IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

W.P.A. 22281 of 2022
C.A.N. 3 of 2023
Setara Begam
versus
State of West Bengal & Ors.
With
W.P.A. 1098 of 2024
Surajit Saha
versus
State of West Bengal & Ors.
With
W.P.A. 1101 of 2024
Ranjan Jathi
versus
State of West Bengal & Ors.
With
W.P.A. 1217 of 2024
Buddhadev Polley
versus
State of West Bengal & Ors.
With
W.P.A. 22283 of 2022
C.A.N. 2 of 2023
M/s. Nagarmal Mahabir Prasad & Anr.
versus
State of West Bengal & Ors.
with
W.P.A. 23432 of 2023
Sadhan Kar
versus
The State of West Bengal & Ors.
With
W.P.A. 23435 of 2023
Amal Kumar Maity
versus
The State of West Bengal & Ors.
With
W.P.A. 23441 of 2023
Md Rejaul Molla & Anr.
versus
The State of West Bengal & Ors.
With

W.P.A. 4615 of 2024
Jahar Bhowmick
versus
State of West Bengal & Ors.
With
W.P.A. 6466 of 2024
Nabadip Kumar Mandal
versus
State of West Bengal & Ors.
With
W.P.A. 6470 of 2024
Tapan Sardar
versus
State of West Bengal & Ors.

For the petitioners in W.P.A. 22281 of 2022, W.P.A. 1098 of 2024, W.P.A. 1101 of 2024, W.P.A. 1217 of 2024, W.P.A. 22283 of 2022, W.P.A. 4615 of 2024, W.P.A. 6466 of 2024 and W.P.A. 6470 of 2024	:	Mr. Mr. Debabrata Saha Roy, Advocate Mr. Pingal Bhattacharya, Advocate Mr. Subhankar Das, Advocate
For the petitioner in W.P.A. 23432 of 2023, W.P.A. 23435 of 2023 and W.P.A. 23441 of 2023	:	Mr. Shamit Sanyal, Advocate Ms. Priyakshi Banerjee, Advocate Mr. Sabyasachi Roy, Advocate
For the State in W.P.A. 23435 of 2023	:	Mr. T.M. Siddiqui, Ld. AGP Ms. Amrita Panja Moulick, Advocate
For the State in W.P.A. 4615 of 2024, W.P.A. 6466 of 2024 and W.P.A. 6470 of 2024	:	Mr. Suman Sengupta, Advocate Mr. Amritalal Chatterjee, Advocate
For the State in W.P.A. 1217 of 2024	:	Mr. Suman Sengupta, Advocate Mr. Dwaipayan Basu Mallick, Advocate
For the State in W.P.A. 22281 of 2022, W.P.A. 1098 of 2024, W.P.A. 22283 of 2022, W.P.A. 23432 of 2023 and W.P.A. 23441 of 2023	:	Mr. Sirsanya Bandopadhyay, Advocate Mr. Ritesh Kr. Ganguly, Advocate
For the State in W.P.A. 1101 of 2024	:	Mr. Suman Sengupta, Advocate Ms. Amrita Panja Moulick, Advocate
For the private respondent nos. 6 and 7	:	Mr. Kalyan Kumar Bandyopadhyay, Senior Advocate Mr. Ramesh Dhara, Advocate Ms. Mousumi Chowdhury, Advocate

Heard on	:	29.01.2024, 31.01.2024, 08.02.2024, 13.02.2024, 27.02.2024, 08.03.2024, 12.03.2024, 20.03.2024
Judgment on	:	02.08.2024

Bivas Pattanayak, J. :-

1. The sole issue raised in the present writ petitions is whether with the promulgation of National Food Security Act, 2013 (hereinafter referred to in short as *'NFSA, 2013'*) and Targeted Public Distribution System (Control) Order, 2015 (hereinafter referred to in short as *'TPDS Control Order, 2015'*) of the Central Government, the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (hereinafter referred to as the '*State Control Order, 2013'*) has become redundant.

2. Mr. Debabrata Saha Roy, learned advocate for the petitioners in W.P.A. 22281 of 2022, W.P.A. 1098 of 2024, W.P.A. 1101 of 2024, W.P.A. 1217 of 2024, W.P.A. 22283 of 2022, W.P.A. 4615 of 2024, W.P.A. 6466 of 2024 and WPA 6470 of 2024 submitted that Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the '*Act of 1955'*) empowers the Central Government to make rule/ order for maintaining, controlling, monitoring, licensing so far as essential commodities are concerned. Section 5 of the Act of 1955 empowers the Central Government to delegate power to the State Government to frame rule/order for exercising power under Section 3 of the Act of 1955 by issuing orders in relation to such matters. The Central Government in exercise of power under Section 3 of the Act of 1955 issued Public Distribution System (Control) Order, 2001 (hereinafter referred to as the '*Central Control Order, 2001'*) on 31st August, 2001 specifying the terms and conditions to be followed by the respective States in framing of rules for maintaining, controlling, monitoring, licensing of Public Distribution System. The State Government in exercise of power under Section 3 of the Act of 1955 read with Central Control Order, 2001 framed two Control Orders namely (i) West Bengal Public Distribution System (Maintenance and Control) Order, 2013 on 8th August 2013 applicable for rural areas throughout the State of West Bengal and (ii) West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 on 12th August 2013 applicable for urban areas throughout the State of West Bengal. Needless to mention that the State Control Order, 2013 has been issued pursuant to the delegation given by the Central Government under Clause 7 of the Central Control Order, 2001. The Central Government, after 66 years of independence in order to ensure access to adequate quantity of quality food at affordable prices to its people, enacted NFSA, 2013 on 10th September, 2013 and for implementation of NFSA, 2013, it introduced TPDS Control Order, 2015 superseding the earlier Central Control Order, 2001, targeting a particular section of the society for providing them with food at affordable price. With the supersession of Central Control Order, 2001 by coming into force of TPDS Control Order, 2015, the State Control Order, 2013 loses its force and becomes redundant. The legality of the scheme of *Duare* ration i.e. doorstep delivery of foodgrains to the beneficiaries was under challenge at the instance of Fair Price Shop owners in FMA 764 of 2022 *(Sekh Abdul Majed versus State of West Bengal & Ors.*) with MAT 910 of 2022 (*Sk. Manowar Ali & Ors. versus State of West Bengal & Ors.*). In the aforesaid appeals, submissions were made by learned Advocate General of the State of West Bengal that the NFSA, 2013 has not yet been implemented fully in the State. Considering such submissions and in view of Proviso to Clause 1 of TPDS Control Order, 2015, which provides that the Control Order, 2001 would be effective in the States till full implementation of NFSA, 2013, the Hon'ble Division Bench did not interfere with the argument advanced on behalf of the petitioners that after coming into force of TPDS Control Order, 2015, the Central Control Order, 2001 has become redundant. However, the State challenging the judgment of Hon'ble Division Bench passed in the aforesaid appeals preferred a SLP before the Hon'ble Supreme Court wherein in ground No. R at page 54 it stated that the Hon'ble Division Bench was wrong in recording that NFSA, 2013 had not been fully implemented in the State of West Bengal. Similarly, a writ petition was also filed challenging the vacancy of wholesaler and similar submissions were advanced by the State in the writ petition that NFSA, 2013 has not been implemented in its full form and the coordinate bench relying on the first proviso of Clause 1 of TPDS Control Order, 2015 dismissed the writ petition. The said order was challenged in appeal and a copy of the aforesaid SLP filed by the State before the Hon'ble Supreme Court particularly ground No. R at page 54 of the said appeal was placed and the Hon'ble Division Bench held that there is clamour of legality of the impugned action in view of coming into force of TPDS Control Order 2015 preceded by NFSA, 2013. Thus, from such ground taken by the State in SLP, it can well be presumed that NFSA, 2013 has been fully implemented in the State of West Bengal, whose resultant effect is supersession of

Central Control Order, 2001 which in turn makes State Control Order, 2013 ineffective and redundant. In consequence thereof, the State of West Bengal is required to frame new Rules/Orders as per TPDS Control Order, 2015 for implementation of the NFSA, 2013 and is debarred from declaring vacancy under the State Control Order, 2013 which has become redundant. With regard to the effect and meaning of supersession, he relied on the decision of Hon'ble Supreme Court passed in ***Union of India versus Glaxo India Limited and Another***[1] and ***Bhimandas Ambwani (Dead) Through LRs. versus Delhi Power Company Limited***[2] and ***Black's Dictionary (6th Edition)***.

3. Mr. Shamit Sanyal, learned advocate for petitioners in W.P.A. 23432 of 2023, W.P.A. 23435 of 2023 and W.P.A. 23441 of 2023 also submitted in the similar manner.

4. On the contrary Mr. Sirsanya Bandopadhyay, learned Junior Standing Counsel appearing for State-respondents in W.P.A. 22281 of 2022, W.P.A. 1098 of 2024, W.P.A. 22283 of 2022, W.P.A. 23432 of 2023 and W.P.A. 23441 of 2023 submitted that Section 3 (1) of the Act of 1955 is the fountainhead of all the powers for framing guidelines in connection with the maintenance and regulation of essential commodities or for securing their distribution and its availability at fair prices to the masses. Section 5 of the Act of 1955 deals with the delegation of powers in favour of the State Government or such officer or authority subordinate to the State Government. Section 3 read with Section 5 of the Act of 1955

[1] (2011) 6 SCC 668

[2] (2013) 14 SCC 195

empowers Government of India to delegate the power to the State Government, by way of issuing notification, to issue orders including control orders in relation to such matter and subject to the conditions if any specified in the said notification. The Government of India in exercise of powers conferred upon it under Section 5 of the Act of 1955 issued notification being no. GSR 800 dated 9th June, 1978 declaring that the powers conferred upon it under Section 3(2)(a) to 3(2)(f), 3(2)(h), 3(2)(i), 3(2)(ii) and 3(2)(j) in relations of foodstuffs would be exercisable also by the State Government. As per the aforesaid notification dated 9th June, 1978, a prior concurrence of the Government of India is required by State Government only for distribution and disposal of foodstuffs outside the boundaries of the State and for transportation of foodstuff under Section 3(2)(d) of the Act of 1955 which is not the case in the present writ petitions. Thus, all the Control Orders, be it Central Control Order, 2001 or TPDS Control Order, 2015 issued by the Government of India or State Control Order, 2013 issued by Government of West Bengal, are independent delegated legislations made by two separate governments in exercise of power conferred under Section 3 of the Act of 1955 and these control orders derive the authorities from Section 3 of the Act of 1955 which is the fountainhead of all orders. Further Clause 9 of TPDS Control Order, 2015 also provides that the State Government shall issue an order under Section 3 of the Act of 1955. Moreover, the NFSA, 2013 itself refers to PDS Control Order, 2001 in Section 24(5)(c) and thus even the Parliament did not find the Central Control Order, 2001 to be obsolete on the date of enactment of NFSA, 2013.

Moreover, even if no State Control Order has been promulgated in terms of TPDS Control Order, 2015, the existing State Control Order, 2013 is still in force in view of the fact that certain provisions of NFSA, 2013 are yet to be implemented fully in the State of West Bengal and as such there is no scope of supersession of Central Control Order, 2001 in view of the proviso to sub-clause (2) of clause 1 of the TPDS Control Order, 2015. Hundred percent Aadhar linking with ration card is yet to be completed in the State of West Bengal amongst other statutory requirement of NFSA, 2013. Though several other provisions and mandates of NFSA, 2013 have been substantially implemented but not fully implemented. To buttress is contention, he relied on the submissions advanced on behalf of the State of West Bengal in the case of ***Intercity Agency Private Limited and Another versus State of West Bengal and Others***[3]. Relying on the decision of this Court rendered in ***Saroj Roy versus The State of West Bengal and Ors.***[4], he submitted that even judged under the purview of TPDS Control Order, 2015 the impugned vacancy notification is not in contravention of the viability of Fair Price Shop as contemplated under Clause 9(5) of TPDS Control Order, 2015. Further although the petitioner has pleaded that State Control Order, 2013 has been superseded yet neither any such prayer has been made for declaring State Control Order, 2013 as superseded by TPDS Control Orders, 2015 nor the *vires* of the State Control Order, 2013 has been challenged.

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[3] ***2023 SCC onLine Cal 575***

[4] ***WPA 21747 of 2023 (Decision of High Court at Calcutta)***

5. Mr. Kalyan Kumar Bandyopadhyay, learned Senior advocate appearing for respondent nos. 7 in W.P.A. 22281 of 2022 and respondent no.6 in W.P.A. 22283 of 2022, at the outset, submitted that petitioners have not sought for any declaration that the State Control Order, 2013 is *ultra vires* the TPDS Control Order, 2015 or any other Act. There is also no prayer in the writ petition that the TPDS Control Order, 2015 prevails over State Control Order, 2013. Every petition under Article 226 of the Constitution of India must contain a relief clause. Whenever the petitioner is entitled to claim more than one relief, he must pray for all the reliefs. Under the provisions of Code of Civil Procedure, if the plaintiff omits, except with the leave of the Court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Bharat Amritlala Kothari and Another versus Dosukhan Samadkhan Sindhi and Others***[5]. Further he also submitted that Section 3 read with Section 5 of the Act of 1955 empowers Government of India to delegate the power to the State Government by way of issuing notification, to issue orders including Control Orders in relation to such matter and subject to the conditions if any specified in the said notification. The Control Order, 2013 is part of the legislation and should be read along with the Act of 1955. To buttress his contention, he relied on the decision of this court passed in ***Sm. Lila Biswas versus State of West Bengal & Ors***[6].

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[5] ***(2010) 1 SCC 234***

[6] ***(1979) 1 CHN 504***

6. Mr. Suman Sengupta, learned advocate for the State-respondents in W.P.A. 4615 of 2024, W.P.A. 1217 of 2024, W.P.A. 1101 of 2024, W.P.A. 6466 of 2024 and W.P.A. 6470 of 2024 submitted that the writ petitioner has neither sought for any declaration that the State Control Order, 2013 has been superseded by promulgation of TPDS Control Order, 2015 nor has challenged the *vires* of the State Control Order, 2013. Therefore, in the absence of such plea, the notifications cannot be challenged nor the implementation of the statutory scheme can be stopped without there being a challenge to the *vires* of the relevant Control Orders. To buttress his contentions, he relied on the decision of Hon'ble Supreme Court passed in ***Dhanraj versus Vikram Singh and Others***[7].

7. In reply, Mr. Saha Roy, learned advocate for the aforementioned petitioners indicated that *vires* of only an existing law can be challenged and not of any redundant/ non-est/ non-existent law.

8. On such submissions advanced at the Bar, following questions need to be examined and answered:

(i) Whether the State Control Order, 2013 is a delegated legislation or an independent delegated legislation?

(ii) Whether the Central Control Order, 2001 has been superseded by the promulgation of TPDS Control Order, 2015 so far as the State of West Bengal is concerned?

(iii) Whether in the absence of prayer challenging the *vires* of the State Control Order, 2013 the question of its effectiveness can be examined?

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[7] ***2023 SCC OnLine SC 724***

QUERY NO.1: WHETHER THE STATE CONTROL ORDER, 2013 IS A DELEGATED LEGISLATION OR AN INDEPENDENT DELEGATED LEGISLATION?

9. In order to find an answer to the query as aforesaid, it would profitable to reproduce the relevant provisions of Section 3(1) and Section 5 of Essential Commodities Act, 1955 as hereunder:

> *"**3. Powers to control production, supply, distribution, etc., of essential commodities.**—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.*
>
> *x x x"*
>
> *"**5. Delegation of powers.** —The Central Government may, by notified order, direct that the power to make orders or issue notifications under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—*
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> *(a) such officer or authority subordinate to the Central Government; or*
>
> *(b) such State Government or such officer or such authority subordinate to a State Government,*
>
> *as may be specified in the direction."*

10. Upon bare reading of the aforesaid provisions, it manifests that Section 3 of Act of 1955, empowers the Central Government to make orders for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein where it finds 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. Section 5 (b) of the Act of 1955 empowers the Central Government, by notified order, to delegate such power to make orders or issue notifications under Section 3 be exercisable also by such State Government or such officer or such authority subordinate to a State Government, in relation to such matters and subject to such conditions, if any, as may be specified in the direction. Thus there cannot be any quarrel that the power of the Central Government under Section 3 of Act of 1955 is exercisable by the State Governments upon order of delegation of Central Government under Section 5 of Act of 1955.

11. Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel for State-respondents tried to impress upon the Court that the Government of India in exercise of powers conferred upon it under Section 5 of the Act of 1955 issued notification being no. GSR 800 dated 9th June, 1978 declaring that the powers conferred upon it under Section 3(2)(a) to 3(2)(f), 3(2)(h), 3(2)(i), 3(2)(ii) and 3(2)(j) in relations of foodstuffs would be exercisable also by the State Government and thus, Control Orders be it Central Control Order, 2001 or TPDS Control Order, 2015 issued by the Government of India or Control Order, 2013 issued by Government of West Bengal are independent delegated legislations made by two separate governments in exercise of the power conferred under Section 3 of the Act of 1955.

12. In order to appreciate the aforesaid argument advanced on behalf of the State-respondents, it would be apposite to reproduce the relevant portion of West Bengal Public Distribution System (Maintenance and Control) Order, 2013:

> *"WHEREAS the Governor is of the opinion that it is necessary and expedient so to do for maintaining supplies and securing availability and distribution of essential commodities under the Public Distribution System;*

> *Now, THEREFORE, in exercise of the power conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) read with the Government of India, Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) Order No. GS.R. 630(E), dated 31st August, 2001, the Governor is pleased hereby to make the following Order, namely: —……………………."*

13. Upon bare reading of the aforesaid, it goes without saying that the State Control Order, 2013 has been issued in exercise of power conferred by Section 3 of the Essential Commodities Act, 1955 read with Order No. GS.R. 630(E), dated 31st August, 2001 issued by the Government of India, Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution). Needless to mention that the State Control Order, 2013 has been issued pursuant to the delegation given by the Central Government under the Central Control Order, 2001. Thus, there cannot be any quarrel that the State Control Order, 2013 issued by the State of West Bengal has its genesis in Section 3 of the Essential Commodities Act, 1955 and Control Order, 2001 of the Government of India. It is relevant to note that State Control Order, 2013 never records that it has been issued in exercise of powers conferred by notification being GSR 800 dated 9th June, 1978. Therefore, the argument that the State Control Order, 2013 issued by the Government of West Bengal is independent delegated legislation is not tenable and acceptable.

QUERY NO.2: WHETHER THE CENTRAL CONTROL ORDER, 2001 HAS BEEN SUPERSEDED BY THE PROMULGATION OF TPDS CONTROL ORDER, 2015 SO FAR AS THE STATE OF WEST BENGAL IS CONCERNED?

14. For finding an answer to the aforesaid query, it would be apposite to reproduce the relevant portion of TPDS Control Order, 2015 as hereunder:

> *"**G.S.R. 213(E).**-Whereas the Central Government is of the opinion that it is necessary and expedient so to do for maintaining supplies and securing availability and distribution of essential commodity, namely, foodgrains under the Targeted Public Distribution System;*
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> *Now, therefore, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) and in supersession of the Public Distribution System (Control) Order, 2001, except as respects things done or omitted to be done before such supersession and save as otherwise provided hereunder, the Central Government hereby makes the following Order, namely: -*
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> ***1. Short title, and commencement.**-(1) This Order may be called the Targeted Public Distribution System (Control) Order, 2015.*
>
> *(2) It shall come into force on the date of its publication in the Official Gazette:*
>
> *Provided that provisions of the Public Distribution System (Control) Order, 2001 shall continue to have effect as against the corresponding provisions of this Order in any State which has not implemented the Food Security Act or is implementing the said Act only in part."*

15. On going through the TPDS Control Order, 2015, it is found that the same has been issued in supersession of the Public Distribution System (Control) Order, 2001. The proviso to Clause 1(2) clearly provides that the Public Distribution System (Control) Order, 2001 shall continue to have effect as against the corresponding provisions of this Order in any State which has not implemented the Food Security Act or is implementing the said Act only in part.

16. Mr. Saha Roy, learned advocate for the aforementioned petitioners submitted that in writ petitions challenging *Duare Sarkar* scheme, it was submitted on behalf of the State that NFSA, 2013 has not been fully implemented. However, in SLP before the Hon'ble Supreme Court, the State made a ground that such submissions have been wrongly recorded by the Court. Therefore, it is to be presumed that NFSA, 2013 has been fully implemented in the State of West Bengal. Accordingly, TPDS Control

Order, 2015 supersedes Control Order, 2001 and thereby making State Control Order, 2013 redundant since it draws its genesis from Central Control Order, 2001.

17. At the outset, the veracity and effect of ground taken in the SLP pending before the Hon'ble Supreme Court being ground no. R at page 54 cannot be decided in the present writ petition. However, it is pertinent to note that Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel for State of West Bengal in his written notes of arguments has categorically stated that certain provisions of NFSA, 2013 has not been fully implemented in the State of West Bengal. Such being the position, as per proviso to Clause 1 Sub-Clause (2) of TDPS Control Order, 2015, the Central Control Order, 2001 will continue to apply. Therefore, in the State of West Bengal, the Central Control Order, 2001 has its application, since the NFSA, 2013 has not been fully implemented in the State of West Bengal and cannot be said to have been superseded by TPDS Control Order, 2015.

18. Though the decision in *Glaxo India Limited (supra)* discusses the meaning of the word *'Supersession'*, yet it will not be applicable in the present case since it is found that the Central Control Order, 2001 is not superseded by TPDS Control Orders, 2015 as far as State of West Bengal is concerned.

19. In *Bhimandas Ambwani (Dead) Through LRs. (supra)*, the case pertains to a land acquisition proceeding wherein the authorities issued notifications under Section 4 of the Land Acquisition Act, 1894. Successive notification under Section 4 and declaration was made under Section 6 of the Land Acquisition Act. The Hon'ble Court held that the earlier notification/declaration stood obliterated/superseded. The facts involved in the cited decision is dissimilar to the case at hand and as such does not apply.

20. In *Bharat Amritlala Kothari (supra)*, the Hon'ble Court dealt with the proposition that if the plaintiff omits to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished except with the leave of the Court. The facts are distinguishable from the case at hand and does not apply to this case.

QUERY NO.3: WHETHER IN THE ABSENCE OF PRAYER CHALLENGING THE VIRES OF THE STATE CONTROL ORDER, 2013 THE QUESTION OF ITS EFFECTIVENESS CAN BE EXAMINED?

21. In the writ petitions, there is no prayer challenging the *vires* of the State Control Order, 2013. Be that as it may, this Court is of the opinion that since the applicability of the State Control Order, 2013 is questioned with the coming into force of NFSA, 2013 and TPDS Control Order, 2015, hence challenging the *vires* of State Control Order, 2013 cannot be a condition precedent for examining the effectiveness and applicability of such State Control Order, 2013. An enactment or law becoming redundant cannot be allowed to operate since none has challenged the *vires* or sought for declaration of supersession by new enactment. Absence of challenge to the *vires* cannot validate a law/rule which is otherwise invalidated by a new enactment. For the reasons as aforesaid, the proposition in *Dhanraj (supra)* is also not applicable in this case. In this regard, this Court finds substance in the submissions of that Mr. Saha Roy, learned advocate for the petitioners that the question of effectiveness and applicability can be examined in the absence of prayer challenging the *vires* of such Control Order or failing to seek declaration of suppression by new enactment.

EFFECT OF INCONSISTENCIES OF STATE CONTROL ORDER, 2013 VIS-À-VIS NFSA, 2013 AND TPDS CONTROL ORDER, 2015.

22. Mr. Saha Roy, learned advocate for the petitioners strenuously argued that the existing State Control Order, 2013 is inconsistent *vis-a-vis* the NFSA, 2013 and TPDS Control Order, 2015 of the Central Government for the following reasons. *Firstly,* under the State Control Order, 2013, there are as many as four types of the ration cards namely APL (Above Poverty Line), AAY (*Antyodaya Anna Yojana*), *Annapurna* Beneficiaries and BPL (Below Poverty Line) beneficiaries whereas under the TPDS Control Order, 2015, there is only one type of beneficiaries namely eligible households categorised as (i) Priority households (PPH), (ii) Special Priority Households (SPPH) and (iii) *Antyodaya Anna Yojana*. *Secondly,* under the State Control Order, 2013, there is no provision of presence of independent witnesses during search and seizure following Section 100 of the Code of Criminal Procedure, 1973 whereas under the provisions of TPDS Control Order 2015, it has been categorically mentioned that provisions of Section 100 of the Code relating to search and seizure shall apply. *Thirdly,* the State Control Order, 2013 defines the MR distributor and their duties, liabilities, responsibilities, functioning, engagement, distribution etc. whereas in the TPDS Control Order, 2015, there is no such nomenclature namely M.R distributor. *Fourthly,* as per the State Control Order, 2013, the M.R distributor are assigned with the responsibility of lifting the food grains from the Food Corporation of India and deliver the same to its respective tagged Fair Price Shop owners following doorstep delivery whereas as per the TPDS Control Order, 2015 the State Government shall lift the food grains from the designated depots of the Corporation through its authorised agency and distribute to the Fair Price Shop. Due to the reason of such stark inconsistencies of State Control Order, 2013 in contrast to the TPDS Control Order, 2015, the State Control Order, 2013 becomes ineffective and redundant.

23. In reply to the aforesaid contentions, Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel for the State-respondents submitted that State Control Order, 2013 also contemplates the concept of TPDS and the statutory mandate of Section 2(3) of the NFSA, 2013. By notification being no. 3156-FS dated 25th November 2016, an amendment was introduced and Clause 3 of the Sate Control Order, 2013 was amended to make *Antyodaya* households and Priority households eligible for a ration card. Apart from that *Rajya Khada Suraksha Yojna (RKSY)* scheme of the Government of West Bengal was introduced to provide ration articles to additional beneficiaries who were not covered by NFSA, 2013. The aforesaid scheme is being run by the State Government in exercise of its authority prescribed under Section 24(1) of the NFSA, 2013. Further Section 24 of General Clauses Act provides for the continuation of orders etc. issued under enactments repealed and re-enacted. The object of the Section is to preserve continuity of the notifications, orders, schemes, rules or bye-laws made under the repealed Act unless they are shown to be inconsistent with the provisions of re-enacted statute and such notifications are not inconsistent with the provisions of the re-enacted Act and are deemed to continue in force as having been issued under the re-enacted Act till the aforesaid notifications are specifically superseded or withdrawn or modified under the Act. In the instant case, the writ petitioners have failed to show any major inconsistencies between the provisions of the TPDS Control Order, 2015 and the provisions of State Control Order, 2013. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***State of Punjab versus Harnek Singh***[8].

24. Mr. Kalyan Kumar Bandyopadhyay, learned Senior advocate appearing on behalf of respondent no. 7 in W.P.A. 22281 of 2022 and respondent no.6 in W.P.A. 22283 of 2022 submitted that there are no inconsistencies in the State Control Order, 2013 contrary to the object of NFSA, 2013 and TPDS Control Order, 2015. The Control Order issued by the Central Government is in the form of a directive and not a mandatory one. The State Control Order, 2013 is supplementary to TPDS Control Order, 2015. The contention of the petitioners is that TPDS Control Order, 2015 does not provide for engagement of private wholesalers or distributors and only provides for engagement of agency as defined under Clause 2(g) of the TPDS Control Order, 2015, who are supposed to lift food grains as per Clause 7(1). Be that as it may, Annexure III of the TPDS Control Order, 2015 framed as per Clause 7(12) of the said Control Order defines agency which includes private agencies like wholesalers. The

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[8] ***(2002) 3 SCC 481***

aforesaid Annexure has not been challenged which are part of TPDS Control Order, 2015. Such being the position the appointment of wholesaler is very much included within TPDS Control Order, 2015. Further there is no clause in the TPDS Control Order, 2015 restricting appointment of dealers. Referring to Article 254 of the Constitution of India, he submitted that since the State Control Order, 2013 is not completely inconsistency with the TPDS Control Order, 2015, the question of repugnancy does not arise at all and hence cannot said to be void or redundant.

25. Upon hearing the learned advocates for the respective parties, the question which crops up is whether State Control Order, 2013 has become redundant and inoperative for the reasons of its inconsistencies with TPDS Control Order, 2015.

26. While examining the aforesaid question, it has already been seen that though provisions of TPDS Control Order, 2015 envisages to supersede Central Control Order, 2001 which is the genesis of State Control Order, 2013, yet the proviso to Clause (1) of TPDS Control Order, 2015 contains that Central Control Order, 2001 will continue to be effective in the State where NFSA, 2013 has not been fully implemented. The NFSA, 2013 has not been fully implemented in the State of West Bengal has been categorically submitted by learned advocate representing the State-respondents. Therefore, even if there may have certain inconsistencies in State Control Orders, 2013 *vis-à-vis* TPDS Control Order, 2015, that does not *ipso facto* make the State Control Order, 2013 redundant since Control

Order, 2001, which is the basis of State Control Order, 2013 continues to be effective.

27. Further Section 24 of the General Clauses Act provides as hereunder:

> *"**24. Continuation of orders, etc., issued under enactments repealed and re-enacted.**—Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5-A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."*

28. Section 24 of the General Clause Act deals with the effect of repeal and re-enactment of an Act and the object of the Section is to preserve the continuity of the notifications, orders, schemes, rules or bye-laws made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted.

29. In *Harnek Singh (supra)*, the Hon'ble Supreme Court while interpreting the provisions of Section 6 and 24 of the General Clauses Act observed as follows:

> *"**26.** It is, therefore, evident that the notifications issued by the Government of Punjab, in exercise of the powers conferred under Section 5-A of the 1947 Act, empowering and authorising the Inspectors of Police posted in Special Inquiry Agency of the Vigilance Department, Government of Punjab to investigate the cases registered under the said Act were saved under the saving provision of the re-enacted 1988 Act. Such notifications are not inconsistent with the provisions of re-enacted Act and are deemed to continue in force as having been issued under the re-enacted 1988 Act till the aforesaid notifications are specifically superseded or withdrawn or modified under the 1988 Act. The investigation conducted by the Inspectors of Police authorised in that behalf under the 1947 Act are held to be proper, legal and valid investigation under the re-enacted Act and do not suffer from any vice of illegality or jurisdiction. The High Court committed a mistake of law in holding the aforesaid notifications as not saved under the re-enacted 1988 Act. The quashing of the proceedings on the basis of the first information report registered against the accused-respondents was illegal and contrary to the settled position of law. The judgment of the High Court, impugned in these appeals, is, therefore, liable to be set aside."*

30. Bearing in mind the aforesaid, the Central Control Order, 2001 not being superseded by TPDS Control Order, 2015 since the State of West Bengal has not implemented the National Food Security Act fully, the State Control Order, 2013 will to continue to operate until and unless the circumstances so arises upon full implementation of the National Food Security Act, 2013 which would make the Central Control Order, 2001 to be superseded. Till such period the Central Control Order, 2001 is not superseded, the State Control Order, 2013 will be operative and cannot be said to be redundant. As the TPDS Control Order, 2015 allows the Central Control Order, 2001 to be effective, which is genesis of State Control Order, 2013, in the State where NFSA, 2013 has not been fully implemented, hence the question of repugnancy does not arise.

DECLARATION OF VACANCY WHETHER IS VIOLATIVE OF ARTICLE 19(1)(g) OF THE CONSTITUTION OF INDIA.

31. Mr. Saha Roy, learned advocate for the aforementioned petitioners argued that State Control Order, 2013 is framed in exercise of power conferred under Central Control Order, 2001 and following the terms and conditions M.R distributorship license and F.P shop dealership licenses were issued under State Control Order, 2013. The Central Control Order, 2001 has been superseded by TPDS Control Order, 2015 which provides in paragraph 9 that the Central Government has delegated the power to all the State Governments and Union Territories to issue orders. The State Control Order, 2013 which has been issued in terms of Central Control Order, 2001 has lost its force and had become redundant/ *non-est* since the Central Control Order, 2001 has been superseded by TPDS Control Order, 2015. It is legitimately expected that the Food & Supplies Department, Government of West Bengal shall frame a fresh Control Order in terms of TPDS Control Order, 2015 since State Control Order, 2013 has no existence after supersession of Central Control Order, 2001 of the Central Government by virtue of TPDS Control Order, 2015. However, the Food and Supplies Department, Government of West Bengal has declared vacancy of M.R distributorship and F.P shop dealership in terms of State Control Order, 2013, which clearly is violative of the writ petitioners' right protected under Article 19 (1)(g) of the Constitution of India since such engagement of dealers/ distributors shall curtail the volume of business of the writ petitioners. It is a settled proposition of law that if the foundation goes then the superstructure falls automatically. The foundation of State

Control Order, 2013 is the Central Control Order 2001. Since Central Control Order, 2001 has already been superseded by TPDS Control Order, 2015, the State Control Order, 2013 also stands superseded and, therefore, no vacancy can be declared invoking the provisions of redundant State Control Order, 2013.

32. In reply to the aforesaid contention, Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel for the State-respondents submitted that although, curtailment of ration cards from a particular dealer or distributor, is one of the modes of penalty as contemplated in Clause 24 of the State Control Order, 2013, however, all curtailment may not necessarily amount to penalising the dealer or distributor. The curtailment of ration cards from a particular dealer or distributor can be undertaken as an administrative measure by the Government of West Bengal. For smooth functioning of the public distribution system and in order to limit the handling of volume/quantum of foodgrains by a particular dealer or distributor, the State of West Bengal decided to declare new vacancies. Clause 20 of Control Order, 2013 empowers the district administration to declare a new vacancy for catering to the needs of consumers in a particular area. Relying on the decision of this Court passed in ***Gour Chandra Gorai & Ors. versus State of West Bengal & Ors.***[9], he submitted that the State Government is empowered to curtail its cards by taking a policy decision in a larger conspectus. Further Clause 20 (ii) of the Control Order, 2013 is completely procedural in nature and as such the writ petitioner did not have any vested right to challenge the same as the

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[9] ***2017 SCC OnLine Cal 5182***

authority which issues grant can very well recall and rescind the decision within the meaning of Section 21 of the General Clauses Act.

Further it is a settled proposition of law that the allotment of a minimum amount of foodgrain cannot be claimed as a matter of right. A Fair Price Shop dealer or distributor has no right to be appointed as such. Therefore, the right to trade of a dealer or distributor under Article 19(1)(g) of the Constitution of India will not be affected in any manner so long as the license was not cancelled. The government as a policy decision can decide to reduce the number of cards per dealer or distributor and such policy decision does not affect the rights if any of the Fair Price Shop dealers or distributors. It can safely be concluded that no right of the petitioners has been infringed by the impugned vacancy notification and thus the petitioner does not have any *locus* to challenge the instant declaration vacancies on such ground since there cannot be any right to allotment. In support of his contention, he relied on the following decisions:

(i) ***District Collector and Another versus B. Suresh and Others***[10]

(ii) ***Hari Om Meena & Anr. versus State of Rajasthan & Ors.***[11]

Moreover, if there be no right to allotment of a particular number of ration cards/dealers, there cannot be infringement of such right giving rise to a cause of action to maintain a writ petition. To buttress his contention, he relies on the following decisions:

(i) ***Mani Subrat Jain and Others versus State of Haryana***[12]

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[10] ***(1999) 5 SCC 612***
[11] ***(2016) 2 RLW 883 (Raj.)***
[12] ***(1977) 1 SCC 486***

(ii) ***Ayaaubkhan Noorkhan Pathan versus State of Maharashtra and Others***[13]

(iii) ***The Nagar Rice & Flour Mills and Others versus N. Teekappa Gowda and Bros. and Others***[14]

In *The Nagar Rice & Flour Mills (supra),* it has been laid down that a competitor in business cannot seek to prevent another entering the same business. Even if the new entrant is sans permission, a competitor will have no *locus standi* for challenging the grant of the permission because no right vested in the competitor was infringed.

33. Mr. Kalyan Kumar Bandyopadhyay, learned Senior advocate appearing for respondent no.7 in W.P.A. 22281 of 2022 and respondent no.6 in W.P.A. 22283 of 2022 submitted that right to earn is a right enshrined under the Constitution of India to earn livelihood and not of any fixed income/ earnings. It is a settled proposition of law that the allotment of a minimum amount of foodgrain cannot be claimed as a matter of right. There cannot be any right to allotment. The government as a policy decision can decide to reduce the number of cards per dealer or distributor and such policy decision does not affect the rights, if any, of the Fair Price Shop dealers or distributors. It can safely be concluded that no right of the petitioner has been infringed by the impugned notification declaring vacancies. Therefore, the right to trade of a dealer or distributor under Article 19(1)(g) of the Constitution of India will not be affected in any manner whatsoever even if there is curtailment of ration cards.

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[13] ***(2013) 4 SCC 465***

[14] ***1970 (1) SCC 575***

34. Upon hearing the learned advocate for the respective parties, the question which falls for consideration is whether the right of a dealer or distributor under Article 19(1)(g) of the Constitution is infringed upon curtailment of ration cards of a dealer or distributor on declaration of a new vacancy.

35. In order to examine the above question in the present context, one has to look to Clause 20(ii) and Clause 26(ii) of the State Control Order, 2013. Such clause of the Control Order, 2013 has been framed by the State Government in exercise of power conferred under Section 3 of Act of 1955 read with Control Order, 2001 which deals with provision pertaining to declaration of vacancy of Fair Price Shop which reads as hereunder:

> *"**20. Engagement of Dealer.–***
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> *x x x*
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> *(ii) If it appears necessary for the District Administration to declare a new vacancy of dealer for catering to the need of consumers in any particular area, the vacancy has to be declared with the approval of State Government. In that case the concerned Sub-divisional Controller, Food and Supplies, shall submit the proposal of such vacancy to the concerned District Controller, Food and Supplies, who, in turn, shall send the same to the Director. The Director shall examine the proposal, if necessary, make re-enquiry and send the proposal to the Department for approval. "*
>
> *"**26. Engagement of Distributor.–***
>
> *x x x*
>
> *(ii) If it appears necessary for the District Administration to declare a new vacancy of Distributor for better functioning of Public Distribution System in a particular area, the concerned Sub-Divisional Controller, Food and Supplies, shall submit the proposal of such vacancy to the concerned District Controller, Food and Supplies, who in turn shall send the same to the Director with the opinion of the concerned District Magistrate. The Director shall examine the proposal, and send it to the State Government with his specific views for consideration."*

36. The aforesaid provisions is completely procedural in nature and the writ petitioners cannot have a vested right to challenge the procedure by dint of which vacancy notifications are declared as has been rightly argued on behalf of the State relying on *Gour Chandra Gorai (supra).* For smooth functioning of the public distribution system and in order to limit the handling of volume/quantum of foodgrains by a particular dealer or distributor in the State of West Bengal, the Government as a policy decision can declare new vacancies. At this juncture, it needs to be seen that does such declaration of vacancy if results in curtailment of ration cards/ beneficiaries of a particular dealer or distributor infringes the rights of petitioners under Article 19(1)(g) of the Constitution of India.

37. In *B. Suresh (supra),* the Hon'ble Supreme Court observed as follows :

> *"**4.** Under the provisions of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, which order has been framed under the provisions of the Essential Commodities Act, 1955 a Fair Price Shop Dealer has no right to be appointed as such dealer. The licence which such dealer has obtained under the provisions of the Act to deal with the commodities has not been cancelled. The right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government, as a policy decision, decided to reduce the number of cards per dealer. Such decision does not affect the rights, if any, of the Fair Price Shop Dealers and as such the High Court was in error to hold that they were to be given any notice prior to the impugned decision of the State Government."*

38. Again the Hon'ble Rajasthan Hight Court in *Hari Om Meena (supra)* observed as follows:

> *"8. The reasons given by learned Single Judge, dismissing the writ petitions on the ground that the petitioners do not have either contractual, or any legal right, to insist upon opening up of fair price shops with at least 500 ration cards, and resultantly not to reduce the number of ration cards attached to the petitioners shops, do not suffer from any legal error. Learned Single Judge has dismissed*

> *the writ petitions on the ground that the petitioners do not have any vested right to insist upon at least 500 ration cards attached to their shops.*
>
> *9. we may also observe that there may be various situations, in which looking to the geographical conditions and the exigency of distribution, the number of ration cards attached to a fair price shop, may either exceed or be reduced below 500, and in such case the authorized dealer would have no legal right to challenge the action."*

39. Article 19 (1)(g) of the Constitution of India confers on all citizens the right to practice any profession or to carry on any occupation, trade or business. This freedom means that every citizen has the right to choose his own employment or to take up any trade or calling, subject only to the limits as may be imposed by the State in the interests of the public welfare and the other grounds mentioned in Clause (6). All activities contemplated under Article 19(1)(g) are essentially activities which enable a citizen to generate economic benefits, which is the primary purpose and thrust of said Article. The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. The guarantee takes into its folds any activity carried on by a citizen to earn his living. "Trade" in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. "Business" means and includes anything which occupies the time, attention of labour of a man for the purpose of profit. It is trite law that while a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist upon the government to have a specific numbers of ration cards allotted to him as a dealer or distributor. What is guaranteed by Article 19(1)(g) is the right to pursue a calling or to carry on in occupation of one's choice and not the right to hold a particular numbers of ration cards. Undisputedly the licences granted to the dealer or the distributor has not been cancelled. Therefore, the right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government as a policy decision, decided to declare vacancy notifications for smooth functioning of the public distribution system which may lead to curtailment and reduction of the number of cards per dealer or distributor. However, such decision does not affect the rights, if any, of the Fair Price Shop Dealers or the distributors and cannot be said to be infringement of any right to trade under Article 19(1)(g) of the Constitution of India.

40. The Hon'ble Supreme Court in *Mani Subrat Jain (supra)* observed as follows:

> *"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England 4th Ed., Vol. I, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors; Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. and Ferris : Extraordinary Legal Remedies, paragraph 198."*

41. In *The Nagar Rice & Flour Mills (supra),* the Hon'ble Supreme Court observed as follows:

> *"**9.** Section 8(3)(c) is merely regulatory, if it is not complied with the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants*

from exercising their right to carry on business, because of the default, nor can the rice mill of the appellants be regard as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6) but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed."

42. In *Ayaaubkhan Noorkhan Pathan (supra),* the Hon'ble Supreme Court observed as follows:

*"**9.** It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of M.P., AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).*

> ***10.*** *A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).*
>
> *x x x*
>
> ***17.*** *In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."*

43. Following the aforesaid proposition, since no right of the dealer or distributor is infringed by declaration of new vacancies under State Control Order, 2013 which is still effective, the dealer or the distributor has no *locus standi* to challenge the impugned vacancy notifications issued by the Government of West Bengal for appointment of fresh dealers and distributors on the ground of curtailment of ration card holders/beneficiaries.

44. Mr. Saha Roy, learned advocate for the petitioners submitted that if any license / permit /contract is given without following or contrary to Statute, the writ petition cannot be dismissed on the ground of *locus standi* of the existing operator/ license order/ contract. In support of his contention, relied on the following decisions.

(i) ***M. S. Jayaraj versus Commissioner of Excise, Kerala & Ors.***[15]

(ii) ***Sai Chalchitra versus Commissioner, Merrut and Others***[16]

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[15] ***(2000) 7 SCC 552***
[16] ***(2005) 3 SCC 683***

(iii) ***Prabhat Pan and Others versus The State of West Bengal and Others***[17]

45. In *M.S Jayaraj (supra),* the Hon'ble Supreme Court while considering the Bar under Rule 6(1) of Kerala Abkari Shops (Disposal in Auction) Rules, 1974, against permission to sell foreign liquor outside the legal limits specified in the license, held that the Excise Commissioner's order permitting the holder of such license to locate his shop outside that range is without authority of law. In such context, it applied the expanded concept of *locus standi* since it found that it would be improper to allow such order of Excise Commissioner to remain alive and operative on the sole ground that the writ petitioner has strictly no *locus standi* and it proceeded to consider the matter on merits whereas in the present case at hand the impugned vacancies have been notified under a valid Control Orders and are not in contravention of any other statute or any other Control Orders. Therefore, the decision rendered does not apply to the facts of the present case.

46. In *Sai Chalchitra (supra),* the authorities granted a license to a new video parlour situated at a distance of 350 metre from the petitioner's video parlour in complete violation of provisions of the U.P Cinema (Regulation of Exhibition by Means of Video) Rules, 1988 as well as Section 7(1-A)(a), (b), (c) of U.P. Regulation of Cinema Act, 1955. The writ was dismissed by the High Court on the ground of *locus standi.* The matter was remitted to the High Court for fresh decision in accordance with law, whereas in the case at hand, the impugned vacancies notification is issued

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[17] AIR 2015 Cal 112 (FB)

under a valid Control Order, hence the fact of the cited decision is distinguishable and does not apply to the present case.

47. In *Prabhat Pan (supra),* the transport authorities issued new permits for operation of buses in a particular area. The existing bus operators challenged the subsequent issuance of permits on the ground of violation of the notification dated 2nd August 2004, which prohibited the issuance of a permit for any new bus route through a particular areas. The Hon'ble Court entertained the writ petition since it was not founded only on commercial interests of the existing operators but was also founded on the fact that the impugned actions where violative of Article 14 of the Constitution of India. Whereas in the present case at hand, the impugned notification declaring vacancies have been made under a valid Control Order and not in contravention of any provisions of any other statute or any other Control Order.

WHETHER BY CHALLENGING THE STATE CONTROL ORDER, 2013, THE PETITIONERS APPROBATE AND REPROBATE AND WHETHER RENEWAL OF LICENCE IS A FRESH GRANT.

48. Mr. Kalyan Kumar Bandyopadhyay, learned advocate for respondent no.7 in W.P.A. 22281 of 2022 and respondent no.6 in W.P.A. 22283 of 2022 submitted that the petitioners are appointed under the State Control Order, 2013. The challenge to Control Order, 2013 by the petitioner is in a sense taking advantage of one part while rejecting the rest. If the contention of the writ petitioners is accepted, then their appointment under the Control Order, 2013 is *dehors* the TPDS Control Order, 2015. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants, cannot be allowed to do so while enjoying the fruits. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm about the transaction. The principle behind the doctrine of election is inbuilt concept of approbate and reprobate. It is also a species of estoppel dealing with the conduct of a party. Accordingly, the petitioners cannot be allowed to approbate and reprobate at the same time. In support of his contention, he relied on the following decisions Hon'ble Supreme Court passed in ***Union of India and Others versus N. Murugesan and Others***[18] and ***Gujarat State Civil Supplies Corporation Limited versus Mahakali Foods Private Limited (Unit 2) and Another with other civil appeals***[19]. Moreover, the distributorship of the petitioner is being continued on the basis of renewal of license granted under State Control Order, 2013. It is settled law that grant of renewal is a fresh grant though it breathes life into the operation of the previous license granted as per existing appropriate provisions of the Act, rules or orders in operation as on the date of renewal. The right to get renewal of licence is not a vested right but a privilege subject to fulfilment of the condition precedent enumerated under the Act. The petitioner is enjoying the fruits of the license issued under State Control Order, 2013 upon renewal. If the State Control Order, 2013 as has been argued on behalf of the petitioners is redundant, then the renewal of licence of the petitioners under the said State Control Order, 2013 is also not sustainable. On such analogy, the license of the

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[18] ***(2022) 2 SCC 25***

[19] ***(2023) 6 SCC 401***

petitioners has no legal sanction and, therefore, the petitioner cannot challenge the vacancy notification issued under State Control Order, 2013. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***State of Tamil Nadu versus M/s. Hind Stone and Others***[20] and ***Gajraj Singh versus State Transport Appellate Tribunal and Others***[21].

49. On the contrary Mr. Saha Roy, learned advocate for the aforementioned petitioners submitted that the license issued to the petitioners under State Control Order, 2013 is protected by the saving clause of NFSA, 2013 as well as the TPDS Control Order, 2015 inasmuch as it provides that notwithstanding such repeal, anything done, any action taken or any identification of eligible households under the said Ordinance shall be deemed to have been done, taken, made, acquired, accrued, incurred, framed, issued, initiated, conducted, continued or imposed under the corresponding provisions of the Act. Therefore, the petitioners can continue their business by such saving clause. However, the State is restricted by the new legislation to issue vacancy without framing new Rule or Control Order, particularly under a redundant, non-est and non-existent law. This is not a case of approbate or reprobate.

50. Since this Court in the foregoing paragraph has already held that the State Control Order, 2013 is effective and is not redundant, hence the question raised as to whether the petitioners can be allowed to approbate and reprobate at the same time by taking benefit under the said State

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[20] ***(1981) 2 SCC 205***

[21] ***(1997) 1 SCC 650***

Control Order, 2013 and challenge its legality and whether a renewal of license is a fresh grant under such Control Order loses relevancy in the context of the matter.

51. In view of the above discussion, it is held that the State Control Order, 2013 is very much effective and is not redundant upon promulgation of National Food Security Act, 2013 and Targeted Public Distribution System, 2015 of the Central Government.

52. Accordingly, the aforementioned writ petitions being nos. **W.P.A. 22281 of 2022, W.P.A. 1098 of 2024, W.P.A. 1101 of 2024, W.P.A. 1217 of 2024, W.P.A. 22283 of 2022, W.P.A. 23432 of 2023, W.P.A. 23435 of 2023, W.P.A. 23441 of 2023, W.P.A. 4615 of 2024, W.P.A. 6466 of 2024** and **W.P.A. 6470 of 2024** stand dismissed.

53. All connected applications in the aforesaid writ petitions, if any, stand disposed of.

54. Interim orders, if any, stand vacated.

55. Urgent certified copy of the order, if applied for, be given to the parties upon completion of all necessary legal formalities.

(Bivas Pattanayak, J.)