

WRIT PETITION NO. 2600 OF 2005

Bastar Zila Thok Upbhokta Bhandar Maryadit

Vs.

The State of Chhattisgarh and Others

Mr. Kanak Tiwari , Sr. Adv. with Mr. Rahul Jha, Mr. P.K.C. Tiwari , Sr. Adv. with Mr. Shashibhusan, Mr. Prashant Jayaswal, Sr. Adv. with Mr. Ali Asgar, Mr. Manindra Shrivastava , Sr. Adv. with Mr. Amrito Das , Mr. Rajesh Pandey, Mr. Rajeev Shrivastava, Mr. Yashwant Tiwari and Mr. Sudhir Verma, learned counsel for the petitioner.

Present: Thakur Vijay Singh, Assistant Solicitor General for the Union of India.

Mr. Prasant Mishra, Additional Advocate General for the State of Chhattisgarh.

ORDER

(Passed on 6th of September , 2005)

The following Order of the Court was passed by A.K. Patnaik, CJ:-

All these writ petitions under Article 226 of the Constitution of India relate to the Chhattisgarh Public Distribution System (Control) Order, 2004 made under the Essential Commodities Act, 1955 were heard Analogously and are being disposed by this order.

(2) Under Section 3 of the Essential Commodities Act, 1955 (*for short "the Act"*) the Central Government has been vested with the power to make orders providing for regulating or prohibiting the production, supply and distribution of essential commodity and trade and commerce therein if the Central Government of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. The Central Government delegated this power to the State Government under Section 5 of the Act by an order dated 9th of June, 1978 in relation to food stuffs subject to such conditions as specified in the said order. On 23rd of June 2001 the State Government of Chhattisgarh made the Chhattisgarh (Khadya Padarth) Sarvajanik Nagrik Poorti Vitaran Scheme, 2001 in exercise of such delegated power under Section 3 of the Act for distribution of different foodstuffs through fair price shops. Pursuant to said Scheme of 2001, the State Government entered into agreements with the petitioners and also issued licences in favour of petitioners for running fair price shops at different places in the State of Chhattisgarh. On 31st of August, 2001 the Central Government made the Public Distribution System (Control) Order, 2001 under Section 3 of the Act providing for distribution of food grains through fair price shops and provided therein that the State Government shall issue an order under Section 3 of the Act for regulating the sale and distribution of essential commodities and shall issue the licenses to the fair price shop owner under the said order laying down the duties and responsibilities of the fair price shop owners. Accordingly, the State Government made a fresh order under Section 3 of the Act by a notification dated 23rd December, 2004 called the Chhattisgarh Public Distribution System (Control) Order, 2004 (*for short "the order 2004"*). Clause 9 (1) of the Order 2004 makes

provisions regarding allocation of fair price shops in the State of Chhattisgarh and is extracted hereunder:

"9. Allocation of fair price shops

(1) Fair price shop run by Large Aadim jati Multipurpose Cooperative Societies (LAMPS), Primary credit cooperative societies, forest protection committees, self help groups, Gram Panchayats and other cooperative societies shall be continued but not run by the private persons. Within six months from commencement of this Order, Fair Price Shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in sub rule (3) and (4) of rule 9".

In accordance with provisions of Clause 9(1) of the Order 2004, quoted above, the licenses issued to the petitioners are proposed to be cancelled and the fair price shops are proposed to be allotted to agencies specified in the said Order 2004. Aggrieved, the petitioners have challenged the provisions of the Order 2004 on different grounds and/or the orders of the authorities proposing to cancel the licences of the petitioners for running the fair price shops.

(3) Mr. Prashant Jayaswal, Sr. Advocate, assisted by Mr. Ali Asgar learned counsel appearing for the petitioner in Writ Petition No.445 of 2005 submitted that the petitioner is a private person and the agreement between the petitioner and the State Government relating to the fair price shop being run by the petitioner provided in Clause (15) that the agreement could be terminated only for breach of the conditions of the agreement by the petitioner and hence the allotment of fair price shop to the petitioner and the license of the petitioner for running the fair price shop cannot be cancelled by the State Government unless it is

established that the petitioner has committed some breach of the agreement. He submitted that though there is no allegation that the petitioner has committed any breach of the agreement, the authorities are now proposing to cancel the allotment of fair price shop to the petitioner as well as the licence for the fair price shop of the petitioner under the Order 2004. Mr. Prashant Mishra, learned Additional Advocate General, for the State of Chhattisgarh, on the other hand, submitted that the allotment as well as the licence of the petitioner for running the fair price shop will have to be cancelled in accordance with the provisions of Clause 9 (1) of the Order 2004.

(4) We are of the considered opinion that the cancellation of the fair price shop is not to be made under Clause (15) of the agreement between the petitioner and the State Government for running the fair price shop but because of supervening change of law. The Order 2004 is a statutory order made under Section 3 of the Act and Clause 9 (1) of the Order 2004 inter alia provides that within six months from the commencement of the Order, fair price shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in the order. Hence, the cancellation of the fair price shop of the petitioner who was a private person was to be done by virtue of the provisions in Clause 9 (1) of the Order 2004. In other words, it is the change of law after the agreement was made between the petitioner and the State Government for running of the fair price shop by the petitioner on account of which the agreement has to be cancelled. Section 56 of the Indian Contract Act, 1870 provides that a contract do an act which, after the contract is made, become Impossible, or, by a reason of some event which the primrose could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Hence, the contract between the petitioner and the State Government In so far as It provides for running of the fair price shop by the petitioner who is a private person would

become unlawful after expiry of six months period from the date of enforcement of the Order 2004 and would therefore, become void and will have to be cancelled. This is thus not a case of cancellation of a fair price shop for breach of agreement but a case of cancellation of fair price shop of the petitioner due to change of law.

(5) Mr. Jayaswal, learned counsel for the petitioner, next submitted that the Order 2004 is discriminatory and violative of Article 14 of the Constitution of India inasmuch as it provides that private persons would not be allowed to run any fair price shop and only the agencies such as co-operative societies as specified in the Order 2004 would be allowed to run the fair price shops. He cited the decision of the Gujarat High Court in Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another. AIR 1961 Gujarat 38, in which it has been held that the decision of the State to entrust wholesale distribution to the Co-operative Societies to the exclusion of other licence holders amounted to discrimination and could not be justified on any reasonable principles of classification and was thus violative of the provisions of Article 14 of the Constitution. He submitted that the only reason given in the return filed by the State of Chhattisgarh for excluding private persons from running fair price shops and for entrusting fair price shops to Co-operative Societies and other agencies specified in the Order 2004 is that some complaints of malpractice's and Irregularities by fair price shops run by private persons have been registered in the State of Chhattisgarh during the years 2001 - 2002, 2002-2003 and 2003- 2004. He submitted that the statements Annexure-R/1 annexed to the return would show that cases have also been registered against Co-operative Societies and other agencies running fair price shops in the State of Chhattisgarh during the years 2001-2002, 2002-2003 and 2003-2004. He argued that there was, therefore, no justification for excluding private

persona from running fair price shops and at the same time allowing Co-operative Societies and other agencies specified in the Order 2004 to run fair price shops. He cited the judgment of the Gujrat High Court in Ramanlal Nagardas and Others Vs. M.S. Patnitkar & another (supra) in which the Gujrat High Court has held that classification of individuals and Co-operative Societies and cancelling the licences of the individuals only has been held to be having no rational nexus with the object sought to be achieved by the Act.

(6) Mr. Manindra Shrivastava, Sr. Advocate assisted by Mr. Amrito Das, leaned counsel appearing for the petitioner in Writ Petition No.578 of 2005, further submitted that the statistics given by the State Government in Annexure-R/1 annexed to the return regarding number of cases of malpractices and irregularities registered against fair price shops for the years 2001-2002, 2002-2003 and 2003-2004 are misleading, as these statistics do not disclose the number of private persons who have been running fair price shops during these three years and the number of Co-operative Societies which have been running fair price shops during those three years. He argued that in the State of Chhattisgarh the number of fair price shops run by the private persons is much larger than the number of fair price shops run by the Co-operative Societies and. therefore, the number of complaints in the case of private persons running fair price shops are bound to be numerically more than the number of complaints against Co-operative Societies running the fair price shop s. He further argued that the State has not indicated in the return whether the complaints against private persons were examined and if so the result of the examination. He vehemently argued that the Court should not therefore rely on the statistics given by the respondent/State in the statements annexed to the return as Annexure-R/1.

(7) Mr. Rajesh Pandey learned counsel appearing for the petitioner in Writ Petition No.1034 of 2005 reiterated the aforesaid contention that the exclusion of private persons from running fair price shops by the Order 2004 was discriminatory and violative of Article 14 of the Constitution. He submitted that one of the objects indicated in the preamble of the Constitution is social justice for the people of India and the classification adopted by the Order 2004 classifying private persons separately from Co-operative Societies and other agencies specified in the Order 2004 is not consistent with this object of social justice mentioned in the preamble of the Constitution and is therefore irrational and the Order 2004 has to be held as violative of the right to equal protection of laws guaranteed under Article 14 of the Constitution of India, In support of this submission he relied on the decision of the Supreme Court in **Atam Prakash Vs. State of Haryana and others, AIR 1986 SC 859**, in which it has been held that a classification adopted by the legislature in the statute which is not in tune with the socialist goal set out in the Preamble and the Directive Principles enumerated in Part- IV of the Constitution and the Constitution is per se illegal and cannot be permitted. He also relied on the decision of the Supreme Court in **LIC of India and another Vs. Consumer Education and Research Centre and others, AIR 1995 SC 1811**. He vehemently argued that private persons in the State of Chhattisgarh have been excluded from running fair price shops by the Order 2004 and thereby deprived of their only means of livelihood and such exclusion of private persons for running fair price shops was inconsistent with the goal of social justice in the Constitution and the Order 2004 was thus discriminatory towards individual private persons and was violative of Article 14 of the Constitution.

(8) Mr. Rajiv Shrivastava learned counsel appearing for the petitioner in Writ Petition No.1558 of 2005 also reiterated the submission that the provision made in the Order 2004 excluding private persons from running fair price shops is discriminatory and violative of Article 14 of the Constitution. He submitted that the classification is not only unreasonable but also unfair and has no nexus with the object of Section 3 (1) of the Act namely distribution of essential commodities at fair prices in an equitable manner.

(9) Mr. Kanak Tiwari. Sr. Advocate, assisted by Mr. Rahul Jha learned counsel appearing for the petitioner in Writ Petition No. 1518 of 2005 submitted that a scheme for public distribution of essential commodities through fair price shops may give preference to the Co-operative Societies but it should also provide that where Co-operative Societies are not available in any area, private persons can be allowed to run fair price shops or where consumer Co-operative Society, available in a particular area, refuses to run the fair price shop. private persons in the area may be allowed to run a fair price shop. He submitted that in **M.P. Ration Vikreta Sangh, Jabalpur and others Vs. State of Madhya Pradesh and another, AIR 1981 MP 203**, clause 2 of the Scheme framed by the Madhya Pradesh High Court in the year 1981 which provided that preference would be given to Co-operative Societies in the matter of appointment of agents for running fair price shops was challenged on the ground that it was violative of Article 14 of the Constitution and the Division Bench after taking note of the concession of the learned Advocate General that Cooperative Societies in clause 2 mean only a consumers' Co-operatives held that the scheme seeks to prefer the consumer societies in the matter of appointment of the agent; 'or running fair price shops and it is only when such societies refuse to accept appointment as agents that others can be considered

for appointment. He also cited the decision of the Supreme Court in **Madhya Pradesh Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and others, AIR 1981 SC 2001**. Wherein the Supreme Court has held that the preference given to consumers' co-operative societies for running fair price shops for distribution of food stuffs was not violative of Article 14 of the Constitution of India. He argued that the total exclusion of the private persons from consideration for appointment as agents for running fair price shops would be violative of Article 14 of the Constitution.

(10) Mr. Yashwant Tiwari learned counsel appearing for the petitioners in Writ Petition No.2150 of 2005 submitted that no exercise has been undertaken by the State Government to find out how many private persons have actually resorted to by mal practices. He further submitted the most of the Co-operative Societies in the State of Chhattisgarh are running a loss and therefore if the Co-operative Societies in the State of Chhattisgarh are entrusted with the work of distribution of essential commodities through fair price shops they will not be able to efficiently bar. lie the said work. argued that total exclusion of persons from carrying en the business of fair price shops is discriminatory and violative of Article 14 of the Constitution inasmuch as it affects the rights of the individuals to equality.

(11) Mr. Sudhir Verma learned counsel appearing for the petitioner in Writ Petition No.2316 of 2005 submitted that those private persons who have indulged in mal practices while carrying on the business of fair price shops have now constituted new Co-operative Societies and would be greatly benefited from the provision in clause (9) of the Order 2004 that the specified agencies including Co-operative Societies instead of private persons would be allowed to run fair price

shops. He submitted that the Classification made by Clause (9) of the Order 2004 between private persons and Co-operative Societies and other agencies specified in the Order 2004 is unreasonable inasmuch as there is no rational nexus between the intelligible differential of such classification and the object of distributing food stuffs and other essential commodities through fair price shops at fair prices sought to be achieved by Order 2004. Mr. Verma submitted that the exclusion of individual private persons is therefore arbitrary, discriminatory and violative of Article 14 of the Constitution. He relied on the decision of the Supreme Court in Onkar Lal Bajaj and others Vs. Union of India and another, (2003) 2 SCC 673 to the effect that Article 14 guarantees to everyone equality in law and arbitrary exercise of executive powers can be quashed by the Court in exercise of the power of judicial review.

(12) Mr. Prashant Mishra, Additional Advocate General, assisted by Mr. Sumesh Bajaj, learned Dy. Govt. Advocate, for the State of Chhattisgarh, on the other hand, relying on the reply filed on behalf of the State of Chhattisgarh in Writ Petition No.445 of 2005 submitted that before the State of Chhattisgarh came into existence in November, 2000, the Madhya Pradesh Sarvajanic Nagrik Vitaran Scheme, 1991 was in force under which fair price shops were being allotted to Co-operative Societies for public distribution of essential commodities at fair prices, but in the year 2001 when the State Government decided to extend the Public Distribution System Network round that due to the financial constraints Co-operative Societies were not in a position to run the additional fair price shops and hence made a provision for allotment of fair price shops to private persons in the Scheme 2001 and such private persons were appointed to run fair price shops on the recommendations of the Minister of the Food Department, Government of Chhattisgarh by the Food Inspector. He submitted that after allotment

of fair price shops to such private persons, however, there were complaints of mal practices by such private persons running fair price shops. He referred to the statements annexed to the reply as Annexure-R/1 to show the numbers of cases registered against the fair price shops run by private persons in the years 2001-02, 2002-03 and 2003-04. He further pointed out that in a PIL Writ petition (Civil) No. 196 of 2001 filed by the People's Union for Civil Liberties, the Supreme Court also passed some orders on 28th of November, 2001, 8th of May 2002 and 2nd of May 2003. He submitted that by the order dated 2nd of May 2003 the Supreme Court issued some directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are supplied food grains and to cancel the licences of those licences who do not keep their shops open throughout the month, fail to provide food grain to BPL families strictly at BPL rates, keep the cards of BPL households with them, make false entries in the BPL cards, engage in black-marketing, siphon away food grains to the open market or hand over such ration shops to such other person/organizations. He submitted that the State Government has a constitutional duty and obligation to protect the poor persons against malnutrition and hunger and to comply with the orders passed by the Supreme Court in the aforesaid case and since it came to the knowledge of the State Government that private persons running fair price shops are not distributing the commodities to the persons living below poverty line and are not providing essential commodities to Annyodaya and Annapoorna beneficiaries as per their entitlement and were resorting to the mal practices mentioned in the aforesaid orders of the Supreme Court in Writ Petition (Civil) No. 196 of 2001, the State Government took the view that a private individual should no longer be allowed to run a fair price shop and that fair price shops should be run by the Co-operative Societies and other agencies specified in the Order 2004. He submitted

that such exclusion of private persons altogether from running fair price shops as agents of the State Government was based on a reasonable classification of private persons who were not suitable to run fair price shops and Co-operative Societies and other agencies specified in the Order 2004 who were suitable to run fair price shops is based on an intelligible differentia having rational nexus with the object to be achieved by the Order 2004 namely distribution of food stuffs and other essential commodities at fair price shops through the Public Distribution System of the State Government. He cited the decision of the Supreme Court in *In re kerala Education Bill, 1957* for the proposition that while article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and submitted that the classification under the Order 2004 of private persons who have not been allowed to run fair price shops and Co-operative Societies and other agencies specified in the Order 2004 which have been allowed to run fair price shops is a reasonable classification and the Order 2004 is not hit by Article 14 of Constitution.

(13) *In re kerala Education Bill, 1957* (supra) cited by Mr. Mishra the Supreme Court after referring to its earlier decisions on the true meaning, Scope and effect of Article 14 of the Constitution, quoted the following passage from its earlier decision **Mohd. Hanif Qureshi Vs. State of Bihar, AIR 1958 SC 731:**

"It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have

a rational to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different basis, namely, geographically or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognize degrees of harm and may confine its restrictions to those case where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation"

Thus, the law laid down by the Supreme Court is that equal protection of Article 14 of the Constitution forbids class legislation but does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled; (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differential must

have a rational nexus to the object sought to be achieved by the statute; question. These propositions have been reiterated in the judgment of the Gujrat High Court in Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another (supra) cited by Mr. Prashant Jayaswal, and it has been further explained in the said decision of the Gujrat High Court that sometimes the law itself may not make the classification but may lay down a policy and vest a discretion in the executive to make a classification for the purpose of administering the law and in such cases the power given to the executive would import a duty on it to classify the subject matter of the legislation in accordance with the policy indicated in the statute and the discretion has to be exercised in accordance with the policy to effectuate which the discretion is given and it is in relation to that policy that the propriety of the classification has to be tested and if the executive proceeds to classify persons or things on a basis which has no rational relation to the policy of the legislature, its action can certainly be struck down as offending against the equal protection clause. In the said decision, the Gujrat High Court further held that in the Act the legislature has laid down the legislative policy and has left it to the Central Government or the State Government to work out the details of that policy within the framework to be found in the four corners of the Act and accordingly make orders under Section 3 of the Act in accordance with the policy laid down in the Act. The observations of Bhagwati, J who delivered the said judgment of the Gujrat High Court on behalf of the Division Bench is quoted herein below:

"Whether this classification can stand the test of Article 14 must depend on various factors such as the background against which the State action has been taken, the nature and character of the commodity and business sought to be regulated by such

action and the object which the legislature had in view in enacting the said Act in the execution or administration of which the classification has been made. When we turn to the provisions of the said Act we find that the ambit and character of the said Act is such that the Legislature can do no more than lay down the legislative policy and leave it to the executive to work out the details of that policy within the framework to be found in the four corners of the said Act, for the executive would be in a better position to judge the needs and exigencies of the situation. The preamble and the body of the sections clearly formulate the legislative policy and the details of that policy are left to be worked out by delegating them to the Central Government or the State Government or other subordinate officers or authorities within the framework of that policy. The Legislature has in the preamble and the body of the Sections declared the policy of the law and the legal principle which is to guide and control the executive in the exercise of its powers under the provisions of the said Act or any Orders made under the said Act. That principle is the maintenance or increase in supply of essential commodities and securing their equitable distribution and availability at fair prices. This is the objective indicated in the said Act and whenever the executive in exercise of its powers under the provisions of the said Act or any orders made under the said Act or any orders made under the said Act makes a classification, the propriety of the classification must be tested in relation to that objective. Whatever is done by the executive in pursuance of or in exercise of its powers under the provisions of the said Act or any Order made under the said Act is ultimately traceable to the said Act and must derive its sustenance and force from the said Act and must, wherefore, be

in conformity with the legislative policy or principle or objective formulated in the said Act. The classification made by the State in the present case must/therefore, in order to successfully meet the challenge of Article 14, bear a just and national relation to the object sought to be achieved by the said Act, namely, the maintenance or increase in supply of essential commodities and securing their equitable distribution and availability at fair prices."

(14) Applying the aforesaid law as has been lucidly enunciated by Bhagwati. J in the said judgment of the Gujrat High Court Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another (supra), the Order 2004 has been made for achieving the objects mentioned in Section 3(1) of the Act and therefore the challenge to the Order 2004 under Article 14 of the Constitution in these writ petitions have to be examined by reference to the objects mentioned in Section 3(1) of the Act. If the classification made by the Order 2004 has no rational nexus with the said objects mentioned in Section 3(1) of the Act, the classification would be an unreasonable classification and would have to be struck down by the Court as ultra virus the Article 14 of the Constitution. On the other hand, if the classification made by the Order 2004 has a rational nexus with the said objects mentioned in Section 3 (1) of the Act, the classification has to be held as reasonable classification and not hit

by the equal protection clause in Article 14 of the Constitution of India. Further more, as has been held by the Gujrat High Court in t's aforesaid case whether the classification made by the Order 2004 can stand the test of Article 14 would depend upon various factors such as the background in which the Order2004 has been issued and the nature and character of the commodities and business sought to be regulated

(15) For finding out the background in which the Order 2004 has been issued by the State Government of Chhattisgarh, we have to refer to the return filed on behalf of the State Government of Chhattisgarh. It is stated in the said return that before the commencement of the Scheme 2001, fair price shops could be allotted to Co-operative Societies only, as per the provisions of the Madhya Pradesh Sarvajanik Nagrik Scheme 1991. It is further stated in the return filed on behalf of the State Government that in the year 2001 the State Government decided to extend the Public Distribution System network but due to the financial constraints the Co-operative Societies were not in a position to run the additional fair price shops and hence a provision was made in the Scheme 2001 for allotment of fair price shops to private persons. After the allotment of fair price shops to private persons, however, the number of cases of irregularities registered against fair price shops increased enormously. Along with the return statements showing the number of cases registered in the years 2001-2002, 2002-2003 and 2003-2004 against fair price shops run by Co-operative Societies and against fair price shops run by private persons has been annexed as Annexure-R/1. We find from the said statements in Annexure-R/1 annexed to the return of the State Government that the total number of cases registered against fair price shops run by private persons and different agencies during the years 2001-2002, 2002-2003 and 2003-2004 are as follows:

Year	Private Persons	Co-operative Societies	Panchayat	Upbhokta Bhandar	Marketing Society
2001-2002	133	54	0	28	0
2002-2003	357	54	0	1	0
2003-04	710	167	1	16	4

It will be clear from the figures indicated in the chart above that the number of complaints of irregularities against fair price shops run by private persons was 133 in the year 2001-2002, 357 in the year 2002-2003 and 710 in the year 2003-2004. The aforesaid chart will also show that the number of complaints against fair price shops run by other agencies such as Cooperative Societies, Panchayat, Consumer Co-operative and Marketing Societies have been comparatively less. Thus, the number of complaints of irregularities against fair price shops run by private persons is not only much more than the number of complaints received against other agencies such as Co-operative Societies, Panchayat, Consumer Co-operatives and Marketing Societies, but such number of complaints against fair price shops run by private persons have been increasing manifold year by year.

(16) In the return filed on behalf of the State Government of Chhattisgarh it is also stated that in Writ Petition No.196 of 2001. People's Union for Civil Liberties Vs. Union of India and others the Supreme Court has been monitoring the implementation of the Public Distribution System and other welfare schemes through its appointed Commissioners and by order dated 2nd of May 2003 the Supreme Court has directed that licences of fair price shop keepers be cancelled if they do not keep their shops open throughout the month during the stipulated period, fail to provide grain to BPL and Antyodaya families strictly at fixed rates and no higher, keep the cards of BPL households with them, make false entries in the BPL and Antyodaya cards, engage in black marketing, siphon away of grains to the open markets hand over such ration shops to other persons/functionaries, or BPL and Antyodaya are not supplied food grains as per their entitlement. It is further stated in the return that Mr. Biraj Patnaik, State Advisor to the Commissioner appointed by the Supreme Court made extensive visits throughout State, interacted with the beneficiaries and thereafter submitted a report to the Commissioner appointed by the Supreme Court and the Commissioner appointed by the Supreme Court sent a communication dated 20/04/2004 to the Chief Secretary, Govt. of Chhattisgarh, mentioning

therein that the advisor has highlighted several irregularities in the implementation of mid-day meal and Tribal Development Projects (TDPs). The relevant portion of the report dated 03/04/2004 of the Advisor of the Commissioner, Mr. Biraj Patnaik regarding the Public Distribution System in the State of Chhattisgarh is reproduced herein below:

"Public Distribution System:

The situation with regard to the PDS is distressing in the entire district and as the reports that I have enclosed as annexures reflect a breakdown of the system due to back of monitoring. I had in my earlier reports and in my personal briefings appraised you about the positive steps which the State Government had taken including the creation of a food security fund and the increase in the subsidy given to the lead ' " " societies and commission to the PDS shops. While welcoming this, I had however cautioned that unless the governance issues in the districts are addressees, this progressive step would have minimal impact. True situation in Manendragarh is a testimony of this failure. I am enclosing the complaints and a set of affidavits that I have received, with regard to the PDS shops in the panchayats - Ghagra, Charwahi, Kelua, Badkabehera, Mahai, Tarabehera, Kachhod, Garudol, Pendri and Biharpur,

It is clear from the aforesaid extract on the Public Distribution System In Manendragarh Block of Korea district that in Manendragarh Block Public Distribution System had broken down and this finding of the Advisor was based on complaints and the set of affidavits that the said Advisor had received with regard to the PDS shops in Ghagra, Charwahi, Kelua, Badkabehera, Mahai, Tarabehera, Kachhod, Garudol, Pendri and Biharpur Panchayats. The copies of the said complaints and Affidavit have also been annexed to the return along with Annexure-R/6 and a reading of the said complaints and affidavits would show that lot of irregularities were being committed by the fair price shops. The aforesaid reports relates to

Manendragarh Block of Korea district but was a sample before the State Government as to how badly the fair price shops were being run. In paragraph '38 of the return it is stated that the State Government received information that there are flagrant violation of the terms and conditions of the grant as well as other provisions of the Scheme and the fair price shop owned by private individuals were opened well after the appointed time and holders of irregularities committed by fair price shops owned by private persons. The facts of the present case, therefore, are distinguishable from the facts of the aforesaid decision of the Gujrat High Court in Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another (supra). The exclusion of private persons from running fair price shops in the facts of the present case has a rational nexus with the object of Section 3 (1) of the Act as well as the Order 2004 namely, the distribution of foodstuffs and other essential commodities in equitable manner at fair prices to ration card holders.

(18) For the aforesaid conclusion, we find support in the judgment of the Supreme Court in Madhya Pradesh Ration Viknrrta Sangh Society and others Vs. State of Madhya Pradesh and others (supra). The facts of that case are that the M.P. Foodstuffs (Distribution) Control Order, 1960 provided for running of fair price shops through retail dealers and the State Government of Madhya Pradesh on 31st of October, 1980 aridness the said Control Order by deleting the provisions relating to running of fair price shops through retail dealers and providing for running the fait price shop s under a Government scheme. On 20th of March 1981 the Stale Government* promulgated the M.P. (Foodstuffs) Civil Supplies Public Distribution Scheme, 1981 under which preference was to be given to Co-operative Societies in appointment of agents for running fair price shops. The M.P. Ration Vikreta Sangh Society and others challenged the said provision of the scheme for giving preference to Co-operative Societies on the ground that the same was violative of Article 14 of the Constitution of India. The Madhya Pradesh High Court upheld the said provision in the M.P. (Foodstuffs) Civil Supplies Public Distribution Scheme,

1981 for giving preference to consumer Co-operative Societies in appointment as agents for running fair price shops. The judgment of the Madhya Pradesh High Court was challenge by M.P. Ration Vikreta Sangh Society and others before the Supreme Court and the closed well before the appointed time and the consumers are finding it difficult to obtain their rations and further that individual private shop keepers do not maintain sufficient stock and siphon away the food grains of the fair price shops to shops of local traders . It is this unhappy experience of allowing individual private persons to run fair price shops in the state of Chhattisgarh during the years 2001-2002,2002-2003 and 2003-2004 which had prompted the State Government to exclude private persons altogether from running fair price shops under the Order 2004 . Section 3 (1) read with the order of delegation under Section 5 of the Act enables the Government to make an order for securing the equitable distribution of any essential commodity and their availability at fair prices and a plain reading of the Order 2004 also shows that the object of the Order 2004 is to distribute foodstuffs and other essential commodities to ration card holders through fair price shops under Public Distribution System and if the experience in the State of Chhattisgarh is that the aforesaid object cannot be achieved through fair price shops owned by private persons, exclusion of private persons from running fair price shops under the Order 2004 has rational nexus with the object sought to be achieved by the Act as well as the Order 2004 . The contention of the petitioners , therefore , that the classification in the Order 2004 excluding private persons altogether from running fair price shops while allowing other agencies specified therein to run the fair price shops is unreasonable and is hit by Article 14 of the Constitution has no merit.

(17) **In Ramanlal Nagardas and Others Vs. M.S. Palntikar & another** cited by Mr. Prashant Jayaswal, the State has decided as a

matter of policy to entrust wholesale distribution of sugar to Co - operative Societies to the exclusion of other licence-holders and this decision of the State was challenged by the petitioners in that case on the ground that it was discriminatory and violative of the equal protection clause of Article 14 of the Constitution . The contention of the petitioner in the said case was that the classification of licence-holders into those who are Co - operative Societies and those who are not for the purpose of wholesale distribution of sugar was unrelated to the policy or object of the Act . The classification was sought to be justified in the case in the reply filed by the Collector on ground that the State had decided to entrust wholesale distribution of sugar to Co - operative Societies to the exclusion of other licence-holders in order to put the distribution of sugar on more satisfactory basis and to promote and encourage the work of Co - operative Societies . The Supreme Court held that the promotion and encouragement of the work of Co-operative societies cannot afford a reasonable basis for classification as it would have no nexus with the policy or object of the Act which is to maintain or increase supplies of sugar and to secure its equitable distribution and availability at fair prices. The Supreme Court also held that putting distribution of sugar on more satisfactory basis may afford a reasonable basis for classification , but the State had not indicated to the Court in the affidavit as to how and in what manner the wholesale distribution of sugar through the Association formed of the licence-holders was unsatisfactory and how and in what way it will put the distribution of sugar on more satisfactory basis if it is entrusted only to Co - operative Societies to the exclusion of other licence-holders. The supreme Court in particular held that the State had not placed any facts before the Court on the basis of which it could be said that wholesale distribution of sugar would be put on more satisfactory basis by entrusting it to Co - operative Societies in preference to other licence-

holders . In the present case , on the other hand , the State in its return has given facts and figures to show that the whole experiment of entrusting fair price shops to private owners during the year 2001-2002,2002-2003 and 2003-2004 has not been at all happy and there have been large number of complaints by ration card holders of irregularities committed by fair price shops owned by private persons . The facts of the present case, therefore , are distinguishable from the facts of the aforesaid decision of the Gujrat High court in Ramanlal Nagric and Others Vs. M.S. Palntkar & another (supre). The exclusion of private persons from running fair price shops in the facts of the present case has a rational nexus with object of section 3 (1) of the Act as well as the Order 2004 namely, the distribution of foodstuffs and other essential commodities in equitable manner at fair price to ration card holders.

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1981 for giving preference to consumer Co-operative Societies in appointment as agents for running fair price shops. The judgment of the Madhya Pradesh High Court was challenge by M.P. Ration Vikreta Sangh Society and others before the Supreme Court and the Supreme Court rejected the challenge under Article 14 of the Constitution of India with the following reasons:

"We have given a brief outline of the impugned scheme and it cannot be said that it suffers from arbitrariness or is irrational to" the object sought to be achieved. The State Government after due deliberation, took a responsible decision to run the fair price shops directly being satisfied that it was necessary to do with the object of distributing foodstuffs at fair prices to the consumers, after taking into consideration the fact that the earlier experiment of running these shops through retail dealers was an utter failure. The scheme has been designed by the State Government by executive action under Art. 162 of the Constitution with a view to ensuring equitable distribution of foodstuffs at fair prices. As already stated, the Court has found in the Sarkari Sasta Anaj Vikreta Sangh case (supra), the entire system of distribution of foodstuffs had collapsed and had become wholly unworkable due to flagrant violations of the provisions of the Control Order by the retail dealers. The action of the State Government in entrusting the distribution of foodstuffs to consumers' co-operative societies, though drastic, was an inevitable step taken in the interests of the general public. The State Government was not bound to give the fair price shops to the retail dealers under a Government scheme. The governmental action in giving preference to consumers' co-operative societies cannot be construed to be arbitrary irrational or irrelevant."

It will be clear from the aforesaid decision of the Supreme Court that once the Court found that the system of distribution of foodstuffs through

appointment of retail dealers was an utter failure and had become wholly unworkable due to flagrant violations of the control order by retail dealers, the Court held that the action of the State Government in entrusting the distribution of foodstuffs to consumers' co-operative societies could not be said to be arbitrary or irrational or unrelated to the object sought to be achieved. In the present case, as we have seen, the experiment of allowing private persons to run fair price shops has been an utter failure inasmuch as complaints had been received in large numbers from the ration card-holders against the private persons who run the fair price shops and such complaints are growing every year during the years 2001-2002, 2002-2003 and 2003-2004 and for this reason the State Government had in the Order 2004 decided not to entrust the running of fair price shops to individual private persons and instead to other agencies specified in the Order 2004. The exclusion of individual private persons from running fair price shops in the Order 2004 cannot in the facts and circumstances of the case be held to be arbitrary, irrational or unreasonable.

(19) The contention of Mr. Kanak Tiwari, learned Sr. Advocate, for the petitioner, however, is that under the Madhya Pradesh (Foodstuffs) Civil Supplies Public Distribution Scheme, 2001 private persons were not altogether excluded from running fair price shops but preference was to be given to consumer co-operatives for running fair price shops and this would mean that in any area if consumers' co-operative society is not available to run a fair price shop or the consumers' co-operative society refuses to run a fair price shop an individual private person can be allowed to run the fair price shop by the State Government. He submitted that such a provision would not be arbitrary but would be reasonable and thus would not be hit by Article 14 of the Constitution. As we have found above during the years 2001-2002, 2002-2003 and 2003-2004 a large number of complaints of irregularities against fair price shops owned by private persons from the ration card-holders have been received and such complaint; have been growing in

number every year and on those facts, is for the State Government to decide as to whether preference is only to be given to Cooperative Societies and other agencies to run fair price shops and entrust such fair price shops to private individuals in areas where such Co-operative Societies or other specified agencies are not available or whether to altogether prohibit allotment of fair price shops to the private individuals. This decision to give preference to Co-operative Societies or to altogether discontinue running of fair price shops by private individuals is a policy decision within the domain of the State Government. Once we have found that the classification in the Order 2004 in between private persons, on the one hand, and Co-operative Societies & other agencies specified in the Order 2004, on the other, has a rational nexus with the object sought to be achieved by Section 3 (1) of the Act as well as the Order 2004 namely distribution of foodstuffs and in particular essential commodities at fair prices to the ration card-holders, the Court will have to uphold the classification as valid and reasonable and not violative of Article 14 of the Constitution and it is not within the domain of the Court thereafter to suggest that instead of excluding private persons altogether from running fair price shops only preference should have been given to Co-operative Societies and other agencies specified in the Order 2004 for running fair price shops and individual private persons could also be considered for allotment, of fair price shops wherever such Co-operative Societies and other specified agencies were not willing to run fair price shops or were not available. The decision in this regard, in our considered opinion, can that be of the Legislature or the Government and not of the Court. In *State of West Bengal Vs. Anwar Ali Sirkar and another*, AIR 1952 SC 75 cited by Mr. Prashant Mishra, Bose, J observed in para 83:

"This, however, does not mean that judge- are to determine what is for the good of the people and substitute their individual and personal opinions for that of the government of 'the day, or that they may usurp the functions of the legislature. That is not their province

and though there must always be a narrow margin within which judges, who are human, will always be influenced by subjective factors their training and their tradition makes the main body of their decisions speak with the same voice and reach impersonal results whatever their personal predilections or their individual backgrounds, it is the function of the legislature alone, headed by the government of the day, to determine what is, and what is not, good and proper for the people of the land; and they must be given the widest latitude to exercise their functions within the ambit of their powers, else all progress is barred. But, because of the Constitution, there are limits beyond which they cannot go and even though it falls to the lot of judges to determine where those limits lie, the basis of their decision cannot be whether the Court thinks the law is for the benefit of the people or not. Class of this type must be decked solely on the basis whether the Constitution forbids it."

(20) We may now deal with the novel argument of Mr. Rajesh Pandey, learned counsel for the petitioner that the classification in the Order 2004 is inconsistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution inasmuch as it excludes private persons to earn their livelihood- by running fair price shops and for this reason the Order 2004 is violative of the right to the equal protection of law under Article 14 of the Constitution. In support of the submission, he relied on the following observations of Chinappa Reddy, J in *A tarn Prakash Vs. State of Haryana and others* (supra);

"Whatever article of the Constitution it is that we seek to interpret, whatever statute it is whose constitutional validity is; sought to be questioned, we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether a statute

offends Article V of the Constitution we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution. A classification which is not in tune with the Constitution is per se unreasonable and cannot be permitted. "

In the aforesaid observations Chinnappa Reddy, J has held that when we consider the question as to whether the statute offends Article 14 of the Constitution, we must also consider whether a classification that, the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV. The Preamble ' of the Constitution seeks 'to secure to all its citizens" justice, social, economic and political. The expression "all its citizens" in the preamble of the Constitution means not only the private persons running fair price shops but also the ration card-holders under the Order 2004 including persons or families below the poverty line and Antodaya families (the poorest families identified by the State Government) and destitute families, Hence social and economic justice in the Preamble of the Constitution would mean that essential commodities and in particular foodstuffs are distributed to such ration card-holders at fair prices and not at prices beyond their reach. The Directive Principle in Article 47 of the Constitution mandates that the State shall regard the raising of the level of nutrition and the standard of living of its people as among its primary duties. Hence, it is part of the duty of the State to ensure that the foodstuffs and other essential commodities are made available to the people at fair prices and not at prices beyond their reach. If the State Government has found that during the three years year 2001 to 2004 a large number of complaints have been received of irregularities and malpractices adopted by the fair price shops owned by private persons and such complaints have been growing in. number year by year, the State Government was

justified in providing in the Order 2004 that private persons will not be allowed to run fair price shops as agents of the State Government and such a provision in the Order 2004 would be consistent with the socialist goals in the Preamble of the Constitution and such a classification in the Order 2004 excluding private persons from running fair price shops would not be violative of Article 14 of the Constitution.

(21) The contention of Mr. Manindra Shrivastava, Mr. Rajesh Pandey, Mr. Rajeev Shrivastava, Mr. Yashwant Trwari and Mr. Sudhir Verma, however, is that the data given by the State Government in its return as well as Annexure-R/4 relating to number of cases registered against fair price shops run by private persons and fair price shops run by Co-operative Societies and other agencies should not be relied upon by the Court as the said data does not disclose the total number of fair price shops owned by private persons and the total number of fair price shops owned by Co-operative Societies and other agencies and in the absence of figures of the total number of fair price shops owned by private persons and the total number of fair price shops owned by Co-operative Societies, it is difficult for the Court to find out as to what proportion of fair price shops in either category have resorted to malpractices and irregularities. This contention overlooks the law laid down by the Apex Court in a series of the decisions including *Mohd. Hanif Qureshi and others Vs. State of Bihar* quoted above that there is always a presumption in favour of the statute and the burden is upon him, who attacks it to show that there has been a clear violation of the Constitution and that the Courts must presume that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. We must presume, therefore, that the State Government while making the Order 2004 has correctly understood and appreciated the failure of the public distribution system through fair price shops run by private persons and has accordingly

made the Order 2004 excluding such private persons from running fair price shops through which essential commodities and in particular foodstuffs are to be distributed to the ration card-holders, if the data furnished in the return of the State Government as well as in Annexure-R/1 on which such understanding and appreciation of the State Government was based was incomplete or incorrect, onus was on the petitioners to furnish additional data before the Court and rebut the presumption of constitutionality in favour of the Order 2004. On whatever materials have been placed before us by the State Government in its reply as well as Annexure-R/1, we have no doubt in our mind that exclusion of private persons from running fair price shops and the Order 2004 cannot be held to be discriminatory and violative of Article 14 of the Constitution.

(22) Mr. Kanak Tiwari learned counsel for the petitioner in Writ Petition No.1397 of 2005 which is a consumer Co-operative Society submitted that Sub Clause (3)(a) of Clause 9 of the Order 2004 provides that allotment of fair price shops In ITDP areas shall be done in order of priority to the following agencies:

- (i) Large Aadim Jati Multipurpose Co-operative Societies (LAMPS).
- (ii) Gram Panchayats
- (iii) Women's Self help groups
- (iv) Primary credit co-operative societies
- (v) Forest protection committees
- (vi) Other co-operative societies,

He submitted that similarly Sub clause 4 (a) of Clause 9 of the Order 2004 provides that allotment of fair price shops in other areas shall be in order of priority to the following agencies:

- (i) Gram Panchayats
- (ii) Women 's Self help groups
- (iii) Primary credit co-operative societies
- (iv) Other co-operative societies

He submitted that consumer Co-operative Societies fall under the category "other Co-operative Societies"* and have thus been placed at the bottom of the priority list for allotment of fair price shops both in ITDP areas and oilier areas. He submitted that Sub-clause 3(b) of Clause 9 provides for allotment of only 10% of the shops to other Co-operative Societies in ITDP areas and for giving top priority to Co-operative Societies of ex-serviceman Cooperative Societies and also 33% reservation for Forest Protection Committees and Women's Self help groups. He pointed out that similarly Sub-clause 4(b) of Clause 9 of the Order 2004 provides for reservation of 33% of the fair price shops in other areas for Women's Self help groups or other Co-operative Societies run by women and for allotment of fair price shops to Co-operative Societies of ex-serviceman on top priority basis. He vehemently argued that these provisions have been made in the Older 2UM by the State Government mechanically following the recommendations of Mr. Biraj Patnaik, State Advisor to the Commissioner appointed by the Supreme Court, without any application of mind as to whether such reservation and priority is permissible under Article 14 of the Constitution. He submitted that the object of Section 3 of the Act and the Order 2004 to distribute essential commodities at fair prices to ration card-holders and in particular to ensure food security to all vulnerable citizens in the State of Chhattisgarh and the Madhya Pradesh High Court in Madhya Pradesh Ration Vikreta Sangh Jabalpur and others Vs. State of Madhya Pradesh, Bhopal and others AIR 1961 MP 203, as well as in Sarkari Sasta Anaj Vikreta Sangh, Tehsii Bemetra and others Vs. State of Madhya Pradesh and others, AIR 1981 SC 2030, the Madhya Pradesh and the Supreme Court, respectively, have upheld the Madhya Pradesh Food-stuffs (Civil Supply Distribution) Scheme. (1981)

providing for giving priority to consumer Co-operatives in the matter of allotment of fair price shops. But this position of law has been ignored altogether by the State Government while accepting the said recommendations of Mr. Biraj Patnaik . He submitted that the petitioner

being a consumer Co-operatives is apprehensive that on account of such reservations and priorities made in Clause 9 of the Order the petitioner will not be allotted any fair price shop . In the context he submitted that in M.P. Ration Vikreta Sangh Society and other Vs. state of Madhya Pradesh and others (supra) the Supreme Court has further held that there can be no quarrel with the principles laid down in the ***Airport Authority*** case (AIR 1979 sc 1628) that if the government action disclosed arbitrariness, it would be liable to be invalidated as offending against Article 14 of the Constitution. He submitted that the provisions in clause 9 of Order 2004 giving priority and making reservations in favour of the Women's self Help Groups, Forest Protection Committees, Co-operative Societies of ex-servicemen are absolutely arbitrary and have no nexus whatsoever with the object sought to be achieved by Section 3 of the Act as well as the Order 2004. Mr. Tiwari also referred to the provisions of Chhattisgarh Co-operative Societies Act ,1960 to show that only LAMPS and consumer Co-operatives are authorized to sell essential commodities in fair price shops and that the Primary Credit Co-operative Societies are not authorized under the provisions of the said Act to sell essential commodities at fair prices .

(23) Mr. Prashant Mishra , learned additional Advocate General , on the other hand, submitted that it is for the legislature and the Government to choose the agencies which are to be allotted fair price shops for selling the essential commodities including foodstuffs to the ration cardholders and if the state Government has in the Order 2004 decided as to which of the agencies should be allotted fair price shops and on what priority, the Court should not interfere with the choice of such agencies in the Order 2004.

(24) Mr. Prashant Mishra is right that it is for the Government

Can the legislature to choose the agencies which are to be allotted fair price shops for selling the essential commodities including foodstuffs to ration, cardholders, but such power of the legislature and the Government to choose the agencies is subject to Article 14 of the Constitution. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Hence, the State Government while making an order under Section 3 of the Act may choose the persons, natural or legal, which are to be allotted fair price shops in selling essential commodities including foodstuffs to ration cardholders, but it cannot discriminate between such persons. It has, however, been held by the Supreme Court that Article 14 forbids class legislation but does not forbid reasonable classification and that in order to pass the test of permissible classification two conditions must be fulfilled (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out from the group and (ii) such differentia must have a rational nexus sought to be achieved by the legislature. The object sought to be achieved by the Order 2004 is to distribute essential commodities including foodstuffs at fair prices to ration cardholders. There is no material placed before the Court to show that this object can be better achieved by fair price shops run by the LAMPS, Gram Panchayats, Women's Self Help Groups, primary credit co-operative, societies, Forest Protection Committees than those run by Consumer Co-operative Societies categorized under Other Co-operative Societies. Thus there is no reason for giving priority to LAMPS, Gram Panchayats, Women's Self Help Groups, primary credit co-operative societies and Forest protection Committees over Consumer Co-operative Societies falling under the category "Other Co-operative Societies" in the matter of allotment of fair price shops either in ITDP areas or other areas. There is, therefore, no rational basis for

the classification of the agencies mentioned In Sub-clause (3)(a) of Clause 9 and Sub-clause (4) (a) of Clause 9 of the Order 2004 for the purpose of giving priority in the matter of allotment of fair price shops, The classification made in the said Sub-clauses (3)(a) and (4)(a) of Clause 9 of the Order 2004 of the agencies for the purpose of giving priority in allotment of fair price shops is thus unreasonable and the provision regarding priority in the said Sub-clause (3)(a) and (4)(a) of Clause 9 of the Order 2004 is thus discriminatory and violative of Article 14 of the Constitution. Similarly, there, is no rational basis for providing in Sub-clause (3)(b) of Clause 9 for giving priority to Co-operative Societies of Ex-serviceman and *for* providing 33% reservation for Forest Protection Committees and Women's Self Help Groups in Sub-clause (3)(b) of Clause 9 and Sub-clause 4(b) of Clause 9 of the Order 2004 as no material has been placed before us to show that the Co-operative Societies of Ex-serviceman or Forest protection Committees and Women's Self Help Groups can achieve the object of distribution of essential commodities including foodstuffs at fair prices to ration cardholders better than the Consumer Co-operative Societies falling under "other Co-operative Societies", In our considered view the specified agencies are to be considered for allotment of fair price shops without any priority or reservation in favour of any category of specified agencies and the only consideration that should weigh with the authorities for making the allotment of fair price shops in any area should be as to which specified agency would be able to best achieve the object of Section 3 of the Act and the Order 2004 namely distribution of essential commodities including foodstuffs. at fair prices to the ration cardholders. The provisions in Sub-clauses (3)(a) & (3)(b) and (4)(a) & (4) (b) of Clause 9 of the Order 2004 providing for priority amongst the specified agencies and reservation in favour of some of specified agencies are liable to be struck down as ultra vires Article 14

of the Constitution.

(25) The Power to make legislation under Section 3 read with Section 5 of the Act is also subject to the law that may be enforced Section 2 of the Chhattisgarh Co-operative Societies Act, 1960 contains definitions of the different types of Co-operative Societies and a reading of the different provisions of Section 2 defining different types of Co-operative Societies would show that different types of Co-operative Societies have been defined keeping in mind the object for which the Co-operative Societies are formed Section 10 (1) of the said Act further provides that the Registrar shall classify all societies under one or more of the heads mentioned therein and Section 10(1-a) further provides that the Registrar may further classify the societies falling under any of the heads specified in sub-section (1) as Apex Society, Central Society or Primary Society. Section 31 of the laid Act also provide that the registration of the Co-operative Society shall render It a body corporate by the name under. Which it is registered. having perpetual succession and a common seal, and with power to hold property, enter Into contracts, institute and defend suits and other legal proceedings and to do all things for the purposes for which It was constituted. Hence. unless Co-operative Society is constituted With the object of distributing or selling essential commodities to its members and to other people in the area, and is registered and classified as such