Peddada Venkata Ramana and ors. Vs. Government of Andhra Pradesh, Represented by Its Secretary, F and a (C.S Ii) Department and ors.

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Court : Andhra Pradesh

Decided On : Oct-12-1990

Reported in : 1991(1)ALT29

Judge : A. Lakshmana Rao and ;P.L.N. Sarma, JJ.

Acts : Andhra Pradesh Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973; Constitution of India - Articles 14 and 226

Appeal No. : Writ Petition No. 6407 of 1990

Appellant : Peddada Venkata Ramana and ors.

Respondent : Government of Andhra Pradesh, Represented by Its Secretary, F and a (C.S Ii) Department and ors.

Advocate for Def. : The Adv. General, ;The Govt. Pleader for Civil Supplies, ;C. Pattabhi Rama Rao and ;P. Venugopal, Advs.

Advocate for Pet/Ap. : E. Manohar, ;C. Sadasiva Reddy, ;S. Lakshman Reddy, ;A.T.M. Rangaramanujam and ;V.S.R. Anjaneyulu, Advs.

Disposition : Petition dismissed

Judgement :

A. Lakshmana Rao, J.

1. In this batch of writ petitions the validity of G.O.Ms.No. 19 Food & Agriculture (CS. II) Department, dated, January 8, 1990 issued by the State Government amending the provisions of the Andhra Pradesh Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973 (for short the Control Order) and the consequential notifications issued by the respective Revenue Divisional Officers/Sub-Collectors calling for applications for issue of authorisations to run fair price shops under the provisions of the Control Order is questioned.

2. The petitioners herein are those who have been granted authorisations to run fair price shops either by the District Collector or the Chairman, Zilla Abhivrudhi Sameeksha Mandali as the case may be under the Control Order, 1973 as amended from time to time.

3. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 read with the Order of the Government of India, Ministry of Food and Agriculture (Department of Food) G.S.R. No. 316(E) dated 20th June 1972 and the Order of the President of India G. S. R. No. 14 (E) dated 18th January 1973 and with the prior concurrence of the Central Government, the State Government made the Control Order, 1973 in G.O.Ms.No. 1088 Food & Agriculture (CS. V) Department, dated September 28, 1973 with a view to controlling the distribution of scheduled commodities. Clause 3 of the Control Order provides for issue of authorisation in favour of any institution or person to obtain and supply scheduled commodities to the cardholders, by the authorities mentioned therein (appointing authority). The authorisation is valid for a period of two years and it can be renewed on an application made in that regard. Clauses 4 to 16 which are not relevant for the purpose of these writ petitions, deal with the issue of supply cards to the members of the public, the distribution of scheduled commodities to the card holders by the authorised fair price shop dealers, the regulation of the issue of supply cards and the distribution of scheduled commodities and the conditions to be observed by the authorised fair price shop dealers. The authorisation shall be liable for suspension or cancellation as the case may be for any contravention of

the provisions of the Control Order or the conditions of the authorisation. A right of appeal is provided under Clause 17 to any person aggrieved by an order passed under Clause 3 granting or refusing to grant authorisation to any person. A further right of revision is provided under Clause 18 against any order passed under Clause 17. The Control Order was amended from time to time by the State Government and in this batch of writ petitions we are mainly concerned with the amendments made to Clauses 3, 17 and 18 of the Control Order, 1973 in G.O.Ms. No. 170, Food and Agriculture (CS.IV) Department, dated 18th April, 1984, G. O. Ms. No. 120, Food and Agriculture (CS. IX) Department, dated 27th February, 1988, G.O.Ms.No. 300, Food and Agriculture (CS.II) Department, dated 5th may, 1989. G.O.Ms.No. 889, Food Agriculture (CS II) Department, dated 31st October, 1989 and G.O.Ms.No. 19, Food and Agriculture (CS II) Department, dated 8th January, 1990. Prior to the amendment of the Control Order in G.O.Ms.No. 120, dated February 27, 1988, so far as the districts were concerned, the Revenue Divisional Officer was conferred power to issue authorisation and in so far as the twin cities of Hyderabad and Secunderabad were concerned, the Assistant Supply Officer was competent to grant authorisation to run a fair price shop. The particulars of the amendments to the extent they are relevant are as shown in the following tabular form:

Sl. Period G.O.No. Appointing Appellate Revisional

No. ---------- & Date Authority Authority Authority

From To

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1. 18-4-84 26-2-88 18-4-84 26-2-88 G.O.Ms.No.

170, dated :

18-4-1984

(i) Twin Cities Assistant Chief Commissio-

of Hyderabad Supply Rationing ner of Civil

and Secundera- Officer Officer Supplies

bad

(ii) Districts Revenue Joint Collector

Divisional Collector

Officer

2. 27-2-88 4-5-89 G.O.Ms.No.

120, dated :

27-2-1988

(i)Twin Cities Chief Minister Govern-

of Hyderabad Rationing nominated ment

and Secunde- Officer by Govern-

rabad ment

(ii)Districts Collector Chairman, Govern-

Zilla ment

Abhivrudhi

Sameeksha

Mandali

3. 5-5-89 -------- G.O.Ms.No.

300, dated :

5-5-1989

(i) Twin Cities Minister Government --------

of Hyderabad nominated

and Secundera- by Govern-

bad ment

(ii) Districts Chairman, Government

Zilla

Abhivrudhi

Sameeksha

Mandali

4.----- ------ G.O.Ms.No.

889, dated :

31-10-1989

(i)Twin Cities Minister Chief -------

of Hyderabad nominated Minister

and Secundera by Govern-

bad ment

(ii) Districts Chairman, Chief

Zilla Minister --------

Abhivrudhi

Sameeksha

Mandali

5. 27-2-88 ----- G.O.Ms.No.

19, dated :

8-1-1990

(i) Twin Cities Assistant Chief Commissio-

of Hyderabad Supply Rationing ner of Civil

and Secundera Officer Officer Supplies

bad

(ii) Districts Revenue Joint Collector

Divisional Collector

Officer or

Sub-Collector

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4. Some persons other than the petitioners herein filed a batch of writ petitions (W.P. No. 215 of 1989 and batch) in this court questioning the validity of G.O.Ms.No. 120, Food & Agriculture (CS. H) Department, dated February 27, 1988 to the extent Clause 17 was amended. Those writ petitions were allowed and the impugned G.O. was quashed in its entirety by a Division Bench of this Court by its judgment dt. 27-10-1989 holding that the amended Clause 17 under which the Minister in so far as the twin cities of Hyderabad and Secunderabad were concerned and the Chairman, Zilla Abhivrudhi Sameeksha Mandali insofar as the districts were concerned were constituted as the appellate authorities, rendered Clause 18 illusory and nugatory. However, noticing that the amendment

introduced by G.O. Ms.No. 120 dated February 27, 1988 was an integrated scheme, the Division Bench quashed the entire G.O. and restored the position as it was prior to the amendment. The relevant portion of the judgment reads as follows :

'....We have therefore, no other alternative, but to strike down Clause 17 as it renders the existing provision Clause 18 nugatory. The amendment introduced by G.O.Ms.No. 120 is an integrated scheme under which Clauses 3 and 17 are amended by conferring the original power on the District Collector and the appellate power on the Ministers. Though it is Clause 17 that is found to be bad, we quash G.O.Ms.No. 120 in its entirely as it is the District Collector that is now made the original authority under the amended provision. By striking down Clause 17, the old provision is restored under which the District Collector was the Appellate Authority. The same authority cannot act as the original authority and also the Appellate Authority and therefore, G.O.Ms.No. 120 in its entirety deserves to be quashed.

In the result, the writ petitions are allowed, the impugned G.O. is quashed and the position would be as it was prior to the amendment.....'

5. During the pendency of W.P.No. 215 of 1989 and batch, the State Government further amended Clauses 3, 17 and 18 of the Control Order, I973 by CO.Ms.No. 300, Food and Agriculture (CS. II) Department, dt. May 5, 1989. G.O.Ms.No. 889, Food and Agriculture (CS. II) Department, dated October 31, 1989 was issued further amending Clause 17 as specified in the above tabular form. Questioning both those GOs. a batch of writ petitions (W.P. No. 8671 of 1989 and batch) had been filed. Those writ petitions also were allowed by the same Division Bench by its judgment dated December 6, 1989 and both the G.Os. were quashed. The relevant portion of the judgment is as follows :

'As the amendments introduced by these G.Os. are quashed, the orders passed thereunder are also quashed. But, the matter cannot be left in vacuum as it relates to supply of essential commodities. It would take necessarily some lime to appoint dealers on a regular basis by the competent authority as the procedure by way of calling for applications etc., has to be complied with. We, therefore, hold that the

authorisations issued by the appointing authority and which are subsisting now shall be treated as temporary authorisations Till regular appointments are made under the provisions of the Order as it stood prior to G.O.Ms.No. 120 dated 27-2-1988. The result would be the status quo ante is restored. The authorisations issued under Section 3 shall be continued on a temporary basis till regular authorisations are issued after complying with the procedure contemplated under the Scheduled Commodities Order.'

6. Thus, this Court quashed all the three Government orders, viz., G.O. Ms. No. 120, dated February 27, 1988, G.O. Ms. No. 300, dated May 5, 1989 and G.O. Ms. No. 889, dated October 31, 1989 made by the State Government amending the provisions of the Control Order, 1973. While quashing G.O. Ms. No. 120, dated February 27, 1988, this Court directed that the position as it was prior to the amendment shall be maintained. While quashing G.O. Ms. No. 300, dated May 5, 1989 and G.O. Ms. No. 889, dated October 31, 1989 it was directed that the authorisations which were subsisting on the date of the judgment i.e., December 6, 1989 shall be treated as temporary authorisations till regular appointments were made under the provisions of the Control Order, 1973 as it stood prior to the amendment by G.O. Ms. No. 120 dated February 27, 1988.

7. In view of the judgments referred to above, the State Government amended the Control Order, 1973 by G.O. Ms. No. 19, Food & Agriculture (CS. II) Department, dated January 8, 1990 with retrospective effect from February 27, 1988 i.e., the date on which G.O. Ms. No. 120, dated February 27, 1988 was issued, restoring Clauses 3, 17 and 18 of the Control Order, 1973 as they existed prior to February 27, 1988. Pursuant to the directions of the State Government, the respective Revenue Divisional Officers/Sub-Co Hectors issued notifications calling for applications for appointment of fair price shop dealers on a regular basis. Questioning G.O. Ms. No, 19, dated January 8, 1990 and the notifications issued by the respective Revenue Divisional Officers/Sub-Collectors inviting applications for appointment of fair price shop dealers on a regular basis, these writ petitions have been filed.

8. It is stated that the writ petitioners had been granted authorisations on a regular basis by either the Collector or the Chairman of the Zilla Abhivrudhi Sameeksha Mandali as the case may be on the basis of the selection after following the prescribed procedure, before G.O. Ms. No. 120, dated February 27, 1988 and G.O. Ms. No. 300, dated May 5, 1989 were quashed by this Court and those orders had become final.

9. It is submitted by Sri E. Manohar, Sri C. Sadasiva Reddy, Sri S. Lakshma Reddy, Sri A.T.M. Ranga Ramanujam and Sri V.S.R. Anjaneyulu the learned counsel appearing for the writ petitioners :

(1) The orders appointing the writ petitioners as the fair price shop dealers were not the subject matter of the two batches of writ petitions disposed of by this court on October 27, 1988 and December 6, 1989 respectively. Therefore, the declaration by the Division Bench that the authorisations which were subsisting on the date of the judgment shall be treated as temporary authorisations till regular appointments are made under the provisions of the Control Order, 1973 as they stood prior to G.O. Ms. No. 120, dated February 27, 1988 is not applicable to and binding on the writ petitioners herein.

(2) The declaration referred to above was given only in W.P. No. 8671 of 1989 and batch while quashing G.O. Ms. No. 300, dated May 5, 1989 and G.O. Ms. No. 889, dated October 31, 1989 and no such declaration was given while quashing G.O. Ms. No. 120, dated February 27, 1988. Therefore, the declaration does not cover the appointments made by the Collector pursuant to G.O. Ms. No. 120, dated February 27, 1988.

(3) In any event, the declaration of this Court in W.P. No. 8671 of 1989 and batch that the authorisations shall be treated as temporary applies only to the writ petitioners therein and not to the writ petitioners herein who were not parties to those writ petitions.

(4) In either of the batch of writ petitions disposed of by this Court, order of appointment of any fair price shop dealer was not challenged and therefore, the Division Bench was not legally competent to declare that the subsisting

authorisations were to be treated as temporary.

(5) The judgments of this Court in W.P. No. 215 of 1988 and batch dated October 27, 1988, and W.P. No. 8671 of 1989 and batch dated December 6, 1989 and in particular the declaration that the authorisations subsisting on the date of the judgment shall be treated as temporary authorisations are legally unsustainable and are per incuriam.

(6) The two judgments referred to above have been rendered, affecting the rights of the writ petitioners herein, without hearing them and therefore they are entitled to question the validity of those judgments.

(7) All the writ petitioners were selected and appointed as fair price shop dealers on a regular basis in accordance with law by an authority who was competent to make such appointments on the dates they were made. In any event, by the application of the de facto doctrine such appointments have to be upheld.

(8) The State Government has no power to amend the provisions of the Control Order, 1973 with retrospective effect.

(9) CO. Ms. No. 19, dated January 8, 1990 does not contain any provision invalidating the appointments of the writ petitioners as fair price shop dealers and therefore, the notifications issued by the Revenue Divisional Officers/Sub-Collectors inviting fresh applications are invalid.

(10) The two judgments of this Court referred to above, G.O. Ms. No. 19, dated January 8, 1990 and the action of the concerned Revenue Divisional Officers/Sub-Collectors are violative of the principles of natural justice; and

(11) Having been appointed on a regular basis as fair price shop dealers the writ petitioners have a fundamental as well as a statutory right to carry on such trade/business and they cannot be deprived of such a right except in accordance with law.

10. It is, however, submitted by the learned Advocate General appearing for the State. Sri C. Pattabhi Rama Rao and Sri P. Venugopal, the learned counsel

appearing for the contesting respondents that when a Division Bench of this Court had quashed the G.Os. amending the provisions of the Control Order, 1973 and declared in one case that the position would be as it was prior to G.O. Ms. No. 120, dated February 27. 1988 and in the other case that the authorisations subsisting on the date of the judgment shall be treated as temporary till regular appointments were made under the provisions of the Control Order, 1973 as it stood prior to G.O. Ms. No. 120, dated February 27,1988, it would not be open to another Division Bench of this Court to adjudicate upon and decide whether the decisions of the earlier Division Bench were valid or not. It is urged that in view of the two judgments of this Court in W.P. No. 215 of 1988 and batch, dated October 27, 1988 and W.P. No. 8671 of 1989 and batch, dated December 6, 1989, the State Government is bound to make regular appointments of fair price shop dealers under the provisions of the Control Order, 1973 as it stood prior to G.O.Ms.No. 120 dated February 27, 1988 treating all the subsisting authorisations as temporary authorisations and G.O. Ms. No. 19 dated January 8, 1990 had been issued by the State Government in order to implement the judgments of this Court. Even without issuance of any such Government Order, it is asserted that the position would have been the same. It is vehemently contended by the learned Advocate Genera' as well as the other learned counsel appearing for the respondents that the writ petitioners do not have any fundamental right to carry on trade/business as fair price shop dealers and question of giving any notice to the writ petitioners for setting aside their appointments does not arise when this Court had quashed the G.Os. amending the provisions of the Control Order, 1973 and declared that all the subsisting authorisations shall be treated as temporary till regular appointments were made under the provisions of the Control Order, 1973 as it stood prior to the amendments made after February 27, 1988. In that context. It is argued that when the Control Order, 1973 had been amended by G.O. Ms. No. 19, dated January 8, 1990, which function is legislative in character, question of violation of principles of natural justice does not arise.

11. In the first instance, we take up for consideration the point relating to the binding effect of the two earlier judgments of the Division Bench of this Court in W.P. No. 215 of 1988 and batch dated October 27, 1988 and W.P. No. 8671 of 1989 and batch dated December 6, 1989. In both those batches of writ petitions,

the validity of the amendments made to the provisions of the Control Order, 1973 by the State Government was questioned. By those amendments, Clauses 3, 17 and 18 of the Control Order, 1973 relating to grant of authorisation, filing of appeal and revision respectively have been modified by substituting one authority in place of the other. Questioning the competence of the State Government to make such amendments as well as the arbitrariness and unreasonableness of the amendments, number of writ petitions were filed. The first batch of writ petitions was filed questioning the validity of G.O. Ms. No. 120 dated February 27, 1988 where under the Assistant Supply Officer was replaced by the Chief Rationing Officer so far as the twin cities of Hyderabad and Secunderabad are concerned, and the Revenue Divisional Officer was replaced by the Collector in so far as the Districts are concerned in the matter of granting of authorisation to run a fair price shop. Prior to the amendment, the appellate authority that was competent to entertain an appeal against an order refusing or granting authorisation so far as the twin cities of Hyderabad and Secunderabad are concerned, was the Chief Rationing Officer. He was replaced by the Minister nominated by the Government, by the amendment. So also, in the case of districts, the Joint Collector who was the appellate authority prior to amendment was replaced by the Chairman, Zilla Abhivrudhi Sameeksha Mandali. Prior to amendment, the authority who was competent to entertian the revision petitions in those matters was the Commissioner of Civil Supplies in respect of authorisation relating to a fair price shop situated in the twin cities of Hyderabad and Secunderabad. In respect of districts, the Collector was the competent authority to entertain revision petitions. In their place, after the amendment, the State Government was constituted as the competent authority to entertain the revision petitions. It may be noticed that the Chairman, Zilla Abhivrudhi Sameeksha Mandali is no other than a minister. The Division Bench considered the validity of the amendments made to the Clauses 3, 17 and 18 of the Control Order, 1973 and held that so far as Clause 3 relating to granting of authorisation was concerned, the amendment was quite valid. But, so far as the amendment of Clauses 17 and 18 was concerned, it was held that by reason of appointment of the Minister and the Chairman, Zilla Abhivrudhi Sameeksha Mandali respectively as the appellate authorities and by providing a right of revision against their orders to the State Government under Clause 18,

Clause 17 rendered Clause 18 illusory and nugatory, and those two Clauses 17 and 18 could not co-exist. However, having found that the amendment introduced by G.O. Ms. No. 120, dated February 27, 1988 was an integrated scheme, the Division Bench quashed the G.O. in its entirety. While quashing the impugned G.O., it was declared that the position would be as-it Was prior to the amendment. This judgment was rendered on Oct., 27, 1989. During the pendency of those writ petitions, the State Government further amended the Control Order, 1973 by G.O. Ms. No. 300, dated May 5, 1989 by appointing the Minister nominated by the State Government as the authority to grant authorisations in respect of fair price shops situated in twin cities of Hyderabad and Secunderabad and the Chairman, Zilla Abhivrudhi Sameeksha Mandali as the authority to grant authorisations in respect of fair price shops situated in the districts. Against the orders passed by them, a right of appeal was provided to the State Government. The right of further revision was taken away. Clauses 3, 17 and 18 of the Control Order, 1973 were thus amended. Again, by G.O. Ms. No. 889, dated October 31, 1989, Clause 17 was further amended by substituting the Chief Minister as the appellate authority in place of the Government. Those two Government Orders were questioned in W.P. No. 8671 of 1989 and batch. Those writ petitions were also allowed and both the impugned G.Os. were quashed as being arbitrary and unreasonable, by the judgment dated December 6, 1989. While quashing those G.Os. the Division Bench declared as follows:

"As the amendments introduced by these G.Os are quashed, the orders passed thereunder are also quashed. But, the matter cannot be left in vacuum as it relates to supply of essential commodities. It would take necessarily some time to appoint dealers on a regular basis by the competent authority as the procedure by way of calling for applications etc., has to be complied with. We, therefore, hold that the authorisations issued by the appointing authority and which are subsisting now shall be treated as temporary authorisations till regular appointments are made under the provisions of the Order as it stood prior to G.O.Ms. No. 120 dated 27-2-1988. The result would be the status quo ante is restored. The authorisations issued under Section 3 shall be continued on a temporary basis till regular authorisations are issued after complying with the procedure contemplated under the Scheduled Commodities Order.

12. It is no doubt true that none of the writ petitioners herein who had been appointed as fair price shop dealer under the amended provisions of the Control Order, 1973 which were subsequently quashed by this court in the judgments referred to above, was a party to those writ petitions. The main grievance of the writ petitioners herein is that when their appointment as fair price shop dealers under the amended provisions of the Control Order, 1973 was not questioned in either of those batch of writ petitions, the Division Bench was neither competent nor justified in declaring that all the authorisations subsisting on the date of the judgment shall be treated as temporary till regular appointments were made under the provisions of the Control Order as it stood prior to G.O.Ms. No. 120, dated February 27,1988, behind the back of the petitioners herein without hearing them. It is, therefore, vehemently contended that those judgments do not bind the writ petitioners.

13. It is pertinent to note that what was challenged in the earlier two batches of writ petitions was the validity of the amendments made by the State Government to the provisions of the Control Order, 1973 and the State Government was made a party. As pointed out by the Supreme Court in Sarkari Sasta Anaj Vikreta Sangh v. State of Madhya Pradesh, : AIR 1981 SC2030 amendment of Control Order is a legislative function. When the amendment of a Control Order is challenged as being arbitrary and unreasonable by the aggrieved persons, it would neither be necessary nor would it be possible to search for and implead all private parties who are likely to be affected in case the impugned provisions of law are quashed. The State Government which amended the provisions of the Control Order was made a party and it contested the writ petitions.

14. However, Mr. E. Manohar, the learned counsel appearing for the petitioners has placed strong reliance on the decision of the Supreme Court in Prabodh Verma v. State of Uttar Pradesh, : [1985]1SCR216 in support of his contention. In that case, the constitutional validity of two Uttar Pradesh Ordinances, namely, (1) the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U.P. Ordinance No. 10 of 1978) and (2) its successor Ordinance-The Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978 (U.P. Ordinance No. 22 of 1978) was

questioned before the Allahabad High Court. The first ordinance ceased to be effective by lapse of time and the second ordinance was struck down as being violative of Articles 14 and 16 of the Constitution of India. Aggrieved by that decision, an appeal was preferred before the Supreme Court. Allowing the appeal, the Supreme Court pointed out that the High Court ought not to have hoard and disposed of the writ petition without the persons who would be vitally affected by its judgment being before it as respondents or atleast some of them being before it as respondents in a representative capacity if their number was too large to join them as respondents individually. It would be necessary to refer to the relevant facts of the case in order to appreciate the decision rendered therein. On June 24. 1978, the Governor of Uttar Pradesh promulgated the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U.P. Ordinance No. 10 of 1978). The title of U.P. Ordinance No. 10 of 1978 stated that it was 'an ordinance to provide for the absorption of certain teachers in the institutions recognised under the Intermediate Education Act, 1921.' Questioning the validity of that ordinance, some aggrieved persons filed writ petitions before the Allahabad High Court. By the time those writ petitions reached for hearing, the ordinance ceased to operate on or about October 17, 1978 as the bill to repeal and re-enact could not be made into an Act and therefore, the Ordinance No. 10 of 1978 ceased to operate on or about October 17, 1978. Therefore, the writ petitions were dismissed as in fructuous as U.P. Ordinance No. 10 of 1978 had lapsed. Meanwhile, on October 7, 1978, the Governor of Uttar Pradesh promulgated the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978 (U.P. Ordinance No 22 of 1978) and it was given retrospective effect on and from June 24, 1978. The provisions of the U.P. Ordinance No. 22 of 1978 were in pari materia with those of U.P. Ordinance No. 10 of 1978. In pursuance of U.P. Ordinance No. 22 of 1978, directions were issued by the Secretary, Education Department, Government of Uttar Pradesh to fill the vacancies by making appointments from the reserve pool in accordance with the provisions of that Ordinance No. 22 of 1978. Thereafter, some teachers from the reserve pool were appointed to the posts which had fallen vacant. Thereupon, some, of the aggrieved persons filed the writ petition challenging the validity of the ordinance. By its judgment dated December 22, 1978, the Allahabad High Court

held that the U.P. Ordinance No. 22 of 1978 violated the provisions of Articles 14 and 16(1) of the Constitution of India and accordingly declared the Ordinance to be void. As a result of that judgment, 2,257 teachers who had been put in the reserve pool had been deprived some of their livelihood and others of their chance of livelihood. Pursuant to the decision of the Allahabad High Court, the State Government directed that the services of the reserve pool teachers who were already appointed could not be continued and that no fresh appointments should be made from the reserve pool. Several teachers from the reserve pool whose services were terminated pursuant to the decision of the High Court filed writ petitions before the Allahabad High Court contending that the termination of their services was illegal inasmuch as those who were appointed under U.P. Ordinance No. 22 of 1978 were not made parties to the petitions filed in the High Court and therefore, the judgment was not binding upon them. As those writ petitions were dismissed, they filed appeals before the Supreme Court. It was held by the Supreme Court that the High Court ought not have decided the writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or atleast some of them being before it as respondents in a representative capacity, if their number was too large, and therefore the Allahabad High Court ought not have proceeded to hear and dispose of the writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or atleast some of them being made respondents in a representative capacity. It may be noticed that the U.P. Ordinance No. 10 of 1978 which was subsequently replaced by the U.P. Ordinance No. 22 of 1978 was promulgated as the title of the Ordinance itself indicates for 'absorption for reserve pool teachers. It provided that the concerned authority (Inspector) should maintain in the prescribed manner a register of reserve pool teachers. It contained a provision that only the reserve pool teachers were to be appointed to those vacancies in recognised institutions which were to be filled by direct requirement. Thus, the ordinance itself was promulgated for the benefit of the reserve pool teachers. When such an ordinance was challenged in the Court in particular after number of reserve pool teachers had been appointed pursuant to the ordinance, without joining the necessary parties viz., the reserve pool teachers or atleast some of them in a representative capacity, the Supreme Court held that the

striking down of the ordinance without hearing the reserve pool teachers was illegal and improper.

15. In our considered opinion that decision has no application to the facts of the present case. The Andhra Pradesh Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973 had been made by the State Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act for the purpose of controlling and regulating the distribution of scheduled commodities to the members of the public. Clause 3 of that Order provides for issuance of authorisation to any institution or person to run a fair price shop. Against an order granting or refusing to grant authorisation, appeal is provided under Clause 17 to an authority mentioned therein and a revision is provided under Clause 18 against any order passed by the appellate authority. That control order had been made in the public interest and not for the purpose of conferring any benefit on any individual much less on a dealer in whose favour authorisation has been granted to run a fair price shop for the benefit of the public. When the State Government amended the provisions of Clauses, 3, 17 and 18 of the Control Order, 1973 re-constituting the original, appellate and revisional authority, the validity of the amendments was questioned by some of the aggrieved persons. Either before or after the filing of the writ petitions, the petitioners have been appointed as the fair price shop dealers in respect of some of the fair price shops situated in the State. This Court held after hearing the State Government that the amendments made by the State Government were arbitrary and unreasonable. It therefore quashed the G. Os amending the provisions of the Control Order, 1973. In those circumstances, we are unable to understand how the writ petitioners herein who have been granted authorisations under the Control Older, 1973 as amended by the State Government from time to time can be said to be necessary parties to the writ petitions in which the validity of the amendments has been challenged and how their non-joinder vitiates the judgments.

16. As held by this Court in B. Gopalaiah v. Government of Andhra Pradesh, : AIR 1969 AP204 where a provision of law or a scheme formulated by the Government is attacked either on the ground of discrimination or arbitrariness or

unreasonableness, it cannot be contended that persons likely to be benefitted by a discriminatory or arbitrary or unreasonable statute should be brought before the court before the statute is struck down. It wa6 observed :

'This is not case of discrimination of individual against individual. This is a case where a whole class of citizens have been discriminated against and the court cannot refuse to give relief to them on the ground that the class of persons who will be benefitted as a result of the discrimination are not before the Court. The person who complains of discrimination cannot be expected to search the country for all persons who are likely to be benefitted by its discriminatory policy. Of course, if the discrimination is in favour of an individual against an individual different considerations might arise. But this is not such a case. In my opinion, where a scheme formulated by the Government is attacked on the ground of its being discriminatory the position is precisely the same as if a statute is attacked as being discriminatory and it can never be an answer to such an attack that persons likely to be benefitted by a discriminatory statute should be brought before the Court before the statute is struck down.. ..' (under lining is ours).

17. In General Manager, South Central Railway; Secunderabad v. A.V.R. Siddhanti, : (1974)ILLJ312SC the decision of the Railway Board contained in administrative rules of general application regulating absorption on permanent basis, fixation of seniority, pay etc., of the employees was impugned as being violative of Articles 14 and 16 of the Constitution. A contention was raised that the writ petition was not maintainable without impleading the employees who are likely to be affected by the decision. Rejecting the contention, the Supreme Court pointed out that the relief was claimed only against the Railway which had been impleaded and as no list or order fixing the seniority of the persons aggrieved was challenged in the writ petition, the employees who. are likely to be affected as a result of the re-adjustment of the petitioners' seniority in accordance with the principles laid down in the Board's decision were at the most proper parties and not necessary parties and their non-joinder could not be fatal to the writ petition.

18. That view of the Supreme Court was reiterated in State of U.P. v. Ram Gopal, 1981 (2) Services Law Reporter p. 3. In this case, vires of Rules 7-A and 7-B of

the Uttar Pradesh Adheenasth Rajaswa Karyakari (Tehsildar) Sewa Niyamavali, 1966 was questioned. A question had arisen whether the rules can be declared ultra vires without impleading the persons likely to be affected by the deci sion. Referring to the decision of this Court as well as the decision of the Supreme Court referred to above, the Supreme Court re-affirmed the principle laid down in General Manager, South Central Railway, Secunderabad v. A.V.R. Siddhanti, : (1974)ILLJ312SC .

19. In the instant case, the validity of the amendment of certain clauses of the Control Order, 1973 as being violative of Article 14 of the Constitution of India on the ground of arbitrariness and unreasonableness was questioned. If some persons have been granted authorisations under arbitrary and unreasonable provisions either before or after the filing of the writ petitions, the persons who complain of such arbitrary and unreason able provisions cannot be expected to search for all such persons who were or are likely to be benefitted by such arbitrary or unreasonable provisions of law and implead them as parties. The attack in the writ petitions was not against any individual and it was an attack against the arbitrariness and unreasonableness of certain provisions of law. In view of the decisions referred to above, we do not, find force in the contention of the learned counsel for the petitioners.

20. It is, however, vehemently contended by the learned counsel for the petitioners that the Collector or the Chairman, Zilla Abhivrudhi Sameekhsa Mandali as the case may be who was constituted as the authority for granting authorisations under the provisions of the Control Order, 1973 by virtue of the impugned amendments of the Control Order cannot be treated as either an intruder or an usurper of an office but shall be considered as the one holding office under the colour of lawful authority even-though the provision under which he, was constituted as the competent authority to grant authorisations was held to be invalid. Therefore, what ever acts were done by them 'when they were clothed with the powers and functions of the office albeit unlawful have the same efficacy as acts done by an authority de jure.' Thus, according to the learned counsel, in view of the de facto doctrine, the appointments made either by the Collector or the Chairman, Zilla Abhivrudhi Sameeksha Mandali as the case may be shall be

deemed to be valid. In support of his contention the learned counsel has relied on the decisions in Immedisetti Ramkrishnaiah Sons, Anakapalli v. State of Andhra Pradesh , : AIR 1976 AP193 , Murlidhar Pradhan v. State of Orissa, : AIR1983 Ori80 and Gokaraju Ranga Raju v. State of Andhra Pradesh, : 1981 CriLJ876 The de facto doctrine was explained by Sir Asthosh Mukerji, J in Pulin Behari v. King Emperor, 1912 Vol. 15 Cal. L.J- 517 at p. 574 as

'the acts of the Officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are genereally as valid and binding, as if they were the acts of officers de jure.'

in Immedisetti Ramkrishnaiah Sons, Anakapalli v. State of Andhra Pradesh, : AIR 1976 AP193 the question was whether the acts done by the de facto Agricultural Market Commitee constituted under the provisions of the Andhra Pradesh Agricultural Produce and Livestock Markets Act, 1966 the constitution of which was later held to be invalid, can be held to be valid under the doctrine of de facto. Upholding the acts done by the De facto Committee, this court explained the scope of the doctrine

'The doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who held office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine.'

That was quoted with approval by the Supreme Court in Gokaraju Rangaraju v. State of Andhra Pradesh, : 1981 CriLJ876 .

21. Those were all cases in which appointments illegally made were subsequently set aside. Where persons who held office under colour of lawful authority, performed certain functions and certain acts were done de facto, in order to protect public and private interest and avoid endless confusion and needless

chaos, the de facto doctrine had been applied to and acted upon.

22. In the present case, the law constituting the original authorities to 1 grant authorisations as well as the appellate and revisional authorities to hear the appeals and revisions filed against the orders granting or refusing to grant authorisations, had been held to be invalid. Anything done under such invalid law shall be held to be void 'and indeed usually destitute of legal effect', as was pointed out in de Smith's Judicial Review of Administrative Action (Fourth Edition) (at page 152).

'void acts and decisions are indeed usually destitute of legal effect; they can be ignored with impunity; ....., they confer no legal rights on any body'.

23. H.W.R. Wade in his book on Administrative Law (Fifth Edition) explained the basis of distinction between void and voidable acts.

(at page 310).

'Void or voidable' is a distinction which applies naturally and without difficulty to the basic distinction between action which is ultra vires and action which is liable to the quashed for error on the face of the record. Action which is ultra vires is unauthorised by law, outside jurisdiction, null and void, and of no legal effect. But an order vitiated merely by error on its face is, as has been seen, intra vires and within jurisdiction, but liable to be quashed because of the exceptional powers of control which the courts established three centuries ago and which they recently revived. Such an order is voidable, being intra vires and valid and effective, unless and until the court quashes it. An order which is ultra vires within any of the ramifications of that doctrine, e.g. because of unreasonableness or wrong grounds or violation of statutory requirements, can only be void: once the court condemns it as being void, it is seen to have been destitute of all legal effect from the outset.. ..'.

24. This is not a case of mere invalidity of the appointment of the Collector or the Chairman, Zilla Abhivrudhi Sameeksha Mandali as the authority to grant authorisations under Clause 3 of the Control Order, 1973. This is a case where the

law under which those authorities have been appointed has been declared to be invalid being arbitrary and unreasonable. 1 Therefore, whatever acts were done under such invalid law shall be held to be void and consequently destitute of any legal effect. Apart from that, the Division Bench which, quashed G.O.Ms. No. 120, dated February 27, 1988 declared in its judgment dated October 27, 1988 that the position would be as it was prior to the amendment dated February 27, 1988. In its subsequent judgment dated December 6, 1989 while quashing the further amendments of the Control Order, 1973 in G.O.Ms. No. 300 dated May 5, 1989 and G.O.Ms. No. 889 dated October 31, 1989, the Division Bench categorically declared that the authorisations which were subsisting on the date of the judgment shall be treated as temporary authorisations till regular appointments were made under the provisions of the Control Order, 1973 as it stood prior to G.O. Ms. No. 120, dated February 27, 1988. It is, however, submitted by Mr. E. Manohar, the learned counsel that the amendment of Clause 3 of the Control Order, 1973 was never challenged before the Division Bench and therefore, the Division Bench was not justified in declaring that all the subsisting appointments shall be treated as temporary authorisations. The Division Bench has given reasons for quashing the G.Os in their entirety. According to it, the amendment introduced by the G.O. was an integrated scheme and therefore, the entire G.O. was liable to be quashed. When once the Division Bench had rendered a decision giving reasons and made a consequential declaration of the position after quashing the impugned G.Os., it would be improper on the part of another Division Bench of the same Court to go into the validity of the decision of the earlier Division Bench and render a decision on its validity. In such circumstances, it would be wholly inappropriate and impermissible to invoke the de facto doctrine and validate the appointments of the writ petitioners as fair price shop dealers, thereby undoing the declaration . made by the earlier Division Bench. For the reasons stated above, we see no force in the contention advanced by the learned counsel for the petitioners.

25. So also, the submission that both the judgments of the Division Bench are per incuriam is devoid of substance. The judgments cannot be said to have been rendered in ignorance of any statute, or a rule having statutory force or a binding decision.

26. Yet another contention that has been put forth on behalf of the writ petitioners is that the State Government is not competent to amend the provisions of the Control Order, 1973 by the impugned G.O.Ms. No. 19, dated January 8, 1990 with retrospective effect from February 27, 1988 as Sections 3 and 5 of the Essential Commodities Act, 1955 and the Orders of the Government of India, Ministry of Agriculture and Irrigation (Department of Food) G.S.R. 800 dated June 9, 1978 do not confer such power on the State Government. In that context, it is urged that the impugned G.O.Ms. No. 19, dated January 8, 1990 does not contain any provision invalidating the authorisations granted in favour of the writ petitioners and therefore, the action of the authorities in calling for fresh applications is' illegal and invalid. It is asserted that once an authorisation has been granted under the provisions of the Control Order, 1973, such authorisation can either be cancelled or suspended only in accordance with the provisions of the Control Order after giving an opportunity of being heard to the aggrieved person and in the absence of any such notice having been given to the writ petitioners, the action of the authorities cannot be legally sustained.

27. The Division Bench was specific and categorical in expressing its view that the regular appointments shall be made under the provisions of the Control Order, 1973 as it stood prior to G.O. Ms. No. 120, dated February 27, 1988 and the position would be as it was prior to that amendment. While quashing the three impugned G.Os., the Division Bench declared that the Control Order, 1973 as it stood prior to the amendment by G.O.Ms. No. 120, dated February 27, 1988 was restored and the regular appointments shall be made in accordance with those provisions. The further declaration regarding subsisting authorisations was that they shall be continued temporarily till regular appointments were made. The State Government which was a party to those writ petitions was bound by those judgments and had no other alternative than to implement them. It is stated by the learned Advocate General appearing for the State that some of the dealers in whose favour the authorisations had been granted under the amended provisions of the Control Order, 1973 either by the Collector or the Chairman, Zilla Abhivrudhi Sameeksha Mandali as the case may be had filed writ petition Nos. 432 and 440 of 1990 under Article 32 of the Constitution of India and S.L.P. No. 5857 of 1990 against the judgment of the Division Bench before the Supreme Court and they

are still pending. The Supreme Court did not stay the operation of the judgments of the Division Bench. In those circumstances, the State Government is bound to implement the judgments of this Court rendered in those two batches of writ petitions. According to those judgments, the authorisations have to be granted on a regular basis in accordance with the provisions of the Control Order, 1973 as it stood prior to February 27, 1988 and the subsisting authorisations have to be treated as temporary authorisations till the granting of such regular authorisations. In order to implement the judgments of this Court, it had issued the impugned G.O.Ms. No. 19, dated January 8, 1990 the effect of which is to restore the Control Order, 1973 to its position as it stood prior to February 27, 1988. Even without the issuance of G.O.Ms. No. 19, dated January 8, 1990, the position would have been the same according to the judgments of the Division Bench. In order to implement the judgments of this Court and provide proper guidance to the concerned authorities for the purpose of such implementation, the State Government had mentioned in G.O. Ms. No. 19, dated January 8, 1990 that it shall be deemed to have come into force with effect from February 27, 1988. By the impugned G.O. the State Government has been merely carrying into effect the directions given by the Division Bench.

28. When the Division Bench itself had declared that the subsisting authorisations shall be treated as temporary authorisations, there is no need to incorporate a provision in the impugned G.O. Ms. No. 19, dated January 8, 1990 invalidating the authorisations granted in favour of the writ petitioners. In those circumstances, question of invalidating the authorisations granted in favour of the writ petitioners and issuing notice to them prior to passing of orders invalidating the authorisations does not arise.

29. It is then submitted by the learned counsel for the petitioners that the petitioners who have been granted authorisations under the Control Order, 1973 have a fundamental right to carry on business as fair price :hop dealers and they cannot be deprived of that right except in accordance with law after giving reasonable opportunity of being heard. An held by the Supreme Court in Sarkari Sasta Anaj Vikreta Sangh v. State of Madhya Pradesh, : AIR 1981 SC2030 and Madhya Pradesh Ration Vikreta Sangh Society v. State of Madhya Pradesh, :

[1982]1SCR750 the petitioners do not have any fundamental right to carry on business as fair price shop dealers. So far as the authorisations are concerned, we have already held that those authorisations having been granted under invalid law, are destitute of any legal effect and cannot be validated by applying the de facto doctrine. If the writ petitioners had borrowed and invested substantial amounts in running the fair price shops, that cannot be a ground for validating invalid authorisations.

30. For the reasons stated above, we do not see any ground to interfere with the impugned G.O. Ms. No. 19, dated January 8, 1990 and the consequential notifications issued by the concerned Revenue Divisional Officers/Sub-Collectors inviting fresh applications for grant of authorisations on a regular basis. The writ petitions are, therefore, dismissed. The interim orders, if any, granted during the pendency of the writ petitions are vacated. No order as to costs. Advocate's fee Rs. 150/- in each.

31. Immediately after the judgment has been delivered, an oral application is made seeking leave to appeal to the Supreme Court. In our view the case does not involve any substantial question of law of general importance that needs to be decided by the Supreme Court. Leave is, therefore, refused. Petitioners have sought stay of operation of the judgment. We do not see any ground to stay the operation of the judgment.