

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE ANIRUDDHA ROY

FMA 764 OF 2022

Sekh Abdul Majed
vs.
State of West Bengal & Ors.

With

MAT 910 OF 2022
with
I.A. No. CAN 1 of 2022

Sk. Manowar Ali & Ors.
Vs.
State of West Bengal & Ors.

For the Appellant in FMA 764 of 2022	:	Mr. Debajyoti Datta, Adv. Mr. Shamit Sanyal, Adv. Ms. Priyakshi Banerjee, Adv. Mr. Sabyasachi Roy, Adv.
For the Appellant in MAT 910 of 2022	:	Mr. Joydip Kar, Sr., Adv. Mr. Debabrata Saha Roy, Adv. Mr. Pingal Bhattacharyya, Adv. Mr. Subhankar Das, Adv. Mr. Neil Basu, Adv.
For the State	:	Mr. S.N. Mookherjee, learned Advocate General Mr. Anirban Ray, learned G. P. Mr. Sanjay Basu, Adv. Mr. Sirsanya Bandyopadhyay, Adv. Mr. Arka Kumar Nag, Adv. Mr. Piyush Agarwal, Adv.

Ms. Utsha Dasgupta, Adv.

For the Respondent : **Mr. Ajay Chaubey, Adv.**
Nos. 5, 6, 7 and 8 : **Ms. Neha Gupta, Adv.**

Heard on : **04.08.2022, 08.08.2022,**
23.08.2022 and 30.08.2022.

Judgment on : **28.09.2022.**

CHITTA RANJAN DASH, J.:-

1. There are two appeals – one is FMA 764 of 2022 arising out of WPA No. 17375 of 2021 (*Sk. Abdul Majed & Ors. Vs. The State of West Bengal & Ors.*) and another MAT 910 of 2022 arising out of WPA 18630 of 2021 (*Sk. Manowar Ali & Ors. Vs. The State of West Bengal & Ors.*).

2. Both the aforesaid appeal having involved common question of fact and law, they are taken up together for disposal by this common Judgement.

BACKGROUND FACTS

3. In third amendment of the Constitution of India in Entry 33 of List-III (Concurrent List) of Schedule-VII Trade and Commerce in X X (b) foodstuffs *inter alia* other items were included. Thereafter the Central Government enacted Essential Commodities Act, 1955 ('**EC Act**' for short) giving the same due protection under Article 31B of the Constitution of India. Section 3 of 'EC Act' vested power in the Central Government to provide for regulating or prohibiting the production supply and distribution of essential commodities and trade and

commerce therein by issuance of requisite order. Section 5 of the 'EC Act' empowers the Central Government by notified order to delegate its power to the State Governments to make requisite order and issue notification under Section 3 of the Act.

3.1. In exercise of the power conferred under Section 3 of the 'EC Act' Central Government issued Public Distribution System (Control) Order, 2001 (**'Central Control Order, 2001'** for short) for regulating, controlling and monitoring Public Distribution System (**'PDS'** for short) in all over India. While skipping the history, it is relevant to mention here that State of West Bengal framed West Bengal Public Distribution (Maintenance and Control) Order, 2013 for rural areas of West Bengal (**'Rural Control Order, 2013'** for short) in exercise of power conferred under Section 3 of the 'EC Act' read with 'Central Control Order 2001'. Few days thereafter in exercise of the same power under Section 3 of 'EC Act' read with 'Central Control Order, 2001', State of West Bengal issued West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 (**'Urban Control Order, 2013'** for short). In 'Central Control Order, 2001', 'Rural Control Order, 2013' and 'Urban Control Order 2013' there are four types of ration card holders (i) Above Poverty Line (APL), (ii) Below Poverty Line (BPL), (iii) Antyodaya Anna Yojana (AAY) and (iv) Annapurna Yojana. Both the aforesaid Control Order of 2013 were issued by the State Government in the month of August, 2013.

3.2. In the month of September, 2013, Central Government enacted National Food Security Act, 2013 (**'NFS Act'** for short) for maintaining, controlling and monitoring Targeted Public Distribution System (**'TPDS'** for short). After

enactment of the 'NFS Act' the beneficiaries under the Scheme were confined to two only viz. (i) Priority House Holds and (ii) Antyodaya Anna Yojana.

In the month of March, 2015, the Central Government invoking power under Section 3 of the 'EC Act' promulgated Targeted Public Distribution System (Control) Order, 2015 ('**Central Control Order, 2015**' for short). Under Clause 9 of the 'Central Control Order, 2015', Central Government has delegated powers to the State Governments to issue requisite order under Section 3 of the 'EC Act' but such order should not be inconsistent with the 'Central Control Order, 2015' and 'NFS Act'.

In the month of August, 2015, the Central Government in exercise of power conferred by Section 39(ii)(e) read with Section 22(4)(d) of the 'NFS Act' after consultation with the State Governments enacted the Food Security (Assistance to State Governments) Rules, 2015 ('**2015 Rules**' for short) in Rule 7 of the '2015 Rules' there is prescription regarding the share of Central Government and State Government in the expenditure to be borne for supply of foodstuffs under the 'NFS Act'.

3.3. In the month of November 9, 2021, the Governor of West Bengal by amendment to 'Rural Control Order, 2013' in exercise of power conferred by Section 3 of the 'EC Act' inserted Clause 19(A) after Clause 19 fixing liability on the Fair Price Shop ('**FPS**' for short) dealers to deliver public distribution commodities at the door step of the ration card holders. Similarly the 'Urban Control Order, 2013' was also amended by inserting Clause 18 fixing liability on the FPS dealers

to deliver ration at the doorstep of ration card holders. On November 16, 2021 the Governor of West Bengal in pursuance of provisions under Section 12 and 32 of the 'NFS Act' made '**West Bengal Duare Ration Scheme, 2021**' ('**Duare Ration Scheme**' for short) in addition to 'Rural Control Order, 2013' and 'Urban Control Order, 2013'. "**Duare Ration**" which are Bengali terms in English means "**door step delivery of ration**".

THE CONTROVERSY

4. In WPA No. 17375 of 2021 and in WPA No. 18630 of 2021 the aforesaid '**Duare Ration Scheme**' was brought under challenge on the ground of repugnancy with the parent Act i.e. 'NFS Act'. In WPA No. 18630 of 2021, the amendment brought in 2013 Control Order (both rural and urban) vide Notification dated 9th November, 2021 in inserting Clause 19(A) and Clause 18 respectively in the said Control Order, was also challenged on the ground that after coming into force of 'Central Control Order, 2015' and repeal of 'Central Control Order, 2001', the 2013 Control Order both for rural and urban area have become non-existent and non-est in the eye of law.

FINDINGS BY HON'BLE SINGLE JUDGES

5. After hearing learned Counsel for the parties Hon'ble Single Judge in WPA No. 17375 of 2021 in paragraph 24 (vi) held thus :-

“(vi) The argument that the Central Government Order covers the whole field is unacceptable since the outer limits of that field extends to and ends at the

*doorstep of the fair price shop. The **Duare Ration Scheme** covers the additional, unexplored and exclusive space from the fair price shop to the doorstep of the ration card holder. The scheme is hence a field yet to be covered as far as the defined end-point of the Central Government Order is concerned.”*

Hon’ble Single Judge in WPA No. 18630 of 2021 held thus :-

“.....Section 24 (2) (b) of the NFSA obliges the State Government to ensure actual delivery of supply of food grains to the entitled persons at the prices specified in Schedule-I. Therefore, the State Government wishes to travel the extra mile to deliver the food grains at the doorsteps of the beneficiaries, such an endeavour cannot be said to fall foul of any provisions of NFSA, the rules framed thereunder or the orders issued under the ECA, 1955....”

5.1. It is found from the order that on the face of challenge to the **‘Duare Ration Scheme’** on the ground of repugnancy with ‘NFS Act’, Hon’ble Single Judges in each case (though by different Benches) have precisely read down the provisions of ‘NFS Act’ with the provision of **‘Duare Ration Scheme’** to reach their conclusion to hold that both the Act and the Scheme can co-exist and this Scheme has only covered “extra mile” or “defined end point of the Central Government Order”.

SUBMISSIONS IN THE APPEAL

6. In the appeal, however, learned Counsel for the appellants i.e. Mr. Datta, learned Counsel for the appellant in FMA No. 764 of 2022 and Mr. Kar, learned Senior Counsel appearing for the appellant in MAT No. 910 of 2022 have taken a new plea altogether which is a pure question of law and can be raised even in appeal. Their argument is that in making the '**Duare Ration Scheme**' which is admittedly an executive legislation, the State Government has exceeded the extent of delegation and therefore, the '**Duare Ration Scheme**' is a nullity in the eye of law. So far as the insertion of Clause 19(A) in 'Rural Control Order, 2013' and Clause 18 in 'Urban Control Order, 2013' by amendment dated 9th November, 2021 is concerned, it is submitted that '2013 Control Order' being non-existent after issuance of 'Central Control Order, 2015' repealing the 'Central Control Order, 2001', no amendment to a non-existent order could have been made. Having heard learned Counsel for the appellants and learned Advocate General and learned Counsel for the Central Government, we find that following questions arise for our consideration :-

- (i) In making the "**Duare Scheme**" whether the State Government has exceeded the limit of delegation.
- (ii) Whether Notification of 1978 (page 69, Vol.-I of the paper book) as contended by Mr. Dutta,

learned Counsel has any effect so far as the **“Duare Ration Scheme”** is concerned.

- (iii) Whether both the State Control Order of 2013 for urban and rural area is non-existent in view of coming into effect of ‘*Central Control Order, 2015*’.
- (iv) Whether both the Control Orders of 2013 are saved by either Section 24 of the General Clauses Act or by provisions contained in ‘*NFSA*’ or ‘*Central Control Order, 2015*’.
- (v) Whether the State Government without any requisite delegation in the parent Act or order can travel extra mile in the name of welfare.
- (vi) Whether the **“Duare Scheme”** or for that matter amendment to Clause 19(A) and 18 of the 2013 Control Order (both rural and urban) are nullity for the aforesaid reasons.

DECISION WITH REASONS

7. So far as the first question that arises for our consideration is concerned, we propose to go through the law cited by both Mr. Kar, learned Senior Counsel and Mr. Datta, learned Counsel on the point.

In the case of **District Collector, Chittoor & Ors. Vs. Chittoor District Groundnut Traders' Association, Chittoor & Ors.** [1989 (2) SCC 58], Hon'ble Supreme Court in paragraph 4 of the Judgement has held thus :-

“..... A delegate is not entitled to exercise powers in excess or in contravention of the delegated powers. If any order is issued or framed in excess of the powers delegated to the authorities, such order would be illegal and void.”

Hon'ble Supreme Court in the case of **Hukam Chand ETC vs. Union of India & Ors.** [1972 (2) SCC 601] in paragraph 8 has held thus :-

“.....The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute law lies in the fact that a subordinate law-making body is bound by the terms by its delegated or derived authority and that Court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions

precedent to the validity of the rules have been fulfilled
(see Craies on Statute Law, p. 297, Sixth Edition).

In the case of **Union of India & Ors. Vs. S. Srinivasan** [2012 (7) SCC 683] in paragraph 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 has held thus :-

“**21.** At this stage, it is apposite to state about the rule-making powers of a delegating authority. If a rule goes beyond the rule-making power conferred by the statute, the same has to be declared ultra vires. If a rule **supplants** any provision for which power has not been conferred, it becomes ultra vires. **The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it.**

22. In this context, we may refer with profit to the decision in *General Officer Commanding-in-Chief v. Subhash Chandra Yadav* [(1988) 2 SCC 351 : 1988 SCC (L&S) 542 : (1988) 7 ATC 296 : AIR 1988 SC 876] wherein it has been held as follows : (SCC p. 357, para 14)

“14. ... before a rule can have the effect of a statutory provision, two conditions must be fulfilled,

namely, (1) **it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule.** If either of these two conditions is not fulfilled, the rule so framed would be void.”

23. In *Delhi Admn. v. Siri Ram* [(2000) 5 SCC 451 : AIR 2000 SC 2143] it has been ruled that it is a well-recognised principle that **the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.**

24. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331] the Constitution Bench has held that : (SCC p. 433, para 18)

“18. ... **statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature.** Rules and regulations made by reason of the specific power conferred by the statute to make

rules and regulations establish the pattern of conduct to be followed”.

25. In *State of Karnataka v. H. Ganesh Kamath* [(1983) 2 SCC 402 : 1983 SCC (Cri) 514 : AIR 1983 SC 550] it has been stated that : (SCC p. 410, para 7)

“7. ... It is a well-settled principle of interpretation of statutes that **the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act** or which is inconsistent therewith or repugnant thereto.”

26. In *Kunj Behari Lal Butail v. State of H.P.* [(2000) 3 SCC 40 : AIR 2000 SC 1069] it has been ruled thus : (SCC p. 46, para 13)

“13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred. **If the rule-**

making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.”

27. In *St. Johns Teachers Training Institute v. National Council for Teacher Education* [(2003) 3 SCC 321 : AIR 2003 SC 1533] it has been observed that : (SCC p. 331, para 10)

“10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. **The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.”**

28. In *Global Energy Ltd. v. Central Electricity Regulatory Commission* [(2009) 15 SCC 570] this Court was dealing with the validity of clauses (b) and (f) of Regulation 6-A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and Other Related Matters) Regulations, 2004. In that context, this Court expressed thus : (SCC p. 579, para 25)

“25. It is now a well-settled principle of law that the rule-making power ‘for carrying out the purpose of the Act’ is a general delegation. Such a general delegation may not be held to be laying down any guidelines. **Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.**”

29. In the said case, while discussing further about the discretionary power, delegated legislation and the requirement of law, the Bench observed thus : (*Global Energy Ltd. case* [(2009) 15 SCC 570] , SCC p. 589, para 73)

“73. The image of law which flows from this framework is its neutrality and objectivity : the ability of law to put sphere of general decision-making outside the discretionary power of those wielding governmental power. Law has to provide a basic level of ‘legal security’ by assuring that law is knowable, dependable and shielded from excessive manipulation. In the context of rule-making, delegated legislation should establish the structural conditions within which those processes can function effectively. The question which needs to be asked is whether delegated legislation promotes rational and accountable policy implementation. While we say so, we are not oblivious of the contours of the judicial review of the legislative Acts. But, we have made all endeavours to keep ourselves confined within the well-known parameters.”

30. In this context, it would be apposite to refer to a passage from *State of T.N. v. P. Krishnamurthy* [(2006) 4 SCC 517] wherein it has been held thus : (SCC p. 529, para 16)

“16. The court considering the validity of a subordinate legislation, will have to consider the

nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. **Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”**

31. In *Pratap Chandra Mehta v. State Bar Council of M.P.* [(2011) 9 SCC 573] , while discussing about the conferment of extensive meaning, it has been opined that : (SCC p. 604, para 58)

“58. ... The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. **It is also clear that it may not always be absolutely necessary to spell out guidelines for**

delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court.”

Hon'ble Supreme Court in the case of **State of T.N. & Anr. Vs. P. Krishnamurthy & Ors.** [2006 (4) SCC 517] in paragraph 15 has held thus : -

“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

(emphasis supplied by us)

With the position of law as aforesaid which is also an admitted position of law according to learned Advocate General we shall proceed to weigh the argument advanced by learned Counsel for the parties.

8. Mr. Kar, learned Senior Counsel appearing for the appellant in one of the appeal elaborated on Sections 3 and 5 of the 'EC Act', making of 'Central Order 2001', making of Control Order 2013 by the State Government for both rural and urban area separately by two different orders in 2013, enactment of 'NFS Act' and making of 'Central Order, 2015'. Taking us through different provisions of 'NFS Act' it is submitted by Mr. Kar that after introduction of the aforesaid Act the beneficiaries have been limited to two groups only and those are Antyodaya House Holds and Priority House Holds. The 'NFS Act' prescribes for lifting of foodstuff from the godown and deliver the same at the door step of FPS dealer. Here, however, going beyond the mandate of the parent statute the impugned '**Duare Ration Scheme**' has been framed. Relying on the aforesaid decision Mr. Kar would submit that the State in making the '**Duare Ration Scheme**' which is a piece of executive legislation has transgressed the limits of delegation by the parent Act i.e. 'NFS Act'.

8.1. Mr. Datta, learned Counsel appearing for the appellant in one of the appeal taking us through Section 12 and Section 32 of 'NFS Act' submits that the framing of '**Duare Ration Scheme**' is beyond the delegated power of the State *vis-a-vis* the parents statute i.e. 'NFS Act'.

8.2. Learned Advocate General taking us through Article 47, 51 of the Constitution of India, different Clauses of statement of object and reasons of the 'NFS Act', the preamble of the said Act Section 2(3), 3 and 10, Section 2(2) and 2(10) Section 3 read with Schedule I and Schedule IV Section 22 (4) Section 12 and 24 Section 14 to 16 Section 27 to 29 and decision of Hon'ble Supreme Court reported in **Swaraj Abhiyan Vs. Union of India & Ors.** [(2016) 7 SCC 498] at paragraph 128 giving direction to the States to give effect to the provisions of the 'NFS Act' in pursuance of their constitutional obligation to ensure Food Security, submits that the State in framing the '**Duare Ration Scheme**' did not transgress the sphere of delegation made by the 'NFS Act'.

8.3. Learned Advocate General has also relied on the Judgement of Hon'ble Delhi High Court in the case of **Delhi Sarkari Ration Dealers Sangh Delhi Vs. Commissioner Food and Supplies Govt. Of NCT of Delhi & Ors.** (2022 SCC Online Del 1485) to buttress his submission but it is fairly admitted by him that similar scheme framed by the NCT Delhi was struck down on the ground that it had completely done away with the existing Fair Price Shop owners which is clearly a part of legislative framework under 'NFS Act'. It is further submitted by him that so far as the State of West Bengal and Andhra Pradesh are concerned they have retained the network of existing Fair Price Shop owners and they have taken

additional responsibility of providing foodstuffs at the door step of the beneficiary not free by the Fair Price Shop owners but on payment of adequate compensation to them for such additional work to be taken up by them.

8.4. Ld. Counsel appearing for the Central Government respondent nos. 5, 6, 7 and 8 taking us through the provision of Section 3 and 5 of the 'EC Act', provision of 'Central Control Order, 2001', 2013 Control Order for rural area and 2013 Control Order for urban area, different provision of 'NFS Act' and 'Central Control Order, 2015' submits that the **"Duare Ration Scheme"** framed by the State Government clearly transgress the limit of delegation and to buttress his submission it is submitted by him that the scheme framed by Government of NCT, Delhi by Notification dated 20.02.2021 was not permitted by the Central Government for implementation on the ground that the Scheme was named Mukhyo Mantri Ghar Ghar Ration Yojona. Provisions were there in that Scheme also for door step delivery of ration.

9. After hearing the learned Counsel for the parties we shall refer to relevant points raised by learned Counsels with reference to the provision of the 'NFS Act'.

The 'NFS Act' has been enacted with a view to implement the directive in Article 47 of the Constitution of India, the universal declaration of human rights and International covenant on economics, social and cultural rights to which India is a signatory. It is also an admitted fact that the 'NFS Act' makes paradigm shift in addressing the problem of Food Security-from the current welfare approach to a right based approach, besides expanding coverage of the Targeted Public

Distribution System. Now the receipt of entitled quantities of quality food grains at highly subsidised prices is a legal right of eligible beneficiaries.

9.1. Ld. Advocate General has laid much emphasis on the statement of object and reasons of 'NFS Act' but we are of the view that with the underlying object and reasons the statute having been enacted by the sovereign parliament it would suffice to refer to the relevant provisions contained in the statute so far as interpretation to the extent as to whether the **“Duare Ration Scheme”** has transgressed the sphere of delegation made in the parent statute.

9.2. Let us see first the definitions in the 'NFS Act' relied on by learned Counsel for the parties. Relevant definitions are reproduced below :-

Section 2(2) defined “central pool” and it reads as follows:

‘(2) ‘central pool’ means the stock of food grains which is,— (i) procured by the Central Government and the State Governments through minimum support price operations; (ii) maintained for allocations under the Targeted Public Distribution System, other welfare schemes, including calamity relief and such other schemes; (iii) kept as reserves for schemes referred to in sub-clause (ii)’

Section 2(3) defines ‘eligible households’ which reads thus:

'(3) "eligible households" means households covered under the priority households and the Antyodaya Anna Yojana referred to in sub-section (1) of section 3'

Section 2(4) defines 'Fair Price Shop' which reads thus:

'(4) "fair price shop" means a shop which has been licensed to distribute essential commodities by an order issued under section 3 of the Essential Commodities Act, 1955 (10 of 1955), to the ration card holders under the Targeted Public Distribution System'

Section 2(12) defines 'other welfare schemes' which reads thus:

'(12) "other welfare schemes" means such Government schemes, in addition to the Targeted Public Distribution System, under which foodgrains or meals are supplied as part of the schemes'

Section 2(14) defines priority households which reads thus:

'(14) "priority households" means households identified as such under section 10'

Section 2(16) defines 'ration card' which reads thus:

*'(16) "ration card" means a document issued under an order or authority of the State Government for the purchase of essential commodities **from** the fair price shops under the Targeted Public Distribution System'*

Section 2(23) defines 'Targeted Public Distribution System':

*'(23) "Targeted Public Distribution System" means the system for distribution of essential commodities to the ration card holders **through** fair price shops'.*

9.3. From the aforesaid definitions it is clear that the Act covers two types of beneficiaries i.e. Priority House Hold and Antyodaya Anna Yojana. Fair Price Shop means the existing Fair Shop who have been issued license to distribute essential commodities. Ration card is a document issued under an order or authority of the State Government for the purchase of essential commodities **from** the Fair Price Shop under the Targeted Public Distribution System. Targeted Public Distribution System is system for distribution of essential commodities to ration card holders **through** Fair Price Shop.

9.4. Mr. Kar, learned Senior Counsel appearing for the appellant in one of the appeals and Mr. Datta, learned Counsel appearing for the appellant in another appeal lays stress on the word '**from**' the Fair Price Shops in Section 2(16) and learned Advocate General lays stress on the word '**through**' Fair Price Shops in Section 2(23). It is argued by Mr. Kar, and Mr. Datta that the beneficiaries have to

lift their entitled foodstuffs from the Fair Price Shop. Learned Advocate General on the other hand submits that the State can go further for distribution of essential commodities to the ration card holders through Fair Price Shop and the word **'through'** cannot be limited to putting liability on the ration card holder to come to Fair Price Shop to lift his entitlement.

9.5. It is common to find in a statute "Definitions" of certain words and expressions used elsewhere in the body of the statute. The object of such definition is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply. The legislature has power to define a word even artificially. So the definition of a word in the definition Section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to "mean" such and such, the definition is *prima facie* restrictive and exhaustive.

9.6. In the definition section of 'NFS Act' we find that the definitions are restrictive and exhaustive by use of words means. In view of such fact the use of word **'from** the Fair Price Shop' in Section 2(16) and **'through** Fair Price Shop' in Section 2(23) makes no difference as urged by the learned Counsel for the parties. Even if we view the matter literally or grammatically the word **'through'** has been used in Section 2(23) as a preposition which is nothing but a function word to indicate means, agency or intermediacy. If we understand the word literally also the Fair Price Shop is only an agency or means or intermediate stage to pass on the foodstuff to the beneficiaries at the subsidised rate as defined in Section 2(23).

The word '**through**' in Section 2(23) therefore does not in any way extend the sphere of function of a Fair Price Shop as urged by learned Advocate General.

9.7. "**Duare Ration Scheme**" by the State having been made in pursuance of provisions under Sections 12 and 32 of 'NFS Act'. It is apposite to reproduce those provisions for ready reference :-

12. Reforms in Targeted Public Distribution System.—

(1) The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act.

(2) The reforms shall, inter alia, include—

(a) doorstep delivery of foodgrains to the Targeted Public Distribution System outlets;

(b) application of information and communication technology tools including end-to-end computerisation in order to ensure transparent recording of transactions at all levels, and to prevent diversion;

(c) leveraging "aadhaar" for unique identification, with biometric information of entitled beneficiaries for proper targeting of benefits under this Act;

(d) full transparency of records;

(e) preference to public institutions or public bodies such as Panchayats, selfhelp groups, cooperatives, in licensing of fair price shops and management of fair price shops by women or their collectives;

(f) diversification of commodities distributed under the Public Distribution System over a period of time;

(g) support to local public distribution models and grains banks;

(h) introducing schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in order to ensure their foodgrain entitlements specified in Chapter II, in such area and manner as may be prescribed by the Central Government

32. Other welfare schemes.—*(1) The provisions of this Act shall not preclude the Central Government or the State Government from continuing or formulating other food based welfare schemes.*

(2) Notwithstanding anything contained in this Act, the State Government may, continue with or formulate food or nutrition based plans or schemes providing for

benefits higher than the benefits provided under this Act, from its own resources.

10. From cursory reading of Section 12, it is clear that the Section provides for reforms in the Targeted Public Distribution System. It provides that the Central Government and the State Government shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the rule envisaged for them in the Act. Section 32 provides that the State Government may continue or formulate other food based welfare scheme. It is also provided in sub-Section 2 of Section 32 that the State government may continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided under this Act from its own resources.

11. Relying on Section 12(2)(a), Mr. Kar learned Senior Counsel appearing for the appellant in one of the appeals and Mr. Datta, learned Counsel appearing for the appellant in one of the appeals submits that the Act in clear term provides for doorstep delivery of food grains to the Targeted Public Distribution System outlet i.e. Fair Price Shops.

Taking us through provisions of Section 32 as reproduced *supra*, learned Advocate General submits that the State Government is not precluded by the Act from continuing or formulating other food based welfare scheme and further sub-Section 2 authorise the State Government to continue with or formulate food or nutrition based plans and schemes providing for benefits higher than the benefits provided under this Act, from its own resources starting with a non-obstante

clause. The **“Duare Ration Scheme”** therefore cannot be said to have transgressed the delegated power made by the Act. In order to properly appreciate the argument advanced by learned Counsel for the parties, it is beneficial to reproduce Section 24 of the Act here. Section 24 of the Act reads thus :-

24. Implementation and monitoring of schemes for ensuring food security.—(1) The State Government shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with guidelines issued by the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State.

(2) Under the Targeted Public Distribution System, it shall be the duty of the State Government to—

*(a) take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I, organise intra-State allocations for delivery of the allocated foodgrains through their authorised agencies **at the door-step of each fair price shop**; and*

(b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.

(3) For foodgrain requirements in respect of entitlements under sections 4, 5 and section 6, it shall be the responsibility of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I for persons belonging to eligible households and **ensure actual delivery of entitled benefits**, as specified in the aforesaid sections.

(4) In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapter II, the State Government shall be responsible for payment of food security allowance specified in section 8.

(5) For efficient operations of the Targeted Public Distribution System, every State Government shall,—

(a) create and maintain scientific storage facilities at the State, District and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution

*System and other food based welfare schemes;
(b) suitably strengthen capacities of their Food
and Civil Supplies Corporations and other
designated agencies;*

*(c) establish institutionalised licensing
arrangements for fair price shops in accordance
with the relevant provisions of the Public
Distribution System (Control) Order, 2001 made
under the Essential Commodities Act, 1955 (10
of 1955), as amended from time.*

12. Furthermore we have to understand the meaning of words 'benefits' occurring in sub-Section 2 of Section 32 and 'welfare scheme' occurring in sub-Section 1 of Section 32. So far as 'welfare scheme' is concerned, it has been defined in sub-Section 2(12) to mean such Government schemes, in addition to the Targeted Public Distribution System, under which food grains or meals are supplied as part of the scheme. Sub-Section 1 of Section 32 if read in conjunction with Section 2(12), it would mean Government's scheme under which food grains or meals are supplied as part of the schemes and it is in addition to the Targeted Public Distribution System. So sub-Section 32(1) in our view does not give any authority to the State Government to travel beyond the role assigned to it in Section 24 read with Section 12 of the Act.

13. Coming to the word 'benefits' occurring in sub-Section 2 of Section 32, it is nothing but the benefits spoken of in Sections 3, 4, 5 and 6 of Chapter II. Sub-Section 2 authorises the State Government to continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided in 'NFS Act' from its own resources, notwithstanding anything contained in this Act. If sub-Section 2 of Section 32 is read with Sections 12 and 24, it would be clear that this sub-Section also does not authorise the State to travel to an extent not delegated to it to tread.

14. Section 12(2)(a) on the other hand in specific term provides for doorstep delivery of food grains to the **Targeted Public Distribution System** outlets and in sub-Section 1 of Section 12, it is clearly mentioned that the Central and State Government shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act. Other reforms have been enumerated in Section 12 with which we are not concerned in the present lis. Section 24(2)(a) specifically provides that it is the duty of the State Government to take delivery of food grains from the designated depots of the Central Government in the State, at the prices specified in Schedule-I, organise intra-State allocations for delivery of the allocated food grains through their authorised agency at **the doorstep of each Fair Price Shop**. Sub-Section 2(b) vests an obligation on the State Government to ensure actual delivery or supply of the food grains to the entitled person at the prices specified in Schedule-I. In sub-Section 3 of Section 24, the State Government has been obliged to take delivery of food grains from the designated depots of the Central

Government in the State, at the prices specified in Schedule-I for persons belonging to eligible households and ensure actual delivery of entitled benefits as specified in the aforesaid Sections.

15. Though much stress is laid on the words 'ensure actual delivery' in sub-Section 2(b) and sub-Section 3 of Section 24 which according to learned Advocate General covers the entire **"Duare Ration Scheme"** it would suffice to say that the phrase 'actual delivery or supply' in Section 24(2)(b) and sub-Section 3 of Section 24 has been qualified by the phrase **as specified in the aforesaid Sections**. So in our view, therefore, the aforesaid facts **"actual delivery or supply"** as occurring in Section 24(2)(b) and sub-Section 3 of Section 24 does not extend to supply of foodstuffs to the beneficiaries at their doorstep through the agency of Fair Price Shops.

16. Many more Sections have been placed before us by the Counsel for either parties to buttress their submissions but those are not of any additional benefit as we found on perusal of them and they have no potency to alter our view as taken *supra*.

17. Hon'ble Single Judges in reaching their conclusion in the writ petitions, orders passed in which are under challenge before us, have not properly construed the "benefits" spoken of *supra*, the meaning of "welfare scheme" that the State can undertake and the role assigned to the State Government in different Sections of the Act and Their Lordships in their individual capacity in different Bench having proceeded on wrong premises have arrived at wrong conclusions.

18. Ld. Advocate General with all the vehemence at his command submits that the **“Duare Ration Scheme”** made by the State does not in any way supplant the provisions of the enabling Act but it supplement the enabling Act when the State Government has proceeded further or farther for the welfare of the poor and needy people.

19. Ld. Advocate General may be right in his submission but as discussed *supra* role having been defined in the Act itself for the State Government, the State Government has no authority to bring into existence **obligation** on the part of the Fair Price Shop dealers to do the additional work though for adequate compensation as provided in the **“Duare Ration Scheme”**.

The outer limit of delivery of the State having been fixed in the enabling Act, the State on the pretext of welfare or to supplement the enabling Act cannot transgress that outer limit. The sovereign parliament in their wisdom have fixed the outer limit of delivery of foodstuffs after due regard to the aims and objectives of the Act. Various provisions have been made, which are essentially “machinery provisions” for proper monitoring, check on pilferage and reach out of the benefits to actual beneficiaries. The wisdom of the legislature cannot be questioned as to why fair price shop was chosen by the Act as outer limit of delivery and why they did not explore little further to fix it at the doorstep of the beneficiaries. We cannot hold that the distance from the fair price shop to the doorstep of the beneficiaries is an unexplored distance or an extra mile only. The legislature has not covered this extra mile or unexplored distance in it’s wisdom that legislative wisdom can

neither be questioned in “Judicial Review” nor the gap can be filled up by exercise of plenary power under Article 226 of the Constitution of India.

20. We are, therefore, constrained to hold that the State Government has transgressed the limit of delegation by obliging the Fair Price Shop dealers to distribute the rations to the beneficiaries at their doorstep in absence of any authority to that effect in the enabling Act i.e. ‘NFS Act’. If the ‘NFS Act’ is amended by the wisdom of the Union Legislature i.e. Parliament for doorstep delivery of food grains to the beneficiaries or invest any such power to the State Government then only such a scheme can be made by the State and that can be said to be in sync with the enabling Act.

21. Accordingly, we hold that the State Government in making the **“Duare Ration Scheme”** has exceeded the limit of delegation by the enabling Act.

22. Question Nos. (i) and (v) as framed in paragraph 6 *supra* are answered accordingly.

23. In view of our finding *supra* question no.(ii) has no relevance.

24. Now, coming to question nos. 3 and 4 framed *supra* in paragraph 6, it is found that the Governor by invoking power under Section 3 of the ‘EC Act’ has amended the ‘Rural Control Order, 2013’ and ‘Urban Control Order, 2013’ obliging the Fair Price Shop dealers therein to distribute the entitlement i.e. the ration at the doorstep of the beneficiaries. The amendment is impugned on the ground already delineated *supra*.

25. The main thrust of argument by Mr. Kar, learned Senior Counsel is that after coming into force of the 'Central Government Control Order, 2015', the 'Rural Control Order, 2013' and 'Urban Control Order, 2013' have become non-existent as the 'Central Control Order, 2001' has been repealed by the 'Central Control Order, 2015' hitting at the very root of existence of 'Rural Control Order, 2013' and 'Urban Control Order, 2013'.

From reading of 'Central Control Order, 2015', it is however found that it has been made in exercise of power conferred by Section 3 of the 'EC Act' and in supersession of the 'Central Control Order, 2001'. In Clause 2 of 'Central Control Order, 2015', it is specifically provided that provision of the 'Central Control Order, 2001' shall continue to have effect as against the corresponding provisions of this order in any State which has not implemented the 'Food Security Act' or is implementing the said Act only in part.

Ld. Advocate General submits that taking into consideration the mechanism which has been provided in the 'NFS Act' and the 'Central Control Order, 2015' like monitoring etc. the 'NFS Act' has not yet been implemented in full in the State. It is submitted by Mr. Kar, learned Senior Counsel appearing for the appellants that the 'NFS Act' has been implemented in full force in the State and thereafter only the **"Duare Ration Scheme"** was made.

26. When learned Advocate General being the highest officer of the State and supposed to be in know of the facts is submitting that 'NFS Act' has not yet been implemented in full in the State, in absence of positive averments in the pleadings

in the writ petition by the petitioner-appellant, we cannot simply deny the assertion made by learned Advocate General. Clause 2 of 'Central Control Order, 2015' clearly negated the contention raised by Mr. Kar, learned Senior Counsel appearing for the appellant and it cannot be held that 'Rural Control Order, 2013' and 'Urban Control Order, 2013' are non-existent in view of supersession of 'Central Control Order, 2001'. In view of such fact the amendment carried out by the State Government in both the aforesaid Control Order of 2013 cannot be held to be invalid.

In view of our discussion *supra* question no. (vi) framed in paragraph 6 *supra* is also answered accordingly.

27. In view of our discussion *supra* we are constrained to hold, in fine, that "**Duare Ration Scheme**" is *ultra vires* the 'National Food Security Act, 2013' and is therefore a nullity in the eye of law.

28. Orders passed in WPA No. 17375 of 2021 and in WPA No. 18630 of 2021 are hereby set aside.

29. Both the appeals are accordingly disposed of.

30. In view of the order in the appeal, the I.A., being numbered CAN 1 of 2022 also stands disposed of.

31. There shall be no order, however, as to cost.

32. Pronounced in open Court on this day i.e. 28th day of September, 2022.

33. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Aniruddha Roy, J.)

(Chitta Ranjan Dash, J.)