person under section 167, Criminal Procedure Code, because of his challan having not been put in Court within sixty days of his arrest, to direct for his arrest and commit him to custody in all the cases of non-bailable offences, which may be triable even by his own Court, provided he considers it necessary so to do at any subsequent stage. Suppose such an accustd person mis-use the concession of bail allowed to him by the Magistrate, then the Magistrate shall be fully competent to cancel his bail and commit him to custody for that reason under sub-section (5) of section 437, Criminal Procedure Code. because the accused person released on bail under section 167, Criminal Procedure Code, shall be deemed to be so released under the provisions of Chapter XXXIII which includes section 437, Criminal Procedure Code, for the purposes of that Chapter. Thus, I would repel the argument of the learned counsel for the petitioners that the learned Magistrate in this case had no jurisdiction to cancel the bail and remand them in custody, while committing them to the Sessions Court for their trial.

For the reasons given above, I find no ground for the acceptance of this bail application and the bail, as prayed for by the peaitioners, is declined.

B. S. G.

Before S. S. Sandhawalia and K. S. Tiwana, JJ.

SHRI PARTAP SINGH KADIAN,—*Petitioner.*

versus

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

Civil Writ No. 6278 of 1974.

January 23, 1975.

Constitution of India (1950)—*Article* 358—*Whether applicable to pre-emergency legislation—Essential Commodities Act* (10 of 1955)—*Section* 3—*Punjab Wheat (Restriction of Stock by Producers) Order* (1974)—*Clauses* 3 *to* 6—*Order issued under section* 3, *Essential Commodities Act, during emergency—Whether open to challenge under Article* 19— *Wheat Stock Order—Whether* ultra vires *Article* 19(1) (*f*) *and* (*g*) *of the Constitution.*

Held, that Article 358 of the Constitution of India is intended to empower the State to enact fresh legislation or to promulgate any new law during the continuance of the emergency in order to meet the peculiar exigencies of the situation that may arise or be anticipated in the course of the emergency and such fresh legislation or new law is made immune to an attack under Article 19 of the Constitution, during the limited period of the continuation of the emergency. The Article is in terms prospective and is not intended either to protect or to validate any legislative provision which would be invalid because of the Constitutional inhibitions before the proclamation of the emergency. The language of the article does not warrant that the moment the emergency is declared the State would thereby be empowered, apart from enacting fresh legislation, to exercise arbitrary, unreasonable and unguided powers in violation of Article 19 under the whole gamut of the pre-emergency legislation which would be existing on the Statute Book. The proclamation of emergency cannot be intended to give such a blanket, uncanalised power to the State emanating from the pre-emergency laws which in letter and spirit were bound to conform to the provisions of the Constitution and in particular to the freedoms enshrined in Article 19 thereof. Hence Article 358 of the Constitution being prospective in nature does not apply to pre-emergency legislation.

Held, that Punjab Wheat (Restriction of Stock by Producers) Order 1974, issued under section 3 of Essential Commodities Act, 1955, although during the emergency, yet being merely a step in continuation of the previous legislation on the point and is an emanation of the previous law promulgated for the extension, amendment, and continuation of the earlier Government policies in regard to the control, regulation, production, and supply of wheat, it must in the eye of law be deemed to be an integral part of the Act. The Act is subject to Article 19 during the emergency and therefore, the delegated legislation emanating from the Act and in continuation of its policies is not immune from such attack. Hence the Wheat Stock Order 1974 although issued during emergency is open to attack under Article 19 of the Constitution.

Held, that a farmer has a guaranteed right under Article 19(1)(f) and (g) of the Constitution to possess and dispose of at least that property which he directly grows from the land owned by him. Punjab Wheat (Restriction of Stock by Producers) Order 1974, by issuing a blanket direction prescribing that the farmer who produces wheat shall not be entitled even to possess the whole of his produce, and the moment it exceeds an arbitrary limit he would forthwith be branded a criminal liable to prosecution under section 7 of the Essential Commodities Act, 1955 is nothing but a restriction on the fundamental rights of the farmers. The requirement of the maximum limit fixed by the Order for the producers

is also arbitrary because this is irrespective of the quantum of land owned by him. The same limit will apply to a farmer holding 10 acres of land or 30 acres of the same.

The most glaring irrationality of the Order, however, lies in the fact that whilst it obliges the producer to dispose of all stocks in excess of the arbitrary limit which he may actually have in his possession or which he may grow from his own land, without creating any corresponding obligation whatsoever on the part of anyone else to take over this excess stock. It also casts no liability on anyone even to offer any reasonable or remunerative price for such produce. In the absence, therefore, in the Stock Order of any indication as to who is to purchase the excess Stocks and without specifying any price therefor whether remunerative or otherwise it smacks sky-high of unreasonableness and is an exercise of arbitrary power. Hence the Punjab Wheat (Restriction of Stock by Producers) Order, 1974, by placing unreasonable restrictions on the fundamental rights of the farmers, is violative of Article 19 of the Constitution and is liable to be struck down.

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

(i) *the orders issued by the Punjab Government contained in Annexure 'P-1' and 'P-2' and also the price control order be declared* ultra vires *the provisions of constitution of India as well as the Essential Commodities Act be struck down;*

(ii) *the stock order which directly affects the petitioners in presented be also declared* ultra vires *and be struck down;*

(iii) *a writ in the nature of mandamus directing respondents State of Punjab to revise the levy and control price of the wheat and fix the same after taking into account the relevant aspects which have been enumerated by the petitioner in the writ petition;*

(*iv*) *the cost of the petition be also awarded to the petitioner;*

(v) *the record of the case be ordered to be sent for.*

Further praying that during the pendency of the writ petition the operaiton of the impugned notification Annexure (P-2) (*Stock order*) *be stayed.*

Kuldip Singh, Advocate with R. S. Mongia, Advocate, *for the petitioners.*

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

JUDGMENT

SANDHAWALIA, J.—A multi-pronged attack against the validity and the constitutionality of the Punjab Wheat (Restriction of Stock by Producers) Order 1974 has been forcefully levelled in this writ petition. It arises from facts which are not in serious dispute but to which detailed reference is nevertheless necessary.

Partap Singh Kadian, petitioner, claims to be what may compendiously be termed as a progressive farmer of the State of Punjab. He is a Graduate in Agriculture and has adopted farming as his profession and carries on mechanical cultivation of an area of 27 acres of land situated in village Kadian, tehsil and district Ludhiana. He has been a former member of the Punjab Legislative Assembly and is now the General Secretary of the Punjab Khetibari Zamindara Union which claims to have a membership of more than seventy-five thousand farmers. The writ-petition is therefore, claimed to be more or less of a reprtsentative character on behalf of the producers.

The petitioner claims to have a complete know-how of the modern mechanised agriculture and has given full details of an investment of Rs. 97,500 regarding the machinery and other equipment necessary for the operations on his farm. In para 4 of the petition further details regarding the expenditure for harvesting, hoeing, seeds, repair of machinery, fuel, fertilizers, rent of land, labour and management, depreciation and interest etc. are specified wherefrom originally a rather tall claim of the cost of the production of one quintal of wheat has been ultimately reduced to Rs. 300 per quintal (as stated in the replication). It is averred that if a meaningfull survey or assessment of the current cost of production of wheat within this area were to be made by the Punjab Government then it would be more than manifest that a price of Rs. 139 per quintal is ridiculously low and indeed ruinous to the producers. A strong apprehension is expressed that if this policy is pursued and continued then the cultivation and production of wheat within the State is likely to suffer a serious set back.

The admitted background of the impugned statutory order is that in early 1973 in pursuance of a policy decision the Central Government decided to take over completely the trading in wheat. To give effect to that policy this State promulgated the Punjab Wheat Dealers' Licensing and Price Control Order on the 3rd of April, 1973. However, in the actual execution of that policy within the State of Punjab and also at the All India level serious difficulties were experienced and in certain areas a total failure of the procurement of wheat resulted therefrom. As a result thereof in the ensuing year 1974, a reversal or substantial modification of the wheat trade take over was made by the Central Government and as a result of the larger policy decision the State of Punjab on the 18th of April, 1974, promulgated the Punjab Wheat Dealers Licensing and Price Control (First Amendment) Order, 1974, and simultaneously therewith the Wheat Procurement (Levy) Order, 1974 was also enforced. Thereby very substantial changes in the procurement policy were envisaged and in particular wholesale dealers in wheat were again brought back into the field of procurement primarily on the condition that 50 per cent of the wheat purchased by them would be surrendered to the State Government in the form of a levy at the rate of Rs. 105 per quintal and the remaining 50 per cent would be allowed to be disposed of in the open market or by the issue of export permits from the State.

The Government of Punjab, however, in the six months that followed appears to have had second thoughts on the procurement policy and on the 22nd of October, 1974, the Punjab Wheat Dealers' Licensing and Price Control (Fourth Amendment) Order, 1974 (hereinafter referred to as the Fourth Amendment Order) was promulgated whereby action in substantial reversal of the preceding policy was sought to be incorporated in the statute book. Clause (12) of this order prescribed that the maximum price at which fair average quality of wheat (other than wheat products) could be sold, would be Rs. 139 per quintal and further the quantum of stock allowed to be possessed by the each wholesaler was substantially slashed from 2,500 quintals to a mere 100 quintals.

The petitioner highlights the facts that so far as wheat production is concerned the State of Punjab is the premier surplus State

in India. During the year 1972 there was a surplus of 34 lakh tonnes of wheat and in the following year the surplus stocks were as much as 27 lakh tonnes whilst during the current year the quantum of surplus hovers around 20 lakh tonnes of wheat. It is further pointed out that 82 per cent of the population of Punjab is rural who are either themselves producers of wheat or get their wages in kind which includes wheat and other grains and a mere 18 per cent of urban population primarily consumes wheat flour ground by the flour mills and chakkiwalas, etc. The State of Punjab is a single Food Zone out of which the export of wheat is prohibited except by the sanction and permission of the State Government. The sale of wheat by the producers is mainly done in the licensed market yards under the Agricultural Produce Markets Act and what is sought to be high-lighted is the fact that a situation exists wherein the State or its agencies are virtually the monoply purchasers of the marketable surplus of wheat within the State of Punjab.

The petitioner now claims to have in stock 180 quintals of wheat raised entirely from his own farm. He alleges that the combined effect of the levy order and the Fourth Amendment Order 1974, to which reference has been made in the earlier paragraph results in the deprival of a producer to get even a reasonable price for his labour far from making any profits therefrom. Nevertheless the State of Punjab on the 6th of November, 1974, in exercise of the powers conferred by section 3 of the Essential Commodities Act promulgated the Punjab Wheat (Restriction of Stock by Producers) Order, 1974 (hereinafter referred to as the Stock Order) which is annexure P. 2 to the petition. This *inter alia* provides that a producer cannot hold in stock beyond 100 quintals of wheat within a period of 15 days from the commencement of the order and a violation of the same would under the relevant provisions of the Essential Commodities Act be a criminal offence. The petitioner is thus obliged on pain of criminal prosecution to dispose of at least 80 quintals of the produce of his own land held by him by the 21st of November, 1974. On the other hand the Fourth Amendment Order apart from fixing a remunerative price had also directed that no licensed dealer can store wheat beyond 100 quintals and the excess thereof already in stock was to be acquired by the State Government at a fixed price of Rs. 139 per quintal. It is highlighted that earlier these wholesalers

and dealers were respectively allowed to hold up to 2,500 and 1,000 quintals and in view of the new statutory orders they were thus obliged to dispose of their surplus stock forthwith rather than purchase or acquire any further quantities of wheat. It is, therefore, the petitioner's case that a situation has been created in which he is unable to sell his produce in the market yards as no dealer is prepared to purchase the same at any reasonable price whilst on the other hand his failure to dispose of the excess stock would expose him to criminal prosecution apart from an equally serious penalty of the confiscation of such stocks. The petitioner alleges that by a colourable exercise of power the State of Punjab has promulgated orders in order to create a situation where neither the licensed dealer can sell his stock nor the producer can dispose of the same with the result that in particular the producers are being forced to part with their wheat at throw away prices. It is averred that in fact the State Government wishes by these methods to seize the whole of the stocks of the producers as well as the dealers at an unremunerative and ridiculously low price. It is further the case that the provisions of the Essential Commodities Act 1955 cannot be deemed to confer an arbitrary, unguided and uncanalised powers on the State Government to fix the price of an essential commodity unrelated to the cost of its production and without giving a reasonable margin of profit to the producer thereof.

A scathing attack has also been levelled against the Agricultural Prices Commission and it is alleged that the report issued by it is based on mere theoretical hypothesis without any factual data worth the name. It is the case that the recommendations of the Agricultural Prices Commission are not based on any study in depth of the cost of production etc. but entirely on political considerations in order to counter the inflationary pressure by providing wheat at a low cost to the vulnerable strata of the community. It is alleged that the Commission ignored entirely the interest of the producer and the cost of production in favour of the general economic conditions of the country and in fact the producer of wheat has been made the scapegoat for countering the rising spectre of inflation. In support of the above averment it is pointed out that the procurement price of wheat was kept static at Rs. 76 per quintal for well-nigh seven

years from 1966 onwards despite a steep rise in the cost of production thereof. It is highlighted that the Commission in the year 1972-73 in fact recommended that the price of wheat be reduced from Rs. 76 per quintal to Rs. 72 per quintal in view of the general inflation even though it was more than manifest that the cost of agricultural inputs had escalated considerably and consequently the cost of production had substantially risen. It is thus pointed out that the Commission has never considered the issue of agricultural prices from the stand point of the cost of production and the interest of producers.

It is also alleged that the State of Punjab has made no survey or assessment whatsoever in order to find out as to what is the actual cost of production of wheat per quintal within this area and that no Tariff Commission in respect of the wheat prices was ever constituted by the State to sudy the issue in detail. It is averred that such like Tariff Commissions were appointed by the Central Government in respect of Sugar and Cotton prices and also in regard to determining even the price of Motor-cars. It is hence averred that without collecting any relevant data and information an attempt is being made to fix a wholly arbitrary and unremunerative price for the wheat produce within this State. It is, therefore, the case that the fixing of the price of the wheat below its cost of production would be ultra vires the relevant provisions of the Essential Commodities Act and in any case it is alleged that the fixation of such a price has not been based on the relevant and reasonable considerations of the cost of production, return on the capital and investment etc., and has been motivated by wholly extraneous and irrelevant considerations.

According to the petitioner in the peculiar context and the situation created by the orders referred to above which have been promulgated under the Essential Commodities Act all channels for purposes of the sale of wheat have been arbitrarily controlled so as to force the petitioner to part with his stocks at a price far below the cost of production. The Stock Order is, therefore, challenged as wholly arbitrary and violative of Articles 14, 19 and 31 of the Constitution of India and further being beyond the scope of section 3 of the Essential Commodities Act. It is also alleged that the fixation of the limit of 100 quintals for producers is arbitrary on its very face

because a farmer-family owning a farm of 50 acres and producing wheat therefrom is placed at par with one owning merely 10 acres. It is pointed out that in view of the restrictions imposed by the Food Zone the petitioner cannot take the wheat out of the State of Punjab whilst within the captive market of a surplus State he is obliged to off-load his stock on pain of criminal prosecution at wholly unremunerative prices and without any corresponding obligation on the part of the State to buy the wheat at a remunerative price therefor. By way of comparison it is pointed out that in the adjoining States and other States of India the price of wheat is at a much higher level than what has now been arbitrarily prescribed here despite the fact that the cost of production is indeed lower in those States.

The respondent-State's stand is set out in the affidavit of Shri S. P. Singal, Under-Secretary, Department of Food & Supplies Punjab. Therein the calculation of the cost of production by the petitioner has been labelled as exaggerated and unrealistic whilst on the other hand it is averred that procurement price of Rs. 105 per quintal has been fixed on the basis of the recommendation of the Agricultural Prices Commission and relevant extracts from its report have been annexed to the return as annexure R-1. It is averred that this Commission deals with all aspects of the production of foodgrains in the country and producers have also been given representation thereon. The procurement price fixed on the Commission's recommendation is stated to leave a sufficient margin for incentive to the farmers besides adequately covering their cost of production. The higher control price of Rs. 139 is explained to be inclusive of market charges and other incidentals as well as the difference of cost incurred by a dealer on the sale of 50 per cent of wheat delivered by way of levy to the Government at Rs. 105 per quintal. In short, this rate is for the levy paid wheat of the dealer. It is then denied that the effect of the levy order and the price control order would be to deprive the farmer of a remunerative price for his produce because other agencies like the Punjab State Civil Supplies Corporation and the Punjab State Co-operative Supply and Marketing Federation have been authorised to make purchases of wheat at a price of Rs. 116 per quintal under instructions of the Punjab Government. It is reiterated that the abovesaid prices provide adequate and remunerative compensation to the producers of wheat. It is admitted that by the Stock Order the producer is obliged to dispose of all Stocks in excess of 100 quintals within a period of 15 days.

It is then averred that the producers are free to dispose of their wheat in the market at any price they can get in the open bidding. Apart from this traders including the Roller Flour Mills, Chakkiwalas and bulk consumers to whom relaxation in the storage limit of 100 quintals have been given are entitled to make purchases from the producers. It has been alleged that the harvesting of wheat was done in April, 1974, and the petitioner was deliberately holding his stock with a view of getting unreasonably higher prices and profiteering during the period of scarcity. It is claimed that the restriction sought to be placed on the storage limits of dealers and on the stocks of the producers is with the object of securing equitable distribution of wheat at fair prices in the country and it is denied that the Punjab Government is forcing the dealers as well as producers to part with their stocks at a throw away price.

The legality of the Price Control Order as also the Levy Order has been reiterated and it is repeated that these do not violate any of the fundamental rights guaranteed under Articles 14, 19(1)(f) and (g), 31 and 301 of the Constitution. The Stock Order is stated to have placed reasonable restrictions on the producers in order to ensure availability and equitable distribution of wheat at fair prices within the country and it is averred that it leaves the producer free to sell his produce in the open market at any price. The stock limit for the producer is averred to have been fixed with due regard for domestic consumption and for seed purposes and for that reason a graded scale has been fixed in order to enable the producer with larger holding to keep a larger stock subject to the maximum of 100 quintals. It is then averred that under the law no producer can possess more than seven hectares of land and it is, therefore, incorrect to say that a farmer can own 50 acres for growing wheat. It is then reiterated that the Stock Order also does not violate any provision of the Constitution.

Lastly it is admitted that the petitioner cannot legally take away wheat outside the State of Punjab as such a movement is restricted under the Inter-zonal Wheat and Wheat Products (Movement) Control Order 1973, issued by the Government of India. Without denying that high prices prevail in the adjoining States, it is stated that it is so because of the withholding, and consequential artificial scarcity of the wheat caused by persons like the petitioner who have been waiting for the time to exploit the situation to their utmost personal advantage and at the cost of the consumers in general.

Inevitably a strong challenge has been levelled against the specific clauses of the Stock Order and it, therefore, becomes necessary to first set down its provisions:—

"In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (Parliament Act 10 of 1955), read with Government of India, Ministry of Agriculture (Department of Food), Orders No. G.S.R. 316(E), dated the 20th June, 1972, G.S.R. No. 452(E), dated the 25th October, 1972 and G.S.R. No. 168(E), dated the 13th March, 1973, and all other powers enabling him in this behalf and with the prior concurrence of the Central Government, the Governor of Punjab hereby makes the following Order, namely:—

Short title, extent and commencement.

1. (1) This Order may be called the Punjab Wheat (Restriction on Stock by Producers) Order, 1974.

(2) It extends to the whole of the State of Punjab.

(3) It shall come into force at once.

Definitions

2. In this Order, unless there is anything repugnant in the subject or context,—

(a) 'Director' means the Director, Food & Supplies, Punjab or Joint Director, Food and Supplies, Punjab or Deputy Director, Food & Supplies, Punjab or any other officer appointed by the Government to administer this Order;

(b) 'Government' means the Government of the State of Punjab;

(c) 'Producer' means a person—

(i) who grows or produces wheat personally, through tenants or otherwise, but does not include a person

who works as a dealer or a broker or who is a partner of a firm of dealers or brokers; and

(ii) who is not engaged in the business of purchase and sale of wheat;

(d) 'wheat' includes all products of wheat excluding bran.

Power to fix maximum quantity of wheat which may be held by a producer.

3. (1) The Government may, by notification, in the Official Gazette fix the maximum quantity of wheat which may, at any time, be possessed by a producer.

(2) The quantity of wheat fixed under sub-clause (1) may be different for different localities or for different classes of producers.

Maximum quantity of wheat which may be held by a producer

4. Till any other limit is fixed under clause 3, no producer shall, after the expiry of a period of fifteen days of the commencement of this Order, have in his possession or custody whether by way of bailment or otherwise at any time a quantity of wheat exceeding ten quintals per acre of the area of land held by him in the State of Punjab as land-owner or tenant or mortgagee in possession, subject to a maximum of one hundred quintals.

Explanation.—Part of an acre shall be treated as one acre for the purpose of this clause.

Disposal of Excess Stock

5. Any producer who, on the date of commencement of this Order, has in his possession any quantity of wheat in excess of the maximum permitted under clause 4 shall dispose of the excess quantity within a period of fifteen days of such commencement.

Powers of entry, search, Fit-seizure, etc.

6. (1) The Director may with such assistance, if any, as he thinks—

(a) enter, inspect or break open and search any place, premises, vehicle or vessel in which he has reasons to believe that any contravention of the provisions of this Order has been, is being, or is about to be committed;

(b) search, seize and remove stocks of wheat kept in contravention of the provisions of this Order and thereafter take or authorise the taking of all measures necessary for securing the production of stocks of wheat so seized in a court and for their safe custody pending such production.

(2) The provisions of sections 100 and 102 of the Code of Criminal Procedure, 1973 (II of 1974), relating to search and seizure shall, so far as may be, apply to searches and seizures under this clause:

Provided that in exercising the powers of entry and search under this clause, due regard shall be paid by the authorised officer to the social and religious customs of the occupants of premises so entered and searched.

7. Nothing contained in this Order shall apply to the storage of wheat by any Department or institution of the State Government or Central Government or by any Corporation owned or controlled by the State Government or Central Government."

On behalf of the petitioner, an incisive two-fold attack had been levelled against clauses 3, 4, 5 and 6 above-said. Firstly they have been challenged as unconstitutional and the contention has been sought to be rested squarely on the provisions of Article 19(1) (f) and (g). This at the very outset raises the issue whether during the continuation of the emergency such an attack is open to the petitioner in view of Article 358 of the Constitution.

In passing it may, however, be mentioned that though the petitioner in terms assailed the Stock Order on the basis of its unreasonableness and its flagrant violation of Article 19, yet the respondent-State in its pleadings did not plead the bar of Article 358

thereto. Nevertheless in the course of arguments Mr. Bhandari on behalf of the State took up the stand that though the constitutionality of the Essential Commodities Act could be assailed on the ground of Article 19 despite the continuation of the emergency, yet the Stock Order issued under section 3 thereof could only be challenged on the ground of being violative of or beyond the scope of the aforesaid section. Despite the absence of the pleading noticed above, this matter does seem to go to the root of the case and it hence becomes necessary to examine the same in some depth.

To be candid, the point does raise some difficulties and complexities and to appreciate the same it is best to clear the factual ground first. It is the common case that the President proclaimed an emergency under Article 352 of the Constitution in the wake of the Indo-Pakistan War on the 3rd of December, 1971, which has been continuing ever since and about the lifting of which as yet there is neither any prospect nor any indication. Equally it is not in dispute that the Essential Commodities Act 1955 is a pre-emergency legislation enacted long before the proclamation of December, 1971. It is specifically under the powers conferred by section 3 of the Act that the impugned stock Order has been promulgated by the State Government. During the course of the two decades that have followed the enforcement of the Act, various changes and amendments therein have been made. In particular the relevant section 3 thereof has been the subject-matter of a continuous amendatory process. Substantial changes, substitutions, amendments, etc., had been introduced in this very section by the amending Act 28 of 1957; Act 17 of 1961; Act 25 of 1966; Act 66 of 1971 and the amending Act 1974 enforced from 22nd of June, 1974. It is manifest therefrom that in continuance of a legislative policy, changes have been made in this section to meet the exigencies of the particular situation.

Now a plain reference to the language of section 3(1) of the Act would show that it empowers the Central Government to issue orders for regulating or prohibiting the production, the supply and distribution of an essential commodity and trade and commerce therein upon its being satisfied about the necessity or expediency of doing so. Section 5 of the Act provide further for the delegation of the power to make orders or issue notifications under section 3 thereof either by an officer or authority subordinate to the Central Government or by a State Government or such officer or authority subordidate thereto as may be duly specified. It is not in dispute that such

powers have been delegated also to the State of Punjab and it is under such a delegation that the present Stock Order has been issued and promulgated.

In pursuance of the powers conferred by sections 3 and 5 of the Act both the Central and the State Governments have issued innumerable Control Orders under the Act to further the course of the governmental policies to regulate, control and govern the production, supply and distribution of essential commodities thereunder. In particular for more than a decade at least the essential commodity of wheat has been the subject-matter of regulation and control through the means of the delegated legislation under section 3 of the Act in continuation of the Government policies in regard thereto. This is not even denied by the respondent-State and on behalf of the petitioner a plethora of such orders issued under the Act have been cited to forcefully maintain the contention that the present Stock Order is indeed not more than a step in the continuous course of Government policy to regulate the production, supply and distribution of wheat within the country. For this purpose it suffices to refer to only a few of such Orders issued both by the Cenrtal and the State Governments and in the order of chronology there are the Wheat Roller Flour Mills (Licensing and Control) Order, 1957; the Wheat (Regulation of use in Roller Mills) Order, 1958; the Punjab Foodgrains (Procurement) Order, 1959; the Punjab Distribution of Foodgrains (Collection of Statistics) Order, 1959; the Punjab Commodities Price Marking and Display Order, 1962; the Punjab Hoarding and Profiteering Prevention Order, 1963; the Punjab Foodgrains Dealers Licensing Order, 1964; the Roller Mills Wheat Products (Price Control) Order, 1964; the Inter-Zonal Wheat and Wheat Products (Movement) Control Order, 1964; the Essential Commodities (Regulation of Production and Distribution for Purposes of Export) Order, 1966; Foodgrains (Prohibition of use in Manufacture of Starch) Order, 1966; Foodgrain Movement Restrictions (Exemption of Food Corporation of India) Order, 1966; the Foodgrains Movement Restriction (Exemption of Certified Seeds) Order, 1966; Roller Mills Wheat Products (Ex Mills) Price Control Order, 1969; Inter Zonal Wheat and Wheat Products (Movement Control) Order, 1969; Foodgrains Movement Restriction (Exemption of Seeds) Order, 1971; Imported Foodgrains (Prohibition of unauthorized sale) Order, 1971; Roller Mills Wheat Products (Ex Mills) Price Control Order, 1971; and Foodgrains (Prohibition of use in Manufacture of Starch Control) Order, 1971.

Coming nearer in point of time to the present Stock Order it may be noticed that in pursuance of the policy decision of the Central Government to take over the wheat trade and to give effect thereto within this State, the Punjab Wheat Dealers Licensing and Price Control Order 1973 was promulgated on the 3rd of April, 1973. This was followed by the Punjab Wheat Dealers Licensing and Price Control (First Amendment) Order dated the 18th of April, 1974, and simultaneously therewith the Wheat Procurement (Levy), Order, 1974, was also enforced. In immediate retrospect it was on the 22nd of October, 1974, that the Punjab Wheat Dealers' Licensing and Price Control (Fourth Amendment) Order 1974, was issued making substantial reduction in the authorised stocks of the wholesalers and dealers and some consequential changes in the Levy Order. Complementary to the aforesaid pieces of legislation is the present impugned Stock Order applicable to the stocks held by the producers issued as it is on the 6th of November, 1974.

The aforesaid background and the legislative history would, therefore, make it manifest that the impugned Stock Order is merely a step in continuation of the previous legislation on the point, and being an emanation of the previous law promulgated for the extension, amendment and continuation of the earlier Government policies in regard to the control, regulation, production, and supply of wheat. It appears to me to be no more than merely one of a series of provisions in continuance of the previous legislative action. To conclude, therefore, it is admitted that the Essential Commodities Act was enacted in 1955 and there seems hardly any doubt that the impugned Stock Order issued under section 3 thereof must either be deemed to be a part and parcel of the same Statute or is an emanation of the same law in the purported exercise of powers conferred by that pre-emergency legislation.

In the light of the aforesaid finding I may now proceed to examine whether the impugned Stock Order is impervious to a challenge under Article 19(1) (f) and (g) by virtue of Article 358 of the Constitution. This is in the following terms:—

> "While a proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but

> any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect."

As is evident the aforesaid provision is applicable to both legislative and executive action. However, because we are here concerned with delegated legislation it is unnecessary to travel into the field of executive action, though the Article applies the identical considerations to either kind. The way I construe the above-said provision is that it does and was intended to empower the State to enact fresh legislation or if I may put it in other words to promulgate any new law during the continuance of the emergency in order to meet the peculiar exigencies of the situation that may arise or be anticipated in the course of the emergency and such fresh legislation or new law was made immune to an attack under Article 19 of the Constitution during the limited period of the continuation of the emergency. Patent examples of such legislation have been the promulgation of the Defence of India Act and the Defence of India Rules enforced thereunder in the two emergencies which have arisen since the promulgation of the constitution. That such legislation is impervious to a challenge under Article 19 has now been authoritatively settled by various pronouncements of the Supreme Court, to which it is unnecessary to refer. To put it in other words, Article 358 of the Constitution is in terms prospective and is not intended either to protect or to validate any legislative provision which would be invalid because of the constitutional inhibitions before the proclamation of the emergency.

To my mind it is not warranted on the language of Article 358 of the Constitution to hold that the moment the emergency is declared the State would thereby be empowered (apart from enacting fresh legislation) to exercise arbitrary, unreasonable and unguided powers in violation of Article 19 under the whole gamut of the pre-emergency legislation which would be existing on the Statute Book. It can hardly be that the proclamation could be intended to give such a blanket, uncanalised power to the State emanating from the pre-emergency laws which in letter and spirit were bound to conform to the provisions of the Constitution and in particular to the freedoms enshrined in Article 19 thereof. I am of the view that Article 358 is not open to any such construction. However, even

assuming at the highest that two constructions could possibly be placed thereon then the one which would even give delegated legislation and orders issued under pre-emergency legislation, the status of being above the test of reasonableness underlying the spirit of the Constitution must necessarily be avoided. The correct approach to the construction of a similar provision under Article 359 of the Constitution was indicated by their Lordships in *Makhan Singh Tarsikka* v. *The State of Punjab* (1). It was noticed therein that there existed no legal remedy against the inordinate continuance of a proclamation of emergency or against the restrictions which could be imposed on the fundamental rights of the citizens by the executive during the same. However, they noticed with approval the lone and celebrated dissent of Lord Atkin in the *Liversidge* v. *Sir John Anderson and another* (2), which was rendered at a time when the British realm itself stood in mortal danger during the Second World War—

> "* * * * In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law. In this case I have listened to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I."

In a later decision their Lordships of the Supreme Court in *I. K. Ananda Nambiar* v. *Chief Secretary to Government of Madras* (3) have authoritatively indicated that the correct approach in construing the emergency provisions is that of a liberal one in favour of the citizen rather than against him, in the following words:

> "We are not impressed by this argument. In construing the effect of the Presidential Order, it is necessary to bear in

(1) A.I.R. 1964 S.C. 381.
(2) 1942 A.C. 206.
(3) A.I.R. 1966 S.C. 657.

> mind the general rule of construction that where an Order purports to suspend the fundamental rights guaranteed to the citizens by the Constitution, the said Order must be strictly construed in favour of the citizens' fundamental rights."

In this very context the position taken up on behalf of the State by Mr. Bhandari deserves pointed notice. It is fairly conceded that the constitutionality of the Essential Commodities Act could certainly be challenged even on the basis of Article 19 despite the continuation of the emergency. This was admittedly so on the ground that all pre-emergency legislations can always be subjected to such an attack. However, learned counsel for the State then proceeded to contend that the delegated legislation under the powers conferred by section 3 of the above-said Act could nevertheless be not subjected to such an attack on the basis of its violation of Article 19 during the continuation of the emergency. This corollary appears to me as patently fallacious. It misconceives the nature and the scope of the delegated legislation warranted by the powers conferfered under the parent statute. Admittedly the Stock Order has been issued under clause 3(1) of the Essential Commodities Act. Once it is so it becomes a part and parcel of the same statute and has the same effect as if it was contained in the Act itself. It has not been contended on behalf of the respondent that there is any legal difference between statutory rules framed under the relevant enabling power of an act and the statutory order warranted by a provision like section 3(1) of the Essential Commodities Act. Once that is so there comes into the field the authoritative pronouncement of their Lordships in *State of Uttar Pradesh and others* v. *Babu Ram Upadhya* (4). It was held therein—

> "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 in the Act, and are to be judicially noticed for all purposes of construction or obligation; see Maxwell 'On the interpretation of statute' 10 edition. pp. 50(51). The statutory rules cannot be described as, or equated with, administrative directions. If so, the Police Act and the rules made

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

thereunder constitute a self-contained code providing for the appointment of police officers and prescribing the procedure for their removal."

and after referring to some decisions of the Privy Council it was again observed:—

"* * *. These decisions and the observations made therein could not be understood to mark a radical departure from the fundamental principle of construction that rules made under a statute must be treated as exactly as if they were in the Act and are of the same effect as if contained in the Act. There is another principle equally fundamental to the rules of construction, namely, that the rules shall be consistent with the provisions of the Act."

In view of the above-said pronouncement it appears clear to me that the Stock Order must in the eye of law be deemed as an integral part of the Essential Commodities Act. If the parent Act is subject to Article 19 even during the emergency (as has been fairly conceded) it would be patently untenable to say that delegated legislation emanating from the said Act and in continuation of its policies would be immune to such an attack.

As regards precedent, whatever may have been the position earlier, so far as the limited issue of the pre-emergency legislation and delegated legislation emanating therefrom by virtue of the powers conferred thereby is concerned the matter seems now to have been conclusively set at rest in favour of the petitioner by some recent pronouncements of their Lordships of the Supreme Court.

The first judgment which deserves notice in this context is *State of Madhya Pradesh and another* v. *Thakur Bharat Singh* (5). Therein, the impugned action was taken on 24th April, 1963, during the course of emergency under section 3(1) (b) of the Madhya Pradesh Public Security Act of 1959. The impugned action was assailed primarily on the ground of unreasonableness by virtue of Article 19(1)(f) and (g) of the Constitution and objection was taken on behalf of the State to the applicability of those provisions

(5) A.I.R. 1967 S.C. 1170.

during the course of the Emergency. Repelling such an objection, Shah, J., speaking for the Constitution Bench observed:

> "Councel for the State urged that in any event so long as the state of emergency declared on October 20, 1962, by the President under Article 352 was not withdrawn or revoked, the respondent could not move the High Court by a petition under Article 226 of the Constitution on the plea that by the impugned order his fundamental right guaranteed under Article 19(1)(d) of the Constitution was infringed. But the Act was brought into force before the declaration of the emergency by the President. If the power conferred by S. 3(1)(b) authorised the imposition of unreasonable restrictions, the Clause must be deemed to be void, for Article 13(2) of the Constitution prohibits the State from making any law which takes away or abridges the rights conferred by Part III, and laws made in contravention of Article 13(2) are to the extent of the contravention void. Section 3(1)(b) was, therefore, void when enacted and was not revived when the proclamation of emergency was made by the President. Article 358 which suspends the provisions of Article 19 during an emergency declared by the President under Article 352 is in terms prospective: after the proclamation of emergency nothing in Article 19 restricts the power of the State to make laws or to take any executive action which the State but for the provisions contained in Part III was competent to make or take. Article 358, however, does not operate to validate a legislative provision which was invalid because of the constitutional inhibition before the proclamation of emergency."

Even more directly on the point is the celebrated decision in the *Bennett Coleman and Co., Ltd. and others* v. *Union of India and others* (6). Therein the Newsprint Policy 1972-73 of the Government of India, which was promulgated admittedly during the continuance of the present emergency, was assailed on the ground of the violation of Article 19 of the Constitution. This was an emanation from the Newsprint Control Order, 1962 which in turn was

(6) A.I.R. 1973 S.C. 106.

made in exercise of the powers conferred by section 3 of the Essential Commodities Act and of the Import Control Order 1955 made in exercise of the powers confered by sections 3 and 4(a) of the Imports and Exports Act of 1946. The abovesaid pieces of legislation were admittedly pre-emergency legislation though the impugned Newsprint Policy 1972-73 was undoubtedly enforced under the abovesaid legal provisions during the continuation of the emergency. Ray. J., (as the learned Chief Justice then was) speaking for the majority struck down the Newsprint Policy 1972-73 primarily on the ground of its violation of Article 19(1)(a) of the Constitution. Rejecting the respondent-Union of India's objection that Article 19 of the Constitution could not be invoked by the petitioners, it was observed, after expressly confirming the ratio of *Thakur Bharat Singh's case* (supra), as follows:

> "The *Madhya Pradesh case* (supra) is an authority for the proposition that Article 358 does not operate to validate any legislative provision which is invalid because of the constitutional prohibition. In the present case, the impugned newsprint policy is continuation of prior executive action and of previous law. Therefore, in our judgment there is no merit in this preliminary objection."

In the very recent case of *Shree Meenakshi Mills Ltd.* v. *Union of India* (7), the impugned notifications were issued under the Cotton Textiles (Control) Order, 1948, (which obviously was a pre-emergency piece of legislation) on the 13th March, 1973, admittedly during the continuation of the emergency. The challenge was primarily levelled under Article 19(1)(f) and (g) of the Constitution and was fully entertained and considered by their Lordships. Rejecting the objections regarding the maintainability of the petition on the ground of the exising emergency, Chief Justice Ray speaking for the Court reaffrmed the ratio in *Bennett Coleman's case* (supra), and tersely observed:

> "It was said on behalf of the State that the petitions were not maintainable because of the proclamation of emergency. During the proclamation of emergency Article 358 does

(7) A.I.R. 1974 S.C. 366.

not apply to executive action taken during the emergency if the same is a continuance of a prior executive action or an emanation of the previous law which is otherwise unconstitutional. The petitioners challenged the action or previous law to be violative of fundamental rights. * * * * * *.

Therefore, if it can be shown that the executive action taken during the emergency has no authority as a valid law its constitutionality can be challenged. The Cotton Textiles Order 1948 was continued by Essential Commodities Act, 1955. The impugned orders are made under pre-emergency Cotton Textiles Control Order. The validity of the impugned orders is challenged under Article 19(1) (f) and (g) of the Constitution on the ground that it is a pre-emergency executive order which could have been challenged under Article 19(1) (f) and (g) before the proclamation of emergency. From that point of view the petitions are competent though the challenge is insupportable on all grounds."

I, therefore, hold that on the language of Article 358 itself, on principle, and in view of the three authoritative precedents referred to above, the petitioner in this case is clearly entitled to challenge the impugned Stock Order on the basis of the same being violative of Article 19(1) (f) and (g) of the Constitution.

Once the constitutional attack under Article 19 is open, Mr. Kuldip Singh, learned counsel for the petitioner, has forcefully assailed the Stock Order, for what he calls to be its patent irrationality. Counsel contended that clause (f) of Article 19(1) guaranteed to the petitioner the right to hold and dispose of his property whilst the Stock Order renders him a criminal for the mere act of possessing his own produce which he may create by the dint of his own labour. Similarly, it was claimed that clause (g) guaranteed the right to carry on the profession or occupation of farming and this must carry within its sweep the elementary right to possess and hold the fruits of his profession or occupation. It was argued that the provisions of the Stock Order taken collectively make a frontal and direct inroad into the abovesaid fundamental rights of the petitioner and thus cannot be supported on any rationale or logic.

Specifically, clause 3 of the Stock Order has been assailed on the ground that it gives arbitrary and uncanalised powers to the Government to fix at any time the quantity of wheat which can be possessed by the producer himself. It is highlighted that no guidelines or policy is indicated which governs the exercise of this naked power. As a logical extension of the argument, it is pointed out that the clause would empower the Government to reduce the quantum of wheat to be lawfully possessed by the producer to any limit even to a single quintal and in the garb of regulation take action which in fact may be confiscatory.

The fixation of the maximum limit of possession at 10 quintals per acre of area owned by the producer subject to a maximum of 100 quintals under clause (4) has been attacked as being devoid of any rational basis and equally without any nexus to the object sought to be achieved. It is highlighted that it is neither a fact nor the case of the State that an industrious producer cannot produce more than 10 quintals of wheat from an acre of land. The absolute limit of 100 quintals irrespective of the area of land owned by the producer is again challenged to be blatantly unreasonable and an illogical attempt to treat unequals as equals.

Clause (5) of the Stock Order is challenged on the ground that it is in terms a direction to off-load and dispose of all surplus stocks in a captive market from which all substantial and potential buyers have been virtually excluded. The core of the attack here is that no obligation is cast on any person or body of persons to take over the stocks nor any indication of a fixed and remunerative price to be paid therefor is remotely suggested.

Lastly, the provisions of clause (6) have been highlighted as being patently harsh and oppressive, and empowering the authorities to forcibly enter and seize the lawful produce of the farmer in Essential Commodities Act which renders the violation of any order his custody. Particular reference is made to section 7 of the under sections 3 to be a criminal offence for which an imprisonment up to one year is provided along with the forfeiture of the stocks in respect of which any such offence is committed even in the case of a first offender. It is hence argued that an industrious producer or grower of wheat may ultimately be rewarded with imprisonment and confiscation for having produced out of the soil wheat beyond an arbitrary quantum of 10 quintals per acre.

In this largely rural country where nearly three decades after the attainment of independence we are still dependant upon foreign sources to even barely feed our teeming millions, the vocation of farming must necessarily have the pride of place. The petitioner herein claims to belong to the class which undoubtedly is the corner stone upon which the edifice of what has been called the green revolution has been built within this country. This hardy and industrious class did in fact bring the country to the verge of self-sufficiency in foodgrains. That achievement is now perhaps being eroded again by the endemic shortages of electric power, of diesel, of fuel, of chemical fertilizers, and other agricultural inputs, and equally the scaring prices of agricultural machinery. The farmer undoubtedly stands out as a class by himself. He truly creates out of the soil valuable property and produce by the dint of his own labour. The farmer or the agricultural producer is thus distinctly on a different footing from the trader, dealer or a manufacturer who may acquire or purchase produce from other sources. In their case it may perhaps be reasonable in a specific situation to require that they shall not purchase, acquire or hold beyond a specific stock or limit. But, can it possibly stand to reason to prescribe that the producer shall not produce or grow beyond a certain arbitrary limit from the land what he can well do by the dint of his labour, energy or intelligence? To my mind, Article 19 of the Constitution guarantees to the citizen the fundamental right to hold and possess the lawful produce of a lawful occupation or profession. Similarly, the right to carry on an occupation or a profession necessarily implies to hold and dispose of the necessary fruits or results of such an occupation. It follows, therefore, that the farmer has a guaranteed right to possess and dispose of at least that property which he directly grows from the land owned by him, by virtue of Article 19(1) (f) and (g) of the Constitution. The solitary issue that, therefore, requires examination is whether the impugned Stock Order has placed reasonable restrictions on the exercise of these rights in the interest of the general public.

Much lip service has been paid on behalf of the respondent-State to the producer both in the pleadings and during the course of the argument. It has been reiterated that one of the patent objectives of the Government is to enhance wheat production within the State and to provide adequate incentives therefor to the farmer. Now it is not even remotely the case of the respondent that within the State of Punjab, a progressive farmer employing the latest

know-how of modern agriculture cannot produce more than 10 quintals of wheat from an acre of fertile land. Indeed, it is well known that the maximum produce from the newly introduced seeds in ideal conditions may well rise up to 30 quintals per acre. That may present the maximum or the ideal figure but an optimum produce of 15 to 20 quintals of wheat per acre is not difficult to attain by a progressive farmer like the one the petitioner claims to be. The learned counsel for the State, Mr. Bhandari, even when pressed is unable to give any criteria or the data or the considerations which have motivated the respondent-State to fix the limit per acre prescribed in the Stock Order. This by itself smacks of unreasonableness and arbitrariness. No clue was given to this Court either in the pleadings or in the course of argument which could suggest a reasonable foundation for the fixation of this limit. It certainly is neither the maximum nor the optimum limit of produce per acre within the State of Punjab given even the average or ideal conditions. Therefore, it follows that a producer may well raise wheat up to the level of 20 quintals per acre and the moment he comes to have and hold the same he would be violating the provisions of the Stock Order. I have said earlier that the producer is at least entitled in terms to possess and hold what he actually grows out of the soil itself by his labour. One can understand a limitation directing that beyond a certain limit of stock he would be liable to deliver the same to the State, its agencies or its nominees at a remunerative price. That might perhaps fall within the ambit of reasonable restrictions (though we are not called upon to pronounce upon the same herein) on the fundamental right to hold and dispose of property acquired through a lawful occupation. But by a blanket direction to prescribe that the producer shall not be entitled even to possess the whole of his produce and the moment it exceeds an arbitrary limit he would forthwith be branded a criminal liable to prosecution and conviction under section 7 of the Essential Commodities Act is not, to my mind, what can possibly be a reasonable restriction on the right abovementioned. The requirement of the Stock Order, therefore, in terms becomes an irrational fiat either directing that the producer shall not be industrious and productive enough to grow wheat beyond this arbitrary limit of 10 quintals per acre and in case he does so he would either be at once within the mischief of a violation of the Stock Order or forthwith bound to off-load and rid himself of his

lawful produce on pain of criminality irrespective of the fact whether or not there is a purchaser for the same or a remunerative price therefor is forthcoming.

Equally arbitrary, to my mind, is the requirement of the maximum limit of 100 quintals for the producer. This is irrespective of the quantum of land owner by him. The result is that the same limit would apply to a farmer holding either 10 acres of land or another holding 30 acres of the same. Taking the concrete case of the petitioner who claims to own and grow wheat on 27 acres of land, the limit in his case is equally put at the figure of 100 quintals. This would bring it to the queer and the ridiculously low figure of a limit of about 3½ quintals of wheat per acre of land held by him. Here again the learned counsel for the respondent-State is unable to enlighten us as to the rationale for treating patent unequals as equals for the upper limit of the holding of stocks. Even assuming the arbitrary limit of 10 quintals of produce per acre a producer like the petitioner could grow 270 quintals of wheat on his land. It is well known that during the relevant season land is primarily diverted to wheat growing within the State. The moment the petitioner thus harvests a crop exceeding 100 quintals which he necessarily would do, then he at once comes within the infraction of the Stock Order. The learned counsel for the State has been unable to give us any rationale why a person like the petitioner should be deprived of his right to possess and even to harvest what he has grown in his fields within even the arbitrary limit of about 10 quintals of wheat per acre. It also equally deserves notice in this context that the limitations of stock are not related to the area of wheat grown on the land but to the area owned or held by the producer. The result may well be that a producer who diverts his entire holding to the growing of cash crops (other than wheat) would be entitled, nevertheless, to hold up to the maximum of 100 quintals of wheat even though he may not have grown a grain of it. On the other hand a producer who grows wheat on the whole of its holding would not be entitled to hold even his own produce if it exceeds the arbitrary limit of either 10 quintals per acre or 100 quintals at the maximum. I am, therefore, unable to hold that the abovesaid prescriptions are reasonable restrictions on the fundamental right of the petitioner.

The Achilles heel and the most glaring irrationality of the Stock Order, however, lies in the fact that whilst it obliges the

producer to dispose of all stocks in excess of the arbitrary limit which he may actually have in his possession or which he may grow from his own land, without creating any corresponding obligation whatsoever on the part of anyone else to either take over this excess stock and what is perhaps more it casts no liability on anyone to offer any reasonable or remunerative price for such produce. The admitted position is that prior to the promulgation of the impugned Stock Order no limitation existed on the right of the producer to hold his produce. Growers were, therefore, lawfully in possession of stocks above the overall maximum limit of 100 quintals now prescribed or the pro-rata limit of 10 quintals per acre of the land held. The petitioner in terms claims in para 8 of his petition that he himself has a stock of 180 quintals of wheat raised by him entirely from his own farm. As has already been shown earlier it is and would be possible in future for progressive farmers to exceed the arbitrary limit even upon an optimum yield of wheat per acre from the land. Both as regards present stocks and the future ones the producer is, therefore, obliged on pain of criminality to divest himself of the same. Mr. K. P. Bhandari on behalf of the respondents candidly states that neither the State nor any of its agencies or whole-salers or dealers are under any obligation to buy the wheat of which the petitioner and others, like him, must forthwith divest themselves within a period of 15 days or to face confiscation of the same and the prosecution for the infraction of the order. The learned counsel for the petitioner is, therefore, on strong ground in contending that the petitioner and those like him are being driven to the wall to dispose of their lawful produce irrespective of the fact whether or not any purchaser worth the name is forthcoming to take it over or any remuneration therefor is available. Counsel is correct in saying that the necessary concomitant of a reasonable power in such a situation must necessarily provide that the surplus stock will either be taken over by the State, its Corporations or bodies controlled by it or cast some similar obligation on the whole-salers, dealers or purchasers who would be willing to accept what the petitioner must divest himself of. In the absence, therefore, in the Stock Order of any indication as to who is to purchase the excess stocks and what is more without specifying any price therefor whether remunerative or otherwise it smacks sky-high of unreasonableness and an exercise of arbitrary power. To repeat, a liability to off-load and dispose of stocks must necessarily be matched with a corresponding obligation in someone to take over and buy the same at a

precisely specified price. Merely by a flat to require the producer that he shall not even possess the produce grown from his field irrespective of the fact whether he can reasonably part therewith appears to me as a provision so harsh that it cannot possibly come within the ambit of what the Constitution calls a reasonable restriction.

What I have said above appears to be well borne out by the weighty observations of Chief Justice Ray in the *Shree Meenakshi Mills case* (supra). The impugned notifications therein even though they affected textile manufacturers (and not a primary producer like the farmer) were forcefully assailed on the ground that they obliged the producer of yarn to sell to persons named, without there being a corresponding obligation on those persons to buy. The challenge was duly entertained as an unreasonable restriction but on the specific facts, to which reference was made, the learned Chief Justice held that in fact positive obligations were cast on the purchaser and the impugned notifications provided that no non-lifting of yarn or denial of the obligation to purchase can happen thereunder (at para 97 of the report). As I have already noticed the State has here taken up the candid position that indeed there is no obligation on the part of anyone to take over the surplus stocks nor is there any suggestion of the price which would necessarily be paid therefor. On the admitted position, therefore, the relevant provision must he held to be a provision which is patently unreasonable.

A statutory provision like the Stock Order has necessarily to be tested on the anvil of all the reasonable possibilities and eventualities arising or likely to arise thereunder and not merely on the fluctuating situation existing at a particular time. It is the admitted case that the State of Punjab is a surplus State which is the bread basket of the country and at least over the last three years it has been exporting more than 20 lakh tonnes of wheat per year to the other deficit States of India. It is again not in dispute that the State of Punjab by itself is a single Food Zone and no producer and even dealer or wholesaler is entitled to take his produce outside the State for marketing the same without the permit and sanction of the State Government. Indeed any unauthorised export of wheat would be a criminal offence. It is also the common case that recently the export permits granted to wholesalers have been withdrawn and it is only the State or its agencies who are now entitled to export

wheat beyond the State's Food Zone. Counsel for the petitioner hence forcefully contends that with a surplus of 20 lakh tonnes of wheat within the captive area of the Punjab State Food Zone it is always in the power of the State to drive the producer to off-load his stock and in case exports are not allowed, a situation can easily be created where there would be huge surpluses without necessarily a purchaser therefor within the isolated Food Zone. Now on the State's own showing in the previous year there was what has been called the State take over of the grain trade which virtually made the State and its sponsored agencies as the sole and monopolistic buyer of wheat at least within the State of Punjab. During the present harvesting year a change was made and wholesalers were brought in on the condition that 50 per cent of the wheat purchased by them was to be delivered over to the State in the form of a levy at a fixed rate of Rs. 105 per quintal whilst the remaining 50 per cent would be allowed to be disposed of in the open market or by the issue of Export Permits beyond the Food Zone. Each whole-saler thus introduced was entitled to hold stocks up to 2,500 quintals whilst each dealer under the said order was allowed to keep in stock up to 1,000 quintals of wheat. Even that policy has not been adhered to and in mid-season by the relevant amending orders it is again being reversed with the effect that whole-salers are again virtually sought to be ousted from the market. It is not in dispute that by the promulgation of the Punjab Wheat Dealers Licencing and Price Control (Fourth amendment) Order, 1974 issued on the 22nd of October, 1974, the stocks of each whole-salers which were earlier fixed at 2,500 quintals had been slashed to the minimal figure of 100 quintals and the balance thereof is sought to be acquired compulsorily by the State. Similarly by virtue of the said order the upper limit of the stock of dealers has again been brought down from 1,000 quintals to a mere 100 quintals each. There is thus substantial force in the argument on behalf of the petitioner that the two potential classes of buyers, namely, the whole-salers and the dealers are now far from being willing purchasers in the market, and are in fact themselves under pressure to off-load the excess of their stock and thus primary sellers in the market. In effect there was no potential buyer of large stocks in the market in a surplus State from where the export is blocked and 82 per cent of whose population is itself rural being either growers or receiving their wages etc. in terms of produce.

There is thus substance in the petitioner's contention that in actual fact a situation has been created where the producers are being directed to off-load the stock without any indication of the price in a market where there are no potential buyers except the virtually monopolistic State agencies. Indeed it is the case that the objective is to drive the producer to off-load their wheat at unremunerative prices. There is force in the contention of the learned counsel for the petitioner that in fact a situation of the kind above-mentioned has been created or in the alternative it can always be so created at the sweet will of the respondent. It is pointed out that the State has the absolute power to exclude all other potential purchasers of wheat from the Food Zone and had earlier exercised that power to do so during the grain trade take over. The Fourth Amendment Order leaves no manner of doubt that the State agencies are having second thought about the policy of having introduced whole-salers and dealers in the market who are either being completely ousted or being limited to proportions where they would be insignificant factors in a surplus market. This would lead to the glaring unreasonable situation of the producer being obliged by law to off-load his stock on pain of confiscation and prosecution and in the absence of any matching obligation on anyone to take over the stocks or to pay a remunerative price thereof. Any monopolistic buyer would be thus wholly in a position to exploit such a contingency and the producer obliged to dispose of the wheat at a throw away price. It appears patent to my mind that a unilateral obligation and liability imposed upon the producer denying him his fundamental right to hold the fruits of his labour in his own hand cannot possibly stand the test of reasonableness or be within the ambit of Article 19(5) and (6) of the Constitution of India.

A feeble and half-hearted attempt was made on behalf of the respondent-State to meet the glaring inequity of the abovenoticed situation. It was stated that two State Agencies, the Punjab Co-operative Supply and Marketing Federation and the Punjab State Civil Supplies Corporation had been given some vague instructions to purchase in the market at a price of Rs. 116 per quintal. No rationale, however, was given as to how this price has been arrived at in face of the State's claim that the controlled price had been fixed at Rs. 139 per quintal absolutely. I would be adverting to the price factor separately hereafter but it deserves notice that Mr. Bhandari fairly concedes that neither the State itself nor the abovementioned organisations are under any legal obligation to buy

the wheat which the producer is bound to off-load. Mr. Kuldip Singh has argued cogently that the above-said Organisations are themselves independent Corporations and it has not been shown that the Government as such has any legal right even to issue the suggested instructions or that there is any liability on the part of the said organisations to comply therewith.

Indeed the position as regards the Punjab Co-operative Supply and Marketing Federation Ltd., is not in dispute that the same is an independent Corporation registered under the Co-operative Societies Act and functioning independently under its relevant Board and its executive officials. No copy of the alleged instruction has been placed on the record nor even the suggested procedure for the take over of surplus stocks is remotely brought to light on behalf of the respondent-State. A vague general instruction of doubtful validity can, therefore, hardly be a corresponding equivalent of a legal liability imposed upon the petitioner and other producers. It is perfectly open to the above-said statutory Corporations to take over or not to take over the stocks offered to them generally and in particular by the petitioner and equally so they may or may not pay even the suggested price therefor. There is no compulsion imposed upon them under the instructions to do either of the two things. Again there are financial limitations within which these Corporations operate and which inhibit them from buying beyond a certain limit at a certain time. In the result, therefore, when either of these corporations are unwilling or unable to buy the large stocks of the producers which they must dispose of within the short span of 15 days they are necessarily left to see with no option but to dispose of at a throw away price in order to escape the criminal and confiscatory liabilities which are imposed upon them by the Stock Order. Apart from the strict letter of the law the learned counsel for the petitioner contends that as a matter of practical working the result that ensues is that it becomes the sweet will of the individual members of the staff of the Corporations to buy or not to buy stock of a particular producer or to declare and determine arbitrarily the quality of his produce and on tenuous ground to make serious inroads into the price that he would be fairly entitled to receive. In actual practice, therefore whenever, there is monopolistic buying by the State or its controlled agencies (without any legal obligation to do so) then the producer is invariably thrown to the tender and sometimes wolfish mercies of the petty ministerial

staff of the Corporation who have in them the power to purchase or not to purchase the fruits of his labour and to give or not to give adequate remuneration for the same. Times out of number it is not without resort to devious methods that these ministerial officials can be persuaded to take over the stock or to pay a remunerative price therefor. With the Damocles sword of clauses (5) and (6) hanging over the heads of the producers requiring them to off-load their produce within a period of 15 days the result that ensues is that a whip hand is given to the State to mercilessly drive the producers with their wheat stock to the market where there may be no buyer at all, or at best a monopolistic one and no reasonable guarantee of securing a remunerative price which would cover his cost of production with a reasonable margin of profit for his labour. In fact he is left obliged by the law to part with his produce within a fortnight at any price without any obligation being cast correspondingly on anyone to receive the excess stocks or to ensure a reasonable remuneration therefor. That, in one way, is the essence of unreasonableness in the impugned Stock Order.

As I have said earlier, the Stock Order has to be tested on the anvil of all reasonable eventualities and its irrationality, arbitrariness and even oppressiveness becomes more than manifest when it is tested against the background of the impending harvest season of wheat within the State which would approach in less than 2½ months from now. The Stock Order is, to all intents and purposes, a regular and permanent addition to the statute book and, as Mr. Bhandari concedes, the first piece of legislation in this State imposing limits on the stock of primary producers like the farmers. By virtue of clauses (4) and (5) thereof after the 21st November, 1974, every producer either having or coming to acquire wheat beyond the arbitrary quantum of 10 quintals of wheat per acre of land held is directly within the mischief of the Stock Order. Not travelling into the realm of conjecture but taking the concrete case of the petitioner, one may visualize the situation if he has now planted wheat on his 27 acres of land. As mentioned earlier, within this State the arbitrary quantum of 10 quintals of wheat per acre is easily likely to be exceeded and even optimum returns of upto 20 quintals may well be achieved by a progressive farmer. Wheat harvesting within the State has taken advantage of the technological advances and there are now a plethora of big harvest combines which operate in the wheat fields during the harvesting season and which are capable of harvesting up to 2 acres of wheat per hour. It

is thus possible for a producer like the petitioner to have the whole acreage of his wheat harvested with one of these combines in a day. The result would be that almost automatically the petitioner would cross the arbitrary limit of hundred quintals of wheat and thus violate the sringent provisions of the Stock Order bringng in its wake the penalties of both confiscation and prosecution. Does it stand to reason that a producer carrying on his lawful profession should be denied the right even temporarily to hold the produce which he creates out of the soil and weigh every grain above the arbitrary limit, and be compelled to dispose the same within and during the mid-harvest operations in order to escape the stringent provisions of the Stock Order ? I am unable to see that a provision which will lead to such anomalies and oppressive results can stand the test of reasonableness.

Equally, the learned counsel for the petitioner highlights the general situation apart from the individual hardship the Stock Order will entail. To repeat, the use of mechanical aids within the State enables the producer now to complete the harvesting operations of wheat within a month and half from the ripening of the grain in the fields. If the Stock Order is to be complied with, the necessary result would be that 20 to 30 lakh tons of the surplus wheat within the State, and may be more, must at once be disgorged and thrown in a surplus market for disposal by the producers if they are to comply with the limits of stock laid down in the Order. Is there the wherewithal and the financial capability in the respondent or its agencies to take over all this surplus and to forthwith pay a remunerative price therefor ? In fact, it is not disputed that even under ordinary conditions the State agencies many a time are inhibited from buying produce by grave limitations of finance. Learned counsel for the petitioner rightly visualises the apprehension that in such a situation without any one being obliged to buy and the producer being required by law to off-land this stocks, the latter would have no choice but to rid himself of his produce at throw-away prices that would necessarily be engendered as a result of the harsh provisions of the Stock Order.

A necessary ingredient of a reasonable restriction in a situation of the present kind is the guarantee or at least the offer of a precise and a remunerative price to the producer. Their Lordships of the Supreme Court have in a string of recent judgments laid down the principles that this test of reasonableness implies at least

some approximation to the cost of production and a reasonable margin of profit thereon for the producer or the manufacturer. Now the floundering position taken on behalf of the State regarding the price that might or might not even be offered to the producer obliged to dispose of his stocks highlights the arbitrariness of the Stock Order. At the cost of repetition, I have mentioned that Mr. Bhandari on behalf of the respondent concedes that neither the State itself for its quasi-governmental agencies or any other body of persons is under any legal obligation to pay even a minimum price for a commodity so vital as wheat. As a matter of fact, he concedes that the respondent has not burdened itself nor obliged any one to pay even a floor-price for this produce with the result that in a captive and surplus area the same may be depressed to any limits. This apart, the shifting stand of the State in this context deserves some detailed notice. On its own showing in the written statement, the procurement price of wheat under the levy orders was Rs. 105 a quintal and that is also the support price of the commodity within this State. It has again to be borne in mind that the respondent-State makes no commitment to buy wheat at this price but may or may not do so. There is thus no effective practical or legal guarantee that prices will not dip far beyond even the purported support price in a surplus area from which export is already banned except at the sweet-will of the respondent- State and from which the potential buyers like wholesalers and dealers are sought to be excluded. The total absence of any uniformity or coherent price policy on so material an issue is equally manifest. Mr. Bhandari concedes that till about the 5th June, 1974, there did not exist any price control on wheat at all within the State. However, a limited price restriction was brought in by the Wheat (Price Control) Order, 1974, issued on the 5th June, 1974, by the Ministry of Agriculture; clause (3) thereof provided as follows:—

"2. *Maximum price at which wheat may be sold by a dealer* :

(1) No dealer in a State or Union Territory to which this Order extends shall sell or agree to sell, in the course of inter-State trade and commerce, wheat at a price exceeding rupees one hundred and fifty per quintal.

(2) For the purpose of this Order, a sale of wheat shall be deemed to take place in the course of inter-State trade and commerce if the sale—

(a) occasions the movement of wheat from one State to another, or

(b) effects a transfer of documents of title to the wheat during its movement from one State to another.

* * * * * *

The provisions of the abovequoted clause would show that fixation of price here again was only in regard to sales in the course of inter-State trade. Even this was allowed to be fixed as high as Rs. 150 per quintal. This apart, there is substance in the contention of the counsel for the petitioner that this was only applicable to inter-State trade and there was as such no limitations of price to the inter-State trade of wheat at all. Discriminatory comparison of prices both in the adjoining and the other States of the country has also been forcefully pointed out on behalf of the petitioner. In the adjoining State of Delhi by an order promulgated on the 24th June, 1974, the price range of wheat has been fixed from Rs. 158 to Rs. 161 per quintal. By similar orders passed under the Essential Commodities Act on the 6th July, 1974, prices of wheat in Maharashtra have been fixed between Rs. 165 and Rs. 168 per quintal. It is forcefully pointed out that these price ranges are equally applicable to the producers in those States as well. It is the case that without any rationale or policy, the producer within the State of Punjab is being discriminated against though there are sizeable indications that in fact the cost of production within this State is higher than in other States, indeed if it is not the highest in India. With this background, on the 22nd October, 1974, by virtue of clause 6 of the Punjab Wheat Dealers Licensing and Price Control (Fourth Amendment) Order, 1974, the price has been controlled in the following terms :—

"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 deductions to the extent specified in the Schedule and in that case the reduced price shall be the maximum price for the purpose of sale :

* * * * * *

Mr. Bhandari on behalf of the State has taken the stand that this fixation of price is general and is applicable to wholesalers, producers, licensed dealers, exporters and applicable both to levy and non-levy wheat. It is manifest, therefore, that now the maximum control price has been fixed by virtue of the abovesaid order on the 22nd October, 1974. Now the curious thing here again is that despite the fixation of the abovesaid price, the averments in the return are that the Punjab State Co-operative Supply and Marketing Federation and the Punjab State Civil Supplies Corporation have been asked to offer a price of Rs. 116 only per quintal to the producers. On the one hand, the stand is that the control price has been uniformly fixed at Rs. 139 per quintal and, on the other, the position is that the State and its agencies would offer only Rs. 116 to the producer. No rationale for this has been suggested and this exhibits the arbitrary power of the respondent which has acquired a monopoly of purchasing the commodity in the surplus State to offer any price for the wheat which it chooses. What, however, deserves to be highlighted is that no obligation is accepted even to offer this price even though the producer is bound to divest himself of his excess stock. From the aforesaid resume it is patent that the price policy is based on no principle, lacking in cohesion as also in uniformity and consistency and appears to be wholly unrelated to the primary criteria laid down by their Lordships of the Supreme Court, namely, the basic cost of production with a reasonable margin of profit thereon.

One may not be understood to imply that the State is to be denuded of its power to purchase and take over the surplus or hoarded stocks with the producers or that the producers can hold the consumers to ransom by withholding the wherewithal whereby the latter must live. Far from that the rapacious produce who inordinately holds his stock unmindful of the needs of the country and the consumers is deserving of no sympathy. But it appears elementary that a primary producer like the farmer is at least entitled to have and to reasonably hold the fruits of his labour which he painfully extracts from the soil. He is further guaranteed the right to dispose of his produce. Limitations to hold the same must be reasonably related to the maximum or optimum produce which the soil is capable of growing. Equally, if he is required to part with his produce, a reasonable and precise channel for doing so must be provided and indicated. The same priority must further be given to ensure at least the basic cost of production of the produce to the

farmer. He should not be driven to or left to the tender mercies of a fluctuating and depressed market in a surplus food zone which is capable of being easily manipulated. These appear to my mind to be the basic minimum of a reasonable restriction on the right which is guaranteed to the farmer by Article 19(1)(f) and (g) of the Constitution. The respondent State already stands fully armed with the very wide ranging powers given by section 3 of the Essential Commodities Act. When reasonably applied, they leave no dearth of authority to acquire or regulate surplus stocks in the hands of any one including the producer. In this context, a bare reference to the provisions of section 3 suffices and in particular sub-clauses (1), (2) (b), (c), (d), (e), (f) and (g); and sections 3A and 3B may be instructively referred to. These provisions leave no manner of doubt about the width and range of the powers with which the respondent State stands already clothed.

Claus (3) of the Stock Order has then been forcefully attacked as patently arbitrary and conducive to arming the State Government with unguided and uncanalised powers to fix any quantity of wheat which may be possessed by a producer without laying any guidelines or rationale for doing so. As an example of the exercise of such a power, it was pointed out that clause (4) appears to be of an ephemeral nature because it provides for the limits of stock only up to the time till any other limit is so fixed under clause (3). It was argued with plausibility on behalf of the petitioner that clause (3), therefore, arms the governmental agencies to fix any arbitrary minimum limit on the producers' stock, for example, even one quintal per acre which in the garb of the regulatory process would in effect be virtually confiscatory. The language of this clause provides not the least indicia which would provide the basis for the Government to fix the maximum stocks with the producer. It is, therefore, left entirely to the whim of the executive to place arbitrary limits and make arbitrary inroads thereby into the fundamental rights guaranteed by Article 19(1)(f) and (g) to persons like the petitioner. To my mind, the provisions of this clause are independently within the observations of their Lordships of the Supreme Court in *Messrs Dwarka Prasad Naxmi Narain* v. *State of Uttar Pradesh and* others (8) :

> "Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the

(8) A.I.R. 1954 S.C. 224:

> freedom guaranteed under Article 19(1) (g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in reasonableness."

Clauses (4) and (5)-have been exhaustively dealt with above by me to pin-point the patent unreasonableness of the inroads which they make into the guaranteed rights of the petitioner. The particular provision of clause (5) requiring the disposal of all excess stock within a fortnight of the promulgation of the order, however, independently smacks of unreasonability in view of the decision of their Lordships in *Oudh Sugar Mills Ltd. etc.* v. *Union of India and others* (9), where they struck down an order directing the petitioner to dispose of its stocks within only 26 days of the order in the open market. Even that period of time was held to be an unreasonable restriction.

I deem it unnecessary to burden this already voluminous judgment with other authorities on the point of unreasonableness in imposing restrictions on the fundamental right under Articie 19. It suffices to notice the following pithy observations of their *Lordships in Ramanlal Gulabchand Shah etc.* v. *The State of Gujarat and others* (10).

> "A person is entitled to hold and enjoy his property as he thinks best. If regard is to be had for the benefits of society a clear law and a clear determination are required. Both the elements are missing."

I am inclined to hold that the position appears to be identical in the case of the Stock Order as well. There is no option but to find that clauses (3), (4), (5) and (6) of the same both as a matter of law and in practical effect erode the fundamental rights guaranteed to the petitioner under Article 19(1)(f) and (g) of the Constitution. Far from merely imposing reasonable restrictions on those rights, the Stock Order virtually negates them by arbitrary, irrational and, if one may say so, oppressive provisions.

The second argument on behalf of the petitioner is completely independent of the first one. As a matter of abundant caution it

(9) A.I.R. 1970 S.C. 1070.
(10) A.I.R. 1969 S.C. 168.

proceeds on the assumption that the Stock Order is immune to an attack on the basis of Article 19(1)(f) and (g). Counsel contends that it is the common case that the Stock Order has been promulgated by virtue of the power conferred by section 3 of the Essential Commodities Act. The said Act and particularly section 3(1) (from which the power to issue orders emanates) were enacted long before the emergency in the year 1955. Being pre-emergency legislation, the Act and its provisions were bound to conform both in letter and spirit to the Constitution of India. Section 3, therefore, could not have been intended to remotely visualize or contemplate the conferment of a power which would authorize the promulgation of orders thereunder which would be violative of the fundamental rights guaranteed under Article 19 or, for that matter, any other provision of the Constitution. Therefore, any delegated legislation under section 3, whether pre or post emergency, must conform to the provisions of the Constitution. Any such legislation or part thereof which, therefore, does not so conform is necessarily beyond the scope and ambit of the power conferred by section 3 of the Essential Commodities Act.

The stand taken by the respondent-State in opposition to the above-said contention deserves express notice. Mr. Bhandari fairly concedes that despite the continuation of the emergency the petitioner is entitled to assail the Stock Order on the ground that it is beyond the scope of the parent statute and in particular section 3 of the Essential Commodities Act. He, however, took a determined stand that because the validity and the constitutionality of the Essential Commodities Act has never been challenged on behalf of the petitioner, therefore, it was not open to him to assail the reasonableness of the Stock Order issued thereunder. According to him Section 3(1) being a valid law conferring the power on the Government to issue orders thereunder, the only issue that could be examined by the Court was whether the Stock Order was within the power conferred and any consideration of the question of infringement of fundamental right under the Constitution should be wholly aside the point.

The compliment of a rational refutation on first principle to the above noticed argument of the learned counsel for the State need not be extended, because such a contention has been authoritatively held to be extravagant by their Lordships in *Narendra Kumar and others* v.

The Union of India and others (11). The relevant observations to my mind deserve quotation *in extenso* :—

> "While this was the main contention on behalf of the respondents, it was also contended that as the petitioners have not challenged the validity of the Essential Commodities Act and have admitted the power of the Central Government to make an order in exercise of the powers conferred by Section 3 of the Act it is not open to the Court to consider whether the law made by the Government in making the non-ferrous metal control order and in specifying the principles under clause 4 of the order violate any of the fundamental rights under the Constitution. It is urged that once it is found that the Government has power under a valid law to provide for regulating or prohibiting the production, supply and distribution of an essential commodity and trade and commerce therein as soon as it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of the essential commodity or for securing its equitable distribution and availability at fair prices, the order made by them can be attacked only if it is outside the power granted by the section or if it is mala fide. Mala fides have not been suggested and we are proceeding on the assumption that the Central Government was honestly of opinion that it was necessary and expedient to make an order providing for regulation and prohibition of the supply and distribution of imported copper and trade and commerce therein. So long as the Order does not go beyond such provisions, the Order, it is urged, must be held to be good and the consideration of any question of infringement of fundamental rights under the Constitution is wholly beside the point. *Such an extravagant argument has merely to be mentioned to deserve rejection*"

Once the hurdle of Mr. Bhandari's argument is out of the way then the second contention already noticed above of the learned counsel

(11) A.I.R. 1960 S.C. 430.

for the petitioners is on firm ground and is borne out by high authority. It suffices to again recall the observations made in *Narendra Kumar and others' case* (supra)—

> "* * * When, as in this case, no challenge is made that Section 3 of the Act is ultra vires the Constitution, it is on the assumption that the powers granted thereby do not violate the Constitution and do not empower the Central Government to do anything which the Constitution prohibits. It is fair and proper to presume that in passing this Act the Parliament could not possibly have intended the words used by it, viz., 'may by order provide for regulating or prohibiting the production, supply and distribution thereof. and trade and commerce in,' to include a power to make such provisions even though they may be in contravention of the Constitution. The fact that the words 'in accordance with the provisions of the articles of the Constitution are not used in the section is of no consequence. Such words have to be read by necessary implication in every provision and every law made by the Parliament on any day after the Constitution came into force. It is clear therefore that when Section 3 confers power to provide for regulation or prohibition of the production, supply and distribution of any essential commodity it gives such power to make any regulation or prohibition in so far as such regulation and prohibition do not violate any fundamental rights granted by the Constitution of India."

Following the above-said view a Division Bench of this Court consisting of Dua and Khanna JJ. in *M/s. Chanan Ram Jagan Nath* v. *The State of Punjab and others* (12), further observed :—

> "* * * The language of Section 3 of Essential Commodities Act remains the same what it was before the emergency was declared and there has been no change or amendment in that section. In the circumstances it is not possible to hold that the words of Section 3 had one meaning before the emergency was declared and they acquire a different

(12) A.I.R. 1965 Pb. 74.

> meaning after the declaration of the emergency. Emergency has no doubt far reaching effects and certain consequences flow from its declaration, but it certainly has not the effect of altering an interpretation which has been placed upon a statutory provision."

As Lord Atkin had said in the Liversidge's case, the voice of the laws must be heard even above the din of the clash of arms and they speak with one voice, be it emergency or normalcy. I have demonstrated above how the provisions of the Stock Order make sizeable inroads into the fundamental rights guaranteed to the petitioners and that the purported restrictions placed thereby are patently tainted with unreasonableness. Once that is so it would be totally anomalous to hold that purporting to act within the confines of the powers conferred by section 3 if the Essential Commodities Act — which is admittedly pre-emergency legislation—the respondent-State can exercise delegated powers which would be patently and flagrantly violative of Article 19 of the Constitution. There thus appears to be no choice but to find that the Stock Order is patently beyond the scope and ambit of the powers conferred by section 3 of the Essential Commodities Act and, therefore, void.

The law is no respector of person but it may perhaps be remotely relevant to notice the class to which the Stock Order was intended to apply. On the State's own showing in para 25 of its return, now under the law no producer can possess more than 7 hectares of land. The myth of the big feudal landlord is, therefore, dead as a dodo. Indeed after more than two decades of the agrarian legislation within the State the producers are now a class of peasant-proprietors, who either like the petitioner are progressive farmers forming the backbone of the Society or continue to be the traditional tillers of the soil, innocent, ignorant and indigent. It is unlikely that the respondent-State deliberately intended to negate what Article 19(1)(f) and (g) guarantees to this class.

I would then be failing in my duty to maintain the consistency of precedent if I were not to advert again to *M/s. Chanan Ram Jagan Nath's case*. I have respectfully followed and relied on what appears to be the basic ratio of that judgment. Nevertheless in the judgment of Khanna J. therein the observation has been made that the impugned order therein which was also issued under the Essential Commodities

Act could not be challenged under Article 19 of the Constitution during the continuation of the emergency. It is patent from the body of the judgment that the specified issue of pre-emergency legislation and delegated legislation emanating therefrom was never even remotely raised or considered by the Bench. Those observations are, therefore, clearly distinguishable. Even if it is otherwise, I am clear in my mind that the observations of Khanna J. are now directly contrary to what their Lordships have subsequently held in the cases (1) *Thakur Bharat Singh*, (2) *Bennett Coleman & Co.; and* (3) *Shri Meenakshi Mills Ltd.* (supra) to which detailed reference has earlier been made in this judgment. In view of this, that view cannot possibly hold the field any longer.

In fairness to the learned counsel for the petitioner it may be mentioned in passing that he had contended that the Stock Order was governed by section 3(2) clause (f) thereof and was bad because it travelled beyond the scope or violated the complementary provisions of section 3-B of the Essential Commodities Act. However, Mr. Bhandari on behalf of the State had taken up a categorical stand that the action was not sought to be taken under section 3(2)(f) and therefore section 3-B was not at all attracted. In view of this stand I deem it wholly unnecessary to examine this contention of the learned counsel for the petitioner. I may further notice that on behalf of the petitioner, no challenge to the Punjab Wheat Procurement (Levy) Order 1974, annexure P. 1, to the petition was made during the course of the arguments.

The Punjab Wheat (Restrictions of Stock by Producers) Order 1974, as hereby struck down. There will be no order as to costs.

K. S. K.

APPELLATE CIVIL

Before Bal Raj Tuli and A. S. Bains, JJ.

SHRI SANGIT MOHINDER SINGH.—*Appellant.*

versus

THE PUNJABI UNIVERSITY, PATIALA,—*Respondent.*

Regular First Appeal No. 82 of 1968.

January 24, 1975.

Land Acquisition Act (I of 1894)—Sections 18 and 25(1)—Code of Civil Procedure (Act V of 1908)—Order 41, Rule 22—Acquisition