

(10) For the foregoing reasons, I dismiss this writ petition as well as Writ Petition No. 2 of 1975. Having regard to the peculiar circumstances of the case, especially that the wrong practice obtaining in the past could have encouraged the petitioners and the second petitioners to file the writ petitions against the impugned order, I leave the parties to bear their own costs.

H. S. B.

LETTERS PATENT APPEAL

*Before Prem Chand Jain and Surinder Singh, JJ.*

RIKHI RAM ETC.—Appellants

*versus*

THE STATE OF HARYANA *and another*,—Respondents.

*Letters Patent Appeal No. 178 of 1974.*

October 29, 1975.

*Essential Commodities Act (X of 1955)—Section 3—Constitution of India 1950—Article 19(1)(g)—Haryana Wheat (Restriction on Stock by Producers) Order 1973—Whether violative of Article 19(1)(g).*

*Held* that merely because in compliance with the Haryana Wheat (Restriction on Stock by Producers) Order 1973, the producer is called upon to dispose of all his stock of wheat in excess of the prescribed limit, to the Government within a short time and a continuous flow of stock will not be available to the dealers for running their trade effectively throughout the year, the provisions of Article 19(1)(g) of the Constitution of India 1950 are not violated. The apprehension of the traders that they shall be eliminated from their trade on account of the non-availability of wheat and the restriction placed upon the maximum limit of wheat that they can possess at a time is wholly ill-founded. The traders can always replenish their stocks by purchasing wheat from other dealers. The demand for ensuring a continuous flow of wheat for running their trade, is also unreasonable. The constitutional guarantees can only protect the right of a citizen to carry on a trade or business but there is no guarantee available that the citizen will be ensured any profits in his trade or business throughout the year. Fluctuation in season, production, economic conditions and many other factors can always affect a trade or a business and it is for a person carrying on such a trade or a business to see if the same is profitable to him or not and whether he

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would like to continue in the said trade or business. The State can afford no guarantees in this respect. The "reasonable restriction" envisaged under Article 19(6) may, in case of some commodities which are essential to the life of the community, even extend to total prohibition. The Stock Order is nowhere near the stage of total prohibition but is merely regulatory. Thus the Haryana Wheat (Restriction on Stock by Producers) Order 1973 is not violative of Article 19(1) (g) of the Constitution of India.

(Paras 10 and 11).

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice M. R. Sharma, dated the 13th February, 1974 passed in Civil Writ No. 2570 of 1973.*

G. R. Majithia, Advocate, for the Petitioners.

Kuldip Singh, Advocate, for the Union of India.

Naubat Singh, District Attorney, for Advocate General Haryana.

#### JUDGMENT

Surinder Singh, J.—(1) Rikhi Ram and others have appealed under Clause X of the Letters Patent of this Court against the judgment of a learned Single Judge passed in (1) *Rikhi Ram and others v. The State of Haryana and another*. The facts in regard to the said writ petition may be briefly noticed.

2. Appellants 1 to 10 are Chakki-owners, who are carrying on the business of grinding wheat at Kalka (State of Haryana). Appellants 11 and 12 are said to be traders dealing in grinding of wheat. The appellants claim to be holders of a licence in form 'B' under the Haryana Wheat Dealers Licensing and Price Control Order, 1973 (for short, the Price Control Order), copy of which is Annexure 'A' to the writ petition. Though not very material but it may be stated here that in the return filed on behalf of respondent No. 1 the stand taken is that appellants Nos. 11 and 12 have not obtained a licence under the above Order. A detailed reference was made in the writ petition to some Orders issued in exercise of the powers conferred under section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act), other than the Price Control Order referred to above. The first one is the Inter-zonal Wheat

(1) C.W. 2570—73 decided on 13th February, 1974.

and Wheat Products (Movement Control) Order, 1973 (for brevity, the Movement Control Order), issued by the Central Government on March 31, 1973, and published in the Haryana Government Gazette dated April 24, 1973, a copy of which is Annexure 'B' to the writ petition. The State of Haryana did not find mention in the List of States and Union Territories constituting the various zones in the Schedule attached with the original Movement Control Order but as per an amendment issued on April 2, 1973, this State was included in the List. A copy of the amending Order is also on the record. The third Order referred to in the writ petition is the Haryana Wheat (Restriction on Stock by Producers) Order, 1973 (hereinafter referred to as the Stock Order), copy whereof is Annexure 'C' to the writ petition. This Order was issued by the Haryana Government on June 20, 1973, in exercise of the powers conferred by section 3 of the Act, read with the Orders enabling the Haryana Government to legislate in these matters with the prior concurrence of the Central Government. In the body of the writ petition, the legality of another notification dated June 26, 1973, issued under the Haryana Wheat Dealers Licensing and Price Control Order, 1973, copy whereof is Annexure 'D' to the writ petition, was also questioned, though this challenge appears to have been curtailed in the prayer made at the conclusion of the petition. However, the order of the learned Single Judge, which is impugned in the present appeal, indicates that when the matter was canvassed before that Court, the legality of all the above-mentioned Orders was mooted.

3. The various points which were urged before the learned Single Judge have been specifically formulated in the judgment as follows:--

- (1) The price of wheat has been fixed at an arbitrary figure. The market value of wheat is much higher and the traders, especially the **chakki** owners, are left with no profit. This arbitrary fixation of price has violated their fundamental right guaranteed to them under article 19(1) (f) and (g) of the Constitution.
- (2) No uniform price of wheat can be fixed for areas which normally produce wheat and those areas in which the wheat is produced in almost negligible quantity.

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- (3) The State Government cannot make fixation of the prices unless it also ensures adequate supply of wheat to the traders like **chakki** owners.

4. **Re point (1)** which was considered at great length by the learned Single Judge, concisely speaking, it was held that there was no basis to hold that the price of wheat fixed by the Government was arbitrary. Accepting the stand of the respondents, it was also held that the fact that the Government itself purchased ordinary wheat at the rate of Rs. 76 per quintal and the **chakki** owners and other traders were allowed to sell it at the rate of Rs. 83.50 P. per quintal, showed that a considerable margin had been left for the traders. An additional margin of Rs. 6 per quintal had been allowed to the **chakki** owners if they grind wheat into flour. The learned Single Judge also non-suited the appellants on the ground that none of them was an actual producer of wheat and hence it was not open to them to assert that the price at which the producer was called upon to sell wheat was not a fair price. An observation was made in this connection that obviously the appellants were "advocating the cause of the actual producers so that they may indirectly be able to reap the actual benefit from the situation resulting from unrestricted hoarding of wheat and its sale at uncontrolled prices".

5. In regard to points (2) and (3), the learned Single Judge was of the view that since the State Government is purchasing wheat at a fixed rate for the purpose of augmenting the needs of the deficit areas in the State, the fixation of uniform rates for wheat-purchasing areas and non-purchasing areas cannot be made the basis of any valid attack. It was also held that if an essential commodity is in short supply, the steps which the competent authorities for meeting the situation are not open to attack unless and until any tangible rights of the citizens are infringed and hence a trader cannot insist that before fixing the minimum or maximum prices the Government must make arrangements for supplying a certain quantity of wheat to them. Both the contentions were, therefore, repelled. In consequence, it was held that the impugned Orders issued by the Haryana Government, i.e., the Price Control Order and the Stock Order, are not violative of any fundamental rights guaranteed to the petitioners-appellants. The Central Government's Order dated March 31, 1973, i.e., the Movement Control Order, was also examined

in the light of the submissions made and it was held that the provisions of that Order did not in any way impinge upon the fundamental rights guaranteed under the Constitution. The Order was, therefore, immune from an attack on that score. The learned Single Judge further noticed that there was no allegation that the appellants had actually applied for a permit under this Order and such a permit was refused to them. As such, they were not competent to question the *vires* of the Order. In these circumstances, the writ petition filed by the petitioners-appellants was dismissed with no order as to costs.

6. With a view to impugn the order of the learned Single Judge, Shri G. R. Majithia, learned counsel for the appellants, elaborated the following points during the course of his address:—

- (i) The Stock Order which imposes a restriction in respect of the maximum quantity of wheat which a **producer** can possess, is violative of Article 19(1) (g) of the Constitution of India inasmuch as the said Order indirectly affects the trade of the appellants.
- (ii) The Movement Control Order which places an arbitrary restriction on the movement of wheat to/from a place in the zonal Border area from/to any place outside that area without obtaining a permit, impinges upon the fundamental right of the appellants available to them under Article 19(1)(g) of the Constitution of India.
- (iii) The Price Control Order issued by the Haryana Government on June 26, 1973, is arbitrary and is **ultra vires** of section 3 of the Act inasmuch as there is no fair margin of profit left for the dealer and this in turn tantamounts to eliminating the appellants from their trade. The Order is, therefore, violative of Article 19(1)(g) of the Constitution of India.

7. Before taking up point (i) it may be better to take up points (ii) and (iii) as these points can be disposed of without much difficulty in view of the circumstances noticed hereinafter.

8. In regard to point (ii), which relates to the challenge against the legality of the Movement Control Order, it is not disputed that none of the appellants had at any time approached the competent

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authority for the grant of permit. In the absence of any such request the question of grant or refusal of a permit did not arise. The necessary corollary to these facts is that without having applied for the necessary permit, the appellants had no **locus standi** to challenge the Order. Faced with this situation, the learned counsel did not press, and rightly so, this point and also submitted that if and when the applications of the appellants for grant of permit, on being filed before the competent authority, are rejected and this rejection would adversely affect their rights, they would make a grouse in this respect. In view of the statement of the learned counsel at the Bar, this point calls for no further deliberation.

9. Coming now to point (iii), which pertains to a challenge against the arbitrary nature of the notification dated June 26, 1973, issued under the Price Control Order, the controversy has been set at rest, by the learned District Attorney, Haryana, bringing to our notice, that by virtue of notification No. S.O. 64/H.W.D.L./P.C.O./73/Cl. 13/74, dated April 29, 1974, the earlier notification No. S.O. 221/H.W.D.L. and P.C.O./73/Cl. 13/73, dated November 16, 1973, was been rescinded. The notification dated November 16, 1973, was the one which had superseded the impugned notification dated June 26, 1973, as per which the sale price of wheat and wheat flour had been fixed. The effect of notification dated April 29, 1974, therefore, is that there is no sale price fixed for the sale of wheat or wheat flour. The question of fixing a fair margin of profit for the dealer does not, therefore, arise and hence this ground of attack is no longer available to the appellants. For this reason the learned counsel for the appellants has not pressed this contention.

(10) The beam may now be focussed on point (i). While elucidating this point the learned counsel for the appellants has submitted that the Stock Order had prescribed a limit for the maximum quantity of wheat that a producer can possess for his own use and that of his household, apart from the quantity of wheat required by him for use as seed. The Stock Order further directed that within 5 days from the date of commencement of this Order the producer must deliver the excess quantity of wheat in his possession to the State Government at the procurement prices already fixed vide notification dated April 13, 1973, issued under clause 6(1) of the Price Control Order. The argument is that in compliance with the aforesaid Order, the producer is called upon to dispose of all his

stock of wheat in excess of the prescribed limit, to the Government within a short time and a continuous flow of stock will not be available to the dealers for running their trade effectively throughout the year. It is by this mode of reasoning that the alleged violation of Article 19(1)(g) is sought to be pressed into service. With a view to seek support for this contention, the learned counsel has been at pains to cite passages from (*Partap Singh Kedian v. The State of Punjab, etc.*, (2) by a Division Bench of this Court (S. S. Sandhwalia and K. S. Tiwana, JJ.). The impugned Order in the said case was the Punjab Wheat (Restriction of Stock by Producers) Order, 1974, which was held to be beyond the scope and ambit of the powers conferred by section 3 of the Act and, therefore, void. It is contended that for the reasons noticed in that case, the Haryana Stock Order may also be struck down. The argument is, however, not tenable for various reasons. The present is a Letters Patent appeal. The point which is now being argued in appeal was never raised before the learned Single Judge and the appellants cannot be allowed to agitate the point for the first time at this stage. Secondly, the appellants have no **locus standi** to plead the cause of the producers in a case where the latter class is not even a party. No legal right of the appellants is affected directly by the Stock Order and a far-fetched consequence of the said Order, which too is illusory, cannot clothe the appellants with the authority to assail the order.

11. The apprehension of the appellants that they shall be eliminated from their trade on account of the non-availability of wheat and the restriction placed upon the maximum limit of wheat that they can possess at a time, is also ill-founded as the Price Control Order of 1973 has been suitably amended vide notification dated March 31, 1975. By means of this amendment, sub-clause (3) of clause 5 of the Order, as it originally stood, has been deleted with the result that there is now no restriction on the sale of wheat by one dealer to another. The appellants can, therefore, always replenish their stocks by purchasing wheat from other dealers. The further demand of the appellants that a continuous flow of wheat should be ensured for running their trade is, to say the least, quite unreasonable. The constitutional guarantees can only protect the right of a citizen to carry on a trade or business but there is no

(2) C.W. 6278—74 decided on 23rd February, 1975.

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guarantee available that the citizen will be ensured any profits in his trade or business throughout the year. Fluctuation in season, production, economic conditions and so many other factors can always affect a trade or a business and it is for a person carrying on such a trade or business to see if the same is profitable to him or not and whether he would like to continue in the said trade or business. The State can afford no guarantees in this respect. We would go a step further. The "reasonable restriction" envisaged under Article 19(6) may, in case of some commodities which are essential to the life of the community, even extend to total prohibition. *Madhya Bharat Cotton Association Ltd., v. Union of India and another* (3). The impugned orders are nowhere near the stage of total prohibition but are merely regulatory.

(12) The decision in **Partarp Singh Kadian's case** (supra) was rendered in a writ petition filed by a producer and not a trader. Even in this case the learned Judges had the occasion to observe that the farmer or the agricultural producer is distinctly on a different footing from the trader or a dealer, who may acquire or purchase the produce from other sources. It was further observed that in their case, it may perhaps be reasonable in a specific situation to require that they shall not purchase, acquire or hold beyond a specific stock or limit. The position in regard to the Stock Order in the Punjab case was also distinguishable from the Stock Order in the present case. Under clause 5 of the Punjab Stock Order the producer was required to dispose of the excess quantity of wheat in his possession but no provision was made in regard to a particular person to whom the same was to be sold. An argument was, therefore, raised that the order was bad inasmuch as no particular buyer had been prescribed for ensuring the sale of excess stocks. In the impugned Haryana Stock Order, the producer has been directed to deliver his excess stock of wheat to the Government for which the latter has to pay the fixed procurement price. The argument that the producers would be obliged to part with their excess stock of wheat at a throw away price is, therefore, not available in the case of Haryana Stock Order. On account of this and other differentiating features, **Partarp Singh Kadian's case** (supra) is of no assistance to the case of the appellants. It may be observed at this stage that in **(M/s. Dhanna Mal Sehai Ram and others v. The State of Punjab**

(3) A.I.R. 1954 S.C. 634.



and others) (4) filed on behalf of some dealers, the same Division Bench declined to strike down the Wheat Dealers Licensing and Price Control (Fourth Amendment) Order, 1974, by which the wholesale dealers (of Punjab) were required to sell all their stocks of wheat in excess of a certain limit, to the Government at a fixed price and a restriction was even placed upon them to sell wheat only to the consumers and not to any other licensed dealer.

(13) Shorn of **Partap Singh Kadian** which was the main plank of arguments by the learned counsel for the appellants, hardly anything more could be and was urged in support of the appeal which fails and is hereby dismissed with costs.

Prem Chand Jain, J.—I agree.

*H.S.B.*

CIVIL MISCELLANEOUS.

Before R. S. Narula, Chief Justice and Harbans Lal, J.

GURDIAL SINGH,—Petitioner

*versus*

THE STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ No. 5139 of 1975.

November 4, 1975.

*Punjab Civil Services (Premature Retirement) Rules 1975—Rules 2(1), 3, 5 and 6—Constitution of India 1950—Articles 309, 310, 311 and 313—Police Act (5 of 1861)—Sections 2, 7 and 12—Punjab Police Rules 1934, Volume I—Rules 9.15, 9.16 and 9.18 and Volume II Rule 12.1(5)—Rules relating to appointment and conditions of service of members of subordinate Police Force—Whether can be framed by the Governor under Article 309—Rule 3 of the 1975 rules—Whether encroaches upon the field covered by rule 9.18 of the Police Rules—The 1975 rules—Whether override the Police Rules—Such rules—Whether can be invoked against the subordinate police officials—Premature retirement on grounds of inefficiency, corruption or incompetency—No imputation or charge made in the order—Article 311—Whether*

(4) C.W. 6372—74 decided on 14th February, 1975.