

K.Ramanathan vs State Of Tamil Nadu & Anr on 27 February, 1985

Equivalent citations: 1985 AIR 660, 1985 SCR (2)1028, AIR 1985 SUPREME COURT 660, (1985) 2 MAD LJ 11, (1985) 98 MAD LW 706, 1985 CRILR(SC MAH GUJ) 247, 1985 SCC(CRI) 162, (1985) EFR 380, 1985 (2) SCC 116

Author: A.P. Sen

Bench: A.P. Sen, A. Varadarajan, V. Balakrishna Eradi

PETITIONER:

K.RAMANATHAN

Vs.

RESPONDENT:

STATE OF TAMIL NADU & ANR.

DATE OF JUDGMENT 27/02/1985

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

VARADARAJAN, A. (J)

ERADI, V. BALAKRISHNA (J)

CITATION:

1985 AIR 660

1985 SCR (2)1028

1985 SCC (2) 116

1985 SCALE (1)510

ACT:

Constitution of India 1950, Arts 14, 19 (1) (2) (p) and 301

Essential Commodities Act, 1955, ss. 3 (1) & (2) and 5-Power under sub-s. (2)-Whether general in nature-Sub-s. (2)-Whether confers any fresh power-Whether illustrative of power conferred by sub-s. (1)-Cl. (d) of sub-s. (2)-Whether contains specific power-Making of Orders by State Government under cls. (a) to (f) of sub-s. 2-Source of power-Whether flows from sub-s. (1) - Delegation of-By notification under s. 5

Essential Commodities-Tamil Nadu Paddy (Restriction on Movement) Order. 1982-Cl. 3 (1A). issued by State Government under s. 3 read with Ministry of Agriculture (Department of Food) Order, S. R. 800 dt. June 9 1978-Placing ban on transport, movement or otherwise carrying of Paddy out of

certain specified are as in the State-Whether in excess of delegated powers -Whether violative of Articles 14, 19 (1) (g) and 301,

HEADNOTE:

Section 3 (2) (d) -Whether regulating includes in the context prohibiting.

Interpretation of statutes-Whether some words may be used in different senses in the Same sentence.

Words and phrases-Regulation and Prohibiting-Meaning and scope of.

Due to failure of monsoon in the years 1981-82, there was a steep fall in production of paddy and it became necessary for the State Government of Tamil Nadu to build up its buffer stocks for distribution through the public distribution system throughout the State. In the circumstances, the State Government had no other alternative but to introduce a monopoly procurement scheme with a view to procure the maximum stock of paddy by banning purchase by traders. This was in addition to compulsory levy on dealers of paddy and rice to the extent of 50% under cl. 5 (1) of the Tamil Nadu Paddy & Rice (Regulation of Trade) Order, 1974.

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In exercise of the powers conferred under s. 3 of the Essential Commodities Act, 1955 read with the Government of India, Ministry of Agriculture (Department of Food) Order GSR 800 dated June 9, 1978 issued under s. 5 of the Act with the prior concurrence of the Government of India, the State Government accordingly promulgated the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 on October 22, 1982. Clause 3 (1A) of the Order prohibited transport, movement or otherwise carrying of paddy outside the State by road or rail or otherwise except under and in accordance with the conditions of a permit issued by an officer authorised in that behalf. By GOMS No. 293 dated May 11, 1982 the State Government introduced sub-cl. (IA) to cl. 3 of the Order which prohibited transport; movement or otherwise carrying of paddy outside places notified by cl. 3 of the Order by road or rail or otherwise. Thereafter, on June 20, 1983, the State Government made a further amendment to the newly inserted cl. 3 (IA) which clamped a complete ban on transport, movement or otherwise carrying of paddy outside the Thanjavur District, Chidambaram and Kattumannarkoil Taluks in South Arcot District and Musiri, Kulithalai, Lalgudi and Tiruchirapalli Taluks in Tiruchirapalli District.

The appellant along with other traders assailed the constitutional validity of cl. 3 (IA) of the Order, as amended, which placed a complete ban on transport, movement or otherwise carrying of paddy outside the Thanjavur

district and the aforesaid Taluks in South Arcot and Tiruchirapalli districts as being violative of Arts. 14, 19(1)(g) and 301 of the Constitution The High Court repelled the contentions and dismissed the writ petitions.

In the appeal, the appellant contended that the impugned cl. 3 (IA) of the Order was ultra vires the State Government on two grounds, namely: (1) The delegation of a specific power under s 3 (2) (d) of the Act to State Government by the aforesaid notification dated June 9, 1978 issued by the Central Government under s. 5 of the Act to regulate storage, transport, distribution, disposal etc. Of an essential commodity, in relation to foodstuffs, does not carry with it The general power of the Central Government under sub-s. (1) of s. 3 to regulate or prohibit the production, supply and distribution thereof and trade and commerce therein. And (2) That the word regulating' in cl. (d) of s. 3 (2) of the Act does not take in 'prohibiting' and as such there cannot be a total prohibition on transport, movement or otherwise carrying of paddy out of the areas in question under (d) but only regulation of such activities in the course of trade and commerce by grant of licences or permits.

Dismissing the appeal,

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HELD: 1. Sub-s (2) of s. 3 of the Essential Commodities Act, 1955 offers no fresh powers but is merely illustrative of the general powers by sub-s. (1) of s. 3 without exhausting the subjects in relation to such powers can be exercised. Although cl. (d) of sub-s. (2) of s. 3 with a specific power, the general power to issue the impugned

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order flows from the provisions of sub-s. (1) of s.3 which stands delegated to the State Government by virtue of the notification issued under s. 5 of the Act. [1042H; 1043B]

Santosh Kumar Jain v. The State, [1951] SCR 303, and Emperor v. Sibnath Banerjee, LR [1945]] 72 IA 241, followed.

Nanalal Navalnathji Yogi v. Collector of Bulsar & Ors. AIR 1981 Guj. 87. approved.

Atulya Kumar v. Director of Procurement & Supply, AIR 1953 Cal. 548, approved. _

Tarakdas Mukherjee v. State of West Bengal, [1978] 2 Cal. L.J. 398 and Lila Biswas v. State of West Bengal, [1918-89] CWN 539, approved.

Sujan Singh v. State of Haryana, AIR 1998 Pun, 363, State of Uttar Pradesh v. Suraj Bhan, AIR 1972 All. 401 and Bejoy Kumar Routrai v. State of Orissa AIR [1976] Orr. 138, overruled.

2. The word 'regulation' cannot have any rigid or inflexible meaning as to exclude 'prohibiting'. It is difficult to define the word 'regulate' as having any precise meaning. It has different shades of meaning and must take its colour from the context in which it is used having

regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy. The question essentially is one of degree and it is impossible to fix any definite point at which 'regulation' ends and 'prohibition' begins. The power to regulate does not necessarily include the power to prohibit, and ordinarily the word 'regulate' is not synonymous with the word 'prohibit'. This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. But the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control and involves the adoption of a rule or guiding principle to be followed or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression.

[1045G-H; 1046E-F

Narendra Kumar v. Union of India, [1960] 2 SCR 361

Slaityery v. Naylor, LR [1888] AC 446 and Municipal Corporation of the City of Toronto v. Virgo, LR [1896] AC 88, Corpus Juris Secundum, vol. 76 at p. 611 and Webster's Third New International Dictionary, vol II, p 1913 and Thorter Oxford Dictionary, vol. II, 3rd edn., p. 1784, referred to

State of Mysore v. H. Sanjeeviah, [1967] 2 SCR 361, distinguish and limited.
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The source of power to issue an order under cl. (d) of sub-s. (2) of A s. 3 of the Act being relatable to the general powers of the Central Government under sub-s. (1) of s. 3, there is no justification for giving a restricted meaning to the word 'regulating,' in cl. (d) of sub-s. (2) of s. 3 of the Act so as not to take in 'prohibiting'. A word may be used in two different senses in the same section. [1050B-C]

The Act is a piece of socio-economic legislation and its predominant object is to provide in the interests of general public, for the control of the production, supply and distribution of, and trade and commerce in, certain essential commodities. Such control can be exercised in a variety of ways otherwise than by placing compulsory levy on the producers, for example, by fixing a controlled price for foodstuffs, by placing a limit on the stock of foodstuffs to be held by a wholesale dealer, commission agent or retailer by placing sales except in certain specified manners etc. All these are nothing but regulatory measures. Placing a ban on inter-State or inter-State movement or export of foodstuffs is one of the ways to regulate and control and such ban prevents the spiral rise in prices of such

foodstuffs by artificial creation of shortage by unscrupulous traders. The various Control Orders issued by the Central Government under sub-s. (1) of s- 3 of the Act or by the State Governments under s. 3 read with s. 5 have introduced a system of checks and balances to achieve the object of the legislation i.e. to ensure equitable distribution and availability of essential commodities at fair prices. Special public interest in an industry e. g. that it is engaged in the production of a commodity vitally essential to the community, may justify the regulation of its production, supply and distribution and its trade and commerce, provided such regulation is not arbitrary and has a rational nexus with the object sought to be achieved. [1048C-D; 1047F-H; 1048A]

If one part of the country or of a State is faced with a famine or even acute shortage of foodstuffs. it is not unreasonable for the Government to acquire foodstuffs from the surplus areas and distribute the same in areas where they are most needed. Since there was steep fall in production of paddy due to failure of monsoons the State Government of Tamil Nadu was justified not only to reimpose compulsory levy on the producers of paddy to the extent of 50% but also to introduce a scheme for a monopoly purchase of paddy by the Government with a view to build up its buffer stock for distribution through the public distribution system throughout the State. [1049E-G]

State of Tamil Nadu v. Hind Stone & Ors. [1981] 2 SCC 205, C. K Krishnan v. State of Tamil Nadu [1975] 2 SCR 715, Krishan Lal Praveen kumar & Ors. v. State of Rajasthan & Ors., [1981] 4 SCC 550, Suraj Mal Kailash Chand & Ors, v. Union of India & Ors., [1981] 4 SCC 554 and Bishamber Dayal Chandra Mohan & Ors. v. State of U.P. & Ors., [1982] 1 SCR 1137, relied on. 1032

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11417 of 1983 From the Judgment and Order dated 14. 9. 1983 of the High Court of Madras in W. P. N. 4615 of 1983. K. Ram Kumar for the Appellant.

A. V. Rangam for the Respondents The Judgment of the Court was delivered by SEN, J. This appeal by special leave directed against the judgment and order of the Madras High Court dated September 14, 1983 raises a question of some complexity. The question is as to whether cl. 3 (IA) of the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 issued by the State Government under s 3 of the Essential Commodities Act, 1955 read with the Government of India, Ministry of Agriculture (Department of Food) Order, a. s. R, 800 dated June 9, 1978, with the prior concurrence of the Government of India, was ultra vires the State Government being in excess of its delegated powers. That depends on whether the delegation of a specific power under cl. (d) of sub-s. (2) of s. 3 of the

Act by the aforesaid notification issued by the Central Government under s. 5 to regulate the storage, transport, distribution, disposal, acquisition, use or consumption of an essential commodity, in relation to foodstuffs, carries with it the general powers of the Central Government under sub-s. (1) of s. 3 of the Act to regulate or prohibit the production, supply and distribution of essential commodities and trade and commerce therein. There is a conflict OF opinion on this question between different High Courts. Hence we thought it fit to grant special leave and heard the appeal on merits. After hearing the parties, we dismissed the appeal by an order dated December 5, 1983 for reasons to follow. The reasons therefore are set out below .

Briefly stated, the facts are these. In the State of Tamil Nadu, there has been a system of imposing levy on purchase of paddy by traders in vogue since the year 1970. This was imposed by cl. 3 (5) (i) of the Tamil Nadu Paddy and Rice (Licensing, Regulation & Disposal of Stock) Order, 1968 issued by the State Government under s. 3 of the Act with the prior concurrence of the Government Of India. Cl. 3 (5) (i) empowered the State Government to impose A and collect upto 50% of the stocks by way of levy on purchases of paddy by traders on payment of price specified from time to time. The said Order was replaced by the Tamil Nadu Paddy and Rice (Regulation of Trade) Order, 1974 issued under s. 3 of the Act with the prior concurrence of the Government of India. Cl. 5 (1) of this Order empowers the State Government to impose and collect levy upto 50% of the purchase of paddy and rice by the dealers other than retail dealers and they are paid prices notified by the Government. This clause was subsequently amended in 1976. The power to impose and collect levy on the purchase of paddy and rice was exercised by the State Government under s. 3 of the Act with a view to procure the stock for distribution of rice to about 118 lakhs family card-holders throughout the State through nearly 17, 800 fair price shops. A review of the food situation in the latter half of 1980 and the beginning of 1981 revealed that the stock of paddy and rice with the Government was not adequate to meet the requirements under the public distribution system. The State Government in the Food & Cooperation Department accordingly, decided to enforce the levy on traders by G. O. Ms. No. 33 dated January 1, 1981 and to collect 40% levy on the purchases of paddy and rice by dealers even though it had the power to impose levy upto 50% at prices fixed by it from time to time. Thereafter, the Government in the Food & Cooperation Department by G. O. MS. No. 765 dated October 1, 1981 increased the levy from 40% to 50% from kuruvai season 1981.

There was a failure of monsoon in the State in the years 1981-82 and the off take of rice in the fair price shops had increased from 34,000 tonnes in April to 85,000 tonnes in December 1982. Due to failure of south-west monsoon in the year 1982 and consequent poor rainfall, the storage level in the Mettur reservoir fell. As a result of this there was a steep fall in kuruvai cultivation of paddy. In Thanjavur district alone, the acreage of paddy cultivation was reduced from 4. 5 lakhs acres to 2.97 lakhs acres. Added to this, the north-east monsoon in the State also failed causing a serious fall in the production of paddy. In the circumstances, the State Government in the Food & Cooperation Department had no other alternative but to introduce a monopoly procurement scheme of paddy with a view to procure the maximum stock of paddy by banning the purchases by traders.

In exercise of the powers conferred under s. 3 of the Essential Commodities Act, 1955 read with the Government of India, Ministry of Agriculture (Department of Food) Order, G. S. R. 800 dated June 9, 1978, with the prior concurrence of the Government of India, the State Government promulgated

the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 on October 22, 1982. Cl. 3 (1) of the Order provides:

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the State by road/rail or otherwise except under and in accordance with the conditions of a permit issued by an authorized officer."

On January 22, 1983, the State Government Department issued G. O. MS. No. 42 for purchase of the entire marketable surplus of paddy in Thanjavur District by the Government through the Tamil Nadu Civil Supplies Corporation as an agent of the Government. On February , 1982, the State Government in the Food & Co-operation Department issued another G. O. Ms. No. 84 extending the provision made with regard to Thanjavur district of Chidambaram and Kattumannarkoil taluks in South Arcot district and Musiri, Kulithalai, Lalgudi and 7 Tiruchirapalli taluks in Tiruchirapalli district.

On May 11, 1983, the State Government in the Food & Co-operation Department issued G. O. Ms. No. 293 introducing sub-cl. (1A) to cl. 3 of the Order. The newly inserted cl. (IA) is as follows:

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the places notified under Clause 3 of the Tamil Nadu Paddy & Rice (Restriction of Rates) Order, 1974 by road/rail or otherwise."

Thereafter, on June 20, 1983, the State Government in the Food & Cooperation Department by G. O. Ms. No 413 made a further amendment to the newly introduced sub-cl. (1A) of cl. 3. The amended cl. (IA) of cl. 3 is follows:

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or other wise carrying of paddy outside the Thanjavur District, Chidambaram and Kattumannarkoil Taluks in South Arcot District and Musiri, Kulithalai, Lalgudi and Tiruchirapalli Taluks in Tiruchirapalli District."

These various orders were issued by the state Government in exercise of the powers conferred by s. 3 of the Act read with the Government of India, Ministry of Agriculture (Department of Food) Order, G. S. R. 800 dated June 9, 1978 which is set out below: C "MINISTRY OF AGRICULTURAL AND IRRIGATION (DEPARTMENT OF FOOD) ORDER New Delhi, the 9th June, 1978.

G. S. R. 800-In exercise of the powers conferred by s. 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. G. S. R. 316 (E) dated the 20th June, 1972, the Central Government hereby directs that the powers conferred on it by sub-s. (1) of s. 3 of the said Act to make orders to provide for the matters specified in cls. (a), (b), (c), (d), (e),

(f), (h), (i), (ii) and (j) of sub-s. (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 cls. (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulations or transport of any foodstuffs, under the said cl (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 matter specified in the said cl. (i) the State Government shall authorize only an officer of Government.

Sd/-K. Balakrishnan, Dy. Secretary to the Government of India (No. 3 (Genl) (1)/78-D&R (1) 59)."

The appellant and various other agriculturists of Thanjavur district and the aforesaid traditionally rice growing areas of South Arcot and Thiruchirapalli districts challenge the constitutional validity of cl. 3 (1A) of the Order placing a complete ban on the transport, movement or otherwise carrying of paddy outside Thanjavur district and the aforementioned taluks of South Arcot and Thiruchirapalli districts by petitions under Art. 226 of the Constitution in the High Court. There were as many as 300 writ petitions in the High Court which were disposed of by the judgment under appeal. The validity of cl 3 (1A) of the Order was assailed on three main grounds: (1) Cl. 3 (1A) was wholly arbitrary and irrational and thus violative of Art. 14 of the Constitution. (2) Cl. 3 (1A) was in excess of the delegated powers conferred on the State Government under s. 3 of the Act by the aforesaid G. S. R 800 dated June 9, 1978 issued by the Central Government under s. 5 of the Act. And (3) The total ban on movement of paddy from out of Thanjavur district and the aforesaid taluks of South Arcot and Thiruchirapalli districts by cl. 3 (1A) of the Order was an unreasonable restriction on the freedom of trade and commerce guaranteed under Art. 19 (1) (g) and also infringes the freedom of inter-State trade, commerce and intercourse under Art. 301 of the Constitution. The High Court repelled all these contentions.

Shri P. Govindan Nair, learned counsel appearing for the appellant argued the case with much learning and resource. Learned counsel with his usual fairness did not advance some of the contentions raised before the High Court as they were apparently misconceived. He has confined his submissions to only two grounds, namely: (1) Cl. 3 (1A) of the impugned Order issued by the State Government under s. 3 of the Act read with G. S. R. 800 dated June 9, 1978 issued by the Central Government under s. 5 of the Act with the prior concurrence of the Government of India placing a ban on the transport, movement or otherwise carrying of paddy from out of Thanjavur district, the two taluks of South Arcot district and the four taluks of Thiruchirapalli district, was ultra vires the State Government being in excess of the delegated powers. It is urged that the delegation of a specific power under cl. (d) of subs. (2) of s. 3 of the Act by the aforesaid notification issued by the Central Government under s. 5 of the Act to regulate the storage, transport, distribution, disposal etc. Of an essential commodity, in relation to foodstuffs, does not carry with it the general power of the Central Government under sub-s. (1) of s. 3 to regulate or prohibit the production, supply and distribution thereof and trade and commerce therein. And (2) The word 'regulating' in cl. (d) of sub-s. (2) of s. 3 of the Act does not take in 'prohibiting' for the words 'regulating' and 'prohibiting'

denote two distinct and separate attributes of power and they are mutually exclusive Otherwise according to learned counsel, there was no point in the Legislature using both the words 'regulating' and 'prohibiting' in sub-s. (1) of s. 3 of the Act and the words 'regulating' and 'prohibiting' differently in various clauses of sub-s. (2) thereof. It is urged that there cannot be a total prohibition on transport, movement or otherwise carrying of paddy out of the areas in question under cl. (d) of subs. (2) of s 3 but only regulation of such activities in the course of trade and commerce by grant of licences or permits The learned counsel is fortified in his submissions by the decisions of the Punjab, Allahabad and Orissa High Courts in *Sujan Singh v State of Haryana*,⁽¹⁾ *State of Uttar Pradesh v. Suraj Bhan*⁽²⁾ and *Bejoy Kumar Routrai v. State of Orissa*⁽³⁾ and he questions the correctness of the decision of the Gujarat High Court in *Nanalal Navalnathji Yogi Collestor of Bulsar & Ors.*⁽⁴⁾ taking a view to the contrary. We are afraid, we are unable to accept any of the contentions advanced by him.

In order to appreciate the contentions advanced, it would be convenient to set out the relevant statutory provisions. Sub-s. (1) of s. 3 of the Act is in these terms:

"3 (1). Power to control production, supply, distribution etc. Of essential commodities-

(1). AIR [1968] Pun. 363 (2). AIR [.972] Al]. 401 (3). AIR [1976] Orr. 138 (4). [1981] . 87 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."

Sub-s. (2) of s. 3 of the Act, insofar as material, lays down:

" 3. (2) Without prejudice to the generality of the powers conferred by sub-s. (1), an order made thereunder may provide-

(a) * * * *

(b) * * * *

(c) * * * *

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity."

S. 5 of the Act provides:

"5. Delegation of powers-The Central Government may, by notified order, direct that (the power to make orders or issue notifications under s. 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.

as may be specified in the direction."

The infirmity in the argument lies in the erroneous assumption A that the source of power on authority to promulgate the impugned Order was derived by the State Government under cl.(d) of sub-s (2) of s. 3 of the Act by virtue of the delegation of powers by the Central Government by the notification No G. S. R. 800 dated June 9, 1978 under s 5 of the Act. The source of power to promulgate an order of this description is derived from sub- s. (1) of s. 3 of the Act, According to its plain language, the aforesaid notification No. G. S. R. 800 provides that in exercise of the powers conferred by s. 5 of the Act, and in supersession of the earlier order of the Government of India in the Ministry of Agriculture, Department of Food, No. G. S R 316 dated June 20, 1972, the Central Government directs that 'the powers conferred on it by sub-s. (1) of s. 3 of the Act' to make orders to provide for matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-s. (2) thereof shall, in relation to foodstuffs, 'be exercisable also by a State Government subject to the conditions set out therein'. There must be some meaningful effect given to the words 'the Central Government hereby directs that the powers conferred on it by sub-s. (1) of s. 3 of the Act to make orders etc.. shall be exercisable also by a State Government subject to the conditions set out therein'. On a plain construction, the first part of the aforesaid notification in specific terms provides for the delegation by the Central Government under s. 5 of the Act of the powers conferred on it by sub-s. (1) of s. 3 of the Act. That power is general in its terms and authorises inter alia the promulgation of any order providing for regulating or prohibiting the production, supply and distribution of, and trade and commerce in, any essential commodity, insofar as it is necessary or expedient so to do for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices. The second part of the notification directs that the power to make 'orders thereunder' i.e. the power under sub-s. (1) of s. 3 of the Act shall be exercisable also by a State Government, in relation to foodstuffs, with respect to 'such matters' viz. for the matters specified in clauses (a), (b), (c),

(d), (e), (f), (h), (i), (ii) and (j) of sub-s. (2) thereof and subject to 'such conditions' set out therein. The aforesaid notification G. S. R. 800 dated June 9, 1978 issued by the Central Government was strictly in conformity with s. 5 of the Act. Of the three conditions, the one that is material for our purpose is condition 2 It provides that before making an order under cl. (d) of sub-s. (2) of s. 3 of the Act in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulations or transport of any foodstuffs, the State Government shall also obtain the prior concurrence of the Central Government. It is manifest on a plain reading that the aforesaid notification No. G. S. R. 800 dated June 9, 1978 was strictly in conformity with the requirements of s. 5 of the Act.

Learned counsel for the appellant however strenuously contends that the delegation of powers by the Central Government under s. 5 of the Act must necessarily be in relation to 'such matters' and subject to 'such conditions' as may be specified in the notification. The whole attempt on the part of the learned counsel is to confine the scope and ambit of the impugned order to cl. (d) of sub-s (.) of g. 3 of the Act which uses the word 'regulating' and take it out of the purview of sub-s. (1) of s. 3 which uses the words 'regulating or prohibiting'. That is not a proper way of construction of sub-ss (1) and (2) of s. 3 of the Act in their normal setting. The restricted construction of s. 3 contended for by learned counsel for the appellant would render the scheme of the Act wholly unworkable. As already indicated, the source of power to make an order of this description is sub-s. (1) of s 3 of the Act and sub-s. (2) merely provides illustration for the general powers conferred by sub-s. (1). Sub-s. (2) of s. 3 of the Act commences with the words 'Without prejudice to the generality of the powers conferred by sub-s. (1)'. It is manifest that sub-s. (2) of s 3 of the Act confers no fresh powers but is merely illustrative of the general powers conferred by sub-s. (1) of s. 3 without exhausting the subjects in relation to which such powers can be exercised.

The matter is no longer *res integra*. The question directly arose for consideration by this Court in *Santosh Kumar Jain v. The State* (1). There, the Court was considering the validity of the Sugar and sugar Products Control Order, 1947 issued by the then Provincial Government of Bihar in exercise of the powers conferred on it by s. 3 of the Essential Supplies (Temporary Powers) Act, 1946 by virtue of the delegation of powers by the Central Government to make orders in relation to foodstuffs under cl. (j) of sub-s. (2) of s. 3 of that Act. Patanjali Shastri, J., speaking for the Court explaining the relevant functions of sub-ss. (1) and (2) of s. 3 of the Act, said:

(1) [1951] S.C.R. 303.

"It is manifest that sub-s. (2) of s. 3 confers no further or other powers on the Central Government than what are conferred under sub-s. (1), for it is "an order made thereunder" that may provide for one or two other of the matter specifically enumerated in sub-s. (2) which are only illustrative, as such enumeration is "without prejudice to the generality of the powers conferred by sub-s. (1)". Seizure of an article being thus shown to fall within the purview of sub-s. (1), it must be competent for the Central Government or its delegate, the Provincial Government, to make an order for seizure under that sub-section apart from and irrespective of the anticipated contravention of any other order as contemplated in cl. (j) of sub-s. (2)."

The Court drew support for this view from the decision of the Privy Council in *Emperor v. Sibnath Banerjee*. (1) The Federal Court in that case held r. 26 of the Defence of India Rules made under cl (j) of sub-s (2) of s. 3 of the Defence of India Act, 1939 to be *ultra vires*, which decision was reversed by the Privy Council, The Court quoted with approval the following observations of Lord Thankerton, J. delivering the judgment of Privy Council:

"In the opinion of their Lordships, the function of sub s. (2) is merely an illustrative one; the rule-making power is conferred by sub-s. (1), and "the rules" which are referred to in the opening sentence of sub-s. (2) are the rules which are authorized

by, and made under, sub-s. (1); the provisions of sub-s (2) are not restrictive of sub-s.

(1), as, indeed is expressly stated by the words "without prejudice to the generality of the powers conferred by sub-s (1)."

This accords with our view of the purport and effect of sub-ss. (1) and (2) of s. 3 of the Act.

In *Atulya Kumar v. Director of Procurement & Supply*(a), the challenge was to the validity of West Bengal Foodgrains (Intensive Procurement Order, 1952 issued under s. 3 (1) of the Essential Supplies (Temporary Powers) Act, 1946 by virtue of delegation of powers by the Central Government under s. 5 of the Act which was (1) LR [1945] 72 IA 241.

(2). AIR [1953] Cal. 548.

almost in identical terms with s. 5 of the Act. Sinha, J. (as he then was) held that the powers to promulgate the levy order was derived from sub-s. (1) of s 3 of the Act; and that the power was general in terms and authorized inter alia the promulgation of any order providing for regulating or prohibiting the production, supply and distribution of, and trade and commerce in, any essential commodity, insofar as it appears necessary or expedient to the State Government for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices. The learned Judge after referring to the Privy Council decision in *Sibnath Banerjee's* case and that of this Court in *Santosh Kumar Jain's* case, observed :

"Sub-s. (2) of s. 3, commences with the words "without prejudice to the generality of the powers conferred by sub-s. (1)....etc." This shows that sub-s. (2) confers no fresh powers but provides illustrations of the general powers conferred by sub-s. (1)....."

The learned Judge went on to observe:

"This is undoubtedly very incompetent drafting. But I think that the meaning is reasonably clear. The 'Matters Specified' in sub-s. (2), being "without prejudice" to the generality of the powers conferred by sub-s (1) must be held to include such powers. Thus it cannot be said that the general powers have not been conferred upon the State, but only those specified in cls. (a) to (j) of sub-s. (2). The only limitation is with regard to the kind of essential commodity concerned. The State has been given powers limited to 'foodstuffs' only."

Quite recently, the Calcutta High Court in *Tarakdas Mukherjee v. State of West Bengal*(1) and *Lila Biswas v. State of West Bengal* 12) following the dictum of Sinha, J. in *Atulya Kumar's* case, supra, have held that the delegation of specific powers to issue an impugned order of this nature is derived from sub-s. (1) of s. 3 and that the provisions of sub-s. (2) thereof are merely illustrative. It has further held that the various clauses of sub-s. (2) of s. 3 of the Act cannot be made operative independently by any notification (1) [1978] 2 Cal. LJ 383 (2) [1978-9] 83 CWN 539 under s. 5 of the Act without deriving the general powers under sub-s. (1) of s. 3 of the Act. We are of the considered

opinion that the view of the Calcutta High Court accords both with reason and principle. The view to the contrary taken by the Punjab, Allahabad and Orissa High Courts in *Sujan Singh's*, *Suraj Ban's* and *Bejoy Kumar Routrai's* cases, *supra*, does not lay down good law. It must accordingly be held that although cl. (d) of sub-s. (2) of s. 3 of the Act deals only with a specific power, the general power to issue the impugned order flows from the provisions of sub-h. (1) of s. 3 which stands delegated to the State Government by virtue of the notification issued under s. 5 of the Act.

Upon that view, the question as to the construction of the word 'regulating' occurring in cl. (d) of sub-s. (2) of s. 3 of the Act does not really arise. However, since the question has been raised at the Bar we think it proper to deal with it. As a matter of construction, *Shri P- Govindan Nair*, learned counsel for the appellant contends that the words 'regulating' and 'prohibiting' connote two distinct and separate attributes of power which are mutually exclusive and therefore the word 'regulating' used in cl. (d) cannot be given the same meaning as 'prohibiting'. He urges that is a sound rule of construction to give the same meaning to the same word occurring in different parts of an Act of Parliament. For the purpose of ascertaining the true meaning of the word 'regulating' in the context of cl. (d) of sub-s. (2) of s. 3, he has referred to us the different clauses of that sub-section. A perusal of the various clauses (a) to

(j) indicates that while cls. (a), (d) and (g) speak of the power to prohibit, and the remaining cls. (b), (c), (f),

(h), (i), (ii) and (j) though they do not mention that they are illustrative of the power to regulate impliedly partake of the character of that power. If the contention of the learned counsel were to be accepted, it would imply that the Central Government derives its power under sub-s. (1) of s. 3 of the Act as the power to promulgate any order providing for regulating or prohibiting the production, supply and distribution of, and trade and commerce in, any essential commodity insofar as it appears necessary or expedient so to do, for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices. If the Central Government were to make an order under sub-s. (1) in respect of the matters specified in cl.

(d), it may not only regulate or control the storage, transport, distribution etc. of an essential commodity including the movement of such foodstuffs by grant of licenses, permits or otherwise, but also place a ban on the movement of wheat from one place to another; but the State Government under cl. (d) has only a regulatory power in relation thereto i.e. to make an order only for regulating the movement of wheat from one place to another by issue of the permits, licenses or otherwise as provided for by cl. 3 of the impugned Order but could not have issued cl. 3 (IA) placing a ban on movement of wheat from one place to another. Although by force of logic one may be driven to that conclusion that the State Government has power to promulgate cl 3 of the impugned Order but not cl. 3 (IA), there is no reason for us to give such a restrictive meaning to the word 'regulating' appearing in cl. (d) of sub-s. (2) of s. 3 of the Act. It would seem that the rule of construction is clearly well recognized that a word may be used in two different senses in the same section of an Act.

The word 'regulation' has not that rigidity of meaning as never to take in 'prohibition'. I must depend on the context in which it is used in the statute and the object sought to be achieved by the legislation. For a time different views were expressed on the question whether the word 'regulation' in Art. 19(2) to 19(6) includes 'prohibition' till the Court in *Narendra Kumar v. Union of India*(1) answered it in the affirmative.

Shri P. Govindan Nair, learned counsel for the appellant however contends that the word 'regulation' should not be confused with the expression 'reasonable restrictions' occurring in Art. 19(2) to (6) of the Constitution and therefore the view taken in *Narendra Kumar's* case is not applicable. According to him, the word 'regulation' in cl. (d) of sub-s. (2) of s. 3 of the Act does not take in 'prohibition'. He seeks to draw a distinction between prohibition or prevention of certain activities and their regulation or governance. It is said that a power to regulate or govern would imply continued existence of that which is to be regulated or governed; and to be inconsistent with absolute prohibition. He therefore submits that cl. 3 (IA) of the Order was ultra vires because the State Government had only power under cl. (d) of sub-s. (2) of s. 3 of the Act to regulate production, supply and distribution of, and trade and commerce in, essential commodities like foodstuffs by (1) [1960] 2 SCR 361.

grant of permits, licenses or otherwise, in contradistinction to the power of the Central Government under sub-s. (1) of s. 3 to regulate or prohibit such production, supply and distribution of, and trade and commerce in, essential commodities.

Learned counsel for the appellant placed reliance on the decision of the Allahabad High Court in *Suraj Bhan's* case which proceeds upon a decision of this Court in *State of Mysore v. Sanjeeviah*(1) holding that power to regulate does not include power to prohibit or restrict. In *Sanjeeviah's* case, the question arose whether two provisos framed by the State Government under s. 37 of the Mysore Forest Act, 1900 which empowered the making of rules to regulate the transit of forest produce which placed absolute prohibition against transportation of forest produce between sunset and sunrise and a qualified prohibition in certain circumstances, was beyond the rule-making power of the State Government. The contention on behalf of the State was. that the two provisos were regulatory and prohibitory- In repelling the contention, the Court observed:

"The power which the State Government may exercise is the power to regulate transport of forest produce, and not the power to prohibit or restrict transport. Prima facie, a rule which totally prohibits movement of forest produce during the period between sunset and sunrise is prohibitory or restrictive of the right to transport forest produce."

These observations do not lay down any rule of universal application.

The word 'regulation' cannot have any rigid or inflexible meaning as to exclude 'prohibition'. The word 'regulate' is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some Courts giving to the term a somewhat

restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in *Corpus Juris Secundum*, vol. 76 at p. 611:

(1) [1967] 2 S.C.R. 361, "Regulate" is variously defined as meaning to adjust; to adjust; order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws:

to govern to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations.

"Regulate" is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict."

See also: Webster's Third New International Dictionary, vol. II, p. 1913 and Shorter Oxford Dictionary, Vol. II, 3rd edn., p. 1784.

It has often been said that the power to regulate does not necessarily include the power to prohibit, and ordinarily the word 'regulate' is not synonymous with the word 'prohibit'. This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. 'the power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy.

The question essentially is one of degree and it is impossible to fix any definite point at which 'regulation' ends and 'prohibition' begins. We may illustrate how different minds have differently reacted as to the meaning of the word 'regulate' depending on the context in which it is used and the purpose and object of the legislation. In *Slattery v. Naylor*,⁽¹⁾ the question arose before the Judicial Committee of the Privy Council whether a bye-law by reason of its prohibition of internment altogether in a particular cemetery, was ultra vires because the Municipal Council had only power of regulating internments whereas the bye-law totally prohibited them in the cemetery in question, and it was said by Lord Hobhouse, delivering the judgment of the Privy Council:

"A rule or bye-law cannot be held as ultra vires merely because it prohibits where empowered to regulate, as regulation often involved prohibition." In contrast in *Municipal Corporation of the City of Toronto v. Virgo*,⁽²⁾ where the question for decision was whether a section or a bye-law prohibiting hawkers from plying their trade, was competently and validity made, Lord Davey delivering the judgment of the Privy Council while laying down that a power to make a bye law to 'regulate' and 'govern' a trade does not authorize the prohibition of such trade, and added:

"There is a marked distinction between the prohibition or prevention of a trade and the regulation or governance of it, and, indeed, a power to regulate' and 'govern' seems to imply the continued existence of that which is to be regulated or governed." The predominant object of the Act, as reflected in the preamble is to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain essential commodities. It is a piece of socioeconomic legislation enacted in the national interest to secure control over the production, supply and distribution of, and trade and commerce in, essential commodities. The various Control Orders issued by the Central Government under sub-s (1) of s. 3 of the Act or by the State Government under s 3 read with s. 5 have introduced a system of checks and balances to achieve the object of the legislation i.e. to ensure equitable distribution and availability of essential commodities at fair prices. Special public interest in an industry e.g. that it is engaged in the production of a commodity, (1) LR [1888] AC 446 (2) LR [1896] AC 88 vitally essential to the community, may justify the regulation of its production, supply and distribution and its trade and commerce, provided such regulation is not arbitrary and has a rational nexus with the object sought to be achieved.

the power to regulate or prohibit the production, supply and distribution of, and trade and commerce in, essential commodities may be exercised in innumerable ways. One of the ways in which such regulation or control over the production, supply and distribution of, and trade and commerce in, an essential commodity like foodstuffs may be exercised by placing a ban on inter State or inter-State movement of foodstuffs to ensure that the excess stock of foodstuffs held by a wholesale dealer, commission agent or retailer is not transported to places outside the State or from one district to another with a view to maximize the procurement of such foodstuffs from the growers in the surplus areas for their equitable distribution at fair prices in the deficit areas. The placing of such ban on export of foodstuffs across the State or from one part of the State to another with a view to prevent outflow of foodstuffs from a State which is a surplus State prevents the spiral in prices of such foodstuffs by artificial creation of shortage by unscrupulous traders. But such control can be exercised in a variety of ways otherwise than by placing compulsory levy on the producers, for example, by fixing a controlled price for foodstuffs, by placing a limit on the stock of foodstuffs to be held by a wholesale dealer, commission agent, or retailer, by prohibiting sales except in certain specified manner, etc. These are nothing but regulatory measures.

We find no lawful justification for giving a restricted meaning to the word 'regulating' in cl. (d) of sub s. (2) of s. 3 of the Act as not to take in prohibiting'. In *State of Tamil Nadu v. M/S Hind Stone*

and Ors.(') Chinnappa Reddy, J. referred with approval the observations of Mathew, J. in G.K. Krishnan v. State of Tamil Nadu(2) laying down that the word 'regulation' has no fixed connotation and that its meaning differs according to the nature of that, thing to which it is applied. The learned Judge also observed:

"In modern statutes concerned as they are with economic and social activities, 'regulation' must, of necessity, (1) [1981] 2 SCC 205 (2) [1975] 2 SCR 715 receive so wide an inter-pretation that in certain situations, A it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in Commonwealth of Australia v. Bank of New South wales [1949] 2 All. ER 755 (PC)-and we agree with what was stated therein-that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified." In Krishan Lal Praveen Kumar & Ors- v. State of Rajasthan & Ors.,(1) Suraj Mal kailash Chand & ors. v. Union of India & Ors.,(a) and Bishamber Dayal Chandra Mohan & Ors.

v. State of U.P. & Ors.(3) the Court has held that a restriction placed on movement of wheat from one State to another and/on movement of wheat from one district to another under cl. (d) of sub-s. (2) of s. 3 of the Act, to be regulatory in character.

Surely when a part of the country is verging on conditions of acute shortage or even famine, it is expected of the government to procure foodstuffs from surplus areas and transport the same for distribution in deficit areas. [D the State of Tamil Nadu like some other States, the two things most essential for the sustenance of human life are rice and paddy. It is amply borne out from the material on record that due to the failure of the southwest and north- east monsoons in successive years, and the consequent poor rainfall, there was a steep fall in production of paddy. In the circumstances, the State Government had no other alternative not only to reimpose compulsory levy on the producers of paddy to the extent of 50%%, but also to introduce a scheme for a monopoly purchase of paddy by the Government with a view to build up its buffer stock for distribution through the public distribution (1) 11981] 4 SCC 550 (2) [1981] 4 SCC 554 (3) [1982] I SCR 137 system throughout the State. If one part of the State is faced with a famine or even acute shortage of foodstuffs, it is not unreasonable for the Government to acquire foodstuffs from the surplus areas and distribute the same in areas where they are most needed. The source of power to issue an order under cl.. (d) of sub-s. (2) of s. 3 of the Act being relatable tot he general powers of the Central Government under sub-s. (1) of s. 3, there is no reason for us to give a restricted meaning to the word 'regulating' in cl. (d) of sub-s. (2) of s. 3 of the Act so as not to take in prohibiting'.

For the reasons aforesaid, the appeal must fail.

A.P.J.

Appeal dismissed.

