

CIVIL MISCELLANEOUS

Before D. K. Mahajan and R. S. Narula, JJ.

M/S SUJAN SINGH-MATU RAM,—*Petitioners*

versus

THE STATE OF HARYANA,—*Respondent*

Civil Writ No. 2777 of 1966

February 8, 1967

Essential Commodities Act (X of 1955)—Ss. 3 and 5—Punjab Essential Commodities (Regulation of Sale) Order, 1966—Whether valid and ultra vires S. 3 of the Act—Commodities enumerated in the Schedule to the Order—Whether foodstuffs.

Held, that the Punjab Essential Commodities (Regulation of Sale) Order, 1966, published on September 23, 1966, is *ultra vires* section 3 of the Essential Commodities Act, 1955, being outside the scope of the delegated authority of the State Government under section 5 of the said Act.

Held, that the commodities enumerated in the Schedule to the Punjab Essential Commodities (Regulation of Sale) Order, 1966, cannot be called "foodstuffs" in the narrower sense in which the expression is intended to refer to substances which are taken into the body to maintain life and growth and to supply waste of tissues; but they all fall within the wider connotation of the said word, in which sense it is used to mean any article used as food or drink by human beings, whether simple, mixed or compound including adjuncts such as condiments, etc. The expression "foodstuffs" has been used in sub-clause (V) of clause (a) of section 2 of the Essential Commodities Act, 1955, in the wider sense so as to include within its ambit adjuncts to nutritive food including condiments, pickles, jams, etc.

Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the notification No. G.S.R./C.A. 10/55 S. 3/66, dated 23rd September, 1966.

KULDIP SINGH WITH R. S. AMOL AND S. K. AGGARWAL, ADVOCATES, for the Petitioners.

ANAND SWARUP, ADVOCATE-GENERAL (HARYANA) WITH P. R. JAIN, for the Respondent.

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the Interveners.

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ORDER

NARULA, J.—This judgment will dispose of a bunch of thirteen writ petitions (Nos. 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2789, 2790, 2791 and 2792 of 1966), in all of which the common question of law that calls for decision is whether the Punjab Essential Commodities (Regulation of Sale) Order, 1966, published in the Punjab Government Gazette (Extraordinary), dated September 23, 1966, is valid, legal, constitutional and *intra vires* section 3 of the Essential Commodities Act (10 of 1955), or not. With the leave of the Court, Shri Bhagirath Dass, Advocate, was allowed to support the case of the petitioners as he is the counsel in civil writs Nos. 2244, 2249 and 2449 of 1966, in which also the same question is involved.

The petitioners in all these cases claim to be doing business of the purchase and sale of Haldi (turmeric), pepper, chillies, coriander, cumin, cinnamon, cloves, fenugreek, cardamon, dry mango peel (Amchoor) and dry ginger (Soonth), etc., in their original form as well as in the form of powders. Their business also includes the purchasing of the above-mentioned commodities in their original form from the open market, grinding the relevant commodities out of them and mixing them together in the powdered form for sale of the condiment known as "Garam Masala". They claim in these writ petitions that the articles above-named are not "foodstuffs" within the meaning ascribed to that expression in the Essential Commodities Act (10 of 1955) (hereinafter called the Central Act), and in the absence of a notification of the Central Government, no addition can be made to the list of essential commodities contained in sub-clauses (i) to (x) of clause (a) of section 2 of the Central Act. They have also attacked the notification in question on the ground that it outsteps the jurisdiction and authority of the Government under section 3 of the Act read with the relevant notification under section 5 thereof.

In the respective written statements of the respondents, the validity of the notification has been supported on the ground that the articles in question fall within the statutory expression of "foodstuffs" and the restrictions laid down by the notification amount to mere qualitative control of the commodities in question for which power has been duly delegated by the Central Government to the State Government under section 5 of the Central Act.

The various legal enactments, to which reference may have to be made during the course of this judgment, leading to the issue of the impugned notification may first be referred to. The Defence of India Act (35 of 1939) was passed on September 29 in that year, as an emergency measure during the Second World War. The Act was to remain in force during the continuance of the said war and for a period of six months thereafter. The ultimate date of its expiry was September 30, 1946. Section 2 of the 1939 Act authorised the Central Government to make such rules as might appear to it necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or "for maintaining supplies and services essential to the life of the community". Sub-section (2) of that section gave an illustrative list of the subjects on which such rules could be made. In exercise of the powers under that section, the Central Government framed the Defence of India Rules, 1939. Rule 81(2)(a) authorised the Central Government or the Provincial Governments to promulgate orders under that rule, *inter alia*, for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition; use or consumption of articles or things of any description whatsoever and in particular for prohibiting the withholding from sale, either generally or to specified persons or classes of persons, of articles or things kept for sale, and for requiring articles or things kept for sale to be sold either generally or to specified persons or classes of persons or in specified circumstances in order to maintain supplies and services essential to the life of the community.

As stated above, the Defence of India Act and with it the Defence of India Rules were to come to an end on September 30, 1946, by efflux of time. The Essential Supplies (Temporary Powers) Ordinance (18 of 1946) was, therefore, promulgated by the Governor General of India in exercise of power conferred by section 72 of the Government of India Act, 1935, on September 25, 1946. Sub-section (1) of section 3 of the Ordinance was in the following terms:—

"(1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may

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by notified order provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein”.

Sub-section (2) of that section gave an illustrative list of the matters which may be provided for in any order promulgated under sub-section (1). “Essential commodity” was defined in section 2(a) of the Ordinance. The commodity referred to therein included “foodstuffs” including edible oilseeds and oils. Before the expiry of the life of the Ordinance, the Essential Supplies (Temporary Powers) Act (24 of 1946) was passed by the Central Legislature. The definition of “essential commodity” and the powers conferred by section 3 of the Ordinance were maintained verbatim in the 1946 Act. The aforesaid Act was also passed for a limited period which was extended from time to time and ultimately expired on January 26, 1955. In April, 1955, the Central Act was passed with which we are directly concerned. A list of the commodities which are included in the statutory definition of “essential commodity” has been given in clause (a) of section 2 of this Act. Item (v) in clause (a) reads:—

“foodstuffs, including edible oilseeds and oils.”

Item (xi) is in the following terms:—

“any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the Constitution.”

Sub-section (1) of section 3 and the relevant part of sub-section (2) of that section are in the following terms:—

“(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. it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

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

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|-----|---|---|---|---|---|---|
| (a) | * | * | * | * | * | * |
| (b) | * | * | * | * | * | * |
| (c) | * | * | * | * | * | * |
| (d) | * | * | * | * | * | * |
| (e) | * | * | * | * | * | * |
| (f) | * | * | * | * | * | * |
- (g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles which, in the opinion of the authority making the order, are or, if, unregulated, are likely to be, detrimental to the public interest;
- | | | | | | | |
|-----|---|---|---|---|---|---|
| (h) | * | * | * | * | * | * |
| (i) | * | * | * | * | * | * |
| (j) | * | * | * | * | * | * |
| (k) | * | * | * | * | * | * |

Section 5 of the Central Act authorises the Central Government to direct by a notified order that the power to make orders 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, *inter alia*, such State Government or such officers or authority subordinate to a State Government as may be specified in the direction. In exercise of the powers conferred by section 5 of the 1955 Act, the Central Government issued notification No. G.S.R. 906, dated 9th of June, 1966 (published in the Gazette of India (Extraordinary), Part II) of section 3, sub-section (1), directing that the powers conferred on it by sub-section (1) of section 3 of the Central 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 certain conditions. The conditions referred to in the notification are not relevant for deciding these cases. A copy of the said notification of

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the Central Government, dated June 9, 1966, has been attached as Annexure 'B' to each of these writ petitions.

In exercise of the authority delegated by the Central Government by the aforesaid notification, dated June 9, 1966, the impugned order was issued by the President of India, who had assumed the functions of the State Government under Article 356 of the Constitution with effect from July 5, 1966, by a notification of that date. Amongst other things, the President of India had assumed to himself as such President, all functions of the Government of the then State of Punjab, and all powers vested in or exercisable by the Governor of that State. In the Punjab Essential Commodities (Regulation of Sale) Order, 1966 (hereinafter referred to as the impugned order), issued on September 23, 1966, "Essential Commodity" has been defined to mean the commodity specified in the schedule appended to the order. The schedule mentions the following commodities:—

1. Turmeric. 2. Pepper. 3. Chillies: 4. Corriander,
5. Cumin. 6. Cinnamon. 7. Cloves. 8. Fenugreek,
9. Cardamon. 10. Dry Mango Peel (Amchur). 11. Dry
Ginger (Soonth).

Paragraph 3 of the impugned order, the vires and validity of which have been directly attacked in these cases, and without which provision the order itself cannot stand, is in the following terms:—

- "3. No person shall, in the ordinary course of business, sell or store or offer for sale in powdered form any essential commodity or a mixture which has such commodity as an ingredient.

Explanation.—If any person who, in the ordinary course of business stores any such commodity or mixture in powdered form in quantities exceeding one kilogram, he shall, unless the contrary is proved, be presumed to have stored such essential commodity for the purposes of sale".

Stage appears to be now set for considering the rival contentions of the parties. Mr. Bhagirath Dass, learned counsel for the interveners, submitted:—

- (1) That the impugned Control Order cannot be deemed to have been issued by the Central Government, but only by

the State Government and as such it could be valid only if the Order can fall within the circumscribed limits of the notification dated June 9, 1966. (Annexure 'B') under section 5 of the Act;

- (2) that the commodities mentioned in the Schedule to the impugned Control Order are not "foodstuffs" within the meaning of that expression as used in sub-clause (v) of clause (a) of section 2 of the Central Act and inasmuch as the Central Government has not issued any notification under sub-clause (xi) of clause (a) of section 2 adding the commodities in dispute to the list contained in that clause, the State Government had no authority and jurisdiction to issue any order under section 3 in respect of the said commodities;
- (3) that the impugned order outsteps the scope of the authority of State Government under section 3(1) of the Central Act and is, therefore, *ultra vires* the Act; and
- (4) that the impugned order has placed unreasonable restrictions on the fundamental rights of the petitioners to carry on their trade and occupation which restrictions are not in the public interest generally and that, therefore, the order is violative of Article 19(1)(g) of the constitution and is not saved by clause (6) of that Article.

The opening part of the impugned notification is in the following words:—

"In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955. read with Government of India Ministry of Food, Agriculture, Community Development and Co-operation. notification No. GSR 906, dated the 9th June, 1966. the President of India is pleased to make the following Order, namely:—"

The notification clearly shows that the President of India has issued the Control Order in exercise of his State functions taken over by the presidential proclamation of July 5, 1966. under Article 356 of the Constitution inasmuch as reference to the notification.

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dated June 9, 1966 (Annexure 'B') would have been meaningless unless the delegated power from the Central Government under section 5 of the Act was intended to be exercised. If the Central Government had to issue a notification in exercise of its normal powers under section 3(1) of the Act, there would be no necessity to refer to the delegated authority conferred on the State Government under section 5 of the Act. It is, therefore, clear that the impugned order is deemed to have been issued by the State Government in exercise of its functions as a delegate of the Central Government under section 5 of the Act irrespective of the fact that the notification was issued in the name of the President of India because of the President's rule which had been imposed on the erstwhile State of Punjab under Article 356 of the Constitution with effect from July 5, 1966. This finding has two-fold effect. Firstly, the impugned order would be valid only if it is within the delegated powers conferred on the State. Secondly, nothing contained in the impugned order can be deemed to be a notification under sub-clause (xi) of clause (a) of section 2 of the Act as the adding of any article to the list of essential commodities enumerated in clause (a) of section 2 of the Central Act can only be done by the Central Government and not by the State Government. Nor is there any provision in the Act authorising the delegation of the powers of the Central Government to the State Government under sub-clause (xi) of section 2(1) of the Act to add any article to the statutory list of essential commodities. Shri Bhagirath Dass is, therefore, correct in urging that the Control Order in question has been issued by the State Government and its validity and *vires* have to be adjudged on that basis. Whether on merits the impugned order is within the statutory jurisdiction of the State Government or not will be decided by me while dealing with the fourth contention of the petitioners.

I do not, however, find much force in the second contention of Mr. Bhagirath Dass. It was fairly and frankly conceded by Shri Anand Swaroop, learned Advocate-General for the State of Haryana, that if the articles in question enumerated in the schedule to the notification do not fall within the definition of "foodstuffs" as contained in section 2(a) of the Act, then the notification has to be struck down as the delegation to the State Government has been made in the notification, dated June 9, 1966 (Annexure 'B'), only in respect of "foodstuffs".

The first question that arises in these circumstances is, whether the commodities enumerated in the schedule to the impugned Order

(hereinafter collectively called "the Scheduled Commodities") are "foodstuff" or not. Beyond adding "edible oilseeds and oils" to the expression, there is no definition of "foodstuffs" in the Central Act. The Scheduled Commodities are undoubtedly not any kind of oils or oilseeds. Are they then foodstuffs? Howsoever, vexed this question may look to be and whatever may be the scope of the expression "foodstuffs" in its narrower connotation, it has been held by the Supreme Court in *State of Bombay v. Virkumar Gulabchand Shah* (1), to include in its wider sense commodities like turmeric in section 3 of the 1946 Act which is verbatim the same as section 3 of the Central Act. Though it was initially observed in the above-said case that turmeric is a "foodstuff" within the meaning of clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944, read with section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946, it was ultimately held as follows:—

"Now I have no doubt that had the Central Government re-promulgated the Order of 1944 in 1946 after the passing of either the Ordinance or the Act of 1946, the Order would have been good. As we have seen, turmeric falls within the wider definition of "food" and "foodstuffs" given in a dictionary of international standing as well as in several English decisions. It is, I think, as much a "foodstuff" in its wider meaning, as sausage skins and baking powder and tea. In the face of all that, I would find it difficult to hold that an article like turmeric cannot fall within the wider meaning of the term "foodstuffs".

What applies to turmeric essentially applies to the other scheduled commodities as none of these articles can be called a "foodstuff" in the narrower sense in which the expression is intended to refer to substances which are taken into the body to maintain life and growth and to supply waste of tissues; but they all fall within the wider connotation of the said word, in which sense it is used to mean an article used as food or drink by human beings, whether simple, mixed or compound including adjuncts such as condiments, etc. The Supreme Court having authoritatively held in the above-said case, that in the 1946 Act the expression is used in the larger sense, that is, the sense in which the said word is often used in laws prohibiting adulteration, etc., there is no scope for the argument sought to be pressed by Shri Bhagirath Dass in this respect. I would, therefore, hold that the expression

(1) A.I.R. 1952 S.C. 335.

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“foodstuffs” has been used in sub-clause (v) of clause (a) of section 2 of the Central Act in the wider sense so as to include within its ambit adjuncts to nutritive food including condiments, pickles, jams, etc.

This takes me to the third and main argument canvassed on behalf of the petitioners by Shri Kuldip Singh, Advocate, and adopted on behalf of his clients by the learned counsel for the interveners. The argument is three-fold and is categorised under the heading “the impugned order is outside the scope of the statutory authority of the State Government under section 3 of the Central Act read with the notification, dated June 9, 1966, under section 5 of that Act.” Mr. Anand Swaroop, the learned Advocate-General, firstly argued that the impugned order is covered by the following words extracted from clause (g) of sub-section (2) of section 3 of the Central Act:—

“An order made under sub-section (1) of section 3 may provide for prohibiting any class of commercial transactions relating to foodstuffs which, in the opinion of the authority making the order, are likely to be detrimental to the public interest.”

Whether what has been prohibited by the impugned order can be called a “commercial transaction” or not, need not be gone into in the case before us, as it has been fairly conceded by the Advocate-General that the order is deemed to have been passed by the State Government, and cannot be upheld if it does not fall within the four corners of the notification, dated June 9, 1966, whereby the powers of the Central Government under sub-section (1) of section 3 have been delegated to the State Government to the extent indicated in the said notification. On a mere reference to the said notification (Annexure ‘B’), it is apparent that the only powers which have been delegated by the Central Government to the State Government, are to provide for matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (if) and (j) of sub-section (2) of section 3, and that the power under clause (g) of that sub-section has not been delegated to the State Government. Mr. Anand Swaroop has thereupon conceded that the impugned order cannot possibly fall under any of the clauses referred to in the notification under section 5 of the Central Act. The State cannot, therefore, justify the validity of the impugned order under clause (g) of section 3(2) of the Act.

There is no doubt that section 5 of the Central Act empowers the Central Government to delegate the power to make orders under

section 3, but section 5 itself lays down that no general delegation is permitted, but that the notification whereby a delegation is made must specify the matters in relation to which the powers may be exercised by the State Government. It is, therefore, apparent that the Central Government is not expected to notify under section 5 of the Central Act that all the powers vested in it under sub-section (1) of section 3, shall be exercised by a particular State Government. The notification under section 5 would be valid only if it specifies the matters in relation to which and the conditions, if any, subject to which powers under section 3 are authorised to be exercised by the State Government. The notification, dated June 9, 1966, is valid as it has clearly specified the matters in relation to which the delegation has been made. As the matter covered by the impugned order does not admittedly fall within any of the various clauses of sub-section (2) of section 3 specifically referred to in the notification under section 5 of the Act, the impugned order is liable to be struck down on that short ground. The delegation has further been circumscribed in the notification in question by the powers in question being permitted to be exercised by the State Government "in relation to foodstuffs" only and not in relation to other essential commodities enumerated in clause (a) of section 2 of the Central Act. But the attack of the learned counsel for the petitioners on the impugned order in question on the ground that it outsteps the notification of delegation, as the order is made to relate to articles other than foodstuffs, cannot be sustained for the reason that I have already held that the scheduled commodities do fall within the expression "foodstuffs", as used in the Act.

The third line of attack under the above-said heading was to the effect that though it is the opinion of the Central Government (and in case of delegation, the opinion of the authority to which the powers are delegated) which alone would justify the passing of an order under section 3 of the Act, the opinion, in question must be to the effect that it is necessary or expedient to make the relevant provision by a notified order only:—

(i) for maintaining or increasing supplies of any essential commodity;

or

(ii) for securing equitable distribution and availability at fair prices of the essential commodity in question.

It was argued that the opening words of sub-section (1) of section 3 of the Central Act, leave no doubt in the matter and that the

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authority of the Government to provide for regulating or prohibiting the production, supply and distribution of any essential commodity and trade or commerce therein, is exercisable only if it is shown that the appropriate Government has formed either of the two opinions quoted above. Inasmuch as the impugned order does not in any manner prohibit or even purport to control the procurement, stocking and sale of the scheduled commodities in their ordinary form, but merely prohibits the keeping and sale, etc., of the very same commodities in their powdered form, it cannot possibly be argued that the impugned order can have any effect on the maintaining or increasing of the supplies of the scheduled commodities or of securing their equitable distribution or availability at fair prices. Things would admittedly have been different if the impugned order had provided that the scheduled commodities in ground form shall not be kept or sold after being mixed with any other article, or if it had provided that in *Garam Masala*, the proportion of particular commodities may be such and such. Provision to that effect would have amounted to a qualitative control of the essential commodities as distinguished from quantitative control, and could have been justified on the authority of the judgment of their Lordships of the Supreme Court in *The Hamdard Dawakhana (Wakf), Delhi and another v. The Union of India and others* (2). What happened in that case was this. In exercise of powers vested under section 3 of the Central Act, the Central Government issued the "Fruit Products Order 1955", whereunder the Hamdard Dawakhana (Wakf) was directed to maintain a minimum percentage of fruit juice in the final product of the Wakf's fruit syrup known as 'Rooh Afza'. The notification was attacked in the Circuit Bench of the Punjab High Court at Delhi, by way of a writ petition, which was dismissed. On appeal to the Supreme Court, various contentions were raised on behalf of the Hamdard Dawakhana. Their Lordships of the Supreme Court held, upholding the validity of the order impugned in that case, that there could be little doubt that the power to regulate the production of an essential commodity will include the power to regulate the production of essential commodities which may operate either qualitatively or quantitatively. In other words, it was held, that in regard to essential commodities, the Central Government is given the power to direct how any particular essential commodity should be produced and in what quantity. The Supreme Court further emphasised that the said power can be exercised only if the condition precedent prescribed by sub-section (1) of section 3 of the Central Act, is satisfied, that is, only if the Central Government is of

(2) A.I.R. S.C. 1167.

the opinion that it is necessary or expedient to regulate the production of any essential commodity for one of the purposes mentioned by the said sub-section. The learned Advocate-General has strongly relied on the aforesaid judgment of the Supreme Court. I, however, regret to be unable to decide the present case in favour of the State on the basis of the said judgment, as in my opinion, the impugned order has not imposed any restriction on the petitioners which can be imputed to the object of regulating the qualitative production of the scheduled commodities. The scheduled commodities remain the same and but for the change in the form no other change is effected in them by being merely ground or powdered. The learned Advocate-General stressed that the real object of the State in promulgating the impugned order was to stop widespread adulteration in the ground form of the scheduled commodities. No such averment appears to have been made in the return to the rule. In any event, the said object could effectively be achieved by taking the requisite proceedings in appropriate cases under section 7 of the Prevention of Food Adulteration Act (37 of 1954), which is in the following terms:—

“7. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; or

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.”

I am not oblivious of the fact that it is no valid argument to urge that merely because a particular action can be more appropriately taken under one statute, it should not be permitted to be taken under another if it is otherwise within the scope of the other Act. But if the

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impugned order does not fall within the Act in question, the Court has no option but to strike it down.

After carefully weighing the pros and cons of the matter and the lengthy arguments addressed to us by the counsel for both the sides on the point, I am of the considered opinion that the impugned order is not capable of achieving any of the objectives enumerated in the opening part of sub-section (1) of section 3 of the Central Act, which objectives are conditions precedent for the exercise of the power under that provision. On this additional ground, the impugned order is invalid as being outside the scope of section 3 itself.

In the view I have taken of the two heads of arguments under the third main contention of the learned counsel, it does not appear to be necessary to deal with the larger question pressed before us on behalf of the petitioners, to the effect that the restriction imposed by the impugned order on the fundamental right of the petitioners under sub-clause (g) of clause (1) of Article 19 of the Constitution to carry on any trade or business, is not in the interest of the general public and is also not reasonable, and is, therefore, not saved by clause (5) of Article 19. Since paragraph 3 of the impugned order is *ultra vires* the Central Act itself and is outside the scope of the authority of the State Government delegated to it by the Central Government under section 5 thereof, the said paragraph has to be and is hereby struck down as invalid and non-existent in the eye of law. The impugned order itself cannot survive paragraph 3 thereof as that is the pivot around which it is woven. The other provisions of the order are not separable from the impugned paragraph 3. The Punjab Essential Commodities (Regulation of Sale) Order, 1966, published on September 23, 1966, is therefore, held to be *ultra vires* section 3 of the Essential Commodities Act (10 of 1965), and to be outside the scope of the delegated authority of the State Government under section 5 of the 1955 Act.

No other point has been argued before us in this case. For the foregoing reasons, all these writ petitions are allowed and the impugned order is struck down. The petitioners would be entitled to have their costs from the respondent State. Counsel's fee Rs. 50 in each case.

D. K. MAHAJAN, J.—I agree.

B.R.T.