

Urmila Devi Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-06-2015

Judge : The Honourable Chief Justice Dr. Dhananjaya Yeshwant Chandrachud, Pradeep Kumar Singh Baghel & Suneet Kumar

Appeal No. : Writ - C No. 58211 of 2014

Appellant : Urmila Devi

Respondent : State of U.P. and Others

Judgement :

Oral Judgment

Dr. D.Y. Chandrachud, C.J.

The present reference to the Full Bench has been occasioned by an order of the Division Bench dated 3 November 2014. Before we set out the issues which have been referred for adjudication by the Full Bench, a brief reference to the background in which the reference arose would be in order.

Clause 3 of the Uttar Pradesh Scheduled Commodities Distribution Order, 20041 provides that with a view to effecting a fair distribution of scheduled commodities, the State Government may issue directions under Section 3 of the Essential Commodities Act, 1955 to set up such number of fair price shops in an area and in

the manner as it deems fit. Clause 4 requires that a fair price shop be run through such person and in such manner as the Collector, subject to the directions of the State Government, may decide. A person appointed to run a fair price shop under sub-clause (1) acts as an agent of the State Government. Moreover, under sub-clause (3), a person so appointed is required to sign an agreement, as directed by the State Government, regarding the running of a fair price shop in terms of the draft appended to the Control Order before the competent authority prior to the coming into effect of the appointment. Several provisions have been thereafter made in the Control Order for identification of families living below the poverty line, the issuance of ration cards, the quantities that may be purchased, increase in the number of units and for dealing with malpractices, including in regard to the issuance of bogus ration cards. Clause 25 requires the agent to observe such conditions as the State Government or the Collector may, by an order in writing, direct from time to time in respect of opening of the shop, maintenance of stocks, supply and distribution of scheduled commodities, maintenance of accounts, keeping of registers, filing of returns, issuance of receipts and other matters. There is a prohibition on the transfer of an agency under Clause 26. Clause 27 provides for a penalty. In that clause, contraventions of the provisions of the Control Order, are liable to be punished in accordance with the orders issued by the State Government from time to time. Clause 28 provides for an appeal and is in the following terms:-

"28. Appeal. - (1) All appeals shall lie before the Concerned Divisional Commissioner who shall hear and dispose of the same or may by order delegate his/her powers to the Assistant Commissioner Food for hearing and disposing of the appeal.

(2) Any person aggrieved by an order of the Food Officer or the designated authority refusing the issue or renewal of a ration card or cancellation of the ration card may appeal to the Appellate Authority within thirty days from the date of receipt of the order.

(3) Any agent aggrieved by an order of the competent authority suspending or cancelling agreement of the fair price shop may appeal to the Appellate Authority

within thirty days from the date of receipt of the order.

(4) No such appeal shall be disposed of unless the aggrieved person or agent has been given a reasonable opportunity of being heard.

(5) Pending the disposal of an appeal the Appellate Authority may direct that the order under appeal shall not take effect until the appeal is disposed of."

In sub-clause (3) of Clause 28, an agent who is aggrieved by the order of a competent authority, suspending or cancelling an agreement of a fair price shop, has the remedy of an appeal to the appellate authority. Under Clause 28(5), the appellate authority is empowered, pending the disposal of the appeal, to direct that the order under appeal shall not take effect until the appeal is disposed of.

The issue which forms the bone of contention is whether, upon the suspension or cancellation of a licence of a fair price shop and pending the disposal of an appeal, it is open to the State Government to make an interim or temporary arrangement by the appointment of a new fair price shop holder. Initially, this issue came up for consideration before a Division Bench of this Court at Lucknow consisting of Uma Nath Singh and Anil Kumar, JJ in *Vinod Kumar Mishra Vs. State of U.P.*, through Secretary, Food and Civil Supplies and Ors.³ On 16 September 2011, the Division Bench issued an interim direction in the following terms:-

"We have heard learned counsel for parties and perused the pleadings of writ petition.

Of late we are noticing that on account of allotment of fair price shops on temporary basis, though under the resolution of Gaon Sabha, as a result of cancellation of earlier licence of fair price shops, lots of unnecessary litigations have been generated at the cost of public exchequer. Therefore, we direct the Principal Secretary, Food and Civil Supplies to ensure that till the matter is finally settled and the Statutory Appeal is decided, the fair price shops shall not be allotted on adhoc basis and shall be attached only to some other neighbouring fair price shops, in order to avoid creating third party rights.

This order shall be circulated to all the Divisional Commissioners and District Collectors forthwith for compliance by the Principal Secretary.

Registrar of this Court shall issue a copy of this order to the Principal Secretary, Food and Civil Supplies immediately for compliance.

List the matter on 28.09.2011 for arguments."

On 19 October 2011, another writ petition, Jagannath Upadhyay Vs. State of U.P., through Principal Secretary, Food and Civil Supplies and Ors.4, came up before the same Division Bench at Lucknow. The Division Bench in that case was seized of a grievance that though the appeal filed under Clause 28(3) was pending before the Commissioner, the State had proceeded to create third party rights. This, the Division Bench held, was contrary to the directions issued on 16 September 2011 at the interim stage in Vinod Kumar Mishra (supra). Though the directions which were issued on 16 September 2011 were of an interlocutory nature, this time, the Division Bench in Jagannath Upadhyay's case disposed of the writ petition finally in terms of the interim directions in the earlier case with the following observations:-

"Learned counsel for petitioner submitted that though appeal of petitioner filed under Order 28(3) of the U.P. Schedule Commodities Distribution Order, 2004 is pending before the Commissioner concerned still the respondents have proceeded to create a third party right which is contrary to the directions given in order dated 16.09.2011 passed in Writ Petition No. 11977 (MB) of 2010 (Vinod Kumar Mishra Vs. State of U.P. and others).

Thus, we take a serious view of the matter and with a note of caution dispose of this writ petition with direction to authorities to act in terms of the directions as contained in the aforesaid order which on reproduction reads as under:-

"We have heard learned counsel for parties and perused the pleadings of writ petition.

Of late we are noticing that on account of allotment of fair price shops on temporary basis, though under the resolution of Gaon Sabha, as a result of

cancellation of earlier licence of fair price shops, lots of unnecessary litigations have been generated at the cost of public exchequer. Therefore, we direct the Principal Secretary, Food and Civil Supplies to ensure that till the matter is finally settled and the Statutory Appeal is decided, the fair price shops shall not be allotted on ad hoc basis and shall be attached only to some other neighbouring fair price shops, in order to avoid creating third party rights.

This order shall be circulated to all the Divisional Commissioners and District Collectors forthwith for compliance by the Principal Secretary.

Registrar of this Court shall issue a copy of this order to the Principal Secretary, Food and Civil Supplies immediately for compliance.

List the matter on 28.09.2011 for arguments."

Writ petition thus stands disposed of."

Subsequently, Vinod Kumar Mishra's case (supra), in which interim directions had been issued on 16 September 2011, was heard by the Division Bench at Lucknow and was disposed of with the following observations:-

"Heard learned counsel for the parties and perused the record.

The licence of fair price shop of the petitioner was set aside by the appellate forum. Thereafter, it was restored and after restoration, the same was granted in favour of the private-opposite party.

Submission of learned counsel for the petitioner is that in view of settled law, the licence of fair price shop cannot be granted in favour of the private opposite party and it should have been restored in favour of the petitioner. In case, it is so, that aspect of the matter can be looked into by the District Supply Officer concerned. Accordingly, we give liberty to the petitioner to represent his cause before the District Supply Officer, District-Barabanki, who shall look into the matter and take a decision with regard to present controversy, in accordance with law, by passing a speaking and reasoned order expeditiously say preferably within a period of two months from the date of receipt of certified copy of the present order and

communicate the decision to the petitioner.

Subject to above, the writ petition is disposed of finally."

Thus, it is clear that in the original case in which an interim direction had been issued, namely, Vinod Kumar Mishra (supra), the final judgment of the Division Bench was that liberty was granted to the petitioner to represent his cause before the District Supply Officer, who was directed to take a fresh decision with a reasoned and speaking order. However, as we have noted above, in the meantime, in Jagannath Upadhyay's case (supra), the interim direction in Vinod Kumar Mishra's case, had been converted into a final operative direction. The consequence thereof was a direction to the effect that the Principal Secretary (Food and Civil Supplies) would ensure that until an appeal is decided under Clause 28(3), the fair price shop should not be allotted on an adhoc basis and units of the existing fair price shop shall be attached only to some other neighbouring fair price shop without creating third party rights. In Wahid Khan Vs. State of U.P. and others⁵, which was decided on 21 June 2012, the authorization of the petitioner for conducting a fair price shop had been cancelled and an appeal was pending. In the writ petition, it was urged that pending the disposal of the appeal, no third party rights should be created. The Division Bench, while dismissing the writ petition, had observed as follows:-

"A fair price shop is settled under the Control Order 2004 for the benefit of the card holders belonging to the poor strata of the society. After the cancellation of the authorization, the fair price shop owner is not left with any rights, to seek a direction for restraining the district administration to allot the shop to any other person during the pendency of the appeal. Where no interim order is granted by the Commissioner, the Court is not required to act against the very object of the scheme to provide for essential commodities at reasonable price to the poor persons on their door steps. The restriction on making fresh allotment causes extreme hardships to the poor persons for whose benefit the fair price shop is run. Such an order is against the object of public distribution system. It will be a travesty of justice to punish the poor people to travel long distances to collect the scheduled commodities from the fair price shop to which their cards are attached,

until the appeal of the person, who has been found guilty of the charges of irregularities, is decided."

Subsequently, another writ petition, Rajeshwar Prasad Vs. State of U.P. and 3 others⁶, came up before a Division Bench of this Court. In that case, the authorization of the petitioner to sell scheduled commodities had been cancelled for irregularities in distribution after a notice to show cause. The petitioner filed an appeal before the Commissioner under Clause 28 of the Control Order and thereafter moved this Court, seeking directions restraining the State from settling the shop afresh until his appeal was decided. In support of the writ petition, reliance was placed on the general mandamus, which was issued at Lucknow in Jagannath Upadhyay's case (supra). The Division Bench by a judgment dated 16 July 2014 held as follows :-

"5. We have, sitting in Division Bench, issued several orders clarifying that no general mandamus can be issued by this Court. The High Court in its extraordinary jurisdiction must confine itself to the facts of the case and issues raised before it. The Supreme Court has also cautioned that the High Courts should not ordinarily, unless it is imperative and in the interest of general public, issue any such directions, which result into serious injustice to large number of people. Where the fair price shop is cancelled and an appeal is pending, the card holders are attached to some other shops, which in rural areas are at the distances of several kilometers. The pendency of the appeals forces thousands of the beneficiaries under the Scheme living below poverty line and seeking benefit under the Antyodaya and Anyapurna Schemes to travel a long distance to collect their entitlement of scheduled commodities.

6. The object of the Public Distribution Scheme is to provide scheduled commodities to the beneficiaries at their doorsteps regularly on fair and reasonable prices. The beneficiaries cannot be punished on account of irregularities committed by the fair price shop dealer, who has suffered cancellation of the licence and has filed an appeal. In such cases fresh shops should be immediately settled for the benefits of the beneficiaries under the Scheme subject to the result of the appeal.

7. We find that the general mandamus issued on 19.10.2011 is causing injustice to the general public specially poor persons, who have to travel several kilometers until the person, who has committed irregularities, gets a decision in his appeal.

8. We thus declare that firstly no such general mandamus can be issued by the Court and secondly the Court is not required to pass orders which ultimately result into hardships to the people at large.

9. If any Government Order has been issued in compliance with the directions of this Court dated 19.10.2011 by which a general mandamus is issued, such orders shall be forthwith withdrawn. The State Government will give publicity to the orders with directions that in cases of cancellations of fair price shop, the fresh fair price shop should be immediately settled for the convenience of the general public.

10. This writ petition has been filed within a few days of filing the appeal. There is no such delay much less unreasonable delay to interfere in the matter.

11. The writ petition is accordingly dismissed. A copy of the order will be given to Chief Standing Counsel for compliance."

The writ petition was accordingly dismissed. The Division Bench also observed that if any Government Order had been issued in compliance with the directions issued on 19 October 2011 in Jagannath Upadhyay's case (supra), that shall be withdrawn forthwith.

A Division Bench of this Court at Lucknow considered the provisions of Clause 28 of the Control Order in Vinod Kumar Vs. State of U.P. and others⁷. That decision was rendered on 19 August 2014. The Division Bench, while construing the provisions of Clause 28, observed as follows:-

"Clause 28 (3) provides for an appellate remedy before the Appellate Authority against an order of suspension or cancellation of an agreement in respect of a fair price shop. Under sub-clause (5), the Appellate Authority is duly empowered, pending disposal of the appeal, to direct that the order against which an appeal has been filed, shall not take effect until the appeal is disposed of. Clearly, therefore, the Appellate Authority is vested with the power to grant a stay, pending

disposal of an appeal, against an order of cancellation or, as the case may be, suspension of an agreement in respect of a fair price shop. Hence, the licence holder is entitled to pursue the remedy which is provided in Clause 28 of the Control Order. The Control Order has been made in accordance with the provisions of Section 3 of the Essential Commodities Act, 1955. A person aggrieved by the suspension or cancellation of the licence is entitled to move the Appellate Authority for an interim stay. If the licence holder either does not move an application for an interim stay, or having moved an application fails to obtain an order of stay, it would not then be possible for such a licence holder to urge that pending disposal of an appeal filed by him, no steps should be taken for making alternate arrangements until the appeal is finally disposed of. The mere filing of an appeal, as the provisions of Clause 28 would indicate, does not operate as a stay of the order which is impugned. Unless an application for the grant a stay is moved before the Appellate Authority and the Appellate Authority stays the order of suspension or cancellation, the order of suspension or cancellation, as the case may be, would continue to remain in force until the appeal is finally disposed of. Having regard to this position in law which clearly emerges from Clause 28, it would not be correct to hold that the mere filing of an appeal before the Appellate Authority would either operate as a stay of the order of suspension or cancellation or preclude the State from making alternate arrangements for the due distribution of essential commodities pending disposal of the appeal. The State may either attach the card holders of the erstwhile licensee, whose licence has been suspended or cancelled, to another fair price shop or may appoint a fresh licensee to whom the fair price shop may be allotted subject to the result of the appeal. In these matters, it is necessary not to lose sight of the fact that the private interest of the licence holder is always subordinate to the public interest in ensuring the due and proper supply of food grains to residents of the area. In a given case, the State may, if it is of the view that an order of attachment of the card holders to another fair price shop would be administratively efficient, pass such an order. However, it may well happen that attaching the card holders to another fair price shop would entail and require the card holders to traverse a long distance which would be inconvenient and ultimately result in seriously affecting the right of the residents to an efficient supply of food grains under the public distribution system.

Ultimately, it is for the State to take a considered decision having regard to the predominant aspect of public interest in each case."

We may note, at this stage, that the Division Bench at Lucknow duly took note of the interim order which was passed in Vinod Kumar Mishra (supra) on 16 September 2011 and to the final order disposing of that petition on 12 December 2011. The Division Bench also took note of the judgment of a Division Bench in Wahid Khan (supra). The attention of the Division Bench at Lucknow was, however, not drawn to the fact that the interim directions in Vinod Kumar Mishra's case had been embodied in the form of a final operative judgment in Jagannath Upadhyay's case. Had this fact been drawn to the attention of the Division Bench, it would be reasonable to assume that the conflict between two Division Benches would have resulted in a reference to a Full Bench.

The present reference before the Full Bench has been occasioned as a result of the conflict between the views expressed in the final judgment of the Division Bench in Jagannath Upadhyay's case and in Rajeshwar Prasad. We may also note that the view of the Division Bench in Wahid Khan is along the same lines as in Rajeshwar Prasad. The following questions have been referred for adjudication by the Full Bench in this reference :-

"(a) Whether the Division Bench in the case of Rajeshwar Prasad (supra) was justified in declaring the mandamus issued by a coordinate Bench as bad and thereby directing that any Government Order issued in pursuance thereof may be withdrawn forthwith or it should have referred the matter to a larger bench.

(b) Whether both the Division Benches in the case of Jagannath Upadhyay (supra) and Rajeshwar Prasad (supra) were correct in issuing general mandamus either way in the matter of fresh settlement of shop during the pendency of the appeal before the Commissioner or not."

We proceed to deal with each of the two questions separately.

Re Question '(a)'

The narration in the earlier part of this judgment would indicate that in Jagannath Upadhyay's case (supra), a Division Bench of this Court in its judgment dated 19 October 2011 had followed the interim directions issued in Vinod Kumar Mishra's case (supra) on 16 September 2011. The interim directions were to the effect that when an agent, whose authorization to conduct a fair price shop had been terminated, files an appeal under Section 28(3) of the Control Order, the Principal Secretary, Food and Civil Supplies, shall ensure that until the matter is finally settled and the statutory appeal is decided, the fair price shop shall not be allotted on an adhoc basis and that the unit holders would only be attached to a neighbouring fair price shop in order to avoid creating third party rights. In Jagannath Upadhyay's case, the Division Bench adopted the interim directions in the earlier decision and converted them into a final operative order in its judgment dated 19 October 2011. Thus, what was initially an interim direction assumed the character of a final judgment albeit in another case. Once this was the position, and when a subsequent Division Bench hearing Wahid Khan's case was apprised of the final judgment dated 19 October 2011 in Jagannath Upadhyay's case, the judgment of the coordinate Division Bench ought to have been followed or, if the Division Bench had reservations about the correctness of the view, a reference ought to have been made to the Full Bench. The judgment in Wahid Khan's case was rendered on 21 June 2012 and expressly refers to the final judgment dated 19 October 2011 in which a general mandamus had been issued. Subsequently, in Rajeshwar Prasad's case, which was decided on 16 July 2014, once again a reference was made to the final decision in Jagannath Upadhyay's case. Despite the fact that there was a final judgment in Jagannath Upadhyay's case, the Division Bench observed in its operative directions that the Government Order which had been issued in compliance with the directions of the Court on 19 October 2011, shall be withdrawn forthwith. On merits, the Division Bench took the view that the general mandamus which was issued on 19 October 2011 was causing injustice to the general public, specially those who are below the poverty line who had to travel large distances until the agent, whose authorization has been cancelled for irregularities, gets a decision on his appeal.

We will, as a larger bench, be required to consider the merits of the issues separately. But insofar as question '(a)' is concerned, this Court has to deal with

the issue of propriety and procedure. The law on the issue is clearly well settled. An earlier judgment of a coordinate Bench binds a subsequent Bench of the High Court. If a subsequent Bench, considering the same issue is of the view that the earlier decision is erroneous or has failed to consider the correct legal position, the correct course of action is to make an order referring the case to a larger bench. Consequently, if a Single Judge is inclined to disagree with the view of another Single Judge, a reference is made to a Division Bench and if a Division Bench is unable to subscribe to the view of an earlier Division Bench on the subject, a reference has to be made to the Full Bench. This is not merely a matter of procedure but of judicial propriety which is founded on sound considerations of public policy. Adjudication of cases in the High Court must have an element of certainty. Consistency in judicial decision making is a hallmark of a system based on the rule of law. Errors in judicial decision-making can be resolved by adopting recourse to well settled judicial procedures within the Court which consist of making a reference to the larger bench.

This position has been set out in several decisions of the Supreme Court. In *Tribhovandas Purshottamdas Thakkar Vs. Ratilal Motilal Patel*⁸, while dealing with a case in which a Judge of the High Court had failed to follow an earlier judgment of a larger bench in the same Court, the Supreme Court observed as follows :-

"...Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in *Bhagwan v. Ram Chand*: (AIR p. 1773, para 18).

"18. ... It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be re-considered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the

proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

We may advert to the decision in *State of Tripura Vs. Tripura Bar Association and others*⁹, in which the following position in law was laid down:-

"We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of *Durgadas Purkayastha*. If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench..."

In *Usha Kumar Vs. State of Bihar and others*¹⁰, the Supreme Court observed as follows:-

"...One Division Bench cannot ignore or refuse to follow the decision of an earlier Division Bench of the same Court and proceed to give its decision contrary to the decision given by the earlier Division Bench. If it is inclined to take a different view, a request should be made to the Chief Justice to refer the same to a Full Bench..."

For these reasons, we answer the first question, by holding that the Division Bench which decided the issue in *Rajeshwar Prasad* (supra) was not justified in declaring the mandamus issued by a coordinate Bench as bad and thereby directing that any Government Order issued in pursuance thereof may be withdrawn forthwith. The correct course of action for the Division Benches which heard *Wahid Khan* and *Rajeshwar Prasad* (supra), if they found themselves unable to agree with the earlier decisions, was to have referred the matter to a larger bench.

Re Question '(b)'

The second question which has been referred for decision by the Full Bench essentially turns upon the merits of the issue. The Control Order provides in Clause 28(3) a remedy of an appeal to an agent who is aggrieved by the suspension or cancellation of his agreement for a fair price shop. Sub-clause (5) of Clause 28 contemplates that pending the disposal of the appeal, the appellate authority may direct that the order under appeal shall not take effect until the appeal is disposed of.

Where a person whose authorization to conduct a fair price shop is aggrieved either by the suspension or cancellation of that authorization, such a person is entitled to pursue the remedy of a statutory appeal. In such an appeal, a provision for seeking an interim stay has been made in sub-clause (5) of Clause 28 of the Control Order. If the order of suspension or cancellation is not stayed, it necessarily continues to remain in force and effect pending the disposal of the appeal. If no application for stay is made at all, the same consequence would follow. Equally, if an application for stay has been made and refused, the order of suspension or cancellation, as the case may be, would continue to remain in force. The mere filing or pendency of an appeal or, for that matter, even the pendency of an application for stay in the appeal does not operate to stay the order of suspension or cancellation. An order of suspension or cancellation would continue to remain in effect unless and until it is either stayed at the interim stage under Clause 28(5) or upon the order being set aside at the final disposal of the appeal. In view of this clear position in law, it is not open to a person whose authorization is suspended or cancelled to seek an order from the writ court under Article 226 of the Constitution restraining the State from making alternate arrangements despite the fact that no stay operates during the pendency of the appeal. If a stay has been refused, undoubtedly, the agent whose authorization has been suspended or cancelled, may take recourse to his lawful remedies but unless and until the operation and effect of the suspension or cancellation has been stayed or set aside, the plain consequence in law is that it would continue to remain in full force and effect.

The provisions of the Control Order are conceived in public interest. The object and purpose of the Control Order is to enable the State to discharge its

fundamental duty and obligation of ensuring the equitable distribution of scheduled commodities. The Control Order is conceived in the interest of those to whom the public distribution system is intended, who belong to the marginalized sections of society, including persons below the poverty line. It is their interest which is paramount. The State has to make proper arrangements to ensure the equitable distribution of essential commodities to those persons and must be guided by the public interest in securing the equitable distribution of food grains, which is the paramount concern. It would, to our mind, be a travesty of justice to hold that a person whose authorization has been suspended or cancelled for irregularities in the distribution of food grains, has a right or entitlement to prevent the State from making alternate arrangements pending the disposal of the appeal, even though the order of suspension or cancellation has not been stayed. The person whose authorization has been cancelled or suspended is merely constituted as an agent of the State Government by Clause 4(2) of the Control Order. His rights and entitlement can certainly not be paramount over the public interest in securing proper distribution of food grains to the marginalized sections of society.

For these reasons, we hold that the Division Bench in Jagannath Upadhyay's case was not justified or, for that matter, correct in law in issuing a general mandamus to the effect that the Principal Secretary, Food and Civil Supplies shall ensure that till a statutory appeal is decided, the fair price shop shall not be allotted on an adhoc basis and shall be attached to some other neighbouring fair price shop. What arrangement should be made when an authorization has been suspended or cancelled, is an administrative matter for the State which has to bear in mind issues of public interest and local need over and above the private interest. In consequence, the Government Order which was issued on 10 July 2014 in pursuance of the directions issued by the Division Bench in Jagannath Upadhyay's case (supra), decided on 19 October 2011, would have no meaning and must be recalled by the Principal Secretary, Food and Civil Supplies forthwith. As regards, the general mandamus which was issued by the Division Bench in Rajeshwar Prasad (supra), we have already held that if the Division Bench were to disagree with the earlier decisions, the correct course of action would have been to refer the matter to the Full Bench. Since, eventually the conflicting views have been referred to the Full Bench, we have put the matter to rest by this judgment.

We, accordingly, hold that the authorization granted to a person to conduct a fair price shop only constitutes such a person as an agent of the State Government under Clause 4(2) of the Control Order. If the authorization is suspended or cancelled, a remedy of an appeal is provided in Clause 28(3). During the pendency of an appeal, a provision has been made in Clause 28(5), for seeking a direction that the order under appeal shall not take effect until the appeal is disposed of. If the order of suspension or cancellation has not been stayed pending the disposal of the appeal, the cancellation or suspension, as the case may be, shall continue to remain in effect. The mere filing or pendency of an appeal or an application for stay does not result in a deemed or automatic stay of the order of suspension or cancellation. There is no such deeming provision. In such a situation, the State is at liberty to make necessary administrative arrangements to ensure the proper distribution of scheduled commodities based on the public interest in the proper functioning of the Public Distribution Scheme and on an assessment of local needs and requirements that would sub-serve the interest of the beneficiaries. We, therefore, hold that the interim mandamus in Vinod Mishra and the judgment in Jagannath Upadhyay's case (supra) which took a contrary view do not reflect the correct position in law and would consequently stand overruled. The Principal Secretary, Food and Civil Supplies, shall now on the basis of the present judgment, issue a circular to all the Divisional Commissioners and concerned officials of the State so that necessary steps in compliance are taken. The learned Standing Counsel has apprised the Court that the Government Order dated 10 July 2014 has since been withdrawn by the Principal Secretary, Food and Civil Supplies on 26 November 2014 and a new Government Order has been issued.

The reference to the Full Bench is answered in the aforesaid terms. The writ petition shall now be placed before the regular Bench in accordance with the roster of work for disposal in the light of this decision.

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