

13.06.2025.  
Item No. 5.  
Court No. 13  
ap

**M.A.T. No. 745 of 2025**  
**With**  
**I.A. No. CAN 1 of 2025**

**State of West Bengal & Ors.**  
**Versus**  
**Sudip Sarkar**

Mr. Kishore Datta, Id. Advocate General,  
Mr. Sirsanya Bandhopadhyay,  
Mr. Vivekananda Bose,  
Mr. Ritesh Kumar Ganguly.

...For the appellants.

Mr. Debabrata Saha Ray, Id. Senior Advocate,  
Mr. Pingal Bhattacharyya,  
Mr. Subhankar Das.

...For the respondent/writ petitioner.

Ms. Nibedita Pal,  
Mr. Ananda Gopal Mukherjee,  
Ms. N. Khatoon.

...For the private respondents.

1. The challenge in the instant appeal by the State is to an interim order dated 7<sup>th</sup> April, 2025 passed by a learned Single Judge of this Court in six several writ petitions. The lead one being W.P.A. No. 6533 of 2025 (Sudip Sarkar – Vs. – The State of West Bengal & Ors.).
2. The subject matter of challenge in the writ petition was Clause 11(V) of West Bengal Targeted Public Distribution System (Maintenance & Control) Order, 2024. The writ petitioners are aggrieved by the said Clause in so far as it imposed an age restriction on the individuals and partners of partnership firms from applying for M.R. Dealership/Fair Price Shops in the State. The age restriction was that the individuals

or partners of the Firms applying for such Fair Price Shop Licences should be above 25 years and below 45 years of age.

3. The learned Single Judge in a detailed interim order, having regard to the decision of the Hon'ble Supreme Court of India in the case of ***Brij Mohan Lal – Vs. – Union of India & Ors.*** reported in ***(2012) 6 Supreme Court Cases 502*** and several other decisions passed an interim order, directing the State to proceed with consideration of applications but not to grant the licences without the leave of the Court. In essence, the learned Single Judge prima facie found that the argument of unreasonableness of the restriction to be sustainable.

4. This Court has heard the appeal of the State against the said order over a period of two days.

5. The primary thrust of the argument of the State against the impugned order is that the writ petitioner has filed the writ petition beyond the period of 45 days within which applications for M.R. Dealership were required to be submitted. The writ petitioner has not even chosen to apply for a M.R. Dealership. It is, therefore, argued that the writ petitioner in the instant case was not entitled to any interim order. The interim order does not enure any benefit to the writ petitioners. There is substance in the arguments of the State in this regard.

6. It is now well-settled that there is a presumption of constitutionality of a legislation once it is passed by the legislature and assent is given by the Governor or President, as the case may be. A question could arise if the same principle is applicable to subordinate legislation and rules framed under the Statute. The learned Single Judge ought to have discussed the above while considering passing of interim order.

7. This Court further notes that in a recent decision of the Hon'ble Supreme Court of India in the case of ***State of Andhra Pradesh – Vs. – Dr. Rao VBT Cheliken*** reported in ***2024 INSC 894***, the test of reasonableness of a restriction under Article 14 of the Constitution, has been expanded to include the “Substantive Clarification Test”. The test has been made more stringent than the pre-existing test. The pre-existing test being existence of intelligible differentia and a rational nexus with the object sought to be achieved by such classification.

8. What is now called is a substantive clarification test following the principles from the Canadian Constitution, the Hon'ble Supreme Court of India in the case of ***Dr. Rao VBT Cheliken's case (supra)*** at paragraphs 51 to 64 has observed that the earlier test of reasonableness under Article 14 of the Constitution of India is required to be relooked and reconsidered in the light of the substantive reasonableness test.

9. Additional parameters have been specified by the Hon'ble Supreme Court of India i.e. as to whether the classification would, inter alia, resulting stereotypes or in prejudice other similarly placed classes.

10. Yet another test to be applied to the challenge is the doctrine of proportionality as explained by the Hon'ble Supreme Court of India in the case of **Union of India & Anr. – Vs. G. Ganayutham** reported in **(1997) 7 Supreme Court Cases 463** and reiterated by more recently in the case of **Justice K.S. Puttaswamy (Aadhaar-5J) – Vs. – Union of India** reported in **(2019) 1 Supreme Court Cases 1** paragraphs 157 and 158 thereof.

11. Mr. Sirsanya Bandhopadhyay, learned Counsel appearing on behalf of the appellants/State has placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of **D. Nagaraj & Ors. – Vs. – State of Karnataka & Ors.** reported in **(1977) 2 Supreme Court Cases 148**, particularly paragraph 7 thereof, the case of **Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra & Ors. – Vs. – State of Madhya Pradesh & Ors.** reported in **(1981) 4 Supreme Court Cases 471**, particularly paragraph 11 thereof and the case of **Madhya Pradesh Ration Vikreta Sangh Society & Ors. – vs. – State of Madhya Pradesh & Anr.** reported in **(1981) 4 Supreme Court Cases 535** particularly paragraph 5 thereof to buttress the arguments that firstly the

interim orders are not granted without exchange of affidavits where Constitutional vires of provisions of Statute and/or subordinate legislation is challenged.

12. It is also argued by reference to the aforesaid judgments that their rights under Article 19(1)(g) of the Constitution of India cannot be claimed in respect of PDS Statute and Subordinate Legislation Rules. There is substance in the arguments of the State in this regard.

13. Per contra, the learned Senior Counsel, Mr. Saha Ray, appearing on behalf of the writ petitioner/respondent has placed reliance on the decision of the Hon'ble Supreme Court of India in the case of **Brij Mohan Lal** (supra), particularly paragraphs 100 and 101 thereof and paragraphs 13 and 15 of the case of **Indian Council of Legal Aid & Advice & ors. – Vs. – Bar Council of India & Anr.** reported in **(1995) 1 Supreme Court Cases 732**. Reliance is also placed in an unreported decision of the Hon'ble Supreme Court of India in the case of **Rakesh Vaishnav & Ors. – Vs. – Union of India & Ors.** being order dated 12<sup>th</sup> January, 2021 in Writ Petition (Civil) No.1118 of 2020.

14. It is submitted that in the case of **Rakesh Vaishnav's decision (supra)**, the Hon'ble Supreme Court of India has passed an interim order staying the provisions of Statute even at an ex parte stage.

15. It is now well-settled that each case depends on its peculiar facts and circumstances. The circumstances under which the Hon'ble Supreme Court of India felt the need to stay the Statute in ***Rakesh Vaishnav's decision (supra)*** where the Farm Laws were under challenged, public protests whereof lead to a stranglehold on the movement of the persons and the people in the northern part of India.

16. Having regard to the aforesaid discussions, this Court is of the view that interest of justice would be served if the State is allowed to proceed with the selection process and also issued licences for M.R. Dealership and Distributorship under the amended Targeted Public Distribution Control Order of 2024 applying Clause 11. There shall, however, be a rider to each licence issued indicating that the same shall abide by the result of the proceedings pending before the learned Single Judge of this Court. The impugned order is modified accordingly.

17. It is made absolutely clear that this Court as of now has not disturbed any of the observations of the Single Bench in the impugned order. The same shall be subject to the final arguments advanced by all the parties and the final result of the writ petition.

18. It is expected that all these writ petitions on the subject matter i.e. challenge to Clause 11(v) of the Control Order of 2024 may be listed together before the learned Single Judge of this Court on an early date

after the State files an affidavit within a mandatory period of seven days from date and reply of the writ petitioner is received within three days thereafter.

19. The learned Single Judge is requested to dispose of these writ petitions after hearing all the sides at an early date, subject to its business permitting.

20. It is made clear that this Court has not made any final pronouncement in favour of either side in so far as Clause 11(v) of the Control Order of the year 2024 is concerned and all the questions are deemed to be kept open for decision by the Single Judge, uninfluenced by any observations made by this Court in this order.

21. As a matter of abundant caution, the parties shall be in addition to the citing judgments already referred to by the learned Single Judge and in this order, may rely upon any other decisions that they may deem necessary in support of their arguments.

22. With the aforesaid observations, the impugned order dated 7<sup>th</sup> April, 2025 passed in six several writ petitions shall stand modified. M.A.T. No. 745 of 2025 is disposed of.

23. In view of the disposal of the appeal itself, the connected application being CAN 1 of 2025 shall also stand disposed of.

24. There will be no order as to costs.

25. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

**(*Rajasekhar Mantha, J.*)**

**(*Ajay Kumar Gupta, J.*)**