

FULL BENCH

*Before S. S. Sandhawalia, C.J., M. R. Sharma, J. and
Gokal Chand Mittal, J.*

M/S. HARI RAM PARAS RAM and others,—*Petitioners.*
versus
STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 518 of 1981.

September 18, 1981.

*Essential Commodities Act (X of 1955)—Sections 3 and 5—
Haryana Rice Bran (Distribution and Price) Control Order 1981—
Clauses 3 and 4—Constitution of India 1950—Articles 14 and 19—
Single composite Control Order under section 3—Control price of a
percentage of an essential commodity fixed below the market price—
Such part of the commodity directed to be sold only to a particular
class of persons—Control Order—Whether imposes unreasonable
restrictions on the right to carry on trade and thus violative of
Article 19(1) (g)—Such partial control—Whether ultra vires sections
3(2) (c) & (f) and 3(3) (c)—Clause (4) of the Control Order dele-
gating authority to fix the control price to Director Food & Supplies—
Such delegation—Whether violative of Article 14 and section 3 of
the Act—First part of clause (4)—Whether in excess of the legisla-
tive powers of the State Government—Such part of the clause only—
Whether could be struck down.*

*Held, (per majority M. R. Sharma, J., S. S. Sandhawalia, C.J.
contra) that the total rice bran produced by the millers has not been
subjected to price-control, nor is the same being acquisitioned by
the State for resale at a higher profit. Only 30 per cent of the rice
bran produced by the millers is being earmarked for allotment to
poultry farmers and cattle breeders against permits presumably on
the basis of their actual needs. Even if the commodity is allotted
in bulk to manufacturers of poultry feed and cattle feed, the result
would practically be the same because ultimately farmers are going
to get the feed at cheaper rates. If the notified price falls within
the ambit of the principles contained in the Essential Commodities ;
Act, 1955, the Control Order tends to ameliorate the lot of poultry
farmers and cattle breeders, it cannot be struck down as violative
of Article 19 of the Constitution at the instance of business com-
munity which claims a right to earn unlimited profits. The Control
Order, therefore, does not violate the right of the business commu-
nity to carry on their trade as enshrined by Article 10(j) of the
Constitution. (Para 10)*

*Held, (per majority M. R. Sharma, J., S. S. Sandhawalia, C.J.,
contra) that sub-section (1) of section 3 vests in the Central Go-
vernment vast powers for regulating or prohibiting the supply and*

distribution of essential commodities. The conditions precedent for the exercise of these powers are that the Central Government or the authorised officer should form an opinion that it is necessary or expedient to take the impugned action and the opinion so formed should be *bona fide*. Sub-section (2) of section 3 enumerates some of the components of this wide and plenary power. In other words, the matters contained in clauses (a) to (j) of this sub-section are illustrative in nature. Clause (c) of this sub-section enables the Central Government to fix the price at which an essential commodity might be, part or whole, sold. The powers under clauses (c) and (f) of section 3 have been delegated by the Central Government on the Government of Haryana State. In other words, Government of Haryana has been empowered to issue an order for controlling the price at which an essential commodity must be sold. The most important consequences which flow from the order are that 30 per cent of the rice bran has been reserved for allotment to poultry farmers and cattle breeders under permits and the price payable by them has been fixed and the millers have been obligated to take steps for proper achievement of the aforementioned task. The only irregularity is that the specific statutory provision which confers power for taking a particular action has not been expressly named in the order, but the order cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within the power under any rule or provision. As such, it has to be held that the State Government did invoke its power under section 3(2) (c) of the Act. Once that is so, the State Government can be allowed to impose a partial control on the price. If it was to be held otherwise, then the Government would have to wait till the essential commodity became so costly and scarce as to make absolute control of prices the only imperative. Besides, there is a legal maxim *omne majus continet in se minus*—the greater contains the less. If the State Government has the option and the right to travel the whole distance, there is no reason why it should be commanded to go further if it exercises an option of stopping midway. Thus, the State Government can impose price control on a part of the essential commodity.

(Paras 13, 15, 17, 18 and 19)

Held, (per Full Bench) that the Central Government has not authorised the State Government to further delegate the power of fixation of the control price under section 3(2) (c) of the Act and as such the first part of clause (4) having been issued by the Government in excess of its legislative function is struck down.

(Paras 43 and 88)

Held, (per S. S. Sandhawalia, C.J. contra.) that the aforesaid legislative history to highlight the solicitude of the legislature of each step in chronological order to lay down meticulously the criteria

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on which the price for compulsory purchase under section 3(c) (f) of the Act was to be determined. Whilst on the one hand the legislature conferred wide ranging powers of regulation and even compulsory acquisition of essential commodities, it provided equal safeguards that the price payable to the citizen for such compulsory purchases was a just equivalent thereof and was not left to the whim of the executive but was to be determined by the clear mandates of the legislature itself. The larger historical conspectus of the legislation on essential commodities is that it is a beneficent (barring certain special and express provisions to the contrary) regulatory measure and was in no way designed to be either expropriatory or confiscatory. Whilst the plenary power to determine the calling control price for the whole of the Essential commodities flows from section 3(2) (c) of the Act, the legislature in its wisdom has laid down different and precise criteria for the quantum of price to be paid for an essential commodity when it is compulsorily acquired under the different sub-sections of sub-section 3(3). A plain reading of clauses (a) and (b) aforementioned would make it manifest that the legislature had laid down as a mandate that the price to be paid hereunder rests on the foundation of an already existing control price, if any. To say that the price arbitrarily named in the control order *ipso facto* becomes the control price under section 3(2) (c) amounts to no more than attempting to define a circle as being circular. In fact clauses (a) and (b) proceed on the basic postulate that there already exists a control price on the basis of which the payment for a compulsory acquisition is to be determined. In the case of an existing control price for the commodity it is to be determined by an agreement of the parties consistent with the control price under clause (a) and in case of failure to reach any such agreement, the price is to be calculated by the authority, but still on the basic criteria of the existing control price. Therefore the very *sine qua non* for determining the price under clauses (a) and (b) is an existing control price. When the provision talks of being consistent with or in reference to a price it obviously pre-supposes the existence of such a thing. In such a context to say that the price determined under section 3(3) would by itself become the control price, appears to be patently illogical because consistency and reference are relevant in two things and not the single one. In providing for the situation and the absence of an existing control price the provision is clear and its mandate plain. Herein clause (c) would come into play and price must then be determined at the market rate prevailing in the locality on the date of the sale. Clearly, therefore, a mere arbitrary fixation of price in the control order is a patent violation of clauses (a), (b) and (c) for compulsory acquisition of an essential commodity and cannot be raised to the pedestal of being the general control price itself under section 3(2) (c) of the Act.

(Paras 68 and 69).

Held, (per S. S. Sandhawalia, C.J. *contra*.) that a plain reading of section 3(2) (c) makes it manifest that it is primarily and wholly directed to the fixation of a price at which any essential commodity may be bought or sold. Its provisions are general in nature. It obviously visualises a fixed or a ceiling price for the whole commodity and not for a part or percentage thereof. The contention on behalf of the petitioner is sound that in the context in which section 3(2) (c) is set it visualises a control price for the whole of the commodity which is uniformly fixed providing a ceiling beyond which it cannot be lawfully permitted to travel. It deserves notice that essential commodities are not things as for instance in the case of foodgrains in which every grain whereof is either identifiable or separable. To prescribe that 30 per cent of an essential commodity would be priced at one level and the remaining 70 per cent should be priced at another level or for that matter be left completely unregulated would pose problems which are beyond the pale of solution. One cannot easily imagine that the legislature has led itself to create a situation which would be patently illogical by prescribing different control prices for different percentages of an essential commodity. The present control order is itself an illustrative example. On the stand of the respondent-State it seems to visualise one price for 30 per cent of the essential commodity namely Rs. 42 per quintal and an altogether different price for the remaining 70 per cent may be as high as Rs. 120 per quintal indeed not even one price but any price for the rest. Again clause (3) of the control order is applicable only to all the dealers and the owners of the Rice Mills. Apparently no control price either partial or total would arise in the case of the rice bran stocks in the hands of persons other than dealers and owners of the Rice Mills specified in the said clause. This would create a situation that the same commodity of the rice bran would have one control price for the 30 per cent of the commodity in the case of dealers and mill owners and another price for the remaining 70 per cent in their hands and no control price at all with regard to the rest. This would make a mockery of what one visualises as the uniform price of a controlled essential commodity. The aforesaid view is then strengthened when a comparison of clauses 3(2) (c) and 3(2) (f) is made. It deserves highlighting that clauses (a) and (b) of section 3(2) (f) in express terms mention the whole or a specified part of an essential commodity. It is plain, therefore that where the legislature intended as under section 3(2) (f) that the power to acquire either the whole of the stock or a part thereof from any person it has specifically said so. Section 3(2) (c) on the other hand does not talk of the control price being either for the whole of the commodity or any specified part thereof. For this added reason also it would be unwarranted to construe section 3(2) (c) as providing for the control price of certain percentages or specified parts of an essential commodity. As the statute is now worded it visualises

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a uniform control price of the whole of the essential commodity at which it may be bought or sold and not a partial control price therefor. If the legislature was so minded it could have expressly appropriated to itself such a power under the statute but it has not chosen to do so in this context and in sharp contrast to the other provisions which expressly provide for dealing in a specified part of the essential commodity. (Para 77).

Held, (per S. S. Sandhawalia, C.J. contra.) that neither section 3 of the Act nor any provision of the Central Order even remotely empowers the State Government to further delegate its powers on to the Director. On general principles it is well settled that a delegatee himself cannot further delegate unless otherwise expressly authorised to do so or where such delegation may in terms be deduced from the language of the statute itself. Here both these things are totally lacking. Viewed from any angle, therefore, the vesting of the power to determine the crucial issue of the price in the Director by clause 4 appears to be totally unwarranted and unauthorised by law. Inevitably, therefore the clothing of the Director with the unlimited power to fix any price at any time is manifestly illegal and has to be necessarily struck down. (Para 82).

Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs be granted:—

- (i) *A writ in the nature of Certiorari be issued calling for the records of Respondent (No. 1 relating to the Control Order and after a perusal of the same, the Control Order as Annexure P/1 be struck down as ultra vires of the Act;*
- (ii) *Any other suitable Writ, Direction or Order that this Hon'ble Court may deem fit in the circumstances of the case, be issued;*
- (iii) *Ad-interim order be issued staying the operation of the impugned order pending the decision of the present writ petition.*
- (iv) *The petitioners be exempted from serving the required notice of motion in the peculiar circumstances of this case because the petitioners will suffer irreparable injury if the consideration of writ petition is postponed till after the service of notice of motion;*
- (v) *Costs of the Writ Petition be allowed to the petitioners.*

R. S. Mittal, Advocate with Harish Kumar, and N. K. Khosla, Advocates, for the Petitioners.

Naubat Singh Senior D.A.G. Haryana, Ashok Bhan, Advocate as intervener, for the Respondents.

JUDGMENT

M. R. Sharma, J.

(1) The petitioners are firms and companies carrying on the business of rice milling and selling rice at Karnal. They purchase paddy, shell it in their shellers and produce rice, 90 per cent of which has to be compulsorily made over to the State Government under the Haryana Rice Procurement Levy Order and the remaining 10 per cent of the rice is sold in the open market. The petitioners purchased paddy in the months of October and November, 1980, at the rate of Rs. 105 per quintal which is the procurement price fixed by the Government. In the process of manufacture of rice from paddy, first of all rice husk is removed and the rice is subjected to polishing by which process rice bran is produced. This rice bran is used for various purposes like extraction of oil and the manufacture of poultry feed. The current price of the rice bran, according to the petitioners, was Rs. 120 per quintal on the date of the filing of the petition.

(2) On January 27, 1981, the Haryana State promulgated the Haryana Rice Bran (Distribution and Price) Control Order, 1981 (hereinafter referred to as the Control Order). This Control Order was promulgated under section 3 of the Essential Commodities Act, 1955 (hereinafter called the Act). Under clause 3 of the Control Order, all the manufacturers, dealers and owners of rice mills were required to sell or offer for sale or supply 30 per cent of the rice bran extracted by them to the poultry farmers of the State of Haryana against the permits to be issued by the District Magistrate or any officer authorised by the Director, Food and Supplies, Haryana, in that behalf. Under clause 4 of the Control Order, maximum sale price of rice bran for the time being, has been fixed at Rs. 42 per quintal exclusive of the cost of containers and taxes. The Director has been authorised to fix the price from time to time. Clause 5 of the Control Order makes it obligatory for every rice dealer or owner of a rice mill or a sheller to furnish within seven days of the commencement of this Control Order a report to the District Food and Supplies Controller of his district regarding the quantity of rice bran so possessed by him. Clause 6 of the Control Order empowers the District Magistrate or any Officer authorised by the Director, Food and Supplies, Haryana, to require any rice dealer or an owner of a rice mill to furnish such information, return or reports as may be required regarding the rice bran produced or sold by him

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These provisions have apparently been made to enable the Director to get the requisite information for giving proper effect to the provisions of the Control Order relating to equitable distribution.

(3) In para No. 14 of the petition, the fixation of this price has been challenged in these terms:—

- (i) That no control price of rice bran has been fixed under section 3(2) (c) of the Act and Clauses (a) and (b) of section 3(3) of the Act are, therefore, not attracted.
- (ii) That the only clause of section 3(3) of the Act, namely, Clause (c) has also not been followed in fixing the price of rice bran in Clause 4 of the Control Order.
- (iii) That there is no material in existence which may justify the fixation of the price of rice bran to be made available to the permit-holders at Rs. 42 per quintal. The whole matter of fixation of price has been dealt within an arbitrary manner without caring for the requirement of law.
- (iv) That since Clause 4 of the Control Order is a pivotal clause, without which the Control Order cannot be put into operation and this clause is bad in law being contrary to the provisions of the Act, the whole Order is *ultra-vires* the provisions of section 3(3) of the Act.
- (v) That the impugned Order interferes with the carrying on of the business of the petitioners and the right guaranteed to them under Article 19 of the Constitution of India. The petitioners have a right to sell the rice bran at the market price and by this illegal Order the petitioners are deprived to make sales in respect of the rice bran on the market price.

(4) This petition came up for motion hearing on February 13, 1981, before a Division Bench of which I was a member, when the Bench passed the following order:—

“The State of Haryana issued Order Annexure P. 1 under which all the millers were obliged to supply 30 per cent of the rice bran produced by their respective mills to

persons to be specified by the licensing authority at the rate of Rs. 42 per quintal. The petitioners have challenged this Order on the ground that under section 3(2) (c) of the Essential Commodities Act, 1955, no control price of this commodity has been fixed and unless that is done, the authority concerned cannot legally, under the aforementioned Order, take action. In support of this view, a Division Bench judgment of this Court in *M[s. Krishna Rice Mills, Pehowa v. The State of Haryana and others*, (1) has been cited.

In the impugned Order, levy of 30 per cent has been fixed and the price at which this commodity has to be given to the poultry farmers, has also been mentioned. *Prima facie*, it appears that where there is a power to do something under a statute and the same thing is done, the action cannot be said to be *ultra vires* merely because the section under which the action is taken is not expressly mentioned. However, since a Division Bench of this Court has taken a certain view, we are of the view that this case should be admitted to hearing by a Full Bench. Let the papers be placed before my Lord the Chief Justice positively by today for obtaining orders in that behalf, and the case should be listed for final hearing on February 16, 1981. The operation of the impugned Order shall remain stayed meanwhile”.

(5) This is how the case has come up for hearing before this Full Bench.

(6) On behalf of the respondents, affidavit in reply has been sworn by Shri V. P. Dhawan, Joint Director of Food and Supplies, Haryana . It is stated therein—

“that the price under clause 4 of the impugned Control Order has been fixed in conformity with the provision of Section 3(2) (c) of the Essential Commodities Act and having been fixed with the prior approval of the Government of India after taking into consideration the relevant material is perfectly legal and valid. In Punjab too the price fixed under the Punjab Rice Bran (Distribution and

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Price Control) Order, 1978, is Rs. 30 per quintal. The said price is considered reasonable. The price of paddy has also been taken into consideration while fixing the said price. In 1977-78 when the price of paddy was Rs. 79 per quintal, the rate of rice bran fixed by the Government was Rs. 35 per quintal. In 1978-79 there was no Control Order, yet the dealers/licencees mutually agreed to sell rice bran at Rs. 37.50 per quintal when the price of paddy was Rs. 87 per quintal. In 1979-80 again the dealers/licencees agreed to sell and actually supplied rice bran at the rate of Rs. 42 per quintal when the price of paddy was Rs. 95 per quintal. In 1980-81 season, the price of rice bran has been fixed by the Government under the Control Order in question at Rs. 42 per quintal when the price of paddy per quintal was Rs. 105 as fixed by the Government of India. The incidence of increase of rate of paddy from 1979-80 to 1980-81 is Rs. 10 per quintal which stands reflected in the price of rice bran, which is 3 per cent of the paddy and comes to 30 paise per quintal. It may not be out of place to mention that while fixing the price of rice bran at Rs. 42, the increase in a few of subsequent months was anticipated and taken into consideration. The price of rice bran fixed by the Punjab State is also taken into consideration. This price of rice bran has been fixed after obtaining the concurrence of the Government of India. The price of rice bran prevailing and likely to prevail in the post-harvest period relevant to the levy order was also kept in view. It was after resume of the above matters that the price was fixed. In view of this, reference to section 3(3) of the Act is misconceived. The price fixed conforms generally to provisions of section 3(3) (c) as well."

(7) It was also denied that the market price of rice bran was Rs. 120 per quintal. In this connection the State relied upon two photostat copies of the vouchers issued by two rice dealers, which go to show that in one case the rice bran was sold at the rate of Rs. 67.75 per quintal and in the other at the rate of Rs. 70 per quintal. It was further pleaded that the sale of rice bran through permits had been regulated with a view to ensuring equitable distribution and availability of rice bran at fair price to the poultry and

cattle framers and that the extent of free sale allowed by the Control Order to the petitioners was so large that they could sell most of the rice bran at higher rates to make good their loss, if any, because of the supply of 30% of the rice bran against permits issued under the Control Order.

(8) The petitioners availed of the opportunity of filing a replication. The relevant part reads as under:—

“The falsity of the averments made in paragraph 8 of the written statement is apparent from the contradictory submission made therein. One contention raised in para 8 of the written statement is that the price fixed under Clause 4 of the Annexure P-1, has been fixed in conformity with the provisions of Section 3 (2) (c) of the Act and the other is that ‘the price fixed conforms generally to the provisions of section 3(3) (c) as well.’ Section 3(3) of the Act comes into play only if the Control Order has been made under section 3(2) (f) of the Act. Moreover, the perusal of the Control Order Annexure P-1, shows that it deals with the matters provided for in section 3(2) (f) of the Act only, namely, requiring persons, holding in stock or producing rice bran to sell a specified part of the commodity according to the direction contained in the Control Order, whereas an order made in exercise of the powers under section 3(2) (c) of the Act can only provide for the controlling of the price at which a particular commodity may be bought or sold by everybody purchasing or selling such commodity. So far as the justification of the price fixed is concerned, it is respectfully submitted that there can be no justification for an action which manifestly violates a statutory provision. Moreover, there is no reason to make rice bran available to poultry farmers at a reduced rate of Rs. 42 per quintal when there is no control on the sale price of poultry products. The other considerations which have been relied upon in paragraph 8 of the written statement are irrelevant because the price of a particular commodity can go up if its demand increases and that is what has exactly happened in case of rice bran. A number of oil extraction plants have come up which extract oil from the rice bran and export the

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oil at high prices. These oil extraction plants have entered into contracts with the petitioners and many others producing rice bran to supply the whole of the rice bran that may be produced by them in this season at the price which is Rs. 120 per quintal or more”.

(9) The contention raised by the parties relevant to the question of the petitioners’ right to carry on trade under Article 19 of the Constitution may now be summed up. The State Government claims to have been impelled to issue this Control Order because rice bran was getting out of the reach of the poultry farmers and rural cattle breeders. On the other hand, the mill owners claim to have also entered into contracts with the oil extractors for the supply of rice bran at the rate of Rs. 120 per quintal. In short, on the one side the State Government is trying to help the rural sector and on the other side the business is raising the *laissez faire* cry of the right of earning maximum profits. In *Shree Meenakshi Mills Ltd. v. Union of India* (2), it was observed—

“In an unreported decision in *Sri Krishna Rice Mills v. Joint Director (Food) Vijavada* (3), this Court held that section 3 of the Essential Commodities Act sufficiently specifies the principles on the basis of which price should be fixed. The Central Government fixed the maximum price for sale of rice of certain quantities. The rice millers contended that notification fixing fair price violated Articles 14, 19(1) (f), (g) and 31(3) of the Constitution and, therefore, they were entitled to the rates prevailing in the market. The contentions on Article 19(1) (f) and (g) were repelled on the rulings of this Court in *Hari Shankar Bagla v. State of Madhya Pradesh* (4) and *Union of India v. Bhanamal Gulzarimal* (5)

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In determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it

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

(3) Civil Appeal Nos. 1026—1031 etc. 1963, dated 27th January, 1965 (S.C.)

(4) (1955) 1 S.C.R. 380—A.I.R. 1954 S.C. 465.

(5) (1960) 2 S.C.R. 627=(A.I.R. 1960 S.C 475=1960 Cr. L.J: 664):

has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable. By its very nature, industry or trade or commerce goes through periods of prosperity and adversity on account of economic and some times social and political factors. In a largely free economy when controls have to be introduced to ensure availability of consumer goods like foodstuff, cloth and the like at a fair price it is an impracticable proposition to require the Government to go through the exercise like that of a Commission to fix the prices."

(10) Herein the total rice bran produced by the millers has not been subjected to price-control, nor is the same being acquisitioned by the State for resale at a higher profit. Only 30 per cent of the rice bran produced by the millers is being earmarked for allotment to poultry farmers and cattle breeders against permits presumably on the basis of their actual needs. Even if the commodity is allotted in bulk to manufacturers of poultry feed and cattle feed, the result would practically be the same because ultimately farmers are going to get the feed at cheaper rates. If the notified price falls within the ambit of the principles contained in the Act, the Control Order tends to ameliorate the lot of poultry farmers and cattle breeders, it cannot be struck down as violative of Article 19 of the Constitution at the instance of business community which claims a right to earn unlimited profits. I am of the considered view that it is not open to the petitioners to contend that the Control Order violates their right to carry on business enshrined in Article 19(g) of the Constitution.

(11) The deck has now been cleared to consider the principal ground of challenge. It has been argued by Mr. Mittal, the learned counsel for the petitioners, that the State Government has not taken any specific action under section 3(2) (c) of the Act, in the sense that no price has been fixed at which the commodity as a whole or part thereof may be sold. The Control Order falls under section 3(2) (f) of the Act and the price payable to the petitioners has to be determined in accordance with the procedure laid down in section 3(3) of the Act. He further submitted that the price mentioned in the Control Order cannot be regarded as the control price,

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for, if that were so the Government would in every case fix an arbitrary price in the order and when challenged would come forth with a plea that the notified price is the control price of the commodity.

(12) In order to appreciate these submissions, it becomes necessary to note the relevant provisions of the Act. They are—

“Section 3, powers to control production supply distribution, etc. of essential commodities.—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

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

* * * * *

(c) for controlling the price at which any essential commodity may be bought or sold ;

* * * * *

(f) for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or a State Government or to an owner or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order ;

(3) Where any person sells any essential Commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefor as hereinafter provided;

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price ;

- (b) where no such agreement can be reached, the price calculated with reference to the control price, if any;
- (c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale."

(13) Sub-section (1) of section 3 vests in the Central Government vast powers for regulating or prohibiting the supply and distribution of essential commodities. The conditions precedent for the exercise of these powers are that the Central Government or the authorised officer who forms an opinion that it is necessary or expedient to take the impugned action and the opinion so formed should be *bona fide*. Sub-section (2) of section 3 enumerates some of the components of this wide and plenary power. In other words, the matters contained in clauses (a) to (j) of this sub-section are illustrative in nature. This is precisely what was laid down by the Supreme Court of India in *Santosh Kumar Jain v. The State*, (6). Therein it was observed—

"It is manifest that sub-section (2) of section 3 confers no further or other powers on the Central Government than what are conferred under sub-section (1) for it is 'an order made thereunder' that may provide for one or the other of the matters specifically enumerated in sub-section (2) which are only illustrative as such enumeration is 'without prejudice to the generality of the powers conferred by sub-section (1)."

(14) Clause (c) of this Sub-section enables the Central Government to fix the price at which an essential commodity might be, part or whole, sold. Clause (f) of this Sub-section enables the Central Government to direct a stockholder of the essential commodities to sell them to the Central Government, to the State Government or to an agent appointed by either of them or to a person or a class of persons. Sub-section (3) of section 3 lays down the procedure for determining the price payable to the stock-holder.

(15) Section 5 of the Act entitles the Central Government to delegate its powers of making orders or issuing notification under

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section 3 in relation to such matters and subject to such conditions, if any, as may be specified, to an officer of the Central Government, to a State Government or to an officer or authority subordinate to the State Government. It is not disputed that powers under clauses (c) and (f) of sub-section (2) of section 3 have been delegated by the Central Government on the Government of Haryana State. In other words, the Government of Haryana State has been empowered to issue an order for controlling the price at which an essential commodity might be sold as also the power to require a stock-holder to sell essential commodities to it or to its agent or to some other persons.

(16) The first point to be determined is whether the State Government has in fact passed any order under section 3(2) (c) of the Act or not, because it is conceded on all hands that if the order is covered by this provision, the petitioners would have no case to put forth.

The impugned Order, copy of which is Annexure P-1, has the following preamble:—

“Whereas the State Government is of the opinion that it is necessary and expedient so to do for securing equitable distribution of rice bran; Now, therefore, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955), read with the Government of India, Ministry of Agriculture and Irrigation (Department of Food) Order No. GSB-800, dated the 9th June, 1978, and all other powers enabling him in this behalf, and with the prior concurrence of the Central Government, the Governor of Haryana hereby makes the following order—” (emphasis supplied).

(17) Apparently, the Order is somewhat unhappily worded because it purports to have been issued under section 3 of the Act and does not make a specific mention of the various powers compartmentalised in sub-section (2) of section 3 of the Act. Nevertheless, there is clear mention of the fact that all the powers which vest in the State Government for taking the impugned action, namely of promulgating the order, have been pressed into service. The most

important consequences which flow from the Order are that 30 per cent of the rice bran has been reserved for allotment to poultry farmers and cattle breeders under permits, the price payable by them has been fixed at Rs. 42 per quintal and the millers have been obligated to take steps for the proper achievement of the aforementioned task. The action taken by the State Government can be related to a specific source of power under the statute. The only irregularity, as already observed, is that the specific statutory provision which confers power for taking a particular action has not been expressly named in the Order.. In *P. Balakotaiah v. Union of India and others*, (7), it was observed—

“It is argued that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule, and that the vaildity of an order should be judged on a consideration of its substance and not its form. No exception can be taken to this proposition”.

(18) In view of this authoritative pronouncement of law, it is not open to me to hold that the State Government did not invoke its power under section 3(2) (c) of the Act while issuing the impugned Control Order. Even otherwise, in para 8 of the affidavit sworn by Shri V. P. Dhawan, Joint Director of Food and Supplies, Haryana, it has been specifically mentioned that the price under clause 4 of the impugned Control Order has been fixed in conformity with the provisions of section 3(2) (c) of the Act, and I see no ground to disbelieve this affidavit. I, therefore, hold that the State Government did invoke the provisions of section 3(2) (c) of the Act, while promulgating the impugned Control Order.

(19) Mr. Mittal was pretty vehement in submitting that under section 3(2) (c) of the Act the price of the entire essential commodity in contradistinction with a part thereof alone can be fixed. According to him, there is no such thing as a partial control of the price. I see no merit in this submission. If the non-availability of essential commodities, which grows with the passage of time, has to be checked then the evil must be nipped in the bud. In other words, if the supply position can be improved by taking less drastic action, the

(7) A.I.R. 1958 S.C. 232.

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State Government should be allowed to take that action instead of allowing the problem to go out of hands. If the interpretation suggested by Mr. Mittal is accepted, then the authorities under the Act, would have to wait till the essential commodities become so costly and scarce as to make absolute control of prices the only imperative. Besides, there is a legal maxim *omno majus continet in se minus*—the greater contains the less. This maxim has been referred to with approval in *Atma Ram v. State of Punjab and others*, (8). If the State Government has the volition and the right to travel the whole distance, I see no reason why it should be commanded to go further if it exercises an option of stopping midway. It is perhaps not being realised that this argument, if accepted, may bring about much more drastic results for the business community. If the impugned Control Order is struck down on this ground, the State Government may be persuaded to impose a price Control on the entire rice bran produced by the millers. In that event, nothing can prevent it from fixing a lower control price or a price equivalent to the one which has been fixed in the bordering State of Punjab. That step, if taken, would certainly be more disadvantageous to the petitioners because in that case they would be obligated to sell the entire rice bran at Rs. 30 per quintal or so at which rate it is being sold in the State of Punjab. Now they are allowed to sell 30 per cent of it at Rs. 42 per quintal plus the cost of containers and can sell the rest of it at whatever prices which they can get in the free market.

(20) I may now notice some of the cases relied upon on behalf of the petitioners. ..

(21) First of all the reliance was placed by Mr Mittal on the following observations made by the Supreme Court of India in *Shree Meenakshi Mills Limited case* (supra):—

“70. The main plank of the petitioner’s contention that fair price means a determination with regard to the cost of raw material, manufacturing cost and reasonable return on the capital employed in the business was founded on the construction that sub-sections (3), (3A), (3B) and

(8) A.I.R. 1959 S.C. 519.

3(C) of section 3 of Essential Commodities Act, 1955 constitute a single scheme and what is implicit in sub-section (3) is made explicit in sub-section (3C).

* * * * *

74. The differences between sub-sections (3) and (3A) on the one hand and sub-sections (3B) and (3C) on the other are these. Sub-sections (3) and (3A) speak of fixing price by agreement consistent with or with reference to controlled price or failing both market rate prevailing in the market during three months proceeding the date of the notification. Sub-section (3B) speaks either of controlled price or where no such price is fixed the price prevailing or likely to prevail during the post harvest period in the area to which the order applies. In sub-section (3C) which relates to sugar price is to be calculated with reference to minimum price of sugarcane, manufacturing cost of sugar, duty or tax, and a reasonable return and different prices may be provided for different areas or factories or different kinds of sugar.
75. Therefore controlled price fixed under section 3(1) read with section 3(2) (c) is different from price under sub-sections (3A), (3B) and (3C)."

On this basis, it was argued that the controlled price and the price fixed in the order had necessarily to be different. I am unable to accept this argument. In this case, the Supreme Court of India was only considering the scheme of the Act and was not concerned with a case in which the controlled price of the commodity fixed under section 3(1) read with section 3(2) (c) of the Act and the levy price under sub-section (3B) of section 3 of the Act had been fixed in a single composite notification.

(22) The next case relied upon by Mr. Mittal is a Division Bench judgment of this Court reported as *M's Bhagwan Singh and others v. The State of Punjab and another* (9). Therein the fixation of the price of wheat (Levy) Procurement Order was successfully challenged on the ground that the fixation thereof had not been made in accordance with sub-section (3B) of the Act, but in that case

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the Division Bench came to the conclusion that no controlled price of wheat had been fixed under sub-section 3(2)(c) of the Act. The relevant observation made by the Division Bench reads as under:—

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

(23) The ratio of *K. B. Jinaarja Hegde and others v. The State of Mysore by Chief Secretary, Vidhana Soudha, Bangalore and others* (10) is distinguishable on similar grounds as is evident from the following passage:

“As regards the first, namely, the control price, it was submitted on behalf of the petitioners that the State Government had not fixed any controlled price either under the Act or under any other law in force in the State of Mysore. Mr. Puttaswamy, learned Advocate for the State submitted that the price fixed in schedule II of the order was itself the controlled price.”

(24) In *M/s. Sitaram Jwala Prasad and others v. The State of Uttar Pradesh and others* (11), a Division Bench of the Allahabad High Court considered the legality of price of food grains fixed in Uttar Pradesh Coarse Foodgrains (Levy) Order (1974). The challenge was allowed mainly on the ground that the price mentioned in the schedule to the order could not be regarded as its controlled price. The learned Judges were persuaded to take this view because of the reason that the controlled price contemplated by clause (1) of Sub-Section 3-B had to be with reference to grade of the food-grain or its variety. It has not been suggested at the bar that the

(10) A.I.R. 1971 Mysore 12.

(11) A.I.R. 1975 All. 272.

rice bran had different grades or varieties. No argument was raised before the Division Bench on the basis of phraseology enshrined in the preamble of that order which might have indicated that the State Government had exercised powers under section 3(2) (c) also. The preamble of the order is not quoted in the report and it might well have omitted to mention that the Government while issuing the order had exercised the powers which were vested in it, to issue the impugned order. Last of all it was found as a question of fact that the price mentioned in the schedule had not been fixed in accordance with the principles contained in sub-section 3 B of Section 3 of the Act.

(25) There are some of the distinguishing features of the case. However, after noticing some of the provisions of the statute, the Bench made the following observations, with which I respectfully disagree:—

“If the argument of the learned Advocate-General that the price which the Government in its discretion chooses to pay in respect of the foodgrains which are required to be sold to it, will automatically become the controlled price within the meaning of clause (i) of sub-section (3-B) is accepted, clause (ii) thereof would become redundant. In no case would clause (ii) be then applicable, for the moment the Government requires a particular percentage of foodgrains to be sold at a particular price, clause (i) would automatically become applicable. In fact, if that was the intention of the Legislature in enacting sub-section (3-B), it would have been simpler to use the phrase ‘there shall be paid such price for the foodgrains, edible oilseeds or edible oils as may be fixed by the Government’ in place of the phrase ‘there shall be paid as the price for the foodgrains, edible oilseeds or edible oils; and then to have clauses (i) and (ii) and the explanation to sub-section (3-B). A similar phraseology could have been used even in sub-section (3-A) in place of sub-clauses (a), (b) and (c) of Clause (iii) of sub-section (3-A). The distinction in the language of sub-section (3-C) which deals with sugar and sub-section (3-B) which deals with foodgrains also makes it clear that the criterion for calculating the price in case of one is altogether different from the other.”

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(26) In order to understand the true import of these observations. Sub-section (3-A) of Section 3 of the Act deserves to be noticed. It reads:

“(3-A) (i): If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices, or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the foodstuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified, in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefor—

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing

market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any court."

(27) This sub-section is in the nature of an emergency provision and can be resorted to for meeting a situation arising in a particular locality. As provided in clause (ii) of this Sub-section, the action taken thereunder is in the nature of a short term measure because the relevant notification can be issued only for a period not exceeding three months. An essential commodity may become scarce in a locality whether it has been subjected to a price control or not. In a given case, the State Government may make such a commodity more easily available without its price being controlled. In that case, if a stock-holder is, pursuant to an order passed under Clause (f) of sub-section (2) of section 3, directed to shed a part or the whole of his stock he will have to be paid the price calculated in accordance with the procedure laid down in clause (c) of Sub-Section (3) of section 3. If the essential commodity is already subjected to a price control or the same is simultaneously imposed when a stock-holder is ordered to part with his stocks, he would be entitled to get a price which can be agreed with consistent with the controlled price or if no such agreement is possible the one calculated with reference to the controlled price. As noticed earlier, section 3 invests the Government with vast powers of imposing controls. At one moment price of a commodity may be controlled, and at another the price may not be subjected to control but its distribution may have to be streamlined. But while making a statutory provision, the Legislature thought that the statutory provision enacted should cover as far as possible all the situations in which the Government becomes entitled to take action on the basis of experience. The important point to be considered is whether in a given case the Government has applied its mind and had taken action under section 3(2)(c) or not. Once it is shown to have acted under this provision, no objection can be raised if the price, which is payable to a stock-holder, is mentioned in the notified order itself. Sub-clause (a), (b) and (c) of clause (iii) of sub-section (3-A) cannot therefore, be regarded as redundant. If the Government wishes to deprive stock-holder of essential commodities for the purpose of making profits, he can certainly raise an objection that the action taken by the Government does not fall within the ambit of the

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statute. In *Shree Meenakshi Mills' case* (supra), the court observed—

“In *State of Rajasthan v. Nathmal* (12), the authorities were allowed to freeze any stock of foodgrains and no person could dispose of any foodgrains out of the stock so ‘frozen’ (sic) without the permission of the authority. The order was held to be relatable to the object of the Act, namely, securing equitable distribution and availability at fair prices. The ceiling price of the commodity was Rupees 17-18. The Government procurement price was Rs. 9 per maund. The court held that it was unreasonable restriction because the Government was free to sell at a higher price and make a profit. The ceiling price was higher than the fixed price at which the stocks were requisitioned but after requisition, the Government would sell at the higher price. Therefore, that was an unreasonable restriction.”

(28) For similar reasons, sub-section (3-B) cannot be held to be redundant. Sub-Section (3-C) relates to sugar and need not be examined in detail.

(29) I might also add that the protective umbrella of the Ninth Schedule is available only to the Act and not the orders issued thereunder. This controversy has been finally set at rest in *M/s. Parg Ice & Oil Mills and another etc., etc. v. Union of India* (13).

(30) The last case relied upon by Mr. Mital is *Joe Pereira and others v. Union of India and another* (14). Therein, the fixation of price under the Karnataka Paddy Procurement (Levy) Order (1966) was successfully challenged on the ground that the same had not been fixed in accordance with the procedure laid down in Sub-section (3-B) of Section 3 of the Act. The learned Judges observed that ‘the controlled price once fixed must be applicable to all sales and purchases. It should not be intended to control the price of particular type of transaction with utmost respect I am unable to

(12) (1954) S.C.R. 982=A.I.R. 1954 S.C. 307.

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

(14) A.I.R. 1979 Karnataka 12.

concur with these observations, for, if that be the case, the State Government would not at all be competent to impose partial control of essential commodities. The other conclusion arrived at by the learned Judges that if in fact there is controlled price, the price shall have to be fixed under Sub-section (3-B) of the Act is unexceptionable. It might be that while promulgating the Karnataka Order the State did not purport to exercise powers under section 3(2)(c) of the Act. In this case also no argument seems to have been advanced before the Division Bench on the basis of the phraseology enshrined in the preamble of the Karnataka Order.

(31) On behalf of the State, Mr. Naubat Singh relied upon *Sri Venkateswara Rice Mill, and others v. State of Andhra Pradesh and another* (15), wherein the view taken in the Mysore case in **K. B. Jinaraja Heqde's** (supra), was dissented from in these words—

“We are unable to subscribe to the view expressed by the Mysore High Court in the two cases referred to above. The expression ‘control’ in section 3(2)(c) takes within its ambit restrictions, regulations, curbs, restraints. To control a thing is to have the right to exercise a directing or governing influence over it. (Block Law Dictionary page 399). The object of procuring from millers or dealers by the government is to make rice available at reasonable price to the consumers. A dealer or miller is called upon only to sell a portion of the total quantity of each variety of rice at a notified price. It is not the case of the petitioners that the Government while fixing the notified price has not taken into consideration the rate at which a dealer or miller purchased paddy, conversion charges, transport charges and other incidental expenses and also the marginal profit. So, a notified price is fixed only after taking the relevant factors into consideration, that is to say, to see that no dealer or miller suffers loss by his having to sell a portion of the total quantity of the rice which he produces or manufactures. The fixation of the notified price has not been questioned before us. What Mr Babulu Reddy contends is that the notified price is not the controlled price and sub-clause (c) of section 3(2) only empowers the Government to control prices and not to

(15) A.I.R. 1975 Andhra Pradesh 84.

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notify prices. We are unable to see any force in this contention. The word 'control' as has already been observed by us, takes in regulation of the prices also by notifying a particular price. To the extent of sub-clause (1) of clause (3) the price at which levy rice should be sold is controlled. It is not open to a miller or dealer to sell at a rate above the notified price. In other words, the price of which a miller or dealer is to sell is controlled. The expression 'control' is of very wide amplitude. Clause (f) of section 3(2), as already seen empowers the Government to require any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or the State Government. The procurement order is issued in exercise of the powers conferred upon the Government under sub-clause (f). We see absolutely no merit in the attack on the Procurement order."

(32) I might also add that in this case the price had been fixed after taking into consideration the statutory requirements.

(33) Apparently, the petitioners cannot derive any benefit from the observations made in the decided cases.

(34) Mr. Naubat Singh conceded that the Central Government had not authorised the State Government to delegate the powers of fixing a controlled price on an officer of the State Government. That being so, clause 4 of the order which authorises the Director to fix prices from time to time cannot be sustained. This finding, however, does not affect the merits of the controversy because for the time being the levy price has in fact been fixed by the State Government.

(35) For reasons aforementioned, I hold that while promulgating the impugned Control Order the State Government did exercise power vested in it under section 3(2)(c) of the Act and it was within its competence to fix the levy price of the rice bran at the rate of Rs 42 per quintal plus the cost of containers. The petition deserves to be dismissed and I order accordingly. However, in view of the difficult nature of the questions of law involved therein, the parties are left to bear their own costs.

Gokal Chand Mital, J.

(36) On perusing the judgments of the learned Chief Justice and learned brother M. R. Sharma, J., with due respect to the learned Chief Justice, I am inclined to agree with the ultimate conclusion arrived at by Sharma, J., that the writ petition is without any merit and should be dismissed for my own reasons which I wish to record separately.

(37) As rightly put by the learned Chief Justice, the first and the foremost point which arises for consideration before the Full Bench is whether the control price under section 3(2)(c) of the Essential Commodities Act, 1955 (hereinafter called the Act), envisages a uniform price for whole of an essential commodity at which it may be brought or sold or can be for a specified percentage thereof. I am of the considered view that it can be for a specified percentage also.

(38) The constitutionality of all the clauses of section 3 of the Act has been upheld by the highest Court of the land as such is beyond the pale of controversy. Section 3(1) of the Act gives legislative power to the Central Government which power has further been delegated by the Central Government to the State Government under section 5 of the Act, by order G.S.R. 800 dated 9th June, 1978, as reproduced by the learned Chief Justice in para 20-A of his judgment. By this order, the Central Government has empowered the State Government to make orders to provide for all matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) of section 3. The two relevant clauses which fall for our consideration are clause (c) for controlling the price at which food stuffs may be bought or sold and clause (f) for requiring any person holding such foodstuffs to sell the whole or a specified part thereof to such authority or person or class of persons as may be specified in the order. In exercise of the powers under section 3 of the Act, the State Government issued the Haryana Rice Bran (Distribution and Price) Control Order, 1981 (hereinafter called the Control Order), Annexure P-1. Therefore, the question arises whether the State Government, while fixing the control price of 30% of the rice bran by the impugned order annexure P-1 has in any way exceeded its legislative functions. It is no doubt true that control price could be fixed for the entire rice

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bran but a power to legislate for the whole includes power to legislate for a part and on this principle alone, I am inclined to hold that the State Government could control the price of part of the rice bran which is a foodstuff. The fixation of the price of part of the commodity, if had been challenged by the petitioners on the basis of Article 14 of the Constitution or on the ground of reasonableness, the matter could have been gone into, but, there is no challenge to the same because it was assumed by the petitioners that the control price could only be fixed for the entire commodity and not for a part thereof. Therefore, unless the fixation of control price of part of the commodity is challenged on some permissible basis, the matter cannot be gone into further except by recording a finding that the power to legislate for the whole includes the power to legislate for part of it also.

(3-A) For the aforesaid reasons I hold that in this case the control price fixed by Order Annexure P-1 would be the control price for 30% rice bran in respect of which the Control Order has been issued as the State Government had the power to legislate by issuing the Control Order fixing the price under section 3(2)(c) of the Act.

(39) Once it is held that the State Government could legislate to control the price of part of rice bran, the next question would be whether the price of Rs. 42 per quintal fixed by the State Government under clause 4 of the Order, is reasonable or not. In the writ petitions, the reasonableness of the price has not been challenged as no date or basis has been provided to show that price fixed is below its cost price. The sole basis to challenge the fixation of the price in the writ petition was that because for the entire rice bran no control price has been fixed under section 3(2)(c) of the Act, therefore, for the rice bran to be sold under section 3(2)(f), the price would be payable under section 3(3)(c) of the Act, which has to be the market price and since Rs. 42 per quintal fixed in the Control Order was far below the market price, it was contrary to section 3(3)(c) of the Act. As already held above, since the State Government can fix the control price under section 3(2)(c) of the Act even for part of the rice bran, Rs. 42 would be taken as the control price of 30% of the rice bran. The petitioners challenged the fixation of Rs. 42 as the control price

and if date had been provided in the writ petitions to show that the same was unreasonable or below the cost price of the petitioners, the matter would have been gone into but since no basis has been laid in the writ petitions, the control price of Rs. 42 fixed by the State Government will have to be upheld on the facts of this case. However, a reading of the reply filed by the State Government, as reproduced by M. R. Sharma, J., at page 4 of his judgment, clearly goes to show that in Punjab under a similar order of 1978, Rs. 30 per quintal was fixed as the price for rice bran and in the subsequent year, when there was no Control Order, the dealers licensees had agreed to sell rice bran at the rate of Rs. 37.50 per quintal, which in the subsequent year was increased to Rs. 42. In conclusion, it was stated that several factors were taken into consideration while fixing the price of the rice bran at Rs. 42 per quintal. In spite of such a reply, in their replications the petitioners could have pleaded that all relevant factors were not taken into consideration and those factors could be highlighted and it could be shown that Rs. 42 per quintal was much less than the cost price or the reasonable price. It cannot be disputed that the control price is not to be the market price but one may reasonably argue that the control price should be reasonable, consistent with the cost price. Accordingly, in the absence of any date, on the facts of the present case it is held that the price of Rs. 42 per quintal is reasonable and has to be upheld.

(40) This brings me to the consideration of the precise argument about section 3(3)(c) of the Act raised by the counsel for the petitioners. A reading of section 3(3) shows that when any person sells any essential commodity in compliance with an order made with reference to section 3(2)(f) of the Act, then he has to be paid the price thereof as provided by clause (a), (b) or (c) which are mutually exclusive. In the present case, the order annexure P-1, issued by the State Government is also an order under section 3(2)(f) of the Act. Therefore, the counsel for the petitioners is right that the price for the rice bran which they have to sell under the impugned order annexure P-1 has to be paid in accordance with section 3(3). At this stage, it has become relevant to reproduce section 3(3) with its three clauses :

“8(3) Where any person sells any essential commodity in compliance with an order made with reference to clause

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(f) of sub-section (2), there shall be paid to him, the price therefore as hereinafter provided—

- (a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price ;
- (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any ;
- (c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.”

The three clauses can be divided into two parts. If there is a controlled price for the commodity for which order under section 3(2)(f) is issued, then the price will have to be paid, firstly under clause (a) on the basis of agreement of the parties, which shall be consistent with the controlled price, which means it may even be more or less than the controlled price. If agreement is not reached between the parties, then clause (a) will cease to apply and under clause (b), the price will have to be calculated with reference to the controlled price, Rs. 42 per quintal alone will not be paid which is the control price in this case but the control price of Rs. 42 will be kept in view and then the local taxes, if any, incidental charges like packing or transportation may have to be added in case the supply is to be made in bags and has to be transported to any particular place. If it is to be supplied without the gunny bags or containers and is not to be transported and no sales tax, etc. is payable, then it may be the control price of Rs. 42 alone at which the payment may be made to the person selling the rice bran under section 3(2)(f) of the Act. In short, the price which will be paid under section 3(3)(b) will be with reference to the control price. In case there is no control price of the commodity in respect of which the order is issued, then alone clause (c) will apply under which the price will have to be calculated at the market rate prevailing in the locality on the date of sale. Therefore, there is no dispute that the price with regard to the commodity in respect of which an order has been issued under section 3(2)(f) has to be

calculated under section 3(3), and whether clause (a) or clause (b) will come into operation or clause (c) will apply, will depend firstly on the fixation of the control price and secondly if there is a control price, whether there has been an agreement as to the price failing which the price payable would be calculated with reference to the control price. Therefore, it is abundantly clear that clause (c) will come into operation in the situation where there is no control price. As held above, there is a control price fixed in the present case and clauses (a) and (b) alone will come into operation and the petitioners will be paid the price in accordance therewith and not simply at Rs. 42 per quintal because it was sought to be argued on behalf of the petitioners that their 30% rice bran is being confiscated at a whimsical price fixed by the Government at Rs. 42 without any reference to section 3(3) of the Act under which the price is payable. The control price of Rs. 42 per quintal has also not been found to be whimsical.

(41) An argument was raised that while section 3(2)(c) provides for controlling the price at which an essential commodity may be bought or sold, section 3(2)(f) specifically mentions that any person holding the essential commodity may be required to sell whole or a specified part of the commodity and, therefore, it is clear that under section 3(2)(c) of the Act, the control price has to be of the entire commodity whereas under section 3(2)(f), a person may be required to sell the whole or part of the essential commodity. From this, the counsel for the petitioners, wanted to deduce that the control price under section 3(2)(c) has to be fixed, of the entire essential commodity, otherwise under section 3(2)(c) it would have been provided that control price may be fixed for whole or part of the same. I have not been persuaded to agree with this contention. On the plain rule interpretation, whole includes part and, therefore, when it is provided in clause 3(2)(f) for requiring any person to sell whole or a specified part, it is only illustrative. The making of such a provision in section 3(2)(f) for part also, cannot be used to reasonably argue that section 3(2)(c) should be read to mean that the control price can be fixed for the entire essential commodity and not for part thereof. As already observed by me in the earlier part of the judgment, both the functions under section 3(2)(c) as well as under section 3(2)(f) are legislative functions and may be exercised in respect of whole or part thereof. Accordingly, it is held that even if clause (f) provides for making

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an order with regard to whole or part of an essential commodity, if in no way lends support to the argument that while interpreting clause (c), the control price must be fixed for the entire essential commodity.

(42) Even otherwise, I do not find the fixation of control price for part of the commodity to be unreasonable or violative of Article 14 of the Constitution. If the State Government or the Central Government, as the case may be, is of the opinion that the control price of 30% of an essential commodity would serve the purpose, I do not find any reason as to why it should not be allowed to do so. If at a later stage, the Government is of the opinion that the control price of still higher percentage of an essential commodity deserves to be fixed, instead of the entire, it can do so and finally when the State Government forms an opinion that it is necessary to control the price of the entire essential commodity, it can resort to that also. As already observed, if any petitioner is able to provide some data or material to the satisfaction of the Court that the fixation of control price in a particular case, whether of part or of whole, is violative of Article 14 of the Constitution or is so unreasonable being below, the cost price, the Court may interfere in that case, but, on the facts of the present cases, it cannot be held that the control price of 30% of the rice bran is in any way illegal or unreasonable.

(43) It was then urged that clause 4 of the Order, under which the price is sought to be fixed, is wholly illegal because this clause empowers the Director/Joint Director/Deputy Director, Food and Supplies, Haryana, to fix the maximum sale price of the rice bran from time to time, which may far exceed the price of Rs. 42 or may even be less and as such it cannot be said that there is any control price fixed for the rice bran or any part thereof. In order to appreciate the argument, clause 4 of the Order deserves to be reproduced below :

“Sale price—The maximum sale price of the rice bran sold against permits as mentioned in clause 3 shall be as determined by the Director, from time to time. For the present the sale price is fixed at rupees forty-two per quintal exclusive of the cost of containers and taxes.”

The first part of the aforesaid clause certainly supports the argument of the learned counsel. The learned counsel for the State

conceded that the Central Government has not authorised the State Government to further delegate the power of fixation of control price under section 3(2) (c) of the Act. Hence, the first part of clause 4 has been issued by the State Government in excess of its Legislative function and is struck down. It was then argued by the counsel for the petitioners that the whole of clause 4 is so inextricably mixed up that if the first part is quashed, the remaining cannot stand. I am wholly unable to agree with this contention. The second part, which is an independent clause by itself, clearly shows that the State Government for the present has fixed the sale price of rice bran at Rs. 42 per quintal exclusive of the cost of containers and taxes. Therefore, till a further order is issued, Rs. 42 would be the control price of rice bran to the extent of 30% and this part is clearly severable from the first part and while doing so, it is held that the second part of clause 4 is a valid piece of legislation issued under section 3(2) (c) of the Act fixing the sale price of rice bran to the extent of 30% at the rate of Rs 42 per quintal. If orders under sections 3(2)(c) and 3(2)(f) are issued simultaneously by one and the same order, or by two separate orders of the same date, then also the price of the goods covered by section 3(2)(f) will have to be calculated in accordance with section 3(3) (a) or (b) as the case may be. If the order under section 3(2) (f) is issued first and under section 3(3) (c) later, then in that situation, the price will be paid of the goods covered by section 3(2) (f) for the period before the order under section 3(2) (c) was issued in accordance with the section 3(3)(c) of the Act and for the remaining goods the supply of which would be made after the issue of order under section 3(2) (c), the price would be calculated on the basis of section 3(3) (a) or (b), as the case may be. Similarly, suppose the State Government was to delete clause 4 from the Control Order at any time, while retaining the remaining part of the order which has reference to section 3(2) (f), in that situation, from the date of deletion of clause 4 under which the control price is fixed, the price payable henceforth would be on the basis of section 3(3)(c) but before the date of deletion, it would be under section 3(3)(a) or (b), as the case may be. Hence, I do not find any merit in this contention either.

(44) The matter may be viewed from another angle. Suppose, the State Government were to issue an order specifically saying that for rice bran the price under section 3(2)(c) of the Act was fixed at Rs. 42 per quintal and by another clause of the same order

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the whole of the rice bran was required to be sold under section 3(2) (f) to the persons classified in that order. In such a situation, the price of the rice bran will be paid to the dealers in accordance with section 3(3) (a) or (b) as the case may be. With this proposition, the counsel for the petitioners had no quarrel. He had also no quarrel with the proposition if the price of whole of the rice bran was fixed at Rs. 42 per quintal under section 3(2) (c) but under section 3(2) (f) only 30% was required to be sold by the dealers to specified persons. If that is so, then I fail to understand how an order fixing price of 30% of the rice bran under section 3(2) (c) can be held to be without legislative sanction. Suppose, the Government considers that it has become necessary to control the price of 30% of an essential commodity and issues an order fixing price under section 3(2) (c) for that essential commodity and no order is issued under section 3(2) (f). That very order further provides that out of the existing stock or stocks to be produced from time to time 30% of the commodity will be separately kept to which the control price would apply and a direction is made that the sale of such 30% would be made at the control price on first-come-first-served basis, according to the quantity specified for each person, and the remaining 70% of the commodity would be sold at the price the dealer may like to sell. To my mind, there is no legal infirmity in the same either from the point of legislative sanction or from the point of Article 14 of the Constitution of India. Therefore, I am of the view, that the State Government had the power under section 3(2) (c) to fix the control price of 30% of the rice bran and if an order under section 3(2) (f) is also issued, then the price payable to the dealer for the same will have to be calculated under section 3(3) (a) or (b) as the case may be with reference to the controlled price. Section 3(3) (c) will come into play only if there is an order under section 3(2) (f) but no price is fixed under section 3(2) (c).

(44-A) This brings me to the consideration of the decided cases cited by the council for the parties. The counsel for the petitioners had placed reliance on the following reported decisions:—

- (i) *M/s. Bhagwan Singh and others v. The State of Punjab and others*, (9 supra).

- (ii) *K. B. Jinaraja Hegue and others v. The State of Mysore and others* (10 supra).
- (iii) *M/s. Sitaram Jwala Prasad and others v. State of Uttar Pradesh and others* (11 supra).
- (iv) *Joe Perqura and others v. Union of India and others*, (14 supra).
- (v) *Shree Meenakshi Mills Ltd. v. Union of India*, (2 supra).

The first four decisions relate to payment of price with regard to grade or variety of foodgrains, edible oilseeds or edible oils covered by section 3 (3-B), regarding which orders under section 3 (2) (f) were issued. In all those cases the price had to be paid for the goods covered by section 3(2) (f) according to the various clauses of section 3(3-B), as it prevailed before the amendment made by Act 92 of 1976. The relevant provisions before and after the amendment, which had to be taken into consideration for fixing the price, are being reproduced hereunder :—

Before amendment

(3-B). Where any person is required by an order made with reference to clause (f) of sub-section (2) to sell any grade or variety of foodgrains, edible oilseeds or edible oils to the Central Government or a State Government or to an officer or agent of such Government and either no notification in respect of such foodgrains, edible oilseeds or edible oils has been issued under sub-section (3-A) or any such notification having been issued has ceased to remain in force by efflux of time; then notwithstanding anything contained in sub-section (3), there shall be paid as the price for the foodgrains, edible

After amendments

(3-B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3-A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section

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oilseeds or edible oils—

(i) The controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils; or

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

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

After amendments

(3), an amount equal to the procurement price or such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government with the previous approval of the Central Government having regard to—

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils ;

(b) the general crop prospects;
(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and

(d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils".

A reading of the unamended provision would show that the price of goods covered by section 3(2)(f) had to be paid as the controlled price, if any, fixed under sub-section (3) of the Act or under any other law for the time being in force and in the absence of any such price having been fixed, according to the price prevailing or likely to prevail during the post-harvest period in the area to which the order applied. All the four decided cases are on the unamended provision of sub-section (3-B) and it was held that the

price fixed in the order could not be treated as a price under section 3(2) (c) of the Act and the dealers had to be paid at the market price under the second clause. The view I have expressed above is clearly contrary to the view taken in the aforesaid four cases. Accordingly, *M/s. Bhagwan Singh v. State of Punjab* (supra), is over-ruled and the other three decisions are dissented from.

(45) Sub-section (3-B), as it stands, now, clearly shows that the price which is payable for the goods covered by section 3(2) (f) will have to be fixed by the State Government with the previous approval of the Central Government, which would be an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, having regard to the four sub-clauses, namely, (a) to (d), which provide for taking into consideration the controlled price, if any, the general crop prospects, the need for making such grade or variety of foodgrains etc., available at reasonable prices to the consumers and the recommendations, if any, of the Agricultural Prices Commission. Now, if sub-section (3) and sub-section (3-B) are compared, it will be seen that under sub-section (3), no price is to be fixed by the State Government but while making payment the price has to be calculated in the manner provided by clauses (a) to (c), as the case may be, but under sub-section (3-B) the State Government has to fix the price keeping in view the ingredients contained in clauses (a) to (d), which has to be an amount equal to the procurement price. Therefore, the two provisions are entirely different.

(46) As regards *Shree Meenakshi Mills' case* (supra), our pointed attention was drawn to paragraphs 70, 74 and 75 of the report. A reading of the same shows that the controlled price fixed under section 3(1), read with section 3(2) (c) is different from the price under sub-sections (3-A), (3-B) and (3-C). The view which I have taken above is in full consonance with the aforesaid decision of the Supreme Court, for I have held that the controlled price under section 3(2)(c) would be different from the price payable under section 3(3) in the present case because the price will have to be calculated with reference to the controlled price, unless agreed upon consistently with the controlled price which means it may be more or less than the controlled price. Hence this decision does not advance the case of the learned counsel any further.

(47) On the other hand, the counsel for the State has placed reliance on a Division Bench judgment in *Shri Venkateswara Rice*

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Mill and others v. State of Andhara and others (15 supra), in support of the argument that the control price of even percentage of an essential commodity can be fixed under section 3(2)(c) in respect of which an order under section 3(2)(f) is also issued. I am in complete agreement with the reasoning adopted in this decision. Reliance was also placed on a Single Bench Judgment of the Rajasthan High Court in *Chand Behari Lal v. Union of India* (16). The aforesaid decision of the Andhra Pradesh High Court has been followed in this case. A passage from the aforesaid judgment has been reproduced by the learned Chief Justice in his judgment to show the inconsistency in the decision of the Rajasthan High Court. Barring the quoted passage, I am in full agreement with the other reasoning of the Rajasthan High Court.

(48) For the reasons recorded above, although the first part of clause 4 of the impugned Order is struck down as void, but since no relief can be granted to the petitioners, the writ petition is dismissed with no order as to costs.

(49) Whether the control price under section 3(2)(c) of the Essential Commodities Act, 1955, envisages a uniform at which it may be bought or sold within the State or in a defined geographical area has come to be the core question before this Full Bench.

(50) I have the privilege of perusing the judgment recorded by my learned brother Sharma, J. On the view taken by him section 3 of the Essential Commodities Act 1955 (hereinafter called the Act) would warrant fixation of a control price even for some percentage of the essential commodity leaving the rest to be unregulated and floating and fluctuating at the open market price. In essence it would also clothe the executive Government with the power to fix any price for any percentage of an essential commodity. With the greatest respect I am of the view that neither section 3 nor the other analogous provisions of the Act envisage the vesting of such unguided and uncanalised power in the Central Government. The meaningful issue herein entails larger, ramifications and with the greatest deference. So to Sharma J., I feel compelled to record this dissent.

(51) In an issue so pristinely legal, the facts giving rise thereto inevitably slide into background. Nevertheless the matrix thereof

(16) C.W. 6, 1980 decided on 14th March, 1980.

has to be noticed, albeit briefly, to maintain the homogeneity of this judgment. The twenty-nine petitioning firms carry on the business of the rice milling at Karnal. They purchase paddy and after shelling it in their sheller produce rice, ninety per cent of which had to be compulsorily made over to the State Government under the Haryana Procurement Levy Order leaving the balance to be sold in the open market. The petitioners purchased paddy in the harvesting season of October and November, 1980, at the rate of Rs. 105 per quintal being the fixed procurement price thereof. The process of converting paddy into rice first of all involves the removal of the rice husk and thereafter the inner shell is also removed in the process of polishing which in commercial terms is known as rice bran. This is used for various purposes including extraction of oil as also for poultry food. The firm stand of the petitioners is that the current market rate of rice bran was Rs. 120 per quintal.

(52) On the 27th of January, 1981, the Haryana State promulgated the Haryana Rice Bran (Distribution and Price, Control) Order, 1981 (annexure P. 1) (hereinafter called the Control Order). This admittedly was promulgated under the powers conferred by section 3 of the Act. Clause (3) of the Control Order obliges all dealers and owners of Rice Mills as defined in clause 2(e), to sell or offer for sale 30 per cent of the rice bran extracted by them to poultry farmers of the Haryana State against permits issued by the District Magistrate or any officer authorised by the Director, Food and Supplies, Haryana in this behalf. What the petitioners particularly highlight is the fact that by clause 4 the power to determine the maximum sale price of the rice bran sold against the permits, as mentioned in clause (3), has been vested in the utter discretion of the Director of Food Supplies, Haryana to be exercised from time to time. What is more is that the present sale price has been arbitrarily fixed at a paltry sum of Rs. 42 per quintal as against its current price of Rs. 120 per quintal in the open market. Clauses 5 and 6 of the Control Order vest procedural powers in the authorities to secure reports and to get information with regard to stocks and supplies of rice bran etc.

(53) It is the firm stand of the petitioners that no control price of the rice-bran has been fixed under section 3(2)(c) and consequently the compulsory purchase price for the rice bran had to

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conform to sub-section (3) of section 3 of the Act and in particular to clause (c) thereof because clauses (a) and (b) of the said sub-section were not applicable. To buttress their stand that the current market price was Rs. 120, annexures P. 2 and P. 3, the cash memos for the sale of 100 quintals of rice bran at the aforesaid price have been annexed to the petition. It is reiterated that the respondent-State has not at all calculated the price with regard to the market rates prevailing in the locality of the date of sale as prescribed by sub-section (3) (c) of section 3 of the Act. The ridiculously low rate of Rs. 42 per quintal thus arbitrarily fixed has been spelled out as the primary grievance of the petitioners, and it is further submitted that since there is no control on the price of poultry products produced by Poultry Farmers there is no rationale why the poultry feed should be made available to them at such extremely low prices, to the detriment of the petitioners. The challenge has been primarily laid to the fixation of the price at Rs. 42 per quintal on the five grounds enumerated in paragraph 14 of the writ petition.

(54) The stand of the respondent-State in meeting the challenge to the Control Order is slightly ambivalent. However, the basic position taken is that the price has been fixed in conformity with the provisions of section 3(2)(c) of the Act, and, therefore, any reference and reliance on section 3(3) of the Act on behalf of the petitioners is misconceived. Apparently in the alternative it is vaguely suggested that the price fixed conform generally to the provision of section 3(3)(c) as well. As regards price a vague denial about the current price of rice bran being Rs. 120 has been made but the fact that the market rate was much higher than Rs. 42 is virtually admitted in the following pleadings in paragraph 13 :—

“* * * The extent of free-sale allowed by the Control Order to the petitioners is so large that they can sell most of the Rice bran at rates convenient and preferable to them and make good the loss, if any, by supply of 30 per cent under permits issued under the Control Order.”

In the affidavit filed in reply to the replication, the respondent-State in paragraph 4 thereof is more specific in admitting that the market price of rice bran from October to November ranged from Rs. 67.25

to Rs. 70 per quintal and reliance was placed on cash memos. Exhibits R. 1 and R. 2 thereto. It is also averred that in fixing the price the prior approval of the Government of India was secured as also certain other considerations and relevant materials were taken into account.

(55) To clear the deck it may be straightaway noticed that the validity of the Control Order has not at all been challenged on the basis of Article 19 (f) and (g) nor on any other provision of the Constitution. The sole challenge on behalf of the petitioners is on the basis of the alleged infraction of section 3 of the Act and in particular sub-section (3) thereof. Since the controversy must inevitably resolve around the relevant provisions of the Control Order it is apt to read them at the very outset.

“Whereas the State Government is of the opinion that it is necessary and expedient to do for securing equitable distribution of rice bran ;

Now, therefore, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1956), read with the Government of India, Ministry of Agriculture and Irrigation (Department of Food) Order No. GSR-800 dated the 9th June, 1978, and all other powers enabling him in this behalf, and with the prior concurrence of the Central Government, the Government of Haryana hereby makes the following order, namely:—

1. Short title, extent and commencement.—(1) This order may be called the Haryana Rice Bran (Distribution and Price) Control Order, 1981.
- (2) It extends to the whole of the State of Haryana.
- (3) It shall come into force with immediate effect.

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

* * * * *

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3. Issue of permit :

All the dealers and owners shall sell or offer for sale or supply 30 per cent rice bran extracted by them to the poultry farmers of the Haryana State against permits issued by the District Magistrate, or any officer authorised by the Director in this behalf.

4. Sale price :

The maximum sale price of the rice bran sold against permits as mentioned in clause 3 shall be as determined by the Director, from time to time. For the present the sale price is fixed at rupees forty-two per quintal exclusive of the cost of containers and taxes."

(56) Before advertng to the contentions raised on behalf of the parties it is apt to notice three salient features about which there is no dispute. It is the common case that clause (3) of the Control Order draws its legal sanction from Section 3(2)(f) of the Act. This provision expressly warrants the making of an order for requiring any person engaged in the business of buying or selling or the production of any essential commodity or on holding the same in stock to sell the whole or specified part of such essential commodity to the government or to such other person or class of persons as may be specified in the order. There is no manner of doubt that clause (3) in terms conforms to the requirements of Section 3(2)(f) of the Act and has been issued thereunder.

(57) Again, it is undisputed that clause (4) pertaining to the sale price is inextricably and integrally linked to the preceding clause (3) and expressly mentions that the maximum sale price pertains to the rice bran sold against permits. Consequently, clause (4) provides for the fixation of price of the essential commodity directed to be compulsorily purchased or sold under section 3(2)(f) of the Act. Thirdly, it is the common case that by the Control Order or otherwise no control price for the whole of the commodity of rice bran has been fixed under the Act as envisaged in Section 3(2)(c) of the Act.

58. Against the aforesaid admitted background, learned counsel for the petitioner launched an incisive two fringed attack. Firstly, it is contended that the control price envisaged under Section

3(2) (c) of the Act is a thing far apart from the one provided for under Section 3(3) of the Act. The sharpest distinction is sought to be drawn betwixt the general control price of the whole of the commonly contemplated by Section 3(2) (c) of the Act as against the compulsory purchase price determined and payable under either of the clauses (a), (b) and (c) of sub-section (3) of the Act to a person who was obliged to sell an essential commodity in compliance with an order made with reference to Section 3(2) (f) of the Act. According to counsel the two concepts are wholly distinct and apart and the twain can never meet.

(59) The second contention of the learned counsel for the petitioners which is indeed a limb or an integral part of the first one is that the general control price envisaged under Section 3(2) (c) of the Act is one fixed uniform price beyond which an essential commodity cannot be allowed to be bought or sold. It provides for a pole star ceiling limit for the price of the whole of the commodity. It cannot be bifurcated into a percentage or divided into smithereens. Either there is a control price for the whole of the commodity or there is none. According to the learned counsel for the petitioners there cannot be a control price under section 3(2) (c) of the Act for only a part of the essential commodity leaving the rest to be unregulated or floating or fluctuating in the open market.

(60) Though the two contentions aforesaid, at certain points, devetail into each other, it is best for clarity sake, to deal with them individually. Adverting to the first one, the two legal questions tersely put is whether the control price fixed under section 3(2) (c) of the Act is distinct and different from the compulsory purchase price payable under clauses (a), (b) and (c) of section 3(3) of the Act.

(61) Ere one comes to grips with the aforesaid issue, it is both apt and instructive to view it first in the larger perspective of the legislative history of the provisions as also the larger scheme of the statute manifest from the inter-linked provisions of sections 3(3), (3-A), (3-B) and (3-C) of the Act.

(62) For our purposes it is unnecessary to travel beyond the predecessor statute namely, the Essential Supplies (Temporary Powers) Act, 1946. This was succeeded by the present Essential Commodities Act, 1955. However, a spate of amendments have

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followed thereafter, some of which call for notice as clear pointers of the legislative intent in this regard. Sub-section (3) of section 3 of the Act not only formed part of the Act as originally enacted in 1955 but in fact corresponds with if not is, in *pari materia* with the earlier section 3 of the Essential Supplies (Temporary Powers) Act, 1946. This provision expressly provided for the payment of a price in accordance with clauses (a), (b) and (c) to any person directed to sell an essential commodity in compliance with an order made with reference to section 3(2) (f) of the Act. However, at that stage the provisions of sub-sections (3-A), (3-B) and (3-C) were significantly absent from the statute. It was by the Essential Commodities (Amendment) Act, 1957 (Act No. 13 of 1957) that sub-section (3-A) was inserted in the statute. It was in the nature of an emergency provision for controlling the rise in prices and the preventing of hoarding of foodstuffs in any locality and the notification issued thereunder was not to extend beyond a period of three months. Even herein also clauses (a), (b) and (c) of section (3-A), (i) specifically provided for the statutory, determination of price for any person obliged to sell the foodstuffs under an order under section 3(2) (f) of the Act. Nearly a decade later by the Essential Commodities (Amendment) Act, 1966 (Act No. 25 of 1966) and the Essential Commodities (Second Amendment) Act, 1967 (Act No. 36 of 1967), sub-sections (3-B) and (3-C) were then added to the statute. Herein again sub-sections (3-B) which pertains specifically to foodgrains, edible oil seeds and edible oils, expressly provided for the statutory price payable to the person from whom the compulsory sale or purchase was made under section 3(2) (f) of the Act. Again section (3-C) which was the specific provision for all kinds of sugar was more explicit in spelling out the statutory guidelines for the payment of such a price to the person required to sell under section 3(2) (f),—*vide* clauses (a), (b), (c) and (d) thereof. To make the true intention of the legislature more explicit, an amendment of sub-section (3-B) was introduced *inter alia* by the Essential Commodities (Amendment) Act, 1971. The statement of Objects and Reasons for this amendment is instructive for it highlights the fact that the control price and the price payable under sub-section (3-B) were distinct:—

“Sub-section (3-B) of section 3 of the Act lays down the procedure for fixing prices of foodgrains, edible oilseeds or

edible oils sold in pursuance of an order made under section 3(2) (f) of the Act. Such price is to be fixed having regard to — (i) the controlled price of foodgrains, edible oilseeds or edible oils fixed under that section or by or under any other law; and (ii) the price of the foodgrains, edible oilseeds and edible oils prevailing or likely to prevail during the post-harvest period in the area to which the order applies. The question of assessing the prevailing price or the price likely to prevail during the post-harvest period will arise only when there is no controlled price. It is, therefore, proposed to amend sub-section (3-B) suitably to make this clear.”

The legislature's concern and decision in this context is then evident from the Essential Commodities (Amendment) Act, 1976 which substituted the present sub-section (3-B) in place of the earlier one. The Statement of Objects and Reasons in this regard was as follows :—

“(iii)—sub-section (3B) of Section 3 is being substituted to provide for the procedure for fixing the price in the case of levy on foodgrains, edible oilseeds or edible oils, and further to provide for the criteria for the fixation of such price.”

By this amendment, the criteria for fixing the statutory price was made even more precise by inserting clauses (a), (b), (c) and (d) with regard to which the same was to be determined.

(63) I have pain-stakingly adverted to the aforesaid legislative history to highlight the solicitude of the legislature at each step in chronological order to lay down meticulously the criteria on which the price for compulsory purchase under Section 3(2) (f) of the Act was to be determined. Whilst on the one hand the legislature conferred wide ranging powers of regulation and even compulsory acquisition of essential commodities, it provided equal safeguards that the price payable to the citizen for such compulsory purchases was just a equivalent thereof and was not left to the whim of the executive but was to be determined by the clear mandates of the legislature itself. The larger historical conspectus of the legislation on essential commodities is that it is a beneficent (barring certain

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special and express provisions to the contrary) regulatory measure and was in no way designed to be either expropriatory or confiscatory.

(64) Apart from the aforesaid historical perspective of the statute, the larger scheme of section 3 of the Act and the wide spectrum of guidelines provided therein for the determination of the price payable to the person from whom an essential commodity is compulsorily acquired calls for notice on a broader canvas. Whilst the plenary power to determine a ceiling control price for the whole of the essential commodity at which it may be bought or sold at a particular stage flows from sections 3(2) (c) of the Act, the legislature, in its wisdom has laid out different and precise criteria for the quantum of price to be paid for an essential commodity when it is compulsorily acquired from its owners under the different sub-sections whose insertion, or substitution at different times has been noticed earlier. It is perhaps apt to notice these *in extenso* because they point an unerring finger to the legislature's intent to prescribe adequate and precise guidelines for determining the crucial issue of payment of price for compulsory purchases or acquisition of an essential commodity :—

“3. (3) X X X

- (a) where the price, can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price ;
- (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any ;
- (c) where neither Cl. (a) nor Cl. (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(3-A) (i) X X X
(ii) X X X
(iii) X X X

- (a) where the price, can, consistently with the controlled price of the foodstuffs, if any, fixed under this section, be agreed upon, the agreed price ;
- (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any ;
- (c) where neither Cl. (a) nor (Cl. (b) applies, the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) X X X

“(3-B) X X X

- (a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils ;
- (b) the general crop prospects ;
- (c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers ; and
- (d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.”

“(3-C) X X X

- (a) the minimum price, if any, fixed for sugarcane by the Central Government under this section ;
- (b) the manufacturing cost of sugar ;
- (c) the duty or tax, if any, paid or payable thereon; and

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(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar.

and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.

X X X "

(65) Even a bare glance at the aforesaid provisions collectively would hardly leave any matter of doubt that the larger scheme of Section 3 intended by the legislature is not to leave it to the fist of the executive authority to declare any price for an essential commodity when it decides to compulsorily purchase or acquire it under Section 3(2)(f) of the Act and the other wide ranging powers given to it by the rest of the provisions. In each specific category of the essential commodities generally; with regard to foodstuffs in a particular locality as an emergency measure, with regard to any grade or variety of foodgrains, edible oilseeds, and edible oils; and in the context of every kind of sugar, the legislature has meticulously laid down the firm criteria on the anvil of which the price payable for compulsory purchase is to be determined. It has not been and perhaps it cannot be left to the whim of the executive authority alone to fix any price which it may choose for even compulsory acquisition because if it were so, the provision might well get tainted with uncanalized and unguided powers and attract the vice of unconstitutionality by violating Articles 14 or 19 of the Constitution. The broad scheme of sub-section (3), (3-A), (3-B) and (3-C) when viewed collectively would therefore, negative the stand that the price payable for compulsory purchase and acquisition may be arbitrarily determined without reference at all to the aforesaid provisions whichever may be applicable.

(66) What appears to be plain on principle is equally sanctified by the precedent of the final Court. The inter-relationship of the aforesaid provisions was noticed and accepted in the Shree Menakshi Mills Ltd. v. Union of India, (supra 2), by Chief Justice Ray speaking for the Constitution Bench with the following observations :—

“The main plank of the petitioner’s contention that fair price means a determination with regard to the cost of raw

material, manufacturing cost and reasonable return on the capital employed in the business was founded on the construction that sub-sections (3), (3-A), (3-B) and (3-C) of Section 3 of Essential Commodities Act, 1955 constitute a single scheme and what is implicit in sub-section (3) is made explicit in sub-section (3-C)."

(67) How it appears to me that some confusion and the resultant fallacy stems from the use of loose terminology applied to the price under Section 3(2)(c) of the Act and what is to be determined as payable for compulsory acquisition under Section 3(3) of the Act. Whilst the price fixed under Section 3(2)(c) of the Act has obviously and plainly been styled as the controlled price generally of the whole commodity, it is in my view an error to use the same and similar terminology to the amount payable and determined under Section 3(3) of the Act. The nature of the two is completely different. The amount fixed under Section 3(3) of the Act can more aptly be described as the compulsory sale price or in the alternative compulsory purchase price. In a particular case it can indeed be the determination of the price of one particular transaction where the essential commodity is acquired under section 4(2)(f) of the Act from a single individual, in sharp contradiction to general control price of the whole commodity, which must be general, that is, either country-wide or State-wide or at least locality-wide application.

(63) Faced with the inherent weaknesses of his stand Mr Naubat Singh, the learned counsel for the respondent-State had in the last resort attempted to argue that therein also there is only one price and the price mentioned and determined to be payable under Section 3 (3) of the Act is also the controlled price under section 3 2(c) of the Act. Subscribing to such a submission would patently render clauses (a), (b) and (c) of sub-section (3) to be totally nugatory and otiose. If the price arbitrarily mentioned in the control order is to be dubbed as the control price under Section 3(2)(c) of the Act then what indeed are the guidelines in clauses (a), (b) and (c) of sub-section (3) of the Act meant for? It is plain that the submission made on behalf of the respondent State in fact begs the whole question. plain reading of clauses (a) and (b) aforementioned would make it

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manifest that the legislature had laid down as a mandate that the price to be paid hereunder rests on the foundation of an already existing control price, if any. To say that the price be arbitrarily named in the control order ipso facto becomes the control price under section 3(2)(c) amounts to no more than attempting to define a circle as being circular. In fact clauses (a) and (b) proceed on the basic postulate that there already exists a control price on the basis of which the payment for a compulsory acquisition is to be determined. In the case of an existing control price for the commodity it is to be determined by an agreement of the parties consistent with the control price under clause (a) and in case of failure to reach any such agreement, the price is to be calculated by the authority, but still on the basic criteria of the existing control price. Therefore, the very sine qua non for determining the price under clauses (a) and (b) is an existing control price. When the provision talks of being consistent with or in reference to a price it obviously pre-supposes the existence of such a thing. In such context to say that the price determined under Section 3(3) would by itself become the control price, appears to be patently illogical because consistency and reference are relevant in two things not in a single one.

(69) In providing for the situation and the absence of an existing control price the provision is clear and its mandate plain. Herein clause (c) would come into play and price must then be determined at the market rate prevailing in the locality on the date of the sale. Clearly, therefore, a mere arbitrary fixation of price in the control order is a patent violation of clauses (a), (b) and (c) for compulsory acquisition of an essential commodity and cannot be raised to the pedestal of being the general control price itself under section 3(2)(c) of the Act.

(70) Confronted with the limitation and the circumscribing of the power by the statute under sections 3(2)(c) and 3(3) of the Act a last desperate throw was attempted on behalf of the respondents. It was sought to be argued that if neither of these two provisions could justify the arbitrary fixing of the price in the Control Order then it must be presumed to have been so done under the generality of the power given by sub-section (1) of section 3 of the Act. This appears to me as an argument of desperation. When sub-section (2) of section 3 expressly provides for the specific situations

spelled out in its detail in clauses (a) to (j) thereof it would be vain and indeed illogical to argue that despite these special and specific provisions they can all be conveniently ignored and wiped off the statute book and resort should be deemed to have been made to the generality of the power under sub-section (1) irrespective of the conditions and constrictions imposed thereon by the statute itself for their exercise. Such a construction would render the whole of sub-section (2) as also sub-sections (3), (3A), (3B), (3C), (4) (4A) and (4B) wholly redundant and otiose. It seems manifest to me that when the statute expressly provides for a thing to be done in accordance with section 3(2)(c) or 3(2)(f) then the provisions thereof must be complied with and they cannot be set at naught by any assumption of or a resort to the generality of the power under section 3(1) of the Act.

(71) Again, the lie direct to the aforesaid stand sought to be taken by the respondent-State is given by the fact that the power here is not being exercised by the Central Government but merely by the State Government as a delegate of the Central Government strictly within the confines of such delegation. It deserves highlighting that the Control Order has not been issued by the Central Government purporting to act under section 3(1) of the Act but expressly by the State Government under the power delegated to it by virtue of section 5 and the delegation made thereunder by Order G.S.R. 800 dated the 9th of June, 1978. In order to appreciate this aspect of the case it becomes necessary to read both of them:—

S. 5. Delegation of powers : The Central Government may, by notified order, direct that the power to make or issue notifications under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by :—

- (a) such officer or authority subordinate to the Central Government, or
- (b) such State Government or such officer or authority subordinate to a State Government,

and may be specified in the direction.”

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ORDER

New Delhi, the 9th June, 1978

G.S.R. 800.—In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in supersession of the order of the Government of India in the late Ministry of Agriculture (Department of Food) No. GSR 316(E), dated the 20th June, 1972, the Central Government hereby directs that the powers conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions—

- (1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf ;
- (2) that before making an order relating to any matter specified in the said clauses (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government ; and
- (3) that in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorise only an officer of Government."

Now, a plain reading of the aforesaid Order makes it manifest that what has been delegated to the State Government expressly is only the making of Order to provide for the matter specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) sub-section (2) of section 3. There is no delegation of the powers vested in the Central Government under section 3(1). The State Government or its minion, the Director, therefore, cannot arrogate to itself the plenary and the generality of powers vested in the Central Government under section 3(1), if any. Equally, it deserves highlighting

(which would be of greater relevance in another context later) that the delegation is expressly in favour of the State Government and to any officer or authority subordinate thereto. Nor has the State Government even by the remotest implication been authorised to further delegate such powers to the Director or any other officer. For this manifest reasons also any purported resort to the generality of the powers under section 3(1) of the Act in this context by the State Government itself or by the Director would be wholly impermissible and unwarranted.

(72) The aforesaid legal proposition appears to be plain but if authority was needed for the same it is available in the following words of the Division Bench in *Bijoy Kumar Routral and others v. State of Orissa and others* (16), where a similar contention was repelled:—

“What has been delegated to the State Government under the above notification is, therefore, the power of the Central Government under sub-section (1) of section 3 to make an order in regard to matters specified in the clauses (a) to (j) excepting (g). As the delegate, the State Government is not entitled to fall back upon the wide powers of sub-section (1) and must exercise power within the field of delegation. The decisions of the Supreme Court are of no avail to the State and unless the order is within the frame of delegation, it cannot be sustained.”

For the aforesaid view the Bench had placed reliance on *Sujan Singh v. State of Haryana* (17), *State v. Suraj Bhan* (18) and *T. M. Prasad v. The State*, (19).

(73) In the light of the foregoing discussion on the basis of both principle and the relevant statutory provisions. I would hold that the general control price of the whole commodity fixed under Section 3(2)(c) of the Act is distinct and a thing apart from the

(16) 1976 Orissa 138.

(17) 1968 Pb. & Haryana 363.

(18) AIR 1972 All 401.

(19) 1972 Patna 250.

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compulsory purchase price payable in accordance with Section 3(3) of the Act.

(74) The aforesaid view receives conclusive support from binding as also persuasive precedent. In *Shree Meenakshi Mills Ltd's case* (supra), Chief Justice Ray, after adverting to all the relevant provisions under Section 3 of the Act concluded as follows :—

The difference between sub-sections (3) (3-A) on the one hand and sub-sections (3B) and (3C) on the other are these. Sub-sections (3) and (3-A) speak of fixing price by agreement consistent with or with reference to controlled price or failing both market rate prevailing in the locality during three months preceding the date of the notification. Sub-section (3B) speaks either of controlled price or where no such price is fixed the price prevailing or likely to prevail during the post-harvest period in the area to which the order applies. In sub-section (3C) which relates to sugar price is to be calculated with reference to minimum price of sugarcane, manufacturing cost of sugar, duty or tax, and a reasonable return and different prices may be provided for different areas or factories or different kinds of sugar.”

“75. Therefore controlled price fixed under Section 3(1) read with Section 3(2) (c) is different from price under sub-sections (3A), (3B) and (3C), I am inclined to the view that the categorical conclusion in paragraph 75 is clearly conclusive on the point and binding on us. Apart from the above, it would appear that there is an equally unbroken line of precedent on the point holding that the general control price under section 3(2) (c) of the Act is something distinct and apart from that determined and payable under sub-sections (3), (3-A), (3-B) and (3-C) of section 3 of the Act. In *M/s Bhagwan Singh and others v. The State of Punjab and others*, (20), the validity of clause 4 of the Punjab Wheat (Levy) Procurement Order arbitrarily fixing price of Rs. 105 per quintal for the compulsorily acquisition of wheat in the Order itself was struck

down as *ultra vires* of Section 3(3-B) of the Act because the same had not been determined in conformity therewith. A similar argument that this itself was the control price was categorically repelled in the following terms :—

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

Coming now to the other High Courts in *K. B. Jinaraja Hodda and others v. The State of Mysore by Chief Secretary, Vidhana Soudha, Bengalore and others*, (21), a similar fixation of price by the Control

(21) A.I.R. 1971 Mysore 12.

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Order itself in the Mysore Paddy Procurement (Levy) Order, 1966, was struck down as being violative of Section 3 (3-B) of the Act. The identical argument raised on behalf of the respondents was specifically rejected with the following conclusion :—

“..... Mr. Puttaswamy, learned Advocate for the State, submitted that the price fixed in Schedule II of the order was itself the controlled price. We are unable to agree with this submission. The controlled price has necessarily reference to the object of the State fixing up a maximum price beyond which sale cannot be legally made by the grower or the dealer. The price fixed under Schedule II, is not such price. It is common knowledge, and that factor is not disputed by the State, that paddy is sold at much higher price in the open market both by the growers and the dealers than the price mentioned in the Schedule. We cannot, therefore call this price as the controlled price, as contemplated by clause (i) of sub-section (3-B) of section 3 of the Act. The wording of the Levy Order leaves no doubt in our mind that the price that has been fixed in Schedule II is the ‘purchase price’ and not the controlled price.”

In *Bijoy Kumar Routrai and others' case* (supra), the validity of the Orissa Paddy Procurement (Levy) Order, 1974, was challenged *inter alia* on the ground of the fixation of the declared price prescribed therein itself. Striking the same as violative of sub-section (3-B) of the Act, it was observed as under :—

“..... Without examining the matter any further, it is sufficient to indicate here that the scheme of the Act requires payment of a price which is intended to be a just equivalent because the mode as indicated in section 3(3-B) of the Act is payment of the prevailing market price on the date when the direction for sale is made or the price which is likely to prevail in the post-harvest period. If what is offered as price does not satisfy the requirement of the Act, there would be a statutory infraction and the requirement to sell at a price inadequate enough would not be enforceable. As the Act does not intend

any expropriatory measure the Order cannot make a provision essentially for such a purpose,”

and again

“We have already noted the huge gap between the actual prevailing price or the price which was likely to prevail in the post-harvest period on one side and the declared price on the other. According to us, it could not have been the intention of the Parliament to fix such a price in exercise of powers under section 3(3-B) (ii) of the Act. Therefore, the direction to sell at a price not in terms of the Act is an infraction and beyond the authority of delegation.”

To the same effect are the following observations of the Division Bench in *M/s. Sitaram Jwala Prasad and others v. State of Uttar Pradesh and others* (22) (to which detailed reference would be necessary on the Second question) :—

“* * *. The controlled price contemplated by clause (i), therefore, has to be with reference to either the grade of foodgrain or its variety. If the Government issues a direction, as in the instant case, that 50 per cent of the foodgrains are to be sold to it, it will have to pay to the seller a price as contemplated either by clause (i) or clause (ii) of sub-section (3-B). It cannot say that whatever price it chooses to mention in the order as price payable in respect of the stock requisitioned by it would automatically become the controlled price of the grade or variety of the concerned foodgrain, as contemplated by clause (i).”

Lastly in the recent judgment in *Joe Pereira and other v. Union of India and others* (23), the Division Bench similarly struck down the arbitrary fixation of the price in the Karnataka Paddy Procurement (Levy) Order, 1960, as patently violative of sub-section (3-B) of section 3 of the Act by holding that the price fixed in the Levy Order could not automatically become the controlled price of the commodity.

(22) A.I.R. 1975 All. 272.

(23) A.I.R. 1979 Karnataka 12.

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(75) In fairness to the learned counsel for the respondents, it becomes necessary to advert to their attempted reliance on *Sri Venkataswara Rice Mill and others v. State of Andhra Pradesh and another 15 supra*. What is significant in this context is that the issue of fixation of price in the Control Order was not even remotely challenged on behalf of the petitioners and the question was, therefore, never before the Bench. Indeed it was the common case that the notified price in the order had been fixed in accordance with the provisions of the statute. This is evident from the following observations therein of the learned Chief Justice:—

“* * *. So, a notified price is fixed only after taking the relevant factors into consideration, that is to say, to see that no dealer or miller suffers loss by his having to sell a portion of the total quantity of the rice which he produces or manufactures. *The fixation of the price has not been questioned before us.*”

That being so, I fail to see how this case would be of any aid to the respondents in the present context where the whole challenge is directed to the arbitrary fixation of price by the Control order. It is, however, necessary to notice that the learned Judges of the Division Bench in *Venkataswara Rice Mill's case* chose to differ from the view of the Mysore and Allahabad High Courts in *K. B. Jinaraja Hedge and M/s. Sitaram Prasad's case* (supra), with which I have already expressed my respectful agreement. If the Division Bench in *Venkataswara Rice Mill's case* intended to lay the law contrary thereto I must respectfully record my dissent therefrom in view of the reasons already recorded above. Reliance on behalf of the respondents was also placed on the unreported judgment of the Rajasthan High Court in *M/s. Chand Behari Lal v. Union of India* (24). In the context of a Sugar Control Order coming within the specific provisions of section 3(3-C). However, the following concluding observations in the said judgment itself give the lie direct to the stand taken by the respondents:—

“Of course, for the purposes of fixing price for clause (f) which includes levy, the order will have to specify and give effect to sub-section (3) of section 3 and if that is not

(24) C.W. 8 of 1980 decided on 14th March, 1980.

done and if the Central Government stops only by fixation of the price, ignoring sub-section (3) of section 3, a citizen can have the grievance that section 3(3) has been violated. Therefore, sub-clause (c) read with section 3(3) would certainly require the Central Government to further give directions under sub-clause 3(3) but those directions will have certainly great bearing on the controlled price in case (a) and (b) of sub-section (3) are to be applied.”

Indeed the aforesaid observations in a nut-shell summarise the argument on behalf of the petitioners and greatly advance their case. Nevertheless there is no gainsaying that certain other observations in the said judgment, if read in isolation, do seem to take a view contrary to the one to which I have subscribed. It would be repetitive to list my reasons afresh and for those already recorded above, I would respectfully dissent therefrom.

(76) To conclude on the first question I am firmly of the view, on the basis of the weight of precedent, the relevant statutory provisions, and on principle, that the general control price of the whole commodity envisaged under section 3(2) (c) of the Act is a class and thing apart from the compulsory purchase price payable in accordance with sub-section (3) of the said Section.

(77) Now once the aforesaid conclusion has been made the answer to the second question whether the general control price envisaged under section 3(2) (c) of the Act is one fixed uniform price beyond which the whole of the essential commodity cannot be allowed to be bought or sold— is relatively easy to arrive at. Inevitably one must first turn to the relevant statutory provisions of section 3(2) (c) and (f):—

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

(a) * * * * *

(b) * * * * *

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(c) for controlling the price at which any essential commodity may be bought or sold.

(d) * * * * *

(e) * * * * *

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity—

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him,

to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Expln. * * * * *
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Now a plain reading of section 3(2) (c) above makes it manifest that it is primarily and wholly directed to the fixation of a price at which any essential commodity may be bought or sold. Its provisions are general in nature. It obviously visualises a fixed or a ceiling price for the whole commodity and not for a part or percentage thereof. The contention on behalf of the petitioners is sound that in the context in which section 3(2) (c) is set it visualises a control price for the whole of the commodity which is uniformly fixed providing a ceiling beyond which it cannot be lawfully permitted to travel. It deserves notice that essential commodities are not things (as for instance in the case of foodgrains) in which every

grain whereof is either identifiable or separable. To prescribe that 30 per cent of an essential commodity would be priced at one level and, the remaining 70 per cent should be priced at another level or for that matter, be left completely unregulated would pose problems which are beyond the pale of solution. One cannot easily imagine that the legislature has led itself to create a situation which would be patently illogical by prescribing different control prices for different percentages of an essential commodity. The present Control Order is itself an illustrative example. On the stand of the respondent-State it seems to visualise one price for 30 per cent of the essential commodity, namely, Rs. 42 per quintal and an altogether different price for the remaining 70 per cent, may be as high as Rs. 120 per quintal — indeed not even one price but any price for the rest. Again clause (3) of the Control Order is applicable only to all the dealers and the owners of the Rice Mills. Apparently no control price either partial or total would arise in the case of the rice bran stocks in the hands of persons other than dealers and owners of the Rice Mills specified in the said clause. This would create a situation that the same commodity of the rice bran would have one control price for the 30 per cent of the commodity in the case of dealers and mill-owners and another price for the remaining 70 per cent in their hands and no control price at all with regard to the rest. With the greatest respect it appears to me that this would make a mockery of what one visualises as the uniform price of a controlled essential commodity. The aforesaid view is then strengthened when a comparison of clauses 3(2) (c) and 3(2) (f) is made. It deserves highlighting that clauses (a) and (b) of section 3(2) (f) in express terms mention the whole or a specified part of an essential commodity. It is plain, therefore, that where the legislature intended as under section 3(2) (f) that the power to acquire either the whole of the stock or a part thereof from any person it has specifically said so. Section 3(2) (c) on the other hand does not talk of the control price being either for the whole of the commodity or any specified part thereof. For this added reason also it would be unwarranted to construe section 3(2) (c) as providing for the control price of certain percentages or specified parts of an essential commodity. As the statute is now worded it visualises a uniform control price of the whole of the essential commodity at which it may be bought or sold and not a partial control price therefor. If the legislature was so minded it could have expressly appropriated to itself such a power under the statute but it has not chosen

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to do so in this context and in sharp contrast to the other provisions which expressly provide for dealing in a specified part of the essential commodity.

(78) The aforesaid view which I take is buttressed conclusively by the Division Bench judgment in *M/s Sitaram Jwala Prasad's case* (supra). Indeed this case appears to be virtually on all fours with the present one. Therein also the U. P. Coarse Foodgrains (Levy) Order (1974) required the licensed dealers to deliver 50 per cent of the coarse grain in their stock at the scheduled price arbitrarily fixed in the Order itself. The remaining 50 per cent was apparently left free of control and floating in the market. Striking the provisions down and repelling an identical argument, which was raised before us, their Lordships observed as follows:

“It was urged by the learned Advocate-General that since only 50 per cent of the coarse foodgrains were required to be sold to the State Government, it was open to the dealers to sell the remaining 50 per cent of the foodgrains at any price which they liked to enable them to compensate themselves for any loss that they may suffer on account of the 50 per cent of the foodgrains being sold to the Government at the rate of Rs. 74 per quintal. According to him, in this view of the matter, on the one hand, the dealers will not be put to any appreciable loss and, on the other, at least 50 per cent of the foodgrains would be available to the consumers at a comparatively much lower price. This argument of the learned Advocate-General, based on economic equity, does not in our opinion help us in interpreting the meaning of the word ‘controlled price’ as used in clause (i) of Section 3(3-B). Moreover, the Legislature has achieved the aforesaid object in the case of stock of sugar required to be delivered in pursuance of an order made under Section 3(2) (c) by enacting section 3(3-C) and wording it differently. To what the learned Advocate-General urges was the real intention of the Legislature it would have enacted sub-section (3-B) on lines similar to sub-section (3-C) but it has not done so.

Accordingly, we are of opinion that even though the State Government had full authority to require 50 per cent of

the foodgrains to be sold to it as contemplated by the impugned order, it was not open to it to have fixed Rs. 74 per quintal as the price payable in respect of such foodgrains. If the State Government desires to purchase 50 per cent of the foodgrains as contemplated by the Order, it must pay its price as contemplated by sub-section (3-B)."

An identical view has then been taken by the Division Bench in *Joe Pereira and others v. Union of India* (14 supra) in the following terms:—

"From these observations, it becomes clear that the controlled price is a price which is required to be determined by taking into consideration all the circumstances like interest of the grower, the consumer and the general public. It must be fair from the point of view of the producer and also from the point of view of the consumer. It has to be determined in such a way that the producer does not perish and the consumer is not crippled. *The controlled price once fixed must be applicable to all sales and purchases. It should not be intended to control the price of a particular type of transaction.* The price which the State Government fixed in the Levy Order or paid to the petitioners was evidently intended to govern the particular type of transaction, i.e., compulsory sale by the grower to the State. Such a price, in our opinion cannot automatically become the controlled price as contended for the State Government."

(79) Both on principle and precedent one must conclude that what section 3(2)(c) envisages is a uniform and fixed ceiling price for the whole of the essential commodity on which it may be bought or sold and not for some parts and percentages thereof. The answer to the question posed at the very outset is thus to be rendered in the affirmative.

(80) Once the two core questions in the case have been answered in the terms aforesaid, their application would leave little doubt that Clause 4 of the Control Order is plainly unsustainable in law.

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The issue indeed narrows down on the pleadings of the respondent-State itself. It is hardly in dispute that Clauses 3 and 4 draw their sanction from section 3(2)(f) and inevitably, therefore, section 3(3) would be directly attracted to the situation. In practical terms, therefore, the question boils down to this — whether the fixation of the price of Rs. 42 by the Control Order is something which is warranted by the closely circumscribed power in this regard under clauses (a), (b) and (c) of section 3(3) of the Act. It is the common stand that no uniform fixed price for the whole of the essential commodity of rice bran has been promulgated. That being so, clauses (a) and (b) which directly postulate the existence of a controlled price already cannot obviously have any application. Therefore, clause (c) only would be applicable which mandates that the price calculated at the market rate prevailing in the locality on the date of the sale would be payable for the acquisition under section 3(2)(f) of the Act. Admittedly the respondents' case itself is that they were far from fixing the price in accordance with the prevailing market price. It is virtually admitted that such a price may well be as high as Rs. 120 per quintal if the sales are made for the commercial purposes of extracting oil from the rice bran and in any case the State has itself relied on annexures R. 2 and R. 3 of the affidavit indicating that the market price ranged between Rs 70 to Rs. 80 per quintal. Consequently in terms the respondents' own stand is that the price paid is not being fixed in accordance with section 3(3) (c) of the Act. Indeed the tall claim is that the arbitrary price of Rs. 42 fixed by the Control Order would itself become the control price of the commodity.

(81) There is no manner of doubt that the issuing of the orders under the Essential Commodities Act including the impugned Control Order here is a subordinate legislation. This must necessarily conform to the mandate and the limitation prescribed by the parent statute itself. The moment it travels beyond the same it must be struck down as violative of the source from which it flows. It must, therefore, be held that the fixation of the price at Rs. 42 being in direct violation of the provisions of clauses (a), (b) and (c) of section 3(3) are *ultra vires* of the Essential Commodities Act and have to be necessarily struck down.

(82) Apart from the aforesaid fatal infirmity the Achilles' heel of clause 4 is the vesting of an unguided and uncanalised power in

the Director to determine the price of rice bran from time to time without any limitation. If the stand of the respondent-State were to be accepted that the arbitrary fixation of price by the Control Order is itself the control price then according to the terms it would follow that the Director can from time to time keep on varying the same. Indeed the language of clause 4 indicates that in essence it is the Director who will determine the price and only as a temporary measure for the present the sale price has been fixed at Rs. 42 per quintal exclusive of the cost of containers and taxes. Now one cannot easily imagine that the control price of an essential commodity under section 3(2)(c) all over the State may be left to the whimsicality of the Director that at any time he may choose to fix it without the least reference to the provisions of section 3(2)(c) or to those under section 3(3) of the Act. A reference to the delegation made by the Central Government,—*vide* Order G.S.R. 800, dated 9th June, 1978 (quoted earlier in paragraph 20) makes it plain that this has been done only in favour of the State Government itself and not in favour of any officer or authority subordinate thereto. Neither Section 5 nor the Order making the delegation even remotely empowers the State Government to further delegate its powers on to the Director. On general principles it is well-settled that a delegatee himself cannot further delegate unless otherwise expressly authorised to do so or where such delegation may in terms be deduced from the language of the statute itself. Here both these things are totally lacking. Viewed from any angle, therefore, the vesting of the power to determine the crucial issue of the price in the Director by clause 4 appears to be totally unwarranted and unauthorised by the law. In fact the learned counsel for the respondents faced with this intractable situation had to concede half-heartedly that at least the vesting of the power in the Director could not be easily validated by the strict delegation made in favour of the State. Inevitably, therefore, the clothing of the Director with the unlimited power to fix price at any time is manifestly illegal and has to be necessarily struck down.

(83) Now once the aforesaid finding has been arrived at an equally fatal and added infirmity attaches to clause 4. A reading thereof would show that the same is an indivisible and integral whole. Indeed the core thereof is the vesting of the power to determine the sale price of rice bran in the Director from time to time. It is only as a temporary and a pragmatic measure that the

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present sale price of rice bran is fixed thereby. It has to be kept in mind that the Control Order is no temporary measure but is intended to retain its statutory force till the State Government thinks otherwise. Consequently, once it is held that the vesting of the power to determine the price in the Director is *ultra vires* of the Act, clause 4 as a whole must similarly be held to be so. As has been said earlier the vesting of the power to determine the price in the Director is literally and figuratively the need of clause 4 and once it is served the same must fall to the ground like a headless body. On this additional ground as well clause 4 cannot be allowed to remain as a limb of the main statute.

(84) In fairness to the learned counsel for the petitioners, it is necessary to advert to another aspect and the more so because of certain passing observations of approval which have fallen from the pen of my learned brother Sharma, J. It was half-heartedly contended on behalf of the respondents that Section 3(2) (c) of the Act gave wide ranging powers to the authorities to fix any control price for an essential commodity and consequently the State Government could determine that Rs. 42 per quintal or even less for the whole of the commodity. This, it was argued, would be even more disadvantageous to the petitioners as they would be obligated to sell the entire rice bran at that low price (whether Rs. 42 or Rs. 30 per quintal) instead of merely 30 per cent thereof as provided under the Control Order. This argument suffers from the fallacy of the assumption that the power to determine the control price under Section 3(2) (c) is wholly arbitrary or unguided which in fact it is not. Undoubtedly, the statute confers a wide ranging and effective power to determine the control price of the whole commodity in the authorities, but, therefrom it does not follow that it can be exercised whimsically with impunity. The fixation of such a price under section 3(2) (c) of the Act has again to satisfy the tests on the anvil of its reasonableness. It is unnecessary to elaborate the matter on principle because the following observations of the final Court in *Meenakshi Mills Ltd.'s case* (supra), completely covers the issue:—

“The control of prices may have effected either on maintaining or increasing supply of commodity or securing equitable distribution and availability at fair prices. The controlled price has to retain this equilibrium in the supply

and demand of the commodity. The cost of production, a reasonable return to the producer of the commodity are to be taken into account. The producer must have an incentive to produce. The fair price must be fair not only from the point of view of the consumer but also from the point of view of the producer....”.

(85) It is obvious from the above that the fixation of a uniform control price for the whole of the commodity under Section 3(2) (c) of the Act has also to satisfy the test of reasonableness and is, therefore, challengeable in law. It must be clarified that it was never the stand of the learned counsel for the petitioner that the fixation of price under section 3(2) (c) of the Act is beyond challenge or if it is whimsically done, he would not assail the fixation of such a price. His whole stand and rightly so was that under the Control Order no uniform control price for the whole of the commodity (which alone in law can be termed as a control price) has been fixed under Section 3(2) (c) and the Control Order, merely envisage a compulsory sale price as such. It was, therefore, that he confined his stand by assailing this compulsory purchase price as being violative of Section 3(3) (a), (b) and (c). Indeed, it was not and possibly could not be his stand that any and every control price how-so-ever whimsically fixed under Section 3(2) (c) is unassailable or that it would always be acceptable to him.

(86) In the light of the aforesaid exhaustive discussion, I must conclude that clause 4 of the impugned Control Order is glaringly violative of Section 3 of the Essential Commodities Act and is, therefore, invalid. It was not even argued before us, that clause 4 is separable from the rest of the impugned Control Order and that it can still hold the field *de-hors* the same. Indeed this clause is a pivotal clause without which the Control Order cannot be put into operation. It would be inconceivable that any compulsory sale of rice bran would be possible under clause 3 without any provision what-so-ever for the quantum of price payable therefor. The whole of the Control Order, therefore, must fall because of this fatal infirmity and is hereby struck down.

(87) The writ petition is, therefore, allowed. In view of the intricate questions of law arising herein the parties are left to bear their own costs.

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(P. C. Jain, J.)

**Order of the Court*

(88) It is unanimously held that the first part of clause 4 of the Haryana Rice Bran (Distribution and Price) Control Order, 1981, which is in the following terms, be and is hereby struck down:—

“The maximum sale price of the rice bran sold against permits as mentioned in clause 3 shall be as determined by the Director, from time to time.”

(89) Held by majority that the remaining part of clause 4 as also the Control Order as a whole is valid and constitutional. The writ petition is dismissed without any order as to costs.

S. S. Sandhawalia, C.J.

M. R. Sharma, J.

Gokal Chand Mittal, J.

H.S.B.

FULL BENCH

Before P. C. Jain, D. S. Tewatia, K. S. Tiwana, Harbans Lal
and G. C. Mital, JJ.

TEJA SINGH,—*Petitioner.*

versus

UNION TERRITORY OF CHANDIGARH and others,—*Respondents.*

Civil Writ Petition No. 1522 of 1973.

September 20, 1980.

Constitution of India 1950—Article 226—Writ jurisdiction (Punjab and Haryana) Rules 1976—Rule 32—Code of Civil Procedure (V of 1908)—Section 141, Order 22 Rules 3 & 4 and Order 23 Rule 1—Limitation Act (XXXVI of 1963)—Provisions of the Code