
Before N.K. Kapoor & K.K. Srivastava, JJ.

THE DIRECTOR, AGRICULTURE, PUNJAB,
CHANDIGARH & ANOTHER,—Appellants

versus

M/S GURMUKH MAL SHIBBA MAL & OTHERS,—Respondents

LPA 1039 of 96

29th July, 1997

Constitution of India, 1950—Arts. 19 & 21—Essential Commodities Act, 1955—Section 7—Fertilizer Control Order, 1985—Section 19(1)—Act does not provide for an opportunity of getting sample examined from another laboratory—Whether denial of opportunity to person to get his sample examined from another laboratory amounts to depriving him of his defence & violative of Arts. 19 & 21 of Constitution of India—Validity of Act challenged as arbitrary.

Held, that Article 19(1) gives all citizens right to freedom of speech and expression, to assemble peaceably and without arms, to form association or unions, to move freely throughout the territory of India, to reside or settle in any part of the territory of India and to practice any profession or carry on any occupation, trade or business, all the same permits the State to make any law imposing reasonable restrictions upon the rights so conferred. Thus, it is to be examined whether law imposes reasonable restrictions on the exercise of such rights or not. Similarly, under article 21 of the Constitution the object is to prevent encroachment upon personal liberty by the executive except in accordance with law and in conformity with the provisions thereto. No person can be deprived of his life or personal liberty unless procedure established by law is strictly followed. In any case procedure cannot be departed from to the disadvantage of the person affected.

(Para 10)

Further held, that in case under scrutiny a sample of fertilizer was taken by the authorities as per provisions of Control Order which on analysis was found to be of non-standard grade. With a view to determine the guilt proceedings have been initiated according to law. Evidence is yet to be adduced by the complainant/ the prosecution. It is thereafter petitioner is to be given a right of defence. It indeed would be pre-mature to judge the ultimate decision which the Court may take. An accused person of course has a right to set up defence in terms of Section 293 Cr. P.C. What

would be the nature of defence can again be a matter of sheer guess? In any case one could visualise that petitioner would adduce all such evidence so as to prove his innocence. May be he examines another expert to cross-examine the official witness or makes reference to some celebrated authority on law relevant to the point in controversy to establish that the conclusion arrived at by the analyst is indeed impermissible and as a last resort can make out a case for the Court to send the third sample for its analysis by another laboratory. With these safeguards at his command it can be stated that procedure prescribed is neither arbitrary nor unreasonable or unfair. On examining the matter on the touch stone of articles 19(1) and 21 and various decisions of the apex Court, we are of the view that Fertilizer Control Order, 1985 has been enacted by competent Legislature and the same does not violate any express provision of Constitution of India.

(Para 18)

G.S. Grewal, AG, Punjab with Mr. Baljit Mann,
DAG, Punjab, *for the appellants.*

H.L. Sibal, Sr. Advocate with Mr. Denesh Goyal,
Ms. Rita Kohli and Mr. Ravinder Chopra,
for the respondent.

JUDGMENT

N.K. Kapoor, J.

(1) Challenge in this set of cases (LPA No. 1039 of 1996 and C.W.P. Nos. 5175, 5176 and 6771 of 1996) is to the judgment of Shri R.L. Anand, J. dated 16th September, 1996 declaring the notification No. G.S.R. 758 (E) dated 25th September, 1985 issued under Section 3(1) of the Essential Commodities Act, 1955 (hereinafter referred to as the Act) to be violative of Articles 19 and 21 of the Constitution of India, thus, striking it down, consequently quashing the proceedings launched for the prosecution of petitioner petitioners.

(2) Learned Single Judge made reference to facts in C.W.P. No. 5643 of 1995. As per the case of the petitioner in the aforesaid writ petition a sample of DAP Fertilizer was drawn by the respondents—the authorities from the premises known as IFFCO Service Centre, Zira on 5th September, 1990. This sample was sent to Fertilizer Quality Control Laboratory, Ludhiana *vide* order dated

7th September, 1990 and as per Laboratory analysis the same was found to be non-standard grade. As per narration of facts in the aforesaid writ petition at the time of drawing of sample three sample tests were prepared. One such sample was given to the petitioner and another remained in the custody of respondent No. 4 and the third sample was sent to the laboratory. As per the report of the analyst the sample sent was found to be of non-standard grade. Chief Agricultural Officer *vide* communication dated 20th April, 1995 apprised the petitioner of the violation of Fertilizer Control Order, 1985 (hereinafter referred to as 'Control Order') read with provisions of the Act. *Vide* aforesaid communication it was brought to the notice of the petitioner that he has contravened the provisions of Section 19(1)(a) of the Control Order by selling sub-standard fertilizer to the farmers and so was asked to appear in person on 5th May, 1995 or to submit his explanation in writing as to why legal action be not taken against him. Petitioner's reply to the aforesaid communication was not found satisfactory by the authorities and so licensing authority cancelled his licence giving 30 days time to dispose of the stock lying with him (annexure P-4). A complaint was also lodged to Senior Superintendent of Police for registering of the case against the petitioner under Section 7 of the Act read with clause 19(1) of the Control Order. F.I.R. No. 53, dated 7th April, 1993 was stated to have been registered. Petitioner assailed the Control order on the ground that the same is violative of Articles 19 and 21 of the Constitution of India as the existing prescribed procedure deprives him of an opportunity of getting the other sample examined from another Laboratory.

(3) Respondents in their written statement defended the action initiated stating that the Control order is perfectly legal and does not suffer from the vice of Unconstitutionality, as alleged. According to the answering respondents the Control Order has been promulgated by the Central Government in exercise of its powers under Section 3(1) of the Act. Fertilizer has been declared to be an essential commodity by the Central Government under section 2(a)(xi) of the act. As it has been declared to be an essential commodity, government is empowered to issue Rules/Regulations/Orders for regulating or prohibiting its production, supply and distribution. The petitioner having been found to be in possession

of sub-standard fertilizer the action initiated by the authorities is according to law. Present petition has been filed to delay the proceedings. Otherwise too, writ petition is legally not maintainable as all these defences could be set up by the petitioner during the trial of the case.

(4) Whether Clause 19(1) read with Section 7 of the Act is violative of Articles 19 and 21 of the Constitution of India is the sole point which has been debated. The learned Advocate General, Punjab argues that as per Section 3(1) of the act Government has power to control production, supply distribution etc. of essential commodities. As per this Section, Government has also powers for regulating or prohibiting production, supply and distribution thereof and trade and commerce therein. Besides it, Government can provide for its regulation by licences, permits etc. Under Section 6 of the Act says that any order made under Section 3 is to take effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. Thus, for all purposes the provisions of the Act and order passed therein are in fact to be examined in the light of aforesaid provisions without making any reference to extraneous material. According to learned advocate General, Control Order is self contained. It deals with various facets like fixation of price, Control on distribution of Fertilizers by Manufacturer, Registration of dealers, Manufacture of mixtures of Fertilizers, Restrictions on Manufacture of mixtures of Fertilizers, Restrictions on manufacture, sale etc. of Fertilizers and provisions with regard to enforcing the arious intendment of the order by appointment of Registering Authorities, Inspectors, their qualifications etc. Control Order also provides for the analysis of the samples notifying the centres and other such relevant instructions regarding the analysis of the samples. According to the counsel, for the point in controversy, Section 29 of the Control Order deals with it i.e. a fertilizer sample drawn by an Inspector is to be analysed in accordance with instructions contained in Schedule II in the Central Fertilizer Quality Control and Training Institute, Faridabad or Regional Fertilizer Control Laboratories at Bombay, Madras or Kalyani (Calcutta) or in any other laboratory notified by the State Government. Persons to be appointed as Fertilizer Analyst are also required to possess a minimum qualification of to be a graduate in Agriculture or Science with

Chemistry as one of the subject from a recognised University and also possessing training in fertilizer Quality Control and analysis at Central Fertilizer Quality Control and Training Institute, Faridabad. According to the counsel, it is not the case of the petitioner that any provision of the Control order has been violated by the authorities while taking out the samples or sending the same for test analysis. It is also not the case of the petitioner that the Legislature lacks competence in passing this order. This being the case a vague averment that such a piece of legislation infringes Articles 19(1) and 21 of the Constitution of India indeed ought not to have been made the basis to strike down a valid legislation by the learned Single Judge. According to the counsel, even otherwise even as per the tests laid by the apex Court in various judicial pronouncements from the often quoted judgment in *A.K. Gopalan v. State of Madras* (1), to case of *Smt. Maneka Gandhi v. Union of India* (2), too does not advance the case of the petitioner in any manner. Counsel for the appellant further argued that somewhat identical matter came up for consideration before this Court in *Joginder Kaur vs. The State of Punjab* (3). In the aforesaid case Court was asked to examine as to whether a person accused of an offence under Section 9 of the Opium act, 1872 has a right to ask the Court to send the additional representative sample of the substance recovered from his possession for opinion from any analyst. The Division Bench declined this prayer holding that the only right the accused has is to request the Court to call the expert for cross-examination and then test his competency as an expert or to have any vagueness in the report clarified. Accused also has a right to examine an expert witness of his choice to challenge the opinion expressed by the expert on whose report or testimony the prosecution relies. Accused can also rebut the opinion given by the expert with the aid of an authoritative text books. However, he has no right to get the sample examined by the same expert or by another expert.

(5) Counsel for the appellant also drew support from the view taken by the division Bench in Criminal Misc. No. 10836-M of

1. AIR 1950 SC 27
2. AIR 1978 SC 597
3. 1978 PLR 617

1990 (*Mewa Singh v. Pirthipal Singh and others*), where a sample under the Insecticides Act, 1968 was sent to the Central Laboratory in the first instance, thus, depriving the accused of his right to get it tested. Court relying upon the decision in *Ram Shankar Mishra v. State of U.P.* (4), held that a sample of insecticides that has been seized can at the outset be got tested from the Central Insecticides Laboratory without getting it tested from the State Insecticide Analyst.

(6) Dealing with the objection taken by the petitioner that he is deprived of getting the sample re-examined or analysed from another authority, counsel argued that at best this can be termed to be an omission and so in a given case the Court can get another sample tested. There is no similarity between a sample taken under the Control Order or one under the Insecticides Acts, Drug Acts or other such provisions. None of the provisions violates articles 19(1) or Article 21 of the Constitution of India. Petitioner infact has failed to prove that his case is not being examined according to procedure established by law. According to the counsel even under Section 293 of the Code of Criminal Procedure, 1973 the Court has powers to summon and examine any expert as to the subject matter of his report. Thus, various defences being available to the accused mere denial of an opportunity to get his sample tested could hardly be a ground to hold the provisions of the act and of the Control Order to be violative of Articles 19 and 21 of the Constitution of India. Infact, the Court has ample powers to supplement certain provision of an enactment especially when it is silent in regard to the same. Reference was also made to the following decisions:—

- (1) *The State v. Sohan Lal*, (5)
- (2) *Hansraj Harjiwan Bhate and others v. Emperor*, (6)
- (3) *Rahim Sheikh and others v. King Emperor*, (7) and
- (4) *Willie (William) Slaney v. State of Madhya Pradesh*, (8).

4. AIR 1979 SC 727
5. AIR 1960, Rajasthan 44
6. AIR 1940, Nagpur 390
7. 1923 Calcutta 724
8. AIR 1956 SC 110

(7) Learned senior Advocate representing the respondents on the other hand argued that Section 29 of the Control Order per se deprives an accused person of his right to get sample examined from another analyst and from another laboratory. This infact was the intendment else there was no reason to divide the sample into three equal parts. Clause VI of Schedule I deals with preparation of test and reference sample. As per clause 6 of clause IV, one such sample is to be sent to the Incharge of the Laboratory notified by the State Government under clause 29 or Central Fertilizer Quality Control and Training Institute, Faridabad for analysis and the second is to be given to the manufacturer or dealer or the purchaser as the case may be. The third sample is to be sent by the Inspector to his next higher authority for keeping in safe custody for production in Court, if required. Had it been the intention of the Legislature that the accused person is not to be permitted sample in his possession for test analysis from another Laboratory possibly there could be no reason for dividing the sample taken into three equal parts as per provisions contained in clause 6 of Schedule I of the Control Order. Counsel further argued that it is not a case of omission which as argued by the Advocate General can be corrected by the Court. In the context of the present case this piece of evidence i.e. accused having right to get sample analysed from another institute/laboratory is indeed vital and so the other defences though available are indeed insufficient to ward off the charge based upon the report of the analyst. The learned Single Judge has examined the various provisions of the Act and the Control Order in the light of Articles 19 and 21 of the Constitution of India. According to the counsel, ambit and scope of Article 21 of the Constitution indeed stands enlarged since the apex Court decision in *Smt. Maneka Gandhi's case* (supra). Before a person can be deprived of his life and personal liberty it is to be seen that the procedure established by law is strictly followed and that such a procedure is reasonable, fair and just. The moment the Court comes to the conclusion that it is unequal or more tilted in favour of the prosecution the Court can legitimately intervene and strike down such a provision being violative of Article 21 of the Constitution of India. Counsel also

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placed reliance upon the decisions of the apex Court in the following cases :—

- (1) *In The Special Courts Bill, 1978* (9),
- (2) *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others* (10), and
- (3) *Unni Krishnan, J.P. and others v. State of Andhra Pradesh and others* (11).

(8) Defending the judgment the learned counsel argued that the Court rightly made reference to the provisions contained in Insecticides Act, Drug Act and provisions of Prevention of Food Adulteration Act as in each one of these enactments an opportunity has been afforded to the accused to get the sample examined from another laboratory. Dilating upon the other decision of this Court in *Joginder Kaur's case* (supra) counsel argued that the case had not been examined in the light of Articles 19(1) and 21 of the Constitution of India and so for the purposes of the present enquiry the earlier decision is hardly helpful. Similarly, the appellant cannot derive much benefit from the view taken by the division Bench in *Mewa Singh's case* (supra) as infact this decision is upon the peculiar facts of that case. It is a different matter that a Court thought that in view of the report received from the Central Insecticide Laboratory no prejudice has accrued to an accused by depriving him of his right to get the sample examined.

(9) We have heard the learned counsel for the parties for a considerable time and have also perused the impugned judgment. Factual aspect is not in dispute. A sample of fertilizer was taken on 19th December, 1994 which was sent for analyst report to the Fertilizer Quality Control Laboratory, Faridabad for test analysis. Sample was found to be sub-standard and so a notice was issued to the petitioner to give his explanation in writing as to why legal action be not initiated against him. On receipt of information which was found to be not satisfactory, his licence was cancelled, all the same permitting him to dispose of the remaining stock. According

to the petitioner, authorities filed complaint for registration of case and so an F.I.R. also had been registered against him under the act/Control Order. Power of the Government to declare a commodity as essential commodity is not in dispute. It is also not in dispute that the Central Government in exercise of its powers conferred by Section 3 of the act has made the Order known as the Fertilizer Control Order, 1985. As noticed earlier Control Order deals with the various facets, namely, price control, distribution of fertilizer by manufacturers, registration of persons desiring to sell fertilizer whether in whole sale or in retail, conditions for grant of certificate for manufacture, restrictions on manufacturer, sale etc. on fertilizer and its quality control. The fertilizer Control Order infact encompasses the various provisions regarding enforcement of standards and of taking remedial steps like suspending/canceling the certificate and even taking criminal proceedings against a guilty person. The challenge to the Control Order is primarily on the ground that it deprives an aggrieved person to get an opinion from another expert with regard to the sample which has been found by the authorities to be of non-standard grade. Petitioner seeks support from the provisions contained in Prevention of Food Adulteration act, Drug Act and Insecticides Act where in specifically a right has been given to the person to get the sample tested from another laboratory by way of putting up his defence to the charge levelled. Thus the controversy revolves around as to whether denial of an opportunity to a person to get his sample examined from another laboratory amounts to depriving him of his right to defence and hence violative of Articles 19 and 21 of the Constitution of India. Essentially the matter is to be examined in the light of various decisions by the apex Court from the decision in *A.K. Gopalan's* case (supra) onwards to come to the conclusion as to whether the procedure prescribed under the Control Order is reasonable, fair and just. For the purpose of the present appeal, production of the relevant part of Articles 19 and 21 of the Constitution would be appropriate:—

19. (1) All citizens shall have the right—
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;

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- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
and
- (f) to practice any profession, or to carry on any occupation,
trade or business.

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(6) Nothing in sub-clause (g) of the said clause shall effect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to—

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation, owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion complete or partial, of citizens or otherwise.

27. No person shall be deprived of his life or personal liberty except according to procedure established by law.

10. (Broadly put, whereas article 19(1) gives all citizens right to freedom of speech and expression, to assemble peaceably and without arms, to form association or unions, to move freely throughout the territory of India to reside or settle in any part of the territory of India and to practice any profession or carry on any occupation, trade or business, all the same permits the State to make any law imposing reasonable restrictions upon the rights so conferred. Thus, it is to be examined whether law imposes reasonable restrictions on the exercise of such rights or not. Similarly, under Article 21 of the Constitution the object is to prevent encroachment upon

personal liberty by the executive except in accordance with law and in conformity with the provisions thereto. No person can be deprived of his life or personal liberty unless procedure established by law is strictly followed. In any case procedure cannot be departed from to the disadvantage of the person affected. Before the decision in *Smt. Maneka Gandhi's case* (supra) Article 21 had been construed narrowly only as a guarantee against the executive action unsupported by law.

11. In *A.K. Gopalan's case* (supra) the Court examined the provisions of Preventive Detention Act vis-a-vis Fundamental Rights granted to a citizen under Articles 19, 21 and 22 of the Constitution of India. It is in this context that the Court held that executive action unless supported by law is to be held to be invalid. The Court further held that while construing the validity of a statute it is to be seen whether the same infringes any of the fundamental rights given by the Constitution and this finding is to be given keeping in view the express provisions of the Constitution as opposed to the spirit supposed to pervade. Court, thus, held as under:—

“There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislation we cannot declare a limitation under the notion of having discovered something in the spirit of the constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written constitution give that authority. It is also stated, if the words be positive and with ambiguity, there is no authority for a Court to vacate or repeal a statute on that ground alone. But it is only in express constitutional provisions limiting legislative power and controlling the temporary wing of a majority by a

permanent and paramount law settled by the deliberate wisdom of the nation that one can find a safe and solid ground for the authority of Courts of justice to declare void any legislative enactment. Any assumption of authority beyond this would be to place in the hands of the judiciary powers too great and too indefinite either for its own security or the protection of private rights”.

12. Decision in *Smt. Maneka Gandhi's* case (supra) indeed has widened the scope of Article 21 of the Constitution of India. The Court in the instant case was examining whether denial of an opportunity of hearing while impounding her passport too violates Article 21 of the Constitution of India. It is in this context that the Court held that by implication it should be held that procedure prescribed under Passport Act envisages giving of an opportunity to the person concerned by implication. Thus, in case such a provision is deemed to have been incorporated in the Passport Act, 1967 procedure so prescribed under the Act for impounding a passport should be right, fair and just, not suffering from the vice of arbitrariness of unreasonableness. The Government during the course of proceedings made a statement agreeing to consider the representation that might be filed by the petitioner in respect of impounding of her passport, giving her an opportunity of hearing. On account of the statement so made, the Court by majority view held that vice from the order stands removed. It is in this context the Court came to the conclusion that procedure prescribed should be right, fair and just.

13. Matter again came up for consideration in *Francis Coralie Mullin's* case (Supra) and the Court held as under:—

“Our Constitution does not recognise the existence of this power, but it is hedged in by various safeguards set out in Articles 21 and 22. Article 22 in clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of preventive detention taken under such law must be in conformity with the restrictions laid down by those clauses on pain of invalidation. But apart from Article 22, there is also Article 21 which lays down

restrictions on the power of preventive detention. Until the decision of this Court in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; (AIR 1978 SC 597), a very narrow and constricted meaning was given to the guarantee embodied in Article 21 and that article was understood to embody only that aspect of the rule of law, which requires that no one shall be deprived of his life or personal liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorising deprivation of life or personal liberty, it was supposed to meet the requirement of Article 21. But in *Maneka Gandhi's* case (supra), this Court for the first time opened-up a new dimension of Article 21 and laid down that Article 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. This Court expanded the scope and ambit of the right to life and personal liberty enshrined in Article 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in *Maneka Gandhi's* case became the starting point the springboard for a most spectacular evolution of the law culminating in the decision in *M.O. Hoskot v. State of Maharashtra*, (1979)1 SCR 192: (1978 Cri, LJ 1978), *Hussainara Khatoon's* case, (1980) 1 SCC 81: (1979 Cri LJ 1036) the first *Sunil Batra's* case (1979) 1 SCR 392: (1978 Cri LJ 1741) and the second *Sunil Batra's* case (1980) 2 SCR 557: (1980 Cri LJ 1099). The position now is that Article 21 as interpreted in *Maneka Gandhi's* case (Supra) requires that no one shall be deprived of his life

or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional powers or judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise.”

14. Article 21 protects life as well as personal liberty of an individual. The word ‘personal liberty’ would primarily mean freedom from physical restraint of person by incarceration or otherwise. At the same, it is deemed to include (as per various judicial pronouncements) like person’s right to travel abroad, right of prisoner to speedy trial, right of a detenu before an Advisory Board to take legal aid etc. The apex Court in *Unni Krishnan, J.P.’s case* (supra) gave list of the rights covered under Article 21 as under:—

- “1. The right to go abroad;
2. The right to privacy;
3. The right against solitary confinement;
4. The right against Bar fetters;
5. The right to legal aid;
6. The right to speedy trial;
7. The right against Handcuffing;
8. The right against delayed execution;
9. The right against custodial violence;
10. The right against public hanging;
11. Doctor’s Assistance; and
12. Shelter.”

15. (Present controversy between the authorities pertains as to whether proceedings initiated against the petitioner can be said to be as per ‘procedure established by law’ (Article 21). ‘Procedure

established by law' would mean law prescribed by Parliament or by a State Legislature. No doubt Parliament or the State Legislature has powers to change the procedure by amending the same. Thus, it is to be seen that procedure prescribed by violates any of the Fundamental Rights declared by the Constitution, it being Articles 14, 19, 21 or 22. As noticed in the earlier part of the judgment there is no challenge to the competency of the Legislature to enact the impugned provision of Control Order. The sole grievance of the petitioner is that the procedure prescribed is neither fair nor just and so infringes the mandate of Article 21 of the Constitution of India). Whether procedure prescribed by the Legislature is reasonable, just and fair, of course, depends upon the circumstances of each case. The apex Court in *Charan Lal Sahu v. Union of India* (12), while examining the constitutionality of Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 held as under:—

“The act does provide a special procedure in respect of the rights of the victims and to that extent the Central Government takes upon itself the rights of the victims. It is a special Act providing a special procedure for a kind of special class of victims. In view of the enormity of the disaster the victims of the Bhopal gas leak disaster, as they were placed against the multinational and a big Indian corporation and in view of the presence of foreign contingency lawyers to whom the victims were exposed, the claimants and victims can legitimately be described as a class by themselves different and distinct, sufficiently separate and identifiable to be entitled to special treatment for effective, speedy, equitable and best advantageous settlement of their claims. There indubitably is differentiation. But this differentiation is based on a principle which has rational nexus with the aim intended to be achieved by this differentiation. The disaster being unique in its character and in the recorded history of industrial disasters situated as the victims were against a mighty multinational with the presence of foreign contingency lawyers looming on the scene, in our opinion, there were sufficient grounds for

such differentiation and different treatment. In treating the victims of the gas leak disaster differently and providing them a procedure, which was just, fair, reasonable and which was not unwarranted or unauthorised by the Constitution, Article 14 is not breached. We are, therefore, unable to accept this criticism of the Act.”

Further examining the objection raised by the writ petitioners that procedure envisaged is unreasonable as the same is not warranted by situation and so such a procedure cannot be termed to be just, fair and reasonable, the Court relying upon the decision in *State of Madras v. V.G. Rao* (13) held that:—

“.....both the restrictions or limitations on the substantive and procedural rights in the impugned legislation will have to be judged from the point of view of the particular statute in question. No abstract rule or standard of reasonableness can be applied. That question has to be judged having regard to the nature of the rights alleged to have been infringed in this case, the extent and urgency of the evil sought to be remedied, disproportionate imposition, prevailing conditions at the time, all these facts will have to be taken into consideration. Having considered the background, the plight of the impoverished, the urgency of the victims's need, the presence of the foreign contingency lawyers, the procedure of settlement in USA in mass action, the strength for the foreign multinationals, the nature of injuries and damages, and the limited but significant right of participation of the victims as contemplated by Section 4 of the Act, the Act cannot be condemned as unreasonable.”

(16) So, whereas law is almost consistent that various enactments have to be tested on the touch stone i.e. whether prescribed procedure is reasonable fair and just, to hold the same to be valid or otherwise be it a civil or criminal proceedings. In *Jagmohan Singh v. State of U.P.* (14), Court was examining as to whether capital punishment of death sentence can be regarded per-se as unreasonable or not in the public interest. On considering

13. AIR 1952 SC 196.

14. AIR 1973 SC 947.

the matter in the light of Article 14 of the Constitution of India, it was held that powers given to Judge to impose capital punishment or the imprisonment for life is not un-guided or un-controlled discretion and so the same does not violate Article 14 of the Constitution of India.

(17) Similarly, in *Bachan Singh v. State of Punjab* (15), the Court held that provision of a death penalty as an alternative punishment for murder under Section 302 IPC is not unreasonable in terms of Articles 19 and 21 of the Constitution of India.

(18) In case under scrutiny a sample of fertilizer was taken by the authorities as per provisions of Control Order which on analysis was found to be of non-standard grade. With a view to determine the guilt proceedings have been initiated according to law. Evidence is yet to be adduced by the complainant/the prosecution. It is thereafter petitioner is to be given a right of defence. It indeed would be premature to judge the ultimate decision which the Court may take. An accused person of course has a right to set up defence interms of Section 293 Cr.P.C. What would be the nature of defence can again be a matter of sheer guess? In any case one could visualise that petitioner would adduce all such evidence so as to prove his innocence. May be he examines another expert to cross-examine the official witness or makes reference to some celebrated authority on law relevant to the point in controversy to establish that the conclusion arrived at by the analyst is indeed impermissible and as a last resort can make out a case for the Court to send the third sample for its analysis by another laboratory. With these safeguards at his command it can be stated that procedure prescribed is neither arbitrary nor unreasonable or unfair. On examining the matter on the touch stone of articles 19(1) and 21 and various decisions of the Apex Court, we are of the view that Fertilizer Control Order, 1985 has been enacted by competent Legislature and the same does not violate any express provision of Constitution of India. Resultantly, we accept these appeals, set aside the judgment of Shri R.L. Anand, J., thereby order dismissing the writ petitions.

No costs.

J.S.T.