

Before B. S. Dhillon and S. S. Dewan, JJ.

JAI BHARAT ETC—Petitioners.

versus

STATE OF HARYANA and others—Respondents.

Civil Writ Petition No. 922 of 1979.

November 8, 1979.

Essential Commodities Act (X of 1955)—Sections 3 and 5—Haryana Cold Storage (Licensing Regulation) Order, 1979—Clauses 2(a) and 18—Constitution of India 1950—Articles 14 and 19(1)(g)—Regulation Order—Whether beyond the scope of section 3(1)—Section 3(1)—Whether envisages an order only in relation to a specific essential commodity—Such order—Whether beyond the scope of delegated powers of the State Government—Interpretation of statutes—Interpretation leading to absurdity to be discarded—State Government—Whether has power to regulate storage charges—Formation of opinion by the State Government under section 3(1)—Sufficiency of material therefor—Whether can be gone into by the High Court—Clause 18 of the Order—Whether lays down sufficient guide-lines for the fixation of cold storage charges—Such clause—Whether violative of Article 14—Fixation of cold storage rates—Whether violative of Article 10(1)(g)—Extent to which courts can interfere with such fixation—Power of the Central Government delegated under section 5 to the State Government—Clause 18 of the Order—Whether delegates this power further to another agency.

Held, that a bare reading of the provisions of section 3 of the Essential Commodities Act, 1955 would show that if the Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. From this provision it cannot be inferred by any stretch of imagination that the Legislature intended while enacting the said provisions that the concerned Government shall issue an order *qua* each of the essential commodities separately. The object of enacting the provision is to see that the essential commodities are made available to the citizens at reasonable rates and that the same may be distributed equitably. In a given case, the Government may form its opinion in relation to a particular essential commodity and at other times the opinion may be formed regarding a number of other essential commodities. The regulation Order has been issued with a view to regulate charges for storing food-stuffs in the cold storages which

step ultimately affects the price of the essential commodities, and it cannot, therefore, be said to be beyond the scope of section 3(1) of the Act. (Para 7).

Held, that in clause 2(a) of the Haryana Cold Storage (Licensing Regulation) Order, 1979 "agricultural produce" has been defined to include food-stuffs, etc. but keeping in view the provisions of the Act and the other relevant provisions of the order, the word 'includes' can safely be read as 'means'. It is obvious that the Central Government delegated its powers to the State Government under section 5 of the Act regarding food-stuffs only and the regulation Order having been issued after obtaining the prior approval of the State Government should be construed so as to be within the ambit of the power conferred upon the State Government. It is well settled that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose of the Legislature may reasonably be given, if necessary, even by modification of the language used. The purpose of the Order is to regulate the storing of food-stuffs in the cold storages. The provisions of the Order and the notification issued by the Central Government under section 5 of the Act delegating its powers to the State Government clearly go to show that the State Government was delegated power *qua* food-stuffs only and it was with this object that the regulation Order had been made. Thus, if the word 'includes' is read as 'means' the provisions of the Order cannot be held to be beyond the scope of the powers of the State Government conferred upon it under section 5 of the Act. (Paras 8 and 9).

Held, that the provisions of section 3 of the Act cover a very wide jurisdiction. The object for exercising powers under this section is for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fair price and the power extends to provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. It cannot be disputed that the charges paid for storing the food-stuffs in the cold storage have to be added to the ultimate price of the essential commodity. With a view to ensure that the essential commodities are available at fair prices, regulation of the cold storage charges is essential and is one of the steps which will certainly help in ensuring fair price of the essential commodities. The State Government, therefore, has the power to regulate such charges.

Held, that formation of opinion by the Government under section 3(1) of the Act is subjective and it is not open to the High Court to look into the adequacy or inadequacy of the material on the basis of which such opinion is formed. So long the formation of the

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opinion or the satisfaction of the Government is based on some relevant material and if on that material a reasonable person could come to the conclusion that the opinion or the satisfaction could be recorded, the High Court will not look into the sufficiency or insufficiency of the material. (Para 13).

Held, that the power given to the State Government under clause 18 of the regulation Order to fix cold storage charges is neither arbitrary nor violative of Article 14 of the Constitution of India. If the provisions of section 3 of the Act are kept in view, there are sufficient guide-lines for the State Government to fix the cold storage charges. The regulation Order has been issued under section 3 of the Act and while exercising powers under this order it is obvious that the State Government has to have reference to the provisions of section 3 of the Act wherein sufficient guide-lines have been provided for making a requisite order. Section 3 of the Act has been held to be valid and does not suffer from the vice of excessive delegation. The provisions of clause 18 of the regulation Order are, therefore, not arbitrary and sufficient guide-lines have been provided in section 3 of the Act and clause 18 has to be read in its context. (Para 14).

Held, that was on the basis of all relevant material on the file that the State Government fixed the cold storage charges and it cannot be said that the same are based on no material or have been fixed without application of mind. Moreover, the purpose of the provisions of section 3 of the Act is to ensure the availability of essential commodities to the consumers at fair price and though patent injustice to the producer is not to be encouraged, a reasonable return on investment or a reasonable rate of profit is not the *sine qua non* of the validity of the action taken in furtherance of the powers conferred by section 3(1) and section 3(2) (c) of the Act. The interest of the consumers has to be kept in the fore-front and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration. The Parliament having entrusted the fixation of price to the expert judgment of the Government, it would be wrong for the High Court to examine each and every minute detail pertaining to the Government decision. The Government is entitled to make pragmatic adjustments which may be called for by particular circumstances and the price control can be declared unconstitutional only if it is patently arbitrary, discriminatory or demonstrably irrelevant to the policy which the Legislature is free to adopt. The interest of the producer and the investor is only one of the variables in the constitutional calculus of reasonableness and the court ought not to interfere so long as the exercise of Governmental power to fix fair price is broadly within the zone of reasonableness. (Para 16).

Held, that merely because under clause 18 of the regulation Order the State Government Government has been empowered to

issue a notification separately fixing the rates of cold storage, it cannot be said that the State Government has sub-delegated its powers to itself in another capacity. If the rate of cold storage was fixed in the order itself, the same was not bad in law and if it was merely provided under clause 18 that a separate notification will be issued, this will not denude the State Government of the power with which it is vested. There is, therefore, no sub-delegation of power by the State Government to itself while enacting clause 18 of the order. (Para 17).

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

- (i) *clause 18 of the 1979 Order and also Notification annexure P-2 be declared a nullity and be quashed.*
- (ii) *the whole of the 1979 Order be declared ultra vires, beyond the jurisdiction of the State Government and be set aside ;*
- (iii) *the fixation of the storage price by notification annexure P-2 at Rs. 10 per bag be declared a nullity and be quashed ;*
- (iv) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued ;*
- (v) *the record of the case be ordered to be sent for ;*
- (vi) *the cost of the petition be awarded to the petitioners ;*

It is further prayed that during the pendency of the writ petition the operation of the impugned order be stayed.

It is further prayed that in any case the petitioners be permitted to charge the agreed rates during the pendency of the writ petition.

It is further prayed that the condition of attaching original copies of the annexures and issuance of notices to the respondents in advance, as required under the High Court Rules and Orders, be dispensed with, under the circumstances of the case.

Kuldip Singh, Bar-at-Law with D. S. Bali, and Vinod Sharma, Advocates, for the Petitioner.

B. S. Gupta, Advocate, for A. G. Haryana.

S. C. Sibal, Advocate, for Respondent Nos. 3 & 4.

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JUDGMENT

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(1) In this petition under Articles 226 and 227 of the Constitution of India, the vires of Clause 18 of the Haryana Cold Storage (Licensing and Regulation) Order, 1979 (hereinafter referred to as the Order), are sought to be assailed. All the petitioners in the writ petition are the proprietors of Cold Storages situate at Shahbad Markanda District Kurukshetra, in the State of Haryana. The vires of Clause 18 of the Order are being impugned on various grounds which will be mentioned in the subsequent paragraphs of the judgment.

(2) The provisions of section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act) are as follows:—

“3. *Powers 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.

“3(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

- (c) for controlling the price at which any essential commodity may be bought or sold;
- (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity.
- (e) * * * * *

The provisions of section 5 of the Act are as under:—

“5. *Delegation of powers:* The Central Government may, by notified order, direct that the power to make orders or issue notification under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, 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.”

(3) Under the provisions of section 5 of the Act, the Union Government issued Notification, dated 20th June, 1972, which is as follows:—

“G.S.R. 316(E).—In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that the powers conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii), and (j), of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions:—

- (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;

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(2) that before making an order relating to any matter specified in the said clauses (a), (e) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation or transport of any foodstuff, under the said clause (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.

(4) In view of the powers conferred of the Central Government under Section 5 of the Act into the State Government by Notification, dated 20th June, 1972, the Haryana Government issued the impugned Order,—*vide* Notification, dated 3rd March, 1979. The opening words of the Order are as follows:—

“No. GSR 21/C-10/55/S. 3/79.—In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 read with the Government of India Notification No. G.S.R. 316(E), dated the 29th (20th) June, 1972, and with the prior approval of the Central Government, the Governor of Haryana hereby makes the following Order, namely:—

* * * * *

Sub-clause (a) of Clause 2 of the Order is in the following terms:—

“2. In this Order, unless the context otherwise requires,—

(a) “Agricultural produce” includes foodstuffs being the product of agriculture or horticulture (including potatoes), animal husbandry, poultry or pisciculture and any other foodstuffs made wholly or partly from any of them;

(b) * * * * *

(5) Clause 3 of the order provides that no person shall carry on the business of storing any agricultural produce in a cold storage

except under and in accordance with the terms and conditions of a valid licence. The other clauses of the Order deal with the procedure for the grant of such licences. Clause 18 of the Order is as follows:—

- “18. (1) Notwithstanding any contract to the contrary entered into whether before or after the commencement of this Order the licensee shall not levy for any period after the commencement of this Order storing charges exceeding the charges notified against each of the agricultural produce by the State Government in the official Gazette under this clause.
- (2) The State Government may, by a subsequent notification in the Official Gazette revise the cold storage charges if on a consideration of the cost of storage and other relevant factors, it so thinks fit.
- (3) For the purpose of sub-clause (1), where any agricultural produce was stored before the commencement of this Order and storing charges in excess of those notified by the State Government under sub-clauses (1) and (2) above were agreed to for the entire period of storage, but remained wholly or partly unpaid till such commencement, the payment so remaining to be made shall be subject to the condition that licensee shall be entitled to storing charges for the period before the said date at the agreed rate after spreading the agreed rate over the entire period of actual storage *pro rata* on a daily basis, and to storage charges for the period beginning from the said date at the maximum rate as notified by the State Government after spreading the said rate over the period specified in the notification *pro rata* on daily basis.
- (4) The storage charges as notified by the State Government under clause 18 shall include charges for labour involved in weighing the agricultural produce or in carrying it from the precincts of the cold storage where the procedure is unloaded by the hirer to the cold storage and in carrying the goods back from the cold storage to the precincts and unfilling, drying and filling for purposes

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or return and no separate charges shall be levied on any such account whatsoever."

(6) In exercise of the powers conferred by sub-clause (1) of Clause 18 of the Order and all other powers enabling him in this behalf, the Governor of Haryana fixed the maximum storage at the rate of Rs 10 per bag weighing upto 85 Kgs. for the entire period from 5th March, 1979 to 30th November, 1979, or part thereof. This rate was prescribed by a Notification dated 5th March, 1979, copy of which is Annexure 'P-2' with the writ petition. The said Notification has also been impugned in this writ petition.

(7) The contention that the Order is beyond the scope of section 3(1) of the Act, is without any merit. It has been contended that an order under section 3 of the Act can be issued in relation to a named "Essential Commodity" and a general order concerning the food-stuff which includes many essential commodities, is not permissible in law to be issued. We are unable to agree with this contention. The bare reading of the provisions of section 3 of the Act would show that if the Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. From the provisions referred to above, it cannot be inferred by any stretch of imagination that the Legislature intended while enacting the said provisions that the concerned Government shall issue an order *qua* each of the essential commodities separately. The object of enacting the provision in question is to see that the essential commodities are made available to the citizens at reasonable rates and that the same may be distributed equitably. In a given case, the Government concerned may form its opinion in relation to a particular essential commodity and at other times the opinion may be formed regarding a number of other essential commodities. Moreover, the argument is not tenable as the impugned order regulates the functioning of the cold storages. It is wholly immaterial as to which of the food-stuffs are stored in the cold storages. The impugned order has been issued with a view to regulate the charges for storing the food-stuffs in the cold storages which step ultimately affects the price of the essential commodities. This contention, therefore, is without any merit.

(8) It has further been contended that the Order is without jurisdiction as the Central Government delegated its powers to the State Government with respect to distribution or disposal of food-stuffs only, whereas the impugned Order covers a wider field, i.e. agricultural produce including foodstuffs. The argument at the face of it appears to be quite attractive, but when minutely examined, it is without any merit. It is no doubt true that in clause 2(a) of the Order, "Agricultural Produce" has been defined to include food stuffs etc., but keeping in view the provisions of the Act and the other relevant provisions of the Order, the word "includes" regarding the deposit can safely be read as "means". It may further be pointed out that the State Government issued a Notification making its intention more clear on 23rd October, 1979, in the following terms:—

"No. G.S.R. III/C.A. 10/55/S. 3/79.—In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, read with Government of India Notification No. GSR 316(E), dated the 29th (20th) June, 1972, the Governor of Haryana hereby makes the following order further to amend the Haryana Cold Storage (Licensing and Regulation) Order 1979, namely:—

1. This Order may be called the Haryana Cold Storage (Licensing and Regulation) First Amendment Order, 1979.
2. In the Haryana Cold Storage (Licensing and Regulation) order, 1979, in clause 2 in sub-clause (a) for the words "includes food stuffs", the words "means food stuffs" shall be substituted."

This Notification has been issued to make clear the intention of the State Government that the word 'includes' used in clause 2(a) of the Order shall be read as "Means". It is obvious that the Central Government delegated its powers to the State Government under Section 5 of the Act regarding food stuffs only and the said Order having been issued after obtaining the prior approval of the Central Government, should be construed so as to be within the ambit of the power conferred upon the State Government. It is well settled that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be

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discarded and an interpretation which will give effect to the purpose of the Legislature may reasonably be given, if necessary, even by modification of the language used. Reference in this connection may be made to a decision of their Lordships of the Supreme Court in *Mahadeolal Kanodia v. The Administrator General of West Bengal*, (1).

(9) It is equally well settled that if an interpretation given to a statute leads to absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. Reference in this connection may be made to a decision of their Lordships of the Supreme Court in *State of Madhya Pradesh v. M/s. Azad Bharat Finance Co, and another*, (2). As already observed, the purpose of the Order is to regulate the storing of food stuffs in the cold storage. The provisions of the Order and the Notification issued by the Central Government under section 5 of the Act delegating its powers to the State Government clearly go to show that the State Government was delegated power *qua* food stuffs only and it was with this object that the impugned Order had been made. Further it may be observed that where the language of a statutory provision is susceptible of two interpretations, the one which promotes the objects of the provision, comports best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the actual practice. Reference in this connection may usefully be made to *The State of Gujarat v. Chaturbhuj Maganlal*, (3). It may thus be seen that from whatever angle the matter may be looked at the word "includes" has to be read as "means" and if that is done, the provisions of the Order cannot be held to be beyond the scope of the powers of the State Government conferred upon it under section 5 of the Act by the Central Government.

(10) The next contention, that the State Government has no power under the Act or the Order to regulate storage charges, is again without any merit. The provisions of section 3 of the Act cover very wide jurisdiction. The object for exercising powers under this section is for maintaining or increasing supplies of

(1) A.I.R. 1960 S.C. 936.

(2) A.I.R. 1967 S.C. 276.

(3) (1976)3 S.C. cases 54.

essential commodities or for securing their equitable distribution and availability at fair price and the power extends to provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. It cannot be disputed that the charges paid for storing the food-stuffs in the cold storage have to be added to the ultimate price of the essential commodity. With a view to ensure that the essential commodities are made available at fair prices, regulation of the cold storage charges is essential and is one of the steps which will certainly help in ensuring fair price of the essential commodities. This contention is also, therefore, without any merit. Therefore, it has to be held that the impugned order is not beyond the scope of section 3(1) of the Act.

(11) As regards the next contention that the State Government has not formed opinion, as is essential under section 3(1) of the Act equally deserves to be rejected. Keeping in view the averments made in the written statement and after having gone through the relevant files, which were produced before us at the time of hearing, we are unable to agree with the contention of the learned counsel for the petitioners that the State Government had not formed the opinion before issuing the impugned Order. In paragraph No. 21 of the return it has been averred as follows:—

“The cold storage owners of the State in the wake of excess crop of potato this year, i.e., an increased production of about 1 lakh tonne, have started taking benefit of the situation and started charging exorbitant rates thus making it impossible to the producers to keep the produce in the cold stores. A situation had arisen where a number of potato producers felt it better to even destroy the produce instead of storing the same in cold storages. If such a situation was allowed to continue there was every possibility that no potato supply would have been available to the general public after the crop harvest season was over as potato being the highly perishable food stuff cannot be stored at room temperature.”

It is not disputed by the learned counsel for the petitioners and as has been laid down by their Lordships of the Supreme Court in *The Hamdard Dawakhana (Wakf), Delhi and another v. The Union of India and others*, (4), that this Court is entitled to look into the

(4) A.I.R. 1965 S.C. 1167.

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Government files with a view to find out whether there was relevant material before, the State Government for the formation of its opinion or not. Consequently, we were referred to the files and we find that on 11th January, 1979, the Director of Agriculture, Haryana, wrote to the Commissioner and Secretary, Government of Haryana, Agriculture Department, informing him about the exorbitant increase of Cold-storage charges by cold storage owners due to bumper potato crop and stressing upon him the need for immediate issuance of Cold Storage Order under the Essential Commodities Act, fixing reasonable cold storage charges. There are a number of press cuttings pasted on the file which showed that the potato growers were being put to a great hardship by the cold storage owners as they demanded exorbitant charges. The Director of Agriculture also wrote to the Deputy Directors of Agriculture in the State seeking information on heavy rise in cold storage charges and problems of hirers due to the said increase in charges in storing their potato produce. On 19th January, 1979, a meeting of the cold storage owners and potato growers was called by the Director of Agriculture in this regard. A letter, dated 15th January, 1979, written by the Deputy Commissioner, Kurukshetra to the Director of Agriculture Haryana, informing him that the potato growers were being exploited by the cold storage owners as the cold storage charges were increased by more than 50 per cent, is also on the record. Letter, dated 2nd February, 1979, written by the Chief Parliamentary Secretary, Haryana to the Director of Agriculture, Haryana highlighting the abnormal rise in cold storage charges and adverse affect of the same on potato production, is also on the record. The potato growers also made a representation on 7th February, 1979, to the Chief Minister, Haryana, alleging that exorbitant rates of storing the potatoes in cold storages were being charged. The potato growers agitated in a leaflet printed by Kissan Samiti, Shahabad, on 8th February, 1979, against the exploitation of cold storage owners. Thereafter, the Haryana Government wrote to the Government of India stating therein about the non-opolistic trend and exploitation of hirers/potato growers by cold storage owners and seeking Government of India's permission for issuing an order, which permission was granted. After taking into consideration the averments made in the return and the material on relevant files, the portions of which have been referred to in this paragraphs of the judgment, we are left with no doubt that the State Government did form its opinion as postulated under Section 3 of the Act.

(12) In reply Mr. Kuldip Singh, the learned counsel for the petitioners, raised a new contention. It was contended that the satisfaction of the State Government was only regarding the regulation of potatoes for invoking the provisions of section 3 of the Act, but the State Government has in fact invoked the said provisions *qua* all food-stuffs. Therefore, the impugned order is bad. This contention need not be gone into in detail for the simple reason that no such averment has been made in the petition. We have very carefully gone through the petition and find that the averments made in the petition are only regarding the non-existence of satisfaction of the State Government regarding potato and no such allegation has been made that there was no satisfaction as regards the other items of food-stuff. It is obvious that whether there was requisite satisfaction of the State Government or not regarding all the food-stuffs for invoking the provisions of Section 3 of the Act, is essentially a question of fact. The petitioners did not make any such averment in the petition and, therefore, it was not necessary for the State Government to mention anything about this in the return. It was contended by Mr. Kuldip Singh, that we should send for the government files and see for ourselves that there was no satisfaction regarding any other essential quantity of food-stuff except potato. We are unable to concede to this contention which has been raised in reply, and which requires investigation of facts in the absence of any averment in the petition. This contention is, therefore, without any merit.

(13) The next contention that even if it be held that the State Government did form the opinion, yet the said opinion has been formed without any material on the record, is also without any merit. It is not disputed that it is the subjective satisfaction of the Government and it is not open to this Court to look into the adequacy or inadequacy of the material on the basis of which the Government forms its opinion. So long the formation of the opinion or the satisfaction of the Government is based on some relevant material and if on that material a reasonable person could come to the conclusion that the opinion or the satisfaction could be recorded, it is not open to this Court to look into sufficiency or insufficiency of the material. We have already referred to the averments made in the written statement and also to the files of the Government and we are unable to hold that the opinion formed by the State Government was based on no material or irrelevant material. The material

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which has already been mentioned in the earlier part of this judgment is relevant and after going through the files, which were produced before us, we have no doubt in our mind that there was material before the Government to come to the conclusion that the cold storage owners were trying to take advantage of the situation of bumper crop of potato during the year in question by charging exorbitant cold storage charges and the potato growers having agitated, the State Government after hearing the potato growers and the cold storage owners formed its opinion that it was necessary to exercise the powers conferred upon it under section 3 of the Act. This contention is also without any merit.

(14) Equally there is no merit in the contention that there is no guidelines for the executive to fix cold storage charge under Clause 18 of the Order. The contention that the powers given to the State Government to fix cold storage charges is arbitrary and violative of Article 14 of the Constitution of India, is equally without any merit. It was conceded during the course of arguments that if the provisions of section 3 of the Act are kept in view, there is sufficient guidelines for the State Government to fix the cold storage charges but it has been contended that since the Government has fixed the charges under Clause 18 of the Order, where there is no guidance given, therefore, the fixing of charges is bad. There is no merit in this contention. It may be, observed that the impugned order has been issued under section 3 of the Act. While exercising powers under the impugned Order, it is obvious that the State Government has to have reference to the provisions of section 3 of the Act wherein sufficient guidelines have been provided for making a requisite order. As regards the provisions of section 3 of the Act, its validity has been upheld by their Lordships of the Supreme Court in *Chinta Lingam and others, v. The Government of India and others*, (5) and the same has been held as not suffering from the vice of excessive delegation. Similar provisions of the Delhi Coarse Grain (Export Control) Order, 1966, were upheld to be *intra vires* by a Division Bench of the Delhi High Court in *Chuni Singh Behari Lal and others v. Union of India and others*, (6). It, therefore, cannot be held that either the provisions of Clause 18 of the Order are arbitrary or that there are no sufficient guidelines provided in section 3 of the Act, or Clause 18, which has to be read in the context of Section 3 of the Act.

(5) A.I.R. 1971 S.C. 474.

(6) A.I.R. 1968 Delhi 196.

(15) It was next contended that fixation of rate of Rs 10 for a bag of potatoes weighing 85 Kgs. for the season which runs from 5th March, 1979 to 30th November, 1979, is arbitrary and that the State Government did not properly apply its mind and had no sufficient material before it to fix the charges at that rate. It was contended that the rate so fixed is violative of Article 19(1)(g) of the Constitution of India as while fixing the rate, the cost of industry and profit margins have not been taken into consideration. We are unable to agree with this contention as well. As regards the material for forming the opinion regarding the rate so fixed, reference may be made to the averments made in paragraphs 16, 17, 18, 21, 28, 31 and 32 of the written statement which are as follows:—

“16. In reply to para 16, it is submitted that the averment of the petitioners that rate of Rs. 10 per 85 Kg. is ‘wholly uneconomical’ is untenable, misleading and baseless. In fact the cold storage charges prevailing during last two years in Haryana ranged between Rs. 7 to Rs. 9 per bag of 85 Kg. for a season. This is obvious from the fact that the Agriculture Department has paid following cold storage charges during last five years for storing its seed potato.

| Name of the Cold Storage | Rate per qtl. | Year |
|----------------------------------|---------------|------|
| M/s Kadan Cold Storage, Karnal. | 8/- | 1975 |
| M/s Kadan Cold Storage, Karnal. | 8/75 | 1976 |
| M/s Mann Cold Storage, Karnal. | 8/90 | 1977 |
| M/s Chawla Cold Storage, Karnal. | 7/25 | 1978 |
| HAFED Cold Storage, Taraori | 8/90 | 1979 |

17. Para 17 of the petition is denied. As already stated the contention of the petitioner that the rates have been fixed

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arbitrarily has no basis. In fact, before fixing the rates, the State Government has duly taken into consideration the various cost components as also the rates charged by the cold storage owners in the State during preceding years and only after that the reasonable charges, i.e., Rs. 10 per bag of up to 85 Kg. for Potato has been fixed.

18. Referring to para 18, it is submitted that at item No. 10(i) of the 'model scheme for 1000 Ton capacity cold storage' as indicated at Annexure P-3 by the petitioners, the cold storage rent has been charged at the rate of 100 per ton of potato which works out to Rs. 8.50 for 85 Kg. bag of potato. Hence, the maximum charges fixed by the State Government at the rate of Rs. 10 per bag of 85 Kg. are still on higher side and, therefore, cannot be called unreasonable or unfair in any way. Referring to para 21 of the petition, it is submitted that the alleged opinion of private consultants obtained by interested parties is irrelevant for deciding the points in issue in this petition and further no authenticity can be attached to such opinion. It is submitted that the State Government has fixed the charges at the rate of Rs. 10 per bag of 85 Kg. during 1979 after taking into consideration all the relevant facts, i.e., cost components and rates charged by the cold storage owners in the State of Haryana and some other neighbouring States. In fact the aforesaid cold storage charges being the maximum charges which may be charged by a cold storage owner, are already fixed on the higher side, thereby providing an upper ceiling of charges only. Any contingent increase in electricity, labour or any other unforeseen expenses is, therefore, very well adjustable within the ceiling. The exact level of cold storage charges that prevailed in the State during the preceding two years ranged between Rs. 7 to 9 as already submitted above in para 16. The nominal increase in electricity charges which comes out to only few paise per bag is very well adjustable within the prescribed charges of Rs. 10 per bag of 85 Kg.

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27. Para 27 is incorrect and hence denied. The Government after taking into consideration and on the basis of necessary material comprising the cold storage charges prevailing in the State and some other States during the preceding years, cost components of the cold storage charges and production and ruling price of potato, has fixed the cold storage rates mainly in the interest of maintaining the supplies of potato and equitable distribution at fair-price of the same for the benefit of the general public at large.
28. Referring to para 28, the contention of the petitioner in this para that the storage charges at the rate of Rs. 10 per bag of 85 Kg. are fixed for the entire period from February to November, is wrong. The said charges in fact have been fixed for the period of 5th March, 1979 to 30th November, 1979, or part thereof by the Haryana Government Gazette (Extra) notification No. S.O. 9/H.C.S. (R & R) O/79/CL. 18/79, dated 5th March, 1979. In this connection nothing has been done which can be said to be contrary to the prevalent practice of the cold storage business and the market conditions in the State.
31. Para 31 is denied. It is incorrect that the cold storage charges fixed by the Government do not leave any margin to the cold storage owners and are unreasonable. In fact the lowest offer of cold storage rates received by the agriculture Department, Haryana, this year (1979) was at Rs. 8.90 per qtl. for storage of seed potato for the entire season. Nevertheless rate offers are made by the intending cold storage owners after including the due margin of profit. Obviously the rates fixed by the Government at Rs. 10 per bag weighing up to 85 Kg. can, therefore, in no way be called unreasonable. There is no violation of Article 19(g) of the Constitution of India. The averments of the petitioners are misconceived and untenable.
32. Para 32 is denied. It is not correct that the State Government did not collect the factual data in respect of the cold storage charges in other states. The higher charges as quoted by the petitioners in case of West Bengal may be on account of varying capital costs required in setting

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up of cold storage in different parts of the country. The cost of land, etc. may be highest in cities like Calcutta and hence higher charges might have been fixed by West Bengal Government. In case of Uttar Pradesh the charges fixed are per quintal, instead of the per bag of 85 Kg., hence the difference. The rate fixed in Haryana is reasonable and fair.”

(16) We have also seen the relevant files and we find that on 14th December, 1978, Messrs Chawla Cold Storage, Karnal, offered to charge Rs. 8.90 per quintal for the entire season. Similarly, the Managing Director of the HAFED offered to charge cold storage charges at the rate of Rs. 8.90 per quintal including loading and unloading charges, for the season. There is material on the record collected by the Deputy Director Agriculture I.A.D.P., Karnal, giving detailed information on cold storage charges during the preceding years, electricity tariff charges and break-up of the charges. In the year 1976, the charges have been mentioned as ten to twelve rupees per season; in the year 1977 as Rs. 8 to Rs. 12 and in 1978 also the rate has been mentioned as Rs. 8 to Rs. 12. It may be mentioned that during those years the period for which these charges were fixed, was from January to November; whereas in the present case, the charges fixed are for the period from March to November. A letter written by the President of the Cold Storage Association, Karnal, to the Director of Agriculture, intimating the estimated cold storage charges, is on the record. The Department also collected information from various cold storage owners of Haryana and in the adjoining States of Uttar Pradesh and Punjab regarding the prevalent cold storage rates. It was on all this and other relevant material on the file that the State fixed the charges at the rate of Rs. 10 per bag weighing up to 85 Kgs. for the season as mentioned in the Notification. It cannot thus be successfully contended that the fixation of charges is based on no material is without application of mind. In fact all relevant material and the view-points of the potato growers and that of the cold storage owners were before the State Government and taking into consideration all the relevant material, the State Government fixed the charges. As regards the argument that the charges fixed are violative of Article 19(1) (c) of the Constitution of India, suffice it to say, that the purpose of the provisions of section 3 of the Act is to ensure the availability of essential commodities to the consumers at fair price and though patent injustice to the producer is not to be encouraged, a reasonable

return on investment or a reasonable rate of profit is not the *sine qua non* of the validity of action taken in furtherance of the powers conferred by section 3(1) and section 3(2)(c) of the Essential Commodities Act. The interest of the consumers has to be kept in the forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration. Further it is well settled that the Parliament having entrusted the fixation of price to the expert judgment of the Government, it would be wrong for this Court to examine each and every minute detail pertaining to the Government decision. The Government is entitled to make pragmatic adjustments which may be called for by particular circumstances and the price control can be declared unconstitutional only if it is patently arbitrary, discriminatory or demonstrably irrelevant to the policy which the legislature is free to adopt. The interest of the producer and investor is only one of the variables in the constitutional calculus of reasonableness and Court ought not to interfere so long as the exercise of Governmental power to fix fair price is broadly within the zone of reasonableness. Reference in this connection may be made to a decision of their Lordships of the Supreme Court in *M/s. Prasa Ice Oil Mills and another, etc. v. Union of India*, (7). Their Lordships while considering the validity of the Mustard Oil (Price Control) Order, 1977, in similar circumstances, repelled the contentions raised and upheld the impugned order.

(17) Another contention raised by the learned counsel for the petitioners is that the Control Order is bad as the State Government, who had been delegated powers under section 5 of the Act by the Union Government has further delegated, its powers which vested in the State Government in its capacity as subordinate legislative body to its other wing in the executive Government. We are unable to agree with this contention as well. It was conceded by the learned counsel that if the rate of cold storage was fixed in the Order itself, the same was not bad in law. The contention raised is that under clause 18 the State Government has been empowered to issue Notification separately and, therefore, the State Government has sub-delegated its powers to itself in another capacity. As has been conceded, the State Government has the powers to fix the rate of cold storage charges under section 3 of the Act and in the impugned order merely it provided under clause 18 that a separate notification

(7) A.I.R. 1978 S.C. 1296.

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will be issued will not denude the State Government of the power with which it is vested. Moreover, recitation of wrong source of power will not vitiate the exercise of power. Reference in this connection may be made to the decision of their Lordships of the Supreme Court in *Hukumchand Mills Ltd. v. The State of Madhya Pradesh and another*, (8). We are unable to appreciate the contention that there is any sub-delegation of power by the State Government to itself while enacting clause 18 of the Order. As already observed, the State Government, while fixing the rate under clause 18 of the Order, has to essentially look to the provisions of section 3 of the Act which is the source of power and the said provision did give sufficient guidelines to the State Government to fix the rate.

(18) The only other argument advanced by the learned counsel for the petitioners is that the Central Government having already issued the Control Order under section 3 of the Act as regards the cold storages, the State Government, a delegatee of the Central Government cannot make an order covering the same field. With a view to appreciate this connection, reference may be made to Cold Storage Order, 1954, issued by the Union Government on 3rd September, 1964, in exercise of the powers conferred by section 3 of the Act. After going through the provisions of the said order we find that the said order has been promulgated to regulate a completely different sphere and it mainly concerned with the sanitary and operational aspects of the cold storages. The cold storage charges are not the subject matter of the said Order and thus we find that the said Order covers completely a different field than the one which is covered by the impugned Order. It is, therefore, incorrect to say that both the Orders cover the same field. In fact, as already observed, both the Orders cover different fields and different aspects of the matter and thus no fault can be found with the impugned order on this ground.

(19) No other point has been pressed before us.

(20) Before parting with the judgment, we may observe that the vires of the same impugned order were sought to be questioned in the Supreme Court in S.W.P. No. 689 of 1979, *Krishna Ice and General Mills and others v. State of Haryana*. The said petition has

(8) A.I.R. 1964 S.C. 1329.

been dismissed on 21st September, 1979 by their Lordships of the Supreme Court. During the pendency of this petition,—*vide* order of the Bench, dated 11th July, 1979, we granted stay in the same terms as was granted by the Supreme Court in *Krishna Ice and General Mills' case* (supra) and further added that the petitioners shall also maintain a list containing the names and particulars of each of their customers from whom they charged the amount in excess of the prescribed limit. The said amount, according to the orders of the Supreme Court, has been deposited in a separate account. Since this petition is being dismissed, we direct that the petitioners should refund the excess amount charged by them to all their customers within a month from today and shall make a report to the Deputy Registrar (Judicial) of this Court regarding the compliance of this part of the order.

(21) For the reasons recorded above, this petition fails and the same is hereby dismissed. However, the parties are left to bear their own costs.

S. S. Dewan, J.—I agree.

H. S. B.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

GURDIAL SINGH and another—*Petitioners.*

versus

STATE OF PUNJAB and another—*Respondents.*

Civil Writ Petition No. 2483 of 1979

November 19, 1979.

Constitution of India 1950—Articles 19(1) (b) & (c), 310 and 311(2) (c)—Inexpediency of holding an enquiry in the interest of the security of the State—Satisfaction of the Governor—Nature of—Whether subjective and non-justiciable—Considerations of security of State—Whether could be the subject matter of judicial review—Disclosure of incriminating material to the delinquent official—Whether necessary when action is taken under Article 311(2) (c)—Such disclosure—Whether necessary to be made when the action is challenged in court—Member of police force indulging in demonstration and prejudicial