is further pleaded by respondents No. 1 and 2 that milk producers are free to sell milk either to co-operatives or any other persons operating in the milkshed area to smaller traders as well as large units. Thus, the petitioners have no *locus standi* to challenge the Control Order as they are not affected by it or they have any grievance whatsoever.

(6) Even otherwise, the Union of India has pleaded that the objective of issuing the impugned Control Order is to ensure the continuous and ready supply of milk and that the supply of liquid milk gets severely affected by conversion of milk into milk products and, therefore, the need was felt by the Government to issue the Order. The primary objective of issuing the Control Order was to restrict large scale conversion of milk into milk products. The purpose for issuance of the Control Order is, thus, in the interests of the society at large.

(7) The Control Order has been issued under Section 3 of the Act, which clearly lays down sufficient guidelines and existence of conditions for proper distribution and control of any essential commodity. It seeks to regulate and guide the conditions under which milk and milk products may be purchased by bulk purchasers. *Prima facie*, it is purely a regulatory measure. The provisions of the Control Order have to be read in the light of the Act which provides the necessary guidelines, namely, that it is essential in public interest to ensure proper distribution of essential commodities. Moreover, Section 3 of the Act has not been said that the Control Order is either arbitrary or without nexus to the objects of the Act.

(8) It was, however, argued on behalf of the petitioners that milk or milk products do not fall within the definition of essential commodity" as defined under the Act. Section 2(a) (v) of the Act

defines the expression "essential commodity" to include "foodstuffs including edible oilseeds and oil". The word "foodstuffs" was interpreted by the apex Court in *M/s Sat Pal Gupta and another v. State of Haryana and others* (1), where their Lordship observed thus :—

"By 'foodstuffs' is meant food of any kind. The Shorter Oxford English Dictionary (Third Edition) says that 'food' is what one takes into the system to maintain life and growth.' According to Webster's Third New International Dictionary, 'food' means 'material consisting of carbohydrates, fats, proteins and supplementary substances, that is taken or absorbed into the body of an organism in order to sustain growth, repair and all vital processes and to furnish energy for all activity of the organism; something that nourishes or develops or sustains'. These dictionary meanings of the word 'food' are not restricted to what is eaten by human beings for nourishment and sustenance. According to them, what one takes into the system to maintain life and growth or what is taken into the body of an organism in order to sustain growth is food."

The term "foodstuff" again up for interpretation in the judgment reported as *Welcome Hotel and others v. State of Andhra Pradesh and others* (2), where their Lordships of the Supreme Court observed thus :—

"Mr. B. Kanta Rao who appeared for some of the petitioners urged that the State Government is not competent to issue any price control measure in respect of cooked food because the Essential Commodities Act, 1955, which confers powers to issue orders in respect of essential commodities does not confer any power to issue any order in respect of cooked food. Section 3 of Essential Commodities Act, 1955 confers power on the Central Government by an order to provide for regulating or prohibiting the production, distribution and supply and trade in essential commodity or for securing their equitable distribution and availability at fair prices. The power to fix price of essential commodity is implicit in the power conferred

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(1) A.I.R. 1982 S.C. 798.

(2) A.I.R. 1983 S.C. 1015.

by Section 3 of the Act and what is implicit in Section 3(1) is made explicit by clause (c) of sub-section (2) of Section 3 which provides that an order made under Section 3(1) may provide—(c) for controlling the price at which essential commodity may be bought or sold. Clause (a) of Section (2) defines 'essential commodity' to mean any of the items which include .....(v) foodstuffs, including edible oilseeds and oils. The submission is that the expression 'foodstuffs' in its etymological and grammatical sense would mean raw foodstuffs or appropriately called foodgrains such as wheat, rice, jawar bazra, maize etc. but not cooked food which is perishable commodity. We see no justification for giving a restricted meaning to the expression 'foodstuffs'. If power to control prices of raw foodstuffs such as rice or wheat is conferred by Section 3, we see no justification for that power not comprehending within its fold the power to regulate prices of articles made out of such raw foodstuffs. Expression such as 'foodcrops', 'spices' and 'condiments' indicates different species of articles of food but the general expression 'foodstuffs' was interpreted to include species and condiments also. In the *State of Bombay v. Virkumar Gulabchandshah*, 1952 S.C.R. 877 : (A.I.R. 1952 S.C. 335) this Court construed the expression 'foodstuffs' in clause (3) of the Species (Forward Contract Prohibition Order of 1944 read with Section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946 to include turmeric. After examining the definition of expression 'foodstuffs' in Oxford English Dictionary and Webster's international Dictionary and some decisions bearing on the subject, this Court held that the expressions 'food and foodstuffs' can be used in both a wide and a narrow sense that the circumstances and background can alone determine which is proper in any given case. After examining the object and the intentment underlying enactment of Essential Supplies (Temporary Powers) Act, this Court held that if turmeric is a commodity essential to the life of the community it must be covered by the expression 'food stuffs'. Accordingly, it was held that the expression 'foodstuffs' has been used in a wide sense in 1946 Act. It may be recalled that the Essential Commodities Act, 1955 was enacted for the control of the production, supply and distribution of and trade and commerce in essential commodities. It has the same object as the 1946 Act and

therefore, the expression 'foodstuffs' in 1955 Act must receive the same construction. If that be so, the expression 'foodstuffs' must obviously include cooked food also.

Further the expression 'food' has generally been understood to mean nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the valid process. What human beings consume is styled as food and what animals consume is described as animal feed. This distinction has to be borne in mind. Expression 'foodstuffs' is made of two expressions, 'food plus 'stuffs'. In other words, the stuff which is used as food would be foodstuff. Therefore, foodstuffs is that which is taken into the system to maintain life and growth and to supply waste of tissue. If the raw foodstuff with a view to making it consumable by human beings undergoes a change of its condition by the process of cooking, the derivative is nonetheless foodstuff. If raw rice is foodstuff, does rice when boiled in water cease to be foodstuff. As the Chinese by an accidental fire in a hut where there were pigs learnt the advantage of consuming cooked food in place of raw food, the submission of Mr. Kanta Rao would make us march backward by centuries and be a disgrace to modern culinary art. And 'foodcrop' is another expression defined in the 1955 Act. Therefore, the expression 'foodstuff' as used in the 1955 Act comprehends cooked food. The contention of Mr. Kanta Rao, therefore, must be negatived."

Thus, milk and milk products squarely fall within the definition of expression 'foodstuffs' as has been authoritatively interpreted by the apex Court in *Welcome Hotel* case (supra).

(9) It was next argued on behalf of the petitioners that the milk and milk products are covered within the term "agriculture" and as such would be covered by Entry 14 in List II of the Seventh Schedule to the Constitution of India and therefore, it was only the State Government which had the power to issue the Control Order for controlling sale, purchase, handling etc. of milk and milk products. The impugned Control Order having been issued by the Central Government is, thus, without jurisdiction. Entry 23 in List III of the Seventh Schedule to the Constitution of India reads thus :—

(10) "Foodstuffs including edible oilseeds and oil."

These are the same words as have been used in Section 2(a) (v) of the Act. Since it has been authoritatively held by the apex Court that milk and milk products would be covered by the wide term of "foodstuffs", these would also be covered by Entry 33 in List III of Seventh Schedule to the Constitution. Both the Central Government and the State Government would have the jurisdiction to legislate in that regard. Article 246 of the Constitution of India deals with the distribution of legislative powers as between the Union and the State Legislatures with respect to different Lists in the Seventh Schedule. Article 246 reads thus :—

- "246. *Subject-matter of laws made by Parliament and by the Legislatures of States.*—(1) Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution, referred to as the 'State List').
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

The gist of the Article, in short, is that the parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. The State Legislature, on the other hand, has exclusive power to legislate with respect to matters in List II, minus matters falling in Lists I and III and has concurrent power with respect to matters included in List III. The Central Government was competent to issue the impugned Control Order.)

For the reasons stated above, the writ petition fails and is dismissed with costs.

*J.S.T.*