

## CIVIL MISCELLANEOUS

*Before Man Mohan Singh Gujral and Rajendra Nath Mittal, JJ.*

BHAGWAN SINGH ETC.,—*Petitioners*

*versus*

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 2986 of 1974.

July 1, 1975.

*Essential Commodities Act (X of 1955)—Section 3—Punjab Wheat Procurement Levy Order 1974—Clause 4(1)—Whether violative of section 3(3-B)—Controlled price under section 3(2)(c) and price to be paid for selling stock under section 3(2)(f)—Distinction between—Stated.*

*Held*, that section 3 of the Essential Commodities Act 1955 empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of any essential commodity by making an order in that respect. Under section 5 of the Act the State Government can be given the power to pass orders or issue notifications under section 3. The scheme of this Act envisages that if the Central Government or the State Government passes an order under clause (f) of sub-section (2) of section 3 it is that Government which will fix the price at which a person holding any stock of essential commodity can be required to sell the whole or a part thereof to the Central Government or the State Government or to persons specified in the order. It is further brought out in section 3 that in the case of foodgrains, edible oilseeds or edible oils the price will be fixed under sub-section (3-B) while in the case of other essential commodities it will be fixed under section 3(3). The price has, however, to be fixed by the Government which issues the order under section 3(2)(f) and that too in the light of the provisions of sub-sections (3), (3-A), (3-B) or (3-C) depending on the nature of the commodity to which the order related or the nature of the emergency which the order is required to meet. The State Government while issuing the levy order cannot accept the price fixed by the Central Government as the price at which the licensed dealers could be directed under clause (f) of section 3(2) to sell the foodgrains, edible oil-seeds or edible oils to the Food Corporation of India or the State Government without considering whether the price so fixed had any relation to the controlled price fixed under section 3 by or under any law for the time being in force or was the price prevailing or likely to prevail during the post harvest period in the area to which that order related. In any case it has to be shown that while fixing the price the provisions of sub-section (3-B) were taken into consideration if the order related to foodgrains, edible oilseeds or edible

oils. Therefore, it not having been shown that while directing the licenced dealers in the State of Punjab to sell the stock of wheat held by them or acquired by them in future, the provisions of sub-section (3-B) were kept in view and that the price was fixed on the basis of the price prevailing or likely to prevail during the post harvest period in the State of Punjab, there is no escape from the conclusion that clause 4 of the Levy Order is violative of sub-section (3-B) of section 3 of the Act, (Para 11).

*Held* that in all the sub-sections which relate to the fixation of price when an order is passed under section 3(2) (f) of the Act requiring any person to sell any essential commodity, a reference to the Controlled price is made indicating it as something distinct from the price which has to be paid to the person from whom stock is acquired by the Central or the State Government. The price to be paid in such case may be the same as the controlled price or may have relation to the controlled price, but these provisions clearly envisage the existence of a controlled price independent of the price to be fixed under sub-section (3), (3-A), (3-B) or (3-C) of section 3 of the Act. Controlled price could be the basis for fixing the price when an order under section 3(2) (f) is passed, but the price at which the Central Government or the State Government can require a person to sell the stock cannot be the controlled price, without an order having been passed by the Central Government or the State Government under section 3(2) (c) of the Act. Section 3(2) (c) enables the Central Government to make an order fixing the controlled price at which any essential commodity may be bought or sold. This is a general provision regarding the fixation of the controlled price and has been formulated in broad terms. As against this, clause (f) of section 3(2) of the Act is of a restricted applicability and relates only to an order by which a person may be required to sell any stock of essential commodities held by him to the Central Government or the State Government or their nominee and when such an order is made the price is to be fixed under sub-section (3) to (3-C) depending on the nature of the essential commodity. When price is fixed under these provisions and not under section 3(2) (c) that cannot be the controlled price though it may be based on the controlled price fixed under section 3(2) (c). (Para 12).

*Petition under Articles 226/227 of the Constitution of India praying that :—*

- (a) *a writ of mandamus declaring the Punjab Wheat Procurement (Levy) Order, 1974 and particularly its clauses 3(a) and 4(1) declaring ultra vires section 3(3) (c) of Essential Commodities Act, 1955 and otherwise void, invalid, unconstitutional, inoperative, null and void.*
- (b) *a writ of mandamus restraining the respondents from enforcing the impugned provisions given in detail above;*

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(c) *a writ of certiorari quashing the impugned orders dated 23rd June, 1974.*

(d) *any other writ, direction or order as this Hon'ble Court may deem fit in the circumstances of this case in the interest of justice and costs of the petition be awarded to the petitioners.*

B. S. Malik Advocate I. S. Balhara, Advocate and Vinod Kataria, Advocate, for the Petitioners.

J. S. Wasu, Advocate-General, Punjab D. S. Nehra, Advocate and Arun Nehra, Advocate with him,—for the Respondents.

#### JUDGMENT

GUJRAL, J.—(1) These two petitions (Civil Writs Nos. 2986 and 1929 of 1974) under Articles 226 and 227 of the Constitution of India which have been filed by some *chakki* owners carrying on the business of grinding wheat at Ludhiana and Amritsar, are mainly directed against the validity of the Punjab Wheat Procurement Levy Order, 1974.

(2) The facts necessary for the decision of this petition are not in dispute. In exercise of the powers conferred under section 3 of the Essential Commodities Act, 1955 (hereinafter called the Act), respondent No. 1, the State of Punjab, promulgated the Punjab Wheat Procurement Levy Order, 1974, (hereinafter called the Levy Order) *vide* Notification No. G.S.R. 47-C.A. 10/55/S. 3/74, dated April 18, 1974. Clause 3 of the Levy Order made it incumbent on every licensed dealer to sell 50 per cent of the stock of wheat lying with him immediately before the commencement of the Levy Order to the Food Corporation of India or to the State Government or to any other person authorized by the State Government. The sale was to be made within a week from the commencement of the Levy Order. The Levy Order further provided that 50 per cent of the quantity of wheat purchased by a Licensed dealer from a person other than a licensed dealer was also to be sold in a similar manner. According to clause 4 of the Levy Order, the wheat so sold was to be paid for at the rate of Rs. 105 per quintal. As some of the mill-owners did not sell the wheat as directed under clause 3(i) (a) of the Levy Order, the District Food and Supplies Controller, Ludhiana, wrote letter dated June 23, 1974, a copy of which is Annexure P1 to Civil

Writ No. 2986 of 1974, to the President of the *chakki* owners' association to convene a meeting and to make arrangements for selling the levy wheat to the Government. The petitioners' case is that in order to comply with this letter, they will have to purchase the wheat at higher price and sell it to the Government at the rate of Rs. 105 per quintal and thereby suffer a loss. It is the issuance of the letter, copy Annexure P1 to Civil Writ No. 2986 of 1974, and the validity of clauses 3 and 4 of the Levy Order that have been assailed in these petitions on various grounds a reference to some of which will hereinafter be made.

(3) The respondents have contested these petitions through the affidavits of Shri S. P. Singal, Under Secretary to Government, Punjab, Food and Supplies Department and Shri Pritam Singh Brar, District Food and Supplies Controller, Ludhiana. In these affidavits, it is asserted that the Levy Order was constitutionally valid and it did not violate either the Essential Commodities Act, 1955, or Articles 14, 19(1) (f), 19 (1) (g) and 31 of the Constitution of India. Clauses 3(1) (a) and 4(1) of the Levy Order are sought to be defended on the basis that these placed reasonable restrictions on the carrying out of the business and are essential to ensure equitable distribution and availability of wheat at fair prices. Section 3B (i) of the Act is pressed into service to uphold the fixation of levy wheat price at Rs. 105 per quintal.

(4) In order to appreciate the respective contentions of the parties, reference will have to be made to some of the provisions of the Act and the Levy Order, which for facility of reference are set out below.

*Essential Commodities Act, 1955.*

3. *Power to control production, supply, distribution, etc., of essential commodities.*—(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 regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

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- (2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide,—
- (c) for controlling the price at which any essential commodity may be bought or sold;
  - (f) for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or a State Government or to an officer or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order.
- (3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefor, as hereinafter provided—
- (a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;
  - (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;
  - (c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.
- (3-B) Where any person is required by an order made with reference to clause (f) of sub-section (2) to sell any grade or variety of foodgrains, edible oilseeds or edible oils to the Central Government or a State Government or to an officer or such agent of Government and either no notification in respect of such foodgrains, edible oilseeds or edible oils has been issued under sub-section (3-A) or any such notification having been issued has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there

shall be paid as the price for the foodgrains, edible oil-seeds or edible oils—

- (i) 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 oil-seeds or edible oils; or
- (ii) where no such price is fixed, the price for such grade or variety of foodgrains, edible oilseeds or edible oils prevailing or likely to prevail during the post-harvest period in the area to which that order applies.

*Explanation.*—For the purposes of this sub-section, “post-harvest period” in relation to any area means a period of four months beginning from the last day of the fortnight during which harvesting operations normally commence.”

*Punjab Wheat Procurement (Levy) Order, 1974.*

“3. *Procurement of Wheat from licensed dealers.*—(1) Every licensed dealer shall sell to the Food Corporation of India, or the State Government, or to such other person as may be authorised by it in such proportion as the State Government may fix, at the specified price.

- (a) Fifty per cent of the quantity of wheat held in stock by him immediately before the commencement of this order, within a period of one week of such commencement; and
- (b) Fifty per cent of the quantity of wheat purchased by him from a person other than a licensed dealer, on any day beginning with the date of commencement of this Order, on the day the purchase is made.

4. *Specified price for sale of wheat by licensed dealer.*—(1) The price of Rs. 105 per quintal for naked grain for delivery at mandi or purchase centre as specified in column 2 of Schedule I shall be the specified price payable to a licensed dealer for the wheat sold by him under sub-clause (1) of clause 3.”

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(5) Though in the petition clauses 3 and 4 of the Levy Order have been challenged on various grounds, but during arguments before us, only one ground was pressed into service and this related to clause 4 of the Levy Order whereby the price of wheat has been fixed at Rs. 105 per quintal. For the purpose of these writ petitions it is not disputed that under section 3(1) (f) of the Essential Commodities Act an order can be made for requiring any person holding in stock any essential commodity to sell the whole or a specified part thereof to the Central Government or to a State Government or to such other person as may be specified in the order, and the only grievance is with regard to the mode by which the price has been fixed. The argument advanced in this respect may be formulated thus.

(6) Whenever any order is passed under section 3(1) (f) of the Act and a person is required to sell an essential commodity in compliance with the order, price has to be paid to him as provided in sub-section (3) of section 3 of the Act. According to this provision, the price to be paid may be agreed upon consistently with the controlled price, if any, fixed under this section or, if no such agreement can be reached, the price may be calculated with reference to the controlled price, if any. It further provides that where these methods of fixation of price are not applicable the price may be calculated at the market rate prevailing in the locality on the date of the sale. By the introduction of sub-section (3-B) by Act 25 of 1966 the applicability of the general provisions which related to all the essential commodities contained in sub-section (3) was restricted to commodities other than foodgrains, edible oilseeds or edible oils, as in respect of these commodities the price had to be fixed under sub-section (3-B). According to this provision, the price to be paid has to be either the controlled price fixed under section 3 or by any other law for the time being in force or where no price has been fixed the price for such grade or variety of foodgrains, edible oilseeds or edible oils prevailing or likely to prevail during the post-harvest period in the area to which that order applied. The expression "post-harvest period" has also been defined in this provision and indicates a period of four months beginning from the last day of the fortnight during which harvesting operations normally commence. The precise argument of the learned counsel for the petitioners is that in the present case no controlled price of

wheat had been fixed either under section 3 or by any other law for the time being in force and that for fixation of the price under clause 4 of the Levy Order, clause (ii) of sub-section (3-B) has not been pressed into service and this fixation of the price was, therefore, illegal. It is stated that no regard was had to the prices prevailing or likely to prevail during the post-harvest period in the area to which the order related and in the fixation of the price, therefore, there had been a violation of sub-section (3-B) of the Act.

(7) It would be helpful in clearing the deck for consideration of the above argument if at this stage the arguments pressed into service by the respondents in reply to the above contention are considered and examined in detail. In the return filed by Shri Singal, Under-Secretary to Government, Punjab, Food and Supplies Department, it has not been clearly mentioned as to under what provision the price was fixed. All that is stated in this respect is that the Government was competent to collect levy wheat under section (3-B) (i) of the Essential Commodities Act and that the price of Rs. 105 per quintal had been fixed under clause 4 of the Levy Order. It is further added that the Government was entitled to purchase wheat at this specified price. There is no indication in this affidavit as to how the figure of Rs. 105 had been arrived at. Even in the affidavit of Shri Pritam Singh Brar, District Food and Supplies Controller, Ludhiana, which was filed in Civil Writ No. 2986 of 1974, the matter has not been taken any further and all that has been stated is that the Levy Order has been issued under section 3 of the Essential Commodities Act and that clause 4 thereof was *intra vires* and not *ultra vires* of the Act. It is, however, added that the Government was competent to levy wheat at the controlled price under sub-section (3-B) (i) of the Essential Commodities Act, 1955.

(8) While arguing the case on behalf of the State of Punjab, Shri J. S. Wasu, the learned Advocate-General, raised the following contentions:—

- (a) that the Levy Order having expired, the two petitions have become infructuous and be dismissed as such.
- (b) that the price had been fixed on the basis of the report of the Agricultural Prices Commission (copy of which was placed on the record), the discussions held in the



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Chief Ministers' conference on 16th March, 1974, in New Delhi (Summary was placed on the record) and the decision of the Government of India conveyed through telegram dated 29th March, 1974, and that the fixation of the price was, therefore, in accordance with sub-section (3-B) (ii) of the Act.

- (c) that clause 4 of the Levy Order fixed the controlled price of wheat and the fixation of price was, therefore, covered by sub-section (3-B) (i) of the Act.

(9) While considering the first argument of Mr. Wasu, it may be stated at the outset that no such objection was taken in the reply originally filed or in any subsequent objection petition. Leaving this apart, it is not disputed that under the Levy Order considerable quantity of wheat has been procured and the price has been paid under clause 4 of the Levy Order and that the rights of the parties in respect of the price of the wheat so procured will be affected by the decision of these petitions. I am, therefore, unable to conclude that the petitions have become infructuous merely because the Levy Order has expired. The second argument is equally without merit. In the returns filed by the respondents no mention was made of the report of the Agricultural Prices Commission or the discussions held in the Chief Ministers' conference or even of the telegram received from the Government of India and reliance on these documents was placed for the first time during arguments. Ignoring this objection for the present, even otherwise no assistance is rendered to the respondents by these documents. Neither in the report of the Agricultural Prices Commission nor in the minutes of the Chief Ministers' conference is there anything to show that clause 4 of the Levy Order was formulated on their basis. Mr. Wasu was unable to point out any portion of these documents in which there may have been reference to the prices prevailing or likely to prevail in the post-harvest period relevant to the Levy Order and in the absence of such a discussion or the consideration of the relevant data the contention can well be considered to be without any foundation whatsoever.

10. So far as the telegram dated 29th March, 1974, is concerned, far from providing any assistance to the respondents' contention, it knocks the very bottom out of their case. It is clearly brought out

in this telegram that it was the decision of the Government of India that Government agencies should purchase wheat during the 1974-75 marketing season at Rs. 105 per quintal. It was after this telegram that the Levy Order was promulgated by the State Government wherein in clause 4 it was provided that Rs. 105 per quintal would be paid for the wheat to be sold to the Food Corporation of India or the State Government or to such other person as may be authorised by it.

11. Section 3 of the Essential Commodities Act empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of any essential commodity by making an order in that respect. Under section 5 of the Act, the State Government can be given the power to pass orders or issue notifications under section 3. The scheme of this Act envisages that if the Central Government or the State Government passes an order under clause (f) of sub-section (2) of section 3, it is that Government which will fix the price at which a person holding any stock of essential commodity can be required to sell the whole or a part thereof to the Central Government or the State Government or to persons specified in the order. It is further brought out in section 3 that in the case of foodgrains, edible oilseeds or edible oils the price will be fixed under sub-section (3-B) while in the case of other essential commodities it will be fixed under section 3(3). The price has, however, to be fixed by the Government which issues the order under section 3(2) (f) and that too in the light of the provisions of sub-sections (3), (3-A), (3-B) or (3-C) depending on the nature of the commodity to which the order related or the nature of the emergency which the order is required to meet. To accept the contention that the State Government while issuing the Levy Order could accept the price fixed by the Central Government as the price at which the licensed dealers could be directed under clause (f) of section 3(2) to sell the foodgrains, edible oilseeds or edible oils to the Food Corporation of India or the State Government without considering whether the price so fixed had any relation to the controlled price fixed under section 3 or by or under any law for the time being in force or was the price prevailing or likely to prevail during the post-harvest period in the area to which that order related, would be to completely ignore the provisions of sub-sections (3) and (3-B) and the very object with which these provisions were introduced. Even if for the sake of argument it may be accepted that where an order under sub-section (2)(f) of section 3 was passed by the State

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Government, the Central Government could fix the price to be paid, it would not flow therefrom that the price could be fixed without having regard to the provisions of sub-section (3-B) of section 3 of the Act. In fact even in that situation, it would have to be shown that while fixing the price the Central Government had taken into consideration the provisions of sub-clause (3-B) if the order related to foodgrains, edible oilseeds or edible oils. In the present case, it not having been shown that while directing the licensed dealers in the State of Punjab to sell 50 per cent. of the stock of wheat held by them or acquired by them in future, at Rs. 105 per quintal, the provisions of sub-section (3-B) were kept in view and that the price was fixed on the basis of the price prevailing or likely to prevail during the post-harvest period in the State of Punjab, there is no escape from the conclusion that clause 4 of the Levy Order is violative of sub-section (3-B) of section 3 of the Act.

12. The third contention of Mr. Wasu that the price mentioned in clause 4 of the Levy Order was in fact the controlled price under section 3(2)(c) of the Act and the licensed dealers could, therefore, be asked to sell wheat at this price under sub-section (3-B)(i) of section 3 is, in my opinion, an argument of frustration, as it loses sight of the distinction between the controlled price fixed under section 3(2)(c) and the price to be paid to a person holding in stock any essential commodity who is required to sell the whole or a specific part of the stock in terms of clause (f) of sub-section (2) of section 3. Starting from sub-section (3) of section 3 of the Act, in all the sub-sections, which relate to the fixation of price when an order is passed under section 3(2)(f) requiring any person to sell any essential commodity, a reference to the controlled price is made indicating it as something distinct from the price which has to be paid to the person from whom the stock is acquired by the Central or the State Government. The price to be paid in such case may be the same as the controlled price or may have relation to the controlled price, but these provisions clearly envisage the existence of a controlled price independent of the price to be fixed under sub-section (3), (3-A), (3-B) or (3-C) of section 3 of the Act. Controlled price could be the basis for fixing the price when an order under section 3(2) (f) is passed, but there is no room for contending that the price at which the Central Government or the State Government could require a person to sell the stock would be the controlled price, without an

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order having been passed by the Central Government or the State Government under section 3(2)(c) of the Act. Section 3(2)(c) enables the Central Government to make an order fixing the controlled price at which any essential commodity may be bought or sold. This is a general provision regarding the fixation of the controlled price and has been formulated in broad terms. As against this, clause (f) of section 3(2) is of a restricted applicability and relates only to an order by which a person can be required to sell any stock of any essential commodity held by him to the Central Government or the State Government or their nominee and when such an order is made the price is to be fixed under sub-sections (3) to (3-C) depending on the nature of the essential commodity. When price is fixed under these provisions and not under section 3(2)(c), that cannot be controlled price though it may be based on the controlled price fixed under section 3(2)(c).

13. I consequently find no merit in the contention that the price mentioned in clause 4 of the Levy Order was the controlled price and that the licensed dealers could be made to part with the levy wheat at this price.

14. From the discussion made above, it would emerge that no controlled price of wheat has been fixed under section 3(2)(c) of the Act and that the fixation of price under clause 4 of the Levy Order does not, therefore, fall within the ambit of sub-section (3-B)(i) of section 3 under which provision the price is alleged to have been fixed. Similarly, there being no data on the record to show that the price was fixed on the basis of the price prevailing or likely to prevail during the post-harvest period, the conclusion is inevitable that clause (ii) of sub-section (3-B) of section 3 of the Act was also not complied with while fixing the price under clause 4 of the Levy Order.

15. It would be relevant at this stage to make a reference to some of the decided cases on the point. In *Bahadurmal Sethia and others v. State of West Bengal* (1), in exercise of the powers conferred by section 3 of the Essential Commodities Act the respondent made an order known as the West Bengal Rice Mills (Levy) Order, 1967. Under clause 4 of this order procurement price was fixed for different grades of rice. The whole of the rice in the possession of

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(1) A.I.R. 1973 Calcutta 67.

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the rice mills was to be sold either to the Director or the Food Corporation and the price was to be paid on the basis of clause 4 of the order. This order was challenged on the ground that the procurement price had been fixed without any reference to the market price during the post-harvest period. While accepting this contention it was held that in fixing the procurement price under clause 4 of the Levy Order the respondent had completely ignored the market price during the post-harvest period as they were required to do under the Essential Commodities Act. It was further observed as under:—

“In my view, the contention of counsel for the petitioners must be upheld. It is plain to me that procurement price in the levy order for 1967 has not been fixed in compliance with the provisions of the Essential Commodities Act. It is also clear to me that according to the State Government the price of aman rice during the relevant period is much higher than the price fixed by the Levy Order. In these facts, I cannot but conclude that the respondents failed to apply their mind to the question of fixing the procurement price and that if the relevant factors in fixing the procurement price were taken into consideration the rates fixed by clause (4) of the Levy Order could not have been fixed as they have been done.”

In *Shree Meenakshi Mills Ltd. v. Union of India* (2), the provisions of section 3(2)(c) in relation to sub-sections (3-A), (3-B) and (3-C) of section 3 came up for interpretation and it was concluded that controlled price fixed under section 3(1) read with section 3(2)(c) was different from the price fixed under sub-sections (3-A), (3-B) and (3-C). The following observation of the Supreme Court may be read with advantage:—

“71. The power to fix controlled price is in section 3(2)(c) read with section 3(1) and not in section 3(3) of the 1955 Act. In sub-section (2) (c) of section 3, it is stated that the order may provide for controlling the price at which any essential commodity may be bought or sold. The dominant words in section 3(1) are that if the Government is of opinion that it is necessary or expedient to provide for

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(2) A.I.R. 1974, Supreme Court 366.

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maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, the Government may, by order, provide as mentioned therein.

72. Sub-section (3) provides that where an order under section 3(2)(f) of the Act is made requiring any person holding any stock to sell to the Government or to any officer or to any class of person, the price under sub-section (3) can be fixed (a) by an agreement consistent with controlled price or (b) if there is no agreement with reference to controlled price or (c) the market price where neither of the two courses is possible.
73. Sub-sections (3-A), (3-B) and (3-C) deal with specific cases of foodstuff, foodgrains, edible oilseeds, edible oil and sugar respectively. Sub-section 3(A) of section 3 is an exception to sub-section (3). Sub-section (3-A) applies when there is a notification in the Official Gazette, that notwithstanding anything contained in sub-section (3), the price shall be regulated in the case of foodstuff in accordance with the provisions of sub-section (3-A). In Sub-section (3-B) it is stated that where either there is no notification under sub-section (3-A) or any such notification has ceased to remain in force by efflux of time, the contingencies mentioned therein will happen. Again, in sub-section (3-C) the matters contemplated are similar to sub-section (3-B)."

The ratio of this decision fully supports the view canvassed on behalf of the petitioners that the price fixed by clause 4 of Levy Order was not the controlled price, which could be fixed under section 3(2)(c) and not under section 3(2)(f) read with section 3(3-B). Clause 4 of the Levy Order does not relate to the price at which the wheat which is an essential commodity could be bought or sold but only deals with the price which would be paid to the person from whom the stock of wheat is purchased by the Central Government or the State Government or their nominees. It could not, therefore, be plausibly urged that clause 4 of the Levy Order fixed the controlled price of wheat and then required the person holding the stock to sell it at the same price to the Central Government or the State

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Government or their nominees, as this argument ignores the essential difference between the price fixed under section 3(2)(c) and the price fixed under section 3(3-B).

16. In this view of the matter, in order to uphold the validity of clause 4 of the Levy Order it will have to be shown that the price was the price prevailing or likely to prevail during the post-harvest period relating to the Levy Order.

17. While considering this aspect it may be mentioned that in the returns filed on behalf of the respondents it was not even pleaded that the price fixed in clause 4 of the Levy Order was connected with the price prevailing or likely to prevail during the post-harvest period. In order to appreciate the anxiety of the Legislature to ensure that the price paid for the foodgrains, edible oilseeds and edible oils covered by an order under section 3(2)(f) was either the controlled price or the price prevailing or likely to prevail during the post-harvest period in the area to which the order related, it would be relevant to consider the amendment introduced in sub-section (3-B) by Act 66 of 1971. This provision, as it stood before amendment, provided that "there shall be paid to that person such price ..... as may be specified in that order having regard to—

- (i) 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 or edible oils, and
- (ii) the price for such grade or variety of foodgrains, edible oilseeds or edible oils prevailing or likely to prevail during the post-harvest period in the area to which that order applies."

Under this provision as it stood before amendment while fixing the price the appropriate authority could take into consideration other relevant factors as well in view of the expression "having regard to" used in sub-section (3-B). With the omission of these words the price to be paid has to be either the controlled price or the price prevailing or likely to prevail during the post-harvest period and other factors cannot be taken into account. This amendment clearly

emphasises the Legislature's intention of ensuring the payment of either the controlled price or the price prevailing or likely to prevail during the post-harvest period in cases where an order under clause (f) of sub-section (2) of section 3 is made.

18. As observed earlier, in the returns no effort was made to connect the price fixed with either the controlled price or the price prevailing or likely to prevail during post-harvest period. Even during arguments the learned Advocate-General did not produce any record, from the perusal of which an inference could be drawn that the figure of Rs. 105 per quintal had been arrived at on the basis of the price prevailing or likely to prevail during the post-harvest period in the Punjab. In this situation, the only conclusion possible is that clause 4 of the Levy Order was *ultra vires* of sub-section (3-B) of section 3 of the Act. The petitions are consequently accepted and clause 4 of the Punjab Wheat Procurement (Levy) Order, 1974, is struck down as being unconstitutional and violative of sub-section (3-B) of section 3 of the Essential Commodities Act. Considering the complicated nature of the question involved, the parties are left to bear their own costs.

R. N. MITTAL, J.—I agree.

N. K. S.

#### INCOME-TAX REFERENCE

*Before Man Mohan Singh Gujral and Rajendra Nath Mittal, JJ.*

THE COMMISSIONER OF INCOME-TAX HARYANA, H. P. & DELHI, III NEW DELHI,—*Applicant.*

*versus*

M/S BEHARI LAL PYARE LAL AMBALA CITY,—*Respondent.*

Income Tax Reference No. 39 of 1973

July 3, 1975.

*Income Tax Act (XLIII of 1961)—Sections 2(24)(v), 4, 5, 41(1) and 271(1) (c)—Non-disclosure of 'deemed income' under section 41(1)—Whether attracts penalty.*