

to face glimpse of Almighty God and after enlightenment she got inspiration to resurrect the wrecked idols and convert the place into an abode of God. On these facts, permission was granted to the construction of the temple on the condition that the site would not be put to use for a purpose other than purely religious. On the date of the order, one room for the Mandir and another room along with a verandah and a kitchen for the residence of Kalyan Mai had already been constructed which were not ordered to be demolished. It was, however, ordered that any addition to the building in future would be in accordance with the plans duly approved by the Chief Architect, Chandigarh. Even if that order was not strictly in accordance with the provisions of the Act, it cannot be said that any violation of Article 14 of the Constitution has taken place. Every case has to be decided on its own facts. The equality enshrined in Article 14 of the Constitution is before law and an order of an executive authority under an Act does not amount to law. The submission is, therefore, repelled.

(15) For the reasons given above, there is no merit in the appeals and the writ petition which are dismissed but in the circumstances, the parties are left to bear their own costs.

S. S. Sandhwalia.—I agree.

N.K.S.

CIVIL MISCELLANEOUS

Before S. S. Sandhwalia and K. S. Tiwana JJ.

M/S. DHANNA MAL SEHAJ RAM AND OTHERS,—
Petitioners.

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 6372 of 1974.

February 14, 1975.

The Essential Commodities Act (X of 1955)—Sections 3 and 5—Constitution of India 1950—Articles 19(1) (f) and (g) and 31(3)—Delegated legislation—Whether can withdraw an earlier undertaking given by similar legislation and acted upon by others—The

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Punjab Wheat Dealers Licensing and Price Control (Fourth Amendment) Order 1974—Whether violative of Article 19—Such Order—Whether had to be reserved for consideration of the President under Article 31(3)—Fixation of maximum price of wheat under this order—Whether violates section 3(3B).

Held, that the legislature itself has plenary powers to make laws within the bounds laid by the Constitution. Its powers to legislate are relatively unfettered. If by previous legislation any undertaking or representation has been held out by a statute upon which the citizen may have acted, nevertheless the legislature is entitled to withdraw or retract from the same. The legislature itself has the power to reverse an earlier legislation and is not necessarily bound by the same. On principle, there is no difference between direct legislation and delegated legislation. Delegated legislation after being duly promulgated and within the powers conferred by the parent statute is of equal efficacy and authority. What the legislature can do itself may also be done through a delegate provided adequate guidelines and policy within which such subordinate legislation is to be made are laid down. If the very source from which the right is sought stems from delegated legislation then a similar delegated legislation can alter, amend or reverse the earlier provision. Thus delegated legislation can retract or withdraw a solemn undertaking given earlier in the same mode and manner which has been relied and acted upon by others.

(Paras 32 and 33).

Held, that section 3 of the Essential Commodities Act 1955 authorises in the widest terms for regulating or prohibiting the production, supply and distribution of essential commodities and the trade and commerce therein. Clause (c) of sub-section 2 of this section in terms provides for the controlling of the price at which any essential commodity may be bought or sold. Clause (f) in particular empowers the State to require any person holding stocks in any essential commodity to sell the whole or a specified part thereof to the Central Government or a State Government or an Officer or agent of the State Government, etc. It cannot, therefore, be said that the Punjab Wheat Dealers Licensing and Price Control (Fourth Amendment) Order 1974 is either violative of Article 19(1) (f) and (g) of the Constitution of India or that it travels beyond the scope and powers conferred on the Government by section 3 of the Act.

(Para 33).

Held, that the fixation of the price of wheat under the Punjab Wheat Dealers Licensing and Price Control (Fourth Amendment) Order 1974 is made under the power conferred by section 3(2)(c) of

the Act which provides for the promulgation of an order for controlling the price at which any essential commodity may be bought or sold. This fixation of the price is not merely *qua*, the excess stock of the wholesalers or of levy wheat alone but is one of general application. Section 3(3-B) does not provide for the fixation of a price which is to be of general application but is of limited import attracted only in regard to persons who have been required to sell their stocks to the Government or its nominee. The general power given under section 3(2)(c) of the Act is not hedged in with any conditions of determining the post-harvest price, etc. The fixation of the maximum price is a mere continuation and corollary of the price fixed by the Wheat Price Control Order 1974. There is no simultaneous acquisition and fixation of the price by the Fourth Amendment Order and if the price is fixed under section 3(2)(c) then section 3(3-B) of the Act would not be attracted. Thus the fixation of maximum price of wheat under the Fourth Amendment Order does not violate section 3(3-B) of the Act.

(Para 45).

Held, that the Essential Commodities Act is a central statute and section 3 thereof empowers the Central Government to issue orders within the scope of the said provision. Section 5 of the Act clearly provides for the delegation of the legislative power and provides that the Central Government may by notified order direct that the power to make orders or issue notifications under section 3 may also be exercisable by the State Government or such officer or authority subordinate to a State Government. The Central Government has delegated the legislative power under section 5 to the State Government, who in turn issued the orders under the Act. The Act of an agent is the act of the principal and, therefore, when the State Government acts as a delegate of the Central Government then it must be deemed as the act of the Central Government itself. The Fourth Amendment Order is, therefore, in the eye of law a central legislation and thus not subject to the restrictions imposed by sub-clause (3) of Article 31 of the Constitution of India.

(Para 48).

Petition under Articles 226 and 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 Fourth Amendment Order, dated 22nd October, 1974 contained in Annexure P-4 to the petition and directing the respondents to issue the required permits for export of the levy free wheat to the petitioners without undue delay and further praying that an ad interim order be issued staying the operation of the order Annexure P-4 till the decision of the writ petition and the petitioners be exempted from serving the notices of motion on the respondents and exemption from filing the certified copies of the Annexures P-1 to P-5 be also granted.

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Anand Swarup, Advocate with K. G. Chowdhry, Advocate, *for the petitioners.*

K. P. Bhandari, Advocate with I. B. Bhandari, Advocate, *for the respondents.*

JUDGMENT

SANDHAWALIA, J.—(1) In this set of writ petitions the primary challenge is directed against the Wheat Dealers Licensing and Price Control (Fourth Amendment) Order, 1974, hereinafter referred to as the Fourth Amendment Order, and the acquisition of the stocks of wheat held by the petitioners thereunder.

(2) It suffices to advert to the facts in Civil Writ Petition No. 6372 of 1974. Therein it is averred on behalf of thirty-two petitioners that in the year 1973 the Central and the State Governments took up policy decision to take over the wholesale trade in wheat. Consequent thereto the Punjab Wheat Dealers Licensing and Price Control Order of 1973 was promulgated. This, in effect, excluded the wholesale dealers from trading in wheat. However, certain difficulties were encountered in the implementation of the wheat trade take-over policy and in March, 1974, again a policy decision to reverse the same was taken and in order to effectuate the same the State of Punjab issued the Punjab Wheat Dealers Licensing and Price Control (First Amendment) Order, dated the 18th of April, 1974. Thereby the wholesale dealers and retail dealers, respectively were sought to be brought in the field of grain trade and definitions pertaining thereto were inserted in the order abovesaid. While certain limitations on the stocks of wheat which could be held by the different categories of dealers were imposed, the quantity allowed to be held in store with the wholesale dealer was up to a maximum of 2,500 quintals at any one time. Simultaneously with the First Amendment Order, the State Government also promulgated the Punjab Wheat Procurement (Levy) Order of 1974. It is the petitioners' case that the abovesaid two orders issued on the 18th of April, 1974, were made and issued under a scheme framed by the Government of India in consultation with the State Governments, according to which the private dealers were again allowed to deal in the wholesale trade of wheat expressly on the condition that if they sold to the Government or its agency fifty *per cent* of the stocks held by them or to be subsequently purchased by them at a fixed price of Rs. 105 per quintal, then they would

be entitled to sell the remaining fifty *per cent* in the open market or export it outside the State under export permits to be issued by the Director, Food and Supplies, Punjab. The relevant extract from the scheme issued by the Director, Food and Supplies, Punjab, Chandigarh, to all the District Food and Supplies Controllers in the State is Annexure 'P-1' to the petition.

(3) Apart from the private wholesale dealers two big corporations, namely, Punjab State Co-operative Supply and Marketing Federation and the Punjab State Civil Supplies Corporation were also duly licensed as wholesale dealers and they also purchased wheat in the open market and delivered fifty *per cent* thereof to the Government or its agencies under the Levy Order. In pursuance of the First Amendment Order and the Levy Order as also the scheme framed by the Government the petitioners averred that they started purchasing large stocks of wheat arriving in the markets during the post-harvest season of April/May, 1974 onwards. The petitioners claim to have delivered fifty *per cent* of the wheat purchased by them to the State Government or its agencies in compliance with the levy order and now hold in stock about 30,370 quintals of wheat as detailed in Annexure 'P-2' to the petition.

(4) The method of purchase of wheat is averred to be in accordance with the provisions of the Punjab Agricultural Produce Marketing Act of 1961. Open auctions of various lots of wheat are held in the market yards and the highest bidder can purchase the quantities so put to auction. The petitioners' case is that the two semi-government corporations above were also purchasing wheat in stiff competition with them apart from the open rivalry between the private traders as well with the result that the petitioners have been purchasing wheat up to Rs. 130 per quintal. After delivery of the fifty *per cent* of the stocks purchased to the Government the cost price of the levy free wheat instock with the petitioners would come to be as high as Rs. 170 per quintal. An example of the cost price of free wheat when purchased at the rate of Rs. 127 per quintal is worked out in Annexure 'P-3' to arrive at a figure of Rs. 167.60 paise per quintal.

(5) The core of the petitioners' case is that the entitlement of the wholesalers to hold stocks up to 2,500 quintals each, to deliver fifty *per cent* of the purchased wheat as levy and the right to dispose of the remaining quantity in the open market or to export the

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same out of the State of Punjab were all integral parts of one scheme and understanding between the State Government and the wholesalers. It is pointed out that by delivery of levy wheat to the Government at the figure of Rs. 105 per quintal they sometimes suffered a loss of nearly thirty rupees per quintal. This was only on the clear understanding that the remaining quantity would be allowed to be disposed of in the manner abovesaid and the State Government after having taken the advantage of securing the levy wheat could not go back on the clear understanding given to the petitioners in this regard.

(6) The procedure for the export of stocks to areas outside the State of Punjab and the issuance of necessary permits therefor for the supply of railway wagons has then been detailed in paragraph 8 of the petition. It is pointed out therein that either because the non-availability of wagons or owing to the non-issuance of the necessary export permits some stocks had accumulated in the hands of the petitioners for which they were not at all to be blamed and to say the least there was no attempt whatsoever on the part of the petitioners to hoard wheat.

(7) The petitioners' grievance is that though the Government of India has not in anyway as yet reversed the new wheat trade policy yet the respondent State of Punjab stopped issuing export permits with effect from the 23rd of August, 1974, and thereafter on the 22nd of October, 1974, issued the impugned Fourth Amendment Order whereby the class of wholesale dealers stands virtually abolished, except in name. By the Fourth Amendment Order, the entitlement of stocks by the wholesale dealers has been slashed from 2,500 quintals to a mere 100 quintals of wheat and further a licensed dealer has been debarred from selling any wheat to another licensed dealer and the sale is permitted to be made only to consumers. Particularly the petitioner-wholesale dealers are thereby required to sell all their stocks of wheat above 100 quintals to the Government at the rate of Rs. 139 per quintal only.

(8) The petitioners averred that the respondent-State having secured the material advantage itself on the basis of the undertaking given to the petitioners has now resiled and gone back thereon before the petitioners could gain the corresponding and complementary advantage of selling their stocks in the open market or

exporting the same out of the State. On the other hand the two State-aided Corporations were being issued permits to export wheat outside the State of Punjab whilst the petitioners were completely debarred to do so and thus there has been a hostile discrimination against the petitioners. The immediate grievance is the issuance of notices like Exhibit P. 5 by the Food and Supplies Controllers directing the petitioners to hand over their stocks of wheat in excess of 100 quintals on pain of punitive action against them. The Fourth Amendment Order and the consequential action taken by the State has, therefore, been impeached on a large variety of grounds to which reference follows hereafter.

(9) Of the three preliminary objections taken on behalf of the respondent-State of Punjab, the only one pressed was that in view of Article 358 of the Constitution and the continuation of the emergency within the country the impugned order could not be challenged on the basis of its alleged violation under Article 19 (1) (f) and (g) of the Constitution. On merits, the broad factual position is not put in dispute. It was, however, denied on behalf of the respondent that there was tough common competition between public wholesale licensed dealers and the private wholesalers because the former were purchasing wheat within certain limits of rates while no such limits were applicable to the private wholesalers. The two State Corporations made purchases of about 5.26 lakh tons up to 23rd May, 1974, within the maximum limit of Rs. 108 per quintal whilst the private traders during the same period purchased about 1.95 lakh tons at a slightly higher rate than the above but not abnormally higher. It is admitted that from 23rd May, 1974 onwards the maximum price paid by the Corporations was up to Rs. 111 per quintal for good variety of wheat. The reason for lower purchases by private wholesalers was suggested to be the fact that there was the general Railway strike during which wagons were not available to them for movement of levy free stocks. But soon after the 5th of June, 1974 when wagons became available, the private wholesalers began making much larger purchases and thereupon the Government of India issued the Wheat (Price Control) Order, 1974 (Annexure R. 2 to the return) whereby the inter-State trade price of wheat was restricted to a maximum of Rs. 150 per quintal. It is the case of the respondent-State that if the upper limit of the export price fixed by the abovesaid Order was to be maintained, the petitioners could not purchase wheat at higher prices within the State. In case they did so and charged the price from the purchasers of the deficit States

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at a rate higher than Rs. 150 per quintal then such a transaction was patently illegal and it is the case of the State that shady deals involving payments under the table in this regard were in fact made. It was because of these malpractices that the State Government suspended the issuance of export permits to the traders and the allegation is that their unsocial practices had resulted in rise of wheat prices throughout the State and the country. It is alleged that complaints against the wholesalers' illegal activities were received both from the public as also from other States as well as the Government of India, and apart from this, such like dealings were resulting in a loss to the State Government in the form of market fees, sales tax, etc., apart from raising the index of inflation. It is averred that the consumers were hard hit in a situation like this and the State Government could not afford to be a helpless spectator and was compelled to take remedial steps which included the promulgation of the Fourth Amendment Order. Because of the unfair exploitation of the situation by the private dealers it is alleged that prices of wheat rose in the deficit States apart from a corresponding rise within the State of Punjab. It is alleged that the private wholesalers circumvented the maximum limit on the sale price imposed by the Government of India's Order, dated 5th of June, 1974, by paying exorbitant and unrecorded prices to the sellers of wheat in the open market and then by charging illegal prices from the consumers and traders of the importing deficit States. In the result, the consumer price of wheat within the State of Punjab and other deficit States continued to rise unabated. In order to check the malpractices and the rising trend in the prices of wheat, the Government entered into a dialogue with the representatives of the private wholesale traders in wheat. But it is averred that the persuasion by the Government to stop these mal-practices did not yield any result and in fact in the meeting held with them, the wholesalers' representatives frankly stated that they could not hold out any guarantee that the maximum sale price of Rs. 150 per quintal would not be violated by the private dealers. It was under these circumstances that the Fourth Amendment Order 1974 was issued and it is alleged that the same was amply justified by the situation created within the State.

(10) This is admitted that the stocks in excess of 100 quintals will be taken over from the wholesale dealers, but the suggestion is that the control price of Rs. 139 per quintal is adequate therefor. The position taken up by the State is that no commitment with the

wholesale dealers was made that export permits would be granted to them merely on their applications and in any case it is averred that the Government has the power to amend, modify or alter the statutory orders issued by it under section 3 of the Essential Commodities Act to meet the exigencies of the situation. It is then pointed out that the petitioners want to export wheat at Rs. 170 per quintal which is higher than the rate of Rs. 150 per quintal fixed by law and it is, therefore, obvious that they had intentions to charge an illegal price therefor. It is admitted that by virtue of the Fourth Amendment Order the State Government has eliminated the wholesalers in the trade of wheat and has further suspended the issuance of export permits from the 23rd August, 1974 in view of the malpractices indulged in by the wholesalers in general. The restrictions imposed by the Fourth Amendment Order are pleaded to be absolutely essential for securing the equitable distribution and availability of wheat at fair prices to the consumers in the country at large.

(11) It has been denied on behalf of the respondent-State that any hostile discrimination against the petitioners *vis-a-vis* the two State Corporations is either intended or necessarily results from the provisions of the Fourth Amendment Order. The price of Rs. 139 per quintal of wheat is stated to have been fixed after taking into consideration all relevant factors and it was pointed out that this does not include sales tax, price of gunny bags, transportation charges, loading into wagons and is in fact only for the naked grain ex-godown or business premises of the dealer. The legality of the impugned Fourth Amendment Order has been reiterated and it is submitted that it does not place unreasonable restrictions violative of Article 19(1)(g) of the Constitution. It is reiterated that no loss to the traders by selling wheat at Rs. 139 per quintal would be entailed because this amount would cover the entire cost on the purchase of wheat by them even after giving 50 per cent of wheat by way of levy to the Government at Rs. 105 per quintal and still leave a reasonable margin of profit to the dealers.

(12) Necessarily the relevant provisions of the impugned Fourth Amendment Order, 1974 first deserve notice *in extenso*—

1. *Short title, extent and commencement.*—This Order may be called the Punjab Wheat Dealers Licensing and Price Control (Fourth Amendment) Order, 1974.

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2. In the Punjab Wheat Dealers Licencing and Price Control Order, 1973 (hereinafter referred to as the said Order), in clause 2, for sub-clauses (b)(i), b(ii), (bb) and (bbb), the following sub-clause shall be substituted, namely:—
 - (b) 'Chakki owner' means a person engaged in grinding of wheat by stone grinders run by electric, diesel, petrol or water powers;'
3. In the said Order, for clause 4, the following clause shall be substituted, namely:—
 - '4. Restrictions on dealers (1). No dealer shall—
 - (i) sell or transfer to any person wheat in quantity exceeding five quintals at a time and shall not sell or transfer wheat to any person other than a consumer;
 - (ii) purchase in one transaction wheat in quantity exceeding one hundred quintals;
 - (iii) store wheat, at any one time, in quantity exceeding one hundred quintals;
 - (iv) sell wheat other than wheat products at a price higher than the controlled price specified in clause 12;
 - (v) sell or purchase any quantity of wheat at any place other than the principal market yard or sub-market yard declared as such under the Punjab Agricultural Produce Markets Act, 1961;
 - (2) Every dealer shall comply with the provisions of the Punjab Wheat Procurement (Levy) Order, 1974.
 - (3) The chakki-owner shall separately show the stocks of wheat of the customers brought for grinding and these will not count towards the storage limit of wheat applicable to him.'
4. In the said Order, for clause 5, the following clause shall be substituted, namely,
- '5. Disposal of stocks in excess of one hundred quintals:—
Every dealer shall sell the stock of wheat in excess of one hundred quintals, lying with him, on the date of

commencement of Punjab Wheat Dealers Licensing and Price Control (Fourth Amendment) Order, 1974, to the State Government at the controlled price specified in clause 12 and the delivery shall be given to such person or persons as may be authorised by the State Government in that behalf.

5. * * *

6. In the said Order, for clause 12, the following clause shall be substituted, namely—

'12. *Controlled Price of Wheat.*—The maximum price at which fair average quality of wheat, other than wheat products, conforming to the specifications specified in the Schedule appended to this order, may be sold shall be one hundred thirty-nine rupees per quintal:

Provided that where the wheat contains admixtures or impurities in excess of the free tolerance limits specified in the Schedule, such price shall be reduced by making deduction to the extent specified in the Schedule and in that case the reduced price shall be the maximum price for the purpose of sale.'

(13) It is apparent that the core of the attack is directed against the relevant part of clauses 3, 4 and 6 whereby a slashing reduction has been made in the entitlement of the petitioners to hold stocks of wheat, the price of wheat has been controlled at Rs. 139 per quintal and dealers have been required to sell their stocks of wheat in excess of 100 quintals to the State Government at the controlled price above-said.

(14) The main plank of the contention raised on behalf of the petitioners is the ratio of the *Union of India and others v. M/s. Anglo Afghan Agencies, etc.* (1) and the observations made therein. Mr. Anand Swaroop contended that the respondent-State had invited the wholesalers to enter the wheat trade market on a clear representation amounting to an undertaking that after the delivery of 50 per cent of levy wheat to the Governmental Agencies, the remaining quantity would be allowed to be sold in the open market or to be exported out of the State of Punjab without any limitation.

(1) A.I.R. 1968 S.C. 718.

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Counsel contended that acting on this representation, the wholesalers including the petitioners had materially altered their position by making large scale purchases of wheat at prices ranging up to Rs. 130 per quintal and thereafter duly delivered 50 per cent thereof to the State Agencies. The promulgation of the Fourth Amendment Order was, therefore, attacked as a clear breach of faith whereby the wholesalers were virtually excluded from the market and their levy free stocks far from being allowed to be disposed of in the open market or being exported out of the State of Punjab were being compulsorily acquired at an arbitrary price. It was the firm case of the petitioners that no such retraction from firm commitments made by the Government upon which the petitioners had duly acted was possible in the light of the law laid in *Anglo Afghan Agencies case*.

(15) In the context of the above-said contention the first issue necessarily is whether the respondent-State had in fact extended a representation or an undertaking of the nature which the petitioners claim. Despite the denial of the respondent-State in the pleading that any such undertaking was given it appears to me that the issue is not of mere averment by a party but one of a true construction of the statutory provisions including the schemes issued thereunder and the course of administrative conduct that followed in pursuance thereof. To fully appreciate the situation it is indeed necessary to go back a little for the legislative background of the impugned order. It is more or less a common case of the parties that early in 1973 a policy decision to take over the trading in wheat by the State was made and consequent thereto the wholesalers were totally excluded from the market. This is manifest from the Punjab Wheat Dealers Licensing and Price Control Order promulgated on the 3rd of April, 1973. Clause 4 thereof provided that no dealer shall sell or transfer wheat in a quantity exceeding five quintals at a time and further that he shall not sell or transfer the same to any person other than a consumer. Similarly the maximum quantity of wheat allowed to be stored by a dealer was not allowed to exceed 100 quintals nor was a dealer allowed to purchase wheat in quantities exceeding the said limit. Clause 5 provided for the take over or disposal of all excess stocks that may have been held by the dealers. Equally it is not in dispute that a sizeable and material change, if one may say so, a reversal of the earlier policy followed

with the promulgation of the Punjab Wheat Dealers Licensing and Price Control (First Amendment) Order, 1974, and vide clauses 3(bb) and 3(bbb) thereof, the definitions of 'retail dealer' and 'wholesale dealer' were added to the statute book. In substance the result was to bring back the wholesale dealers into the market and they were defined as persons engaged in business of purchase, sale etc., of wheat in quantities of more than five quintals, and were entitled to hold stocks as high as a limit of 2,500 quintals at one time. It is rightly the petitioners' case that the above-said provision was only one limb of an integrated policy and this is manifest from the fact that on the same date of 18th April, 1974, the Punjab Wheat Procurement (Levy) Order, 1974 was issued. Clause 3 thereof brought into force what has been conveniently called the Levy Scheme. This provided in the first instance that every licensed dealer shall sell to the Food Corporation of India, or the State Government, etc., 50 per cent of all wheat stocks held by him immediately before the commencement of the Order and thereafter similarly 50 per cent of the quantity of wheat to be purchased by him in the market was to be delivered to the State Agencies at a specified price of Rs. 105 per quintal for the naked grain. The provisions of clause 3 were also expressly declared to be applicable to co-operative and public agencies.

(16) To counter-balance and match the liability of delivering 50 per cent of the purchased wheat as levy to the State Agencies by the wholesalers, the respondent-State issued a comprehensive directive through the Director of Food and Supplies to all the District Food and Supplies Controllers in the State, etc. This has been placed on the record as annexure R-1.

(17) Now the very pre-ambule of this document notices that whereas earlier the wholesale dealers had been eliminated from the trade, the Government of India had decided that during the year 1974-75 wholesalers would now be allowed to purchase the wheat along with the public agencies and to give effect to this policy necessary statutory amendments had been made. It is unnecessary to advert to the various details with which this document is intended to deal but pointed notice of paragraphs 9, 10 and 11 thereof is inevitable. These provide that the wholesale dealers' primary liability was to contribute 50 per cent of the purchased wheat by way of levy to the Government for the Central Pool and thereafter the remaining quantity would be released by the issuance of

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necessary certificates. The relevant part of paragraph 10 deserves notice *in extenso*:—

“10. *Release Order*.—After the dealer has surrendered the levy share to the Government, the Assistant Food and Supplies Officer incharge of the mandj will issue release certificate allowing him to dispose of the balance 50 per cent in the open market or under export permits in other States. A specimen of the release certificate is enclosed as annexure III. Proper care and due precaution should be taken before issuing the release certificate.

* * *

(18) Para 11 then provided for the export procedure of wheat beyond the Punjab Food Zone. It required that the wholesale dealer shall apply in duplicate in the prescribed form, annexure IV for exporting his share of the levy free wheat to other States. The authority after satisfying itself about the details would thereafter issue the export permit in a form prescribed as annexure V. On receipt of the export permit an indent for supply of wagons was to be placed by the licenced dealers with the Station Master and subject to availability of wagons, the export was to be allowed in accordance with the permit duly issued.

(19) Now, it is the common case that from the 18th of April, 1974, onwards the above-said overall scheme continued to operate within the State of Punjab. The wholesale dealers made purchases of large quantities of wheat and after delivery of 50 *per cent* thereof by way of levy they disposed of the balance either in the open market or by way of export to other deficit States.

(20) On an overall appraisal of the previous legislative background; on the provisions of the Punjab Wheat Dealers Licensing and Price Control (First Amendment) Order, 1974; Punjab Wheat Procurement (Levy) Order, 1974; issuance of the scheme for the procurement of wheat during the year 1974-75 (Annexure R-1 to the written statement); and the course of conduct that followed thereafter the only reasonable inference flowing therefrom is that the wholesale dealers entered into the wheat trade on a clear representation and undertaking that after the delivery of 50 *per cent* of

their purchases as levy to the State they would be allowed to dispose of the rest in the open market within the State or export the same outside it. This much at least must be held in the petitioner's favour.

(21) However, we do not find it possible to accede to the further contention of the learned counsel for the petitioners that the above-said representation or undertaking included the right to dispose of the levy free wheat within the State at any price whatsoever or similarly to export the same without any limitations or regulations of its price. Firstly the respondent-State has categorically averred that at no stage was it ever expressly declared or even suggested impliedly that the wholesalers would be allowed to inflate the wheat prices without any limitations thereon. Indeed the case of the respondent is that the clearest impression and indicia were given to the wholesale traders that the overall price of wheat, both within the State and for the purposes of export therefrom, would never be allowed to cross the mark of Rs. 150 per quintal. Indeed it is Mr. Bhandari's case that the respondent-State could not possibly license or countenance any actual or intended manipulation of prices or black-marketing in a vital essential commodity, like wheat.

(22) In support of the above-said stand Mr. Bhandari has relied on a wide authority of statutory orders and directions. A reference is made to clause 4(iii) and clause 8 of the Punjab Wheat Dealers, Licensing and Price Control (First Amendment) Order, 1974, which provided that no dealer was entitled to sell wheat at a rate higher than that fixed by the Government and that the Government was entitled from time to time to fix the sale price of wheat to be charged by a dealer. Form 'B' attached to the above-said order prescribed the terms of licence of a dealer in wheat and therein it was clearly provided that such dealer shall not sell wheat at a rate higher than that fixed by the Government and shall not sell or offer to sell in any locality any wheat at a price higher than that fixed in such locality by the Central Government or the State Government, etc. Even though at that stage no actual price for wheat had been fixed within the State, Mr. Bhandari forcefully contended that these statutory provisions patently negated any suggestion that wheat trade would be allowed to operate without any price limit whatsoever.

(23) Reference has then been made by Mr. Bhandari to the prescribed form of the application for securing an export permit

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(annexure IV to annexure I of the written statement). On the 24th of May, 1974, the Director of Food and Supplies issued instructions to the effect that Government had decided that all licensed dealers seeking export permits for levy free wheat should also indicate their average cost price of the wheat and also the sale price at which the bargain had been struck with the consignee in the deficit State.

(24) In order to give effect to this instruction the relevant application form for securing an export permit was revised and another column No. 12 was added therein. This deserves notice in full:—

“12(i) The average cost price of the seller		
licence Rs.	per qtl.	<i>Sale detail</i>

(ii) Price at which wheat intended to be
exported has been sold to the consignee
in the deficit State Rs. ———— per qtl.

Necessary release certificate bearing No. ———— date ————
obtained from the Food and Supplies Department in support of my
having got the released share is enclosed.

I certify that the information given above is correct and is based
on the record and that nothing has been concealed.

I hereby give an undertaking that the delivery of wheat for
permission is being sought through this application shall be made
to the consignee only who is licensed dealer and that the consign-
ment shall not be delivered to anybody else, even if the R. R. is in
the name of the consignor, viz. ‘SELF’.

Signature of the applicant.”

Dated :

(25) That the movement of wheat from one food zone to
another is restricted and severely controlled is evident from the
provisions of the Inter-Zonal Wheat and Wheat Products (Move-
ment Control) Order, 1973. But what deserves particular notice is

the fact that on the 5th of June, the Central Government promulgated the Wheat (Price Control) Order, 1974. Clause 3 thereof in terms provided that no dealer in wheat trade would sell or agree to sell in the course of Inter-State trade and commerce wheat at a price exceeding Rs. 150 per quintal. It further specifies that this limit included the cost of gunny bags, octroi, terminal tax and other local or general taxes and also all incidental charges incurred by a dealer. It further buttressed his contention. In this regard Mr. Bhandari has also pointed out that numerous other States within India had imposed price controls on wheat and as an example reference has been made to the relevant notification issued in the adjoining State of Delhi and also by the State of Maharashtra.

(26) In fairness to the learned counsel for the petitioners we must notice an argument advanced on his behalf regarding the limitations on the sale price of Inter-State Wheat trade. Counsel had contended that clause 3 of the Wheat Price Control Order, 1974, was susceptible of an interpretation that export of wheat to 'self' as a consignee in any other State was allowed without any limitation of price and the same would not come within the mischief of the above-said provision. We are unable and reluctant to place any such interpretation on this provision. This apart, it is rightly highlighted by Mr. Bhandari, that there is not a single averment in the writ petition of the present petitioners or of other licensed dealers that they had also registered themselves as licensed dealers in their own names in the other deficit States of India and were exporting wheat from Punjab to 'self' in such a capacity. Equally it has not even remotely been averred that in fact any of the petitioners or other dealers had exported wheat to themselves in this circuitous manner without any limitations of price or at above Rs. 150 per quintal. Mr. Bhandari also pointed out that it was never the petitioners' case in the writ petition that they had applied for export permits on the basis of consignment to 'self'. In view of the above we must uphold Mr. Bhandari's contention that the submission on behalf of the petitioners is being raised without any factual basis and without laying any ground therefor in the pleadings which could be adequately met by the respondent-State. As a last resort Mr. Bhandari fell back on an equally firm ground that in view of the revised form for the application of export permits for wheat each wholesale dealer had given an individual undertaking to the effect that wheat would be delivered to another consignee in the deficit State and thus come within the ambit of an Inter-State Sale.

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The learned counsel for the respondent-State was, therefore, right in contending that all export of wheat above the price of Rs. 150 was either illegal in view of its contravention of clause 3 of the Wheat Price Control Order of 1974 or in the alternative it was in flagrant violation of the undertaking given by each wholesale dealer at the time of applying for the export permit.

(27) In the context of the limitations placed on the price of wheat in the course of its wholesale trade we are clearly inclined to agree with the submissions of the learned counsel for the State. The data, to which a reference has been made above and in particular the statutory provisions and authorised action taken thereunder totally repels the stand of the petitioners that the State had extended an express or implied undertaking to allow the sale of levy free wheat at wholly unrestricted and uncontrolled prices. Indeed the intention to control the prices and the acquisition of power to do so is inherent and runs throughout the gamut of the statutory orders, to which reference has already been made. It has, therefore, to be held that the petitioner-wholesale dealers were well-aware and in any case should have been so aware of the statutory restrictions, the overall effect whereof was that the trade in wheat was being confined within the four-corners of the support price at Rs. 105 per quintal and a ceiling price of Rs. 150 per quintal only.

(28) The above-said finding takes the main current of wind out of the sails of the petitioner's case. Nevertheless a limb of the argument on behalf of the petitioners still survives and, therefore, deserves examination. Mr. Anand Swaroop contended that even assuming for the sake of argument that the undertaking to the petitioners was hedged in by a ceiling price of Rs. 150 per quintal, they had acted thereon and purchased large stocks of wheat and now even the above-said undertaking was being retracted and the petitioners were being prevented from disposing of the same either in the open market or by way of export. Counsel, therefore, called in aid the ratio of the *Anglo-Afghan Agencies' case* (supra) and submitted that the petitioners having acted to their detriment on the firm representation extended to them, the respondent-State could not now be allowed to go back thereon.

(29) We are unable to hold that the ratio of *Anglo-Afghan Agencies* judgment either governs the present case or is even

attracted to it by way of analogy. It is unnecessary to recount the well-known facts of the above-said celebrated decision. Therein the Export Promotion Scheme whereunder the action was taken, had throughout remained intact and unamended, whereas in the present case the Fourth Amendment Order has made substantial statutory changes in the preceding law. Secondly in that case, the challenge was laid to the executive action of the order of the Textile Commissioner or his subordinates in refusing the adequate import entitlement certificate to the petitioners whilst herein the attack is not directed against any executive action of an official but is a frontal assault on the legislation itself. This high-lights the fact that the *Anglo-Afghan Agencies' case* impugned the executive action of an individual officer taken under the Export Promotion Scheme (about which also doubts were expressed whether the same was legislative or executive). Whereas what is in issue in the present case is not any executive action but the very validity of the legislation duly promulgated by the respondent State. Action in the earlier case was taken by an official in the case of a single individual whereas the present one is not the case of a single individual but the right of the respondent-State to exercise statutory power against all persons similarly situated. Lastly the issue in that case was whether the executive having held out a firm representation could go back again on the same by its own fiat after others had materially altered their position by acting on such a representation. Here, however, the crux is whether legislation can withdraw or retract from an undertaking solemnly given by prior legislation. The *Anglo-Afghan Agencies' case*, therefore, is clearly distinguishable and does not in any way advance the case of the petitioners.

(30) Mr. Anand Swaroop, however, had still pressed his contention that the respondent-State could not retract from a solemn undertaking given earlier even through the medium of delegated legislation. This argument was sought to be supported first on principle and secondly by way of an analogy with similar limitations on executive action. Counsel, however, fairly conceded that the legislature itself could go back or reverse a previous solemn undertaking because it was clothed with plenary powers.

(31) Shorn off surplusage the real issue is reduced to this— Whether delegated legislation can retract or withdraw a solemn undertaking given earlier in the same mode and manner which had been relied and acted upon by others.

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(32) In resolving the above question it may first be borne in mind that there is no dispute on the proposition that the legislature itself has plenary powers to make laws, of course, within the bounds laid by the Constitution. Its powers to legislate are, therefore, relatively unfettered. If by previous legislation any undertaking or representation has been held out by the statute upon which the citizen may have acted, nevertheless the legislature is entitled to withdraw or retract from the same. In other words, the legislature itself has the power to reverse an earlier legislation and is not necessarily bound by the same. The principle is some times expressed by the dictum that there can be no estoppel against the statute. That being so, the question is whether delegated legislation, in this context is on an inferior footing than direct legislation. On principle, we are unable to see any great difference and nothing of substance has been pointed out either by the learned counsel for the petitioners. Delegated legislation after having been duly promulgated and within the powers conferred by the parent statute is thus of equal efficacy and authority. We deem it unnecessary to refer to the mass of case law on the point of delegated legislation but the principle that throughout runs implicit therein is, that what the legislature can do itself may also be done through a delegate provided adequate guidelines and policy within which such subordinate legislation is to be made are laid down. Herein, there is no suggestion even that the legislation under attack travels or goes beyond the power or the authority conferred by the Essential Commodities Act.

(33) What next meets the eye is the basic fact that the petitioners themselves rely on the Punjab Wheat Dealers Licensing and Price Control (First Amendment) Order and its complement, the Wheat (Levy) Order, 1974, and the scheme Exhibit R-1 issued thereunder. Consequently, therefore, the petitioners' case is that an undertaking or a representation was held out by the above-said provisions. Now admittedly the above-said statutory orders are themselves pieces of delegated legislation under the Essential Commodities Act. If the very source from which the right is sought stems from delegated legislation itself then one fails to see why similar delegated legislation like the Fourth Amendment Order would not be empowered to alter, amend or reverse the earlier provision. There might have been some foothold in the argument (we do not

at all pronounce it to be so) if the undertaking or representation was alleged to have been granted by the legislature itself and the same was to be effaced subsequently by the mode of delegated legislation. Where, however, the grant of the alleged right is itself rooted in delegated legislation we are unable to see why the said grant or right cannot be taken away by a similar exercise of power.

(34) Apart from the principle, the view enunciated above appears to be equally well supported by statute and by authority. Reference in this connection may first be made to section 21 of the General Clauses Act of 1897. This in the clearest terms provides that where by any Central Act a power to issue orders is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any such orders. There is then the authoritative precedent of *State of Uttar Pradesh and others v. Babu Ram Upadhyaya* (2), holding that rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained therein. They become indeed a self-contained Code with the parent statute under which they are issued. Reliance was also placed by Mr. Bhandari on *Secretary to Government, Public Works and Transport Department, A.P. and others v. Adosi Ginning Factory and others* (3), wherein by the exercise of the delegated powers under section 3 of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act 29 of 1949, an order was issued enhancing electricity rates and tariffs in direct violation of an earlier agreement and undertaking given by the Government to several consumers in the State at specified rates therein. Upholding the validity of such delegated legislation, the Bench had observed that the existence of prior contract or undertaking does not curtail the authority of the legislature to legislate on subjects which were within its sphere. *P. V. Sivarajan v. The Union of India and another* (4), has then been referred to by the learned counsel for the respondent for the proposition that primarily the validity of a rule framed under an Act can be successfully challenged if it is shown that it is inconsistent with the provisions of the parent Act or that it has been made in excess of

(2) A.I.R. 1961 S.C. 751.

(3) A.I.R. 1959 A.P. 538.

(4) A.I.R. 1959 S.C. 556.

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the powers conferred on the rule making authority. Counsel rightly pointed out that in the present case no such contention has even been remotely raised on behalf of the petitioners, in this context.

(35) For the afore-mentioned reasons we are inclined to hold that even assuming that there was some representation held out to the petitioners by way of delegated legislation the same could be withdrawn or retracted from through the mode of subsequent delegated legislation, like the Fourth Amendment Order in the present case. As has been authoritatively observed the State cannot barter away its right to legislate.

(36) Mr. Anand Swaroop had then assailed the Fourth Amendment Order on the alleged ground of its violation of Article 19(1)(f) and (g) of the Constitution. It was argued that the impugned order placed unreasonable and arbitrary restrictions on the fundamental rights of the petitioners to carry on their trade and occupation as also their rights to hold and dispose of their property.

(37) On behalf of the respondent-State it was strenuously objected to that during the continuation of the emergency no challenge based on Article 19(1)(f) and (g) could be raised in view of the provisions of Article 358. In the connected Civil Writ Petition No. 6278 of 1974, decided on 23rd January, 1975, we have already examined in detail this contention and repelled the same. We do not propose to traverse the same ground again and think it sufficient to observe that following our view in that case the petitioners are entitled to invoke Article 19(1)(f)(g) during the continuation of the emergency on the admitted fact that the Essential Commodities Act is pre-emergency legislation and the impugned order is an emanation therefrom.

(38) Nevertheless we are unable to find any substantial merit in the attack on behalf of the petitioners that the Fourth Amendment Order places unreasonable or arbitrary restrictions on their guaranteed fundamental right. It is common ground that the vires of the Essential Commodities Act and in particular Section 3 thereof have been authoritatively upheld by their Lordships of the Supreme Court. In view of this, learned counsel for the petitioners

did not and in fact could not assail the wide-ranging power given by section 3 of that Act above-mentioned. This authorises in the widest terms for regulating or prohibiting the production, supply and distribution of essential commodities and the trade and commerce therein. Clause (c) of sub-section (2) of the Section in terms provides for the controlling of the price at which any essential commodity may be bought or sold. Clause (f) in particular empowers the State to require any person holding stocks in any essential commodity to sell the whole or a specified part thereof to the Central Government or a State Government or an officer or agent of the State Government etc. It cannot, therefore, be said that the impugned order is either directly violative of Article 19(1)(f) and (g) or that it travels beyond the scope and powers conferred on the Government by the relevant provisions of section 3 of the Essential Commodities Act.

(39) The specific ground of unreasonableness on behalf of the petitioners was directed wholly against the fixation of the price of Rs. 139 per quintal for naked grain by the impugned order. It was argued that the fixation of this price was arbitrary and harsh, that it violated the undertaking given to the petitioners to be allowed to sell or export wheat at unrestricted prices and that no valid data and criteria for arriving at this particular figure has been shown.

(40) For the very detailed reasons given in the earlier part of this judgment we have arrived at the finding that the representation, if any, extended to the wholesale dealers in wheat was clearly and openly hedged in by the condition that the export or trading therein even within the State was to operate within the ceiling price of Rs. 150 per quintal. This is more so because as early as the 5th of June, 1974, the Wheat Price Control Order of that date had in terms fixed the maximum price for the Inter-State trade of wheat at Rs. 150 per quintal. Admittedly no challenge to the validity of the Wheat Price Control Order of 1974 was laid either at the time of its promulgation or even now during the course of the arguments here. Once it is held that the export price of wheat was statutorily required to be within the ceiling of Rs. 150 per quintal and the export permits required an undertaking from the wholesale exporter to the effect that he was to deliver wheat to another dealer in the deficit State then the fixation of the controlled price at Rs. 139 per quintal and the acquisition of the wholesaler's stock at that price on his own premises can hardly be assailed as unreasonable or oppressive. This is so because clause 3 of the Wheat Price

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Control Order of 1974 had fixed the price of Rs. 150 to be inclusive of the cost of gunny bags, octroi, terminal tax, purchase tax, sales-tax or any other local tax payable under the law and also of all incidental charges which may be incurred by a dealer up to the point to which wheat was to be loaded into a railway wagon or other vehicles for purpose of export. The respondent-State in its return has made it clear that the approximate sum total of the above-mentioned costs of packing, taxes and incidental charges per quintal of wheat had been worked out to be about Rs. 11. Therefore deducting this amount from the overall ceiling of Rs. 150, the price of Rs. 139 was fixed by the State for naked grain either ex-godown or from the business premises of the dealers. Learned counsel for the State further highlighted the fact that the support price of wheat within the State was as low as Rs. 105 per quintal. It was, therefore, argued that the fixation of the price of Rs. 139 per quintal was liberal and in effect was the maximum that could be given for the naked grain in view of the earlier overall ceiling of Rs. 150 per quintal which was inclusive of packing, taxes and other incidental charges which were inevitable thereon. We are inclined to agree with the submissions of the counsel for the respondent-State that the fixation of the price of Rs. 139 per quintal was reasonable, based upon sound data and relevant consideration, and appears indeed to be in continuation of the existing price control for Inter-State trade imposed as early as the 5th of June, 1974, by the Wheat Price Control Order of that date.

(41) On behalf of the respondent-State, adequate explanation and reasonable cause for promulgation of the Fourth Amendment Order has also been made out on facts by virtue of the averments made in the return. It is the case that the State Government was compelled and indeed its hands were forced to take the impugned action in view of the circumstances which were the creation of the wholesale dealers themselves. The affidavit discloses that the price of an essential commodity, like wheat, was manipulated and made to rise inordinately even within a surplus State, like the Punjab for purposes of export so as to go beyond the envisaged limit of Rs. 150 per quintal. Allegations of unsocial activities and abuse of the provisions by unscrupulous wholesale traders had been particularly put in the fore-front by the respondent. It has been averred that black marketing in the trade of wheat had become rampant

and money for the commodity was passing below the table, though in figure work the prices were sought to be shown below the statutory limit of Rs. 150 with the result that prices started skyrocketing not only within the State but in sympathy within the deficit States as well in the rest of India. The specific averment is that the State Government received complaints in this regard, both from the other deficit States as also by the Central Government. A *bona fide* attempt was still made by the respondent-State to break the deadlock and a dialogue was opened with the spokesmen of the wholesale traders and the other dealers in wheat. Nevertheless a meeting was called for this purpose between the representatives of the trade and the Government which proved abortive and the representatives of the trade far from holding the price line forthrightly took the stand that they could give no undertaking that the price of wheat would remain within the statutory limit of Rs. 150 per quintal even in Inter-State trade. In the above-said circumstances which are in terms alleged in the States's affidavit, (the same has to be accepted in view of the further fact that no replication has been filed controverting the same) there is merit in the respondent-State's stand that far from there being any breach of faith on its part, in fact, the boot was on the other leg and the State's hands were forced into action due to unsocial activities indulged in by a sizeable section of the wholesale traders.

(42) A limb of the argument on behalf of the petitioners in regard to the fixation of the price of wheat was that an identical price was being fixed for both levy-free wheat and what may be called in contra-distinction as non-levy wheat. This was assailed as unreasonable and violative of Article 14 of the Constitution. We are unable to agree. The submission appears to suffer from a basic fallacy. The price of Rs. 139 per quintal is the maximum price at which fair average quality of wheat may be sold. It is not an inflexible fixed price for wheat. Indeed as has been shown the support price continues to be as low as Rs. 105 and the maximum for the naked grain is now controlled at Rs. 139 per quintal only. The respondent-State nor any other body is obliged to make purchases of non-levy wheat at the above-said price of Rs. 139 per quintal. As has already been noticed the control price has been fixed by deducting the packing, taxes and incidental charges from the earlier ceiling of Rs. 150 per quintal only. Once it is held that the fixation of this price is fair, reasonable and based on adequate data and considerations (as it has already been held above) then the petitioners can

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hardly make a grouch of the fact that their stocks are being acquired at the maximum price permissible under the law.

(43) On this issue of discrimination the stand of Mr. Bhandari equally deserves notice. He contends that what may be conveniently called 'levy free wheat' and 'non-levy wheat' are two distinct classes whose owners are distinct and separate. Whilst the wholesalers are subjected to the condition of delivering 50 per cent of their purchase by way of levy to the State, the producer and perhaps the retailer are under no such obligation. Again the maximum price of wheat alone has been fixed, but there is no obligation on the State or anyone else to necessarily pay this maximum price and it is perfectly legal to pay prices below the ceiling as well. Counsel highlights the fact that the respondent-State has not acquired non-levy wheat in the hands of the producers and in fact the purchases made by Governmental Agencies from the producers are at a much lower price of approximately Rs. 116 per quintal. He highlights the fact that the petitioners cannot possibly be aggrieved by the fact that they are indeed being offered and paid the highest price now allowed by law, for the excess stocks held by them. In sum, therefore, he contends that separate and distinct classes may be treated differently without inviting the stigma of discrimination. We agree with the learned counsel for the respondents that there has indeed been no infraction of Article 14 of the Constitution in prescribing a maximum sale price of wheat within the State.

(44) The last contention of Mr. A. S. Mital, for the petitioners is that there has been a violation of section 3 B of the Essential Commodities Act in fixing the maximum price of wheat by virtue of the Fourth Amendment Order. The submission is that in taking over the excess stocks of wheat as a result of the slasing of the storage limit of the wholesalers, the State Government is patently exercising its power under section 3(2)(f) of the Essential Commodities Act. As a necessary consequence, therefore, section 3-B of the Act is attracted and the argument is that a simultaneous prescription of controlled price and acquisition of the stocks is not authorised or envisaged by the relevant provisions. In substance the argument is that clause (ii) of section 3-B of the Act alone is attracted to the situation and the respondent-State was, therefore, obliged to determine the price with relevance to that prevailing or likely to prevail

during the post-harvest period in the area to which the Order applies.

(45) The stand of the respondent-State is, however, categorical and different. The firm case is that the fixation of the price has been made under the power conferred by section 3(2) (c) of the Act. This provision provides for the promulgation of an order for controlling the price at which any essential commodity may be bought or sold. We find weight in the contention of the respondent's counsel. Firstly it is the State's stand that they are acting under section 3(2)(c) of the Act and nothing has been pointed out on behalf of the petitioners to show that the State would either be debarred from exercising the power conferred by that provision or in fact has not acted thereunder. We have hence to accept the position that the price has been controlled under the above-said general provision. Equally in this context it has to be noticed that the fixation of the price is not merely *qua* the excess stock of the petitioner-wholesalers or of levy wheat alone but is one of general application. Section 3-B does not provide for the fixation of a price which is to be of general application but is of limited import attracted only in regard to persons who have been required to sell their stocks to the Government or its nominees. The general power given under section 3(2)(c) of the Act is not hedged in with any conditions of determining the post-harvest price etc. We have held earlier that the exercise of this power for fixation of the price has not been done either unreasonably or arbitrarily. Indeed there is much in the submission of the learned counsel for the respondent that the fixation of the maximum price of Rs. 139 is a mere continuation and corollary of the price fixed as early as the 5th of June, 1974, by the Wheat Price Control Order of that date. Whereas therein the maximum of Rs. 150 per quintal was fixed as inclusive of packing, taxes and incidental charges, the present price is merely a subtraction of Rs. 11 therefrom for the naked grain thus excluding the cost of packing, taxes and incidental charges from the earlier ceiling. Counsel, therefore, can rightly fall back on the ground that in fact there is no simultaneous acquisition and fixation of the price by the Fourth Amendment Order and that the limitations of price were envisaged from the 18th of April, 1974, onwards and in any case from the 5th of June, 1974. We are equally unable to see that if the price had been fixed under section 3(2)(c) then how section 35 of the Act would be attracted to the situation or to control the explicit power given by the general provision.

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(46) In the view that we have taken that limitation and the fixation of the wheat price has been inherent in the situation from the very beginning the issue of simultaneous fixation of price and acquisition of stocks hardly arise and we, therefore, cannot pronounce upon the same. Nevertheless in fairness to Mr. Bhandari it may be noticed that he contended that there was nothing in the language of the statute which prevented a simultaneous exercise of the powers to determine a controlled price and then to take over the stocks under section 3(2)(f) of the Essential Commodities Act. The argument is that clause (ii) of section 3B is a subsidiary provision which comes into play only when in fact no control price is existing or has been prescribed. It is suggested that a situation may well arise where the State may wish to take over particular stocks of an essential commodity in the hands of an individual or individuals at a particular price without prescribing or promulgating a general control price of the commodity in the market for all times to come. His contention is that it would be in such a situation that clause (ii) above referred to would apply. This stand has been seriously controverted on behalf of the petitioners but as we have already said the matter in the present case is academic and therefore does not call for determination.

(47) Mr. Harbans Lal on behalf of some of the petitioners whilst adopting the contentions raised by Mr. Mittal had also launched an ancillary attack under Article 31 of the Constitution of India. He contended that taking over of the excess wheat stocks from the hands of the petitioners was a compulsory acquisition of property under the said Article. His particular reliance was on sub-clause (3) of the said Article which required that any State Legislation in regard to compulsory acquisition of property shall not have effect unless the same had been reserved for the consideration of the President and had received his assent. Counsel contended that the Fourth Amendment Order being State legislation and admittedly not having secured the President's sanction was, therefore, in contravention of Article 31(3) of the Constitution and hence *ultra vires*.

(48) We are of the view that the above-said contention stems from a fallacious assumption that the impugned Fourth Amendment Order is to be deemed as State Legislation. The Essential Commodities Act is a central statute and section 3 thereof empowers the

Central Government to issue orders within the scope of the said provision. Section 5 of the Act, however, clearly provides for the delegation of the legislative power and provides that the Central Government may by notified order direct that the power to make orders or issue notifications under section 3 may also be exercisable by the State Government or such officer or authority subordinate to a State Government. There is no dispute that the Central Government has in terms delegated the legislative power under section 5 of the State of Punjab and it is thereafter that the orders under the Essential Commodities Act had been issued by the State Government. Now, it is settled law that the act of the agent is the act of the principal and, therefore, when the Punjab State acts as a delegate of the Central Government then it must be deemed as the act of the Central Government itself. The impugned orders, therefore, in the eye of law are central legislation and thus not subject to the restrictions imposed by sub-clause (3) of Article 31 of the Constitution of India. Reliance was placed by Mr. Harbans Lal, on *Ramjidas and others v. State of Rajasthan*, but it suffices to mention that this authority does not in any way advance this argument on behalf of the petitioners.

(49) Two ancillary contentions raised on behalf of the petitioners must in fairness be noticed before closing this judgment. It was contended that the respondent-State whilst imposing a maximum sale price of fair average quality of wheat had nevertheless imposed no control on wheat products. What was particularly highlighted was that wheat flour (*atta*) and similarly other edible products of wheat had been left completely beyond the ambit of any price control. The submission was that wheat as such is hardly used for human consumption and it is only after it is converted primarily into wheat flour and other subsidiary products that it becomes edible. It was, therefore, argued that leaving out the edible by-products of wheat free of any control was thus the ultimate unreasonableness and the State's position in this regard even cast a doubt on its true intentions and *bona fides* in purporting to control the price of wheat. We are not impressed by the above-said line of reasoning. As was rightly pointed out by the learned counsel for the respondents the mere non-fixation of any price for wheat flour and other edible wheat products could not by itself be deemed either discriminatory or patently unreasonable. In fact it was pointed out that

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if the base product is controlled in price then inevitably the by-products thereof automatically got related to its controlled price. The respondent-State has, therefore, not deemed it necessary to impose statutory control thereon, and indeed it could not be compelled to do so. Further the difficulties of statutory price control of by-products owing to the varied nature of the same and the complexities of enforcing them may well lead to mal-practices and easy violation thereof, have also been pointed out on behalf of the respondents. Nevertheless it was contended that the respondent-State had not in any way denuded itself of the power to fix prices of the by-products of wheat and if necessity arose or prices got out of hand, the respondent-State, it was stated, would not be found wanting in its duty to keep the by-products of wheat also within the bounds of a reasonable price.

(50) Learned counsel for the petitioners had also made a serious grouse of the fact that despite the promulgation of the Fourth Amendment Order, the Punjab Wheat Procurement (Levy) 1974, still continued to be on the statute book. It was argued that there was an inherent conflict between the two provisions and both of them could not be allowed to stand.

(51) We are unable to see any inherent incompatibility between the impugned Fourth Amendment Order and the Punjab Wheat Procurement (Levy) Order, 1974. It had been clarified on behalf of the respondent-State that the Levy Order was a separate and independent enactment which can nevertheless continue and be of effect despite the changes brought about by the Fourth Amendment Order. The levy scheme is intended to be continued in its application to the purchase which may be made by the semi-governmental agencies, like the Markfed and the Punjab Civil Supplies Corporation as also the purchases made by the Roller Flour Mills, the Chakkivalas and certain other categories of licenced dealers. Therefore, the necessity of continuing with the provisions of the Levy Order has been highlighted. It has also to be borne in mind that the basic procurement or the support price of wheat was still being maintained at Rs. 105 per quintal and to sustain the same the levy scheme was essential in order to ensure adequate stocks at relatively cheaper prices in the hands of the respondent-State for supply to the weaker sections of the society through its official distribution

system. We, therefore, see no incongruity in the continuance of both the Wheat Procurement (Levy) Order and the impugned Fourth Amendment Order on the statute book.

(52) As all the contentions raised on behalf of the petitioners have not found favour with us we hereby dismiss these writ petitions. However, in view of the intricacy of the issues raised herein we leave the parties to bear their own costs.

N. K. S.

Before R. S. Narula, C. J. and A. S. Bains, J.

MAJOR TRILOKI NATH BHARGAVA, AND ANOTHER,—
Appellants.

versus

SMT. JASWANT KAUR, ETC.,—*Respondents.*

Letters Patent Appeal No. 447 of 1971.

March 18, 1975.

Motor Vehicles Act (IV of 1939)—Sections 110-A and 110-D—Code of Civil Procedure (V of 1908)—Order 41, Rule 22—Cross-objections in an appeal under section 110-D—Whether maintainable—Court fee on such cross-objections—Whether required to be paid on ad-valorem basis—Letters Patent (Punjab)—Clause 10—Motor Vehicles Act (IV of 1939)—Section 110-D—Cross-objections in an appeal under section 110-D insufficiently stamped—objection to such cross-objections not taken either at the hearing before Single Judge or in the grounds of Letters Patent Appeal—Such objection at the hearing of the appeal under clause 10—Whether can be urged as a matter of right.

Held, that when a statute directs that an appeal shall lie to a court already established, then that appeal in the absence of a special rule to the contrary in that statute or rules framed thereunder must be regulated by the practice and procedure of that Court. Thus when a High Court becomes seized of an appeal under section 110-D of the Motor Vehicles Act, 1939, the rules of practice and procedure of the High Court become applicable to the appeal as there is no special rule to the contrary in the Act or the rules framed thereunder. Moreover the High Court while hearing appeals under section 110-D of the Act acts as a court and a proceeding even if at its inception has a semblance of an arbitration proceedings, does not retain its character as such in the appeal and the