

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF
WPA 27453 of 2024

All Bengal Fair Price Shop Dealers' Welfare Association & Anr.
Vs.

The State of West Bengal & Ors.

For the Petitioners	:	Mr. Debabrata Saha Roy, Sr. Adv., Mr. Pingal Bhattacharyya, Adv. Mr. Subhankar Das, Adv.
For the State	:	Mr. Kishore Datta, Ld. Adv.Gen. Mr. Sirsanya Bandopadhyay, Ld. Sr. - Standing Counsel., Md. Ritesh Kr. Ganguly Adv.

Reserved on : 16.07.2025

Judgment on : 26.09.2025

Subhendu Samanta, J.

1. Petitioner No. 1 is a registered recognised association of fair price shop owners all over West Bengal and petitioner No. 2 is the general secretary of petitioner No. 1 and is a Fair Price Shop Owner. Petitioner's challenge the constitutional validity of West Bengal targeted Public Distribution System (Maintenance and Control) Order, 2024, (shall referred to as "State control order 2024" hereinafter) as ultra viers to the provisions of Constitution of India.

2. Learned Advocate General appears on behalf of the State and raised **point of maintainability**. It is the submission of Learned Advocate General that a writ petition is not maintainable by a person who is not aggrieved. The association or the General Secretary of the association cannot be considered as an aggrieved party. Ld. Advocate General, further submits that association does not itself hold a FPS license under Control Order 2024. It is further argued that a writ petitioner can be said to be aggrieved only when any of his legal right is denied by someone who has a legal duty to do something or to abstain from doing something.
3. Learned Advocate General further argued that in the instant case no infringement of any legal right has been pleaded by the association due to operation of State Control Order, 2024, furthermore, writ petitioner, being an association, have no legal right whatsoever and therefore there is no question of infringement of their legal right. In support of this contention Ld. Advocate General cited :-

1. **Siliguri Inter District Minibus Owner's Association Vs. Bijon Krishna Bhowmick 1992 SCC Online Cal 217**
2. **Cable Operators' Association of Tamizagam Vs. Comissioner of Police/Authorised Officer, Greater**

**Chennai, 2011 SCC Online Mad 680= (2011) 4 CTC
369**

**3. Kusum Ingots and Alloys Ltd. Vs. Union of India,
(2004) 6 SCC 254**

4. Leaned Advocate General further raised point of maintainability on a further ground that State control order, 2024 is a subordinate legislation and there is very remote scope to interfere by the writ court. Learned Advocate General submits that the State Government is empowered under Entry 33 of the Concurrent List of the Seventh Schedule, read with Articles 245 and 246 of the Constitution of India, to frame rules regarding the trade and commerce in, and the production, supply and distribution of foodstuffs, including edible oilseeds and oils. Furthermore, Articles 39 and 47 of the Constitution of India also impose a duty upon the State Government to raise the level of nutrition and standard of living and to improve public health. He submits, Section 3(1) of the Essential Commodities Act, 1955 (hereinafter referred to as “the EC Act”) 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 availability at fair prices to the masses. Section 5 of the EC Act 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 EC Act empowers the Government of India to delegate the power to the State Government, by way of issuing Notification, to issue Orders including the Control Orders under Section 3 of the EC Act, in relation to such matter and subject to the conditions, if any, specified in the said Notification.

5. Learned Advocate General further argued The Government of India, in the exercise of the powers conferred upon it under section 5 of the EC Act, issued Notification No. G.S.R. 800 dated 9th June 1978 vide which it declared that the powers conferred upon it under Section 3(2)(a) 3(2)(b) 3(2)(c) 3(2)(d) 3(2)(e) 3(2)(f) 3(2)(h) 3(2)(i) 3(2)(ii) and 3(2)(j) in relations to foodstuffs, would be exercisable also by the State Government. As per the notification dated 9th June 1978, the State Government required the prior concurrence of the Government of India only for the distribution and disposal of 4 foodstuffs outside the boundaries of the state and for transportation of foodstuff under Section 3(2)(d) of the EC Act, which is not the case here. He argued thus, the West Bengal Targeted Public Distribution System (Maintenance & Control) Order, 2024 is an independent legislation formulated by the State Government in the exercise of the power conferred upon it under section 3 of the EC Act, read with Notification No. G.S.R. 800 dated 9th

June 1978. Learned Advocate General again submits all the Control Orders of the State and Centre derive their authority from Section 3 of the EC Act, which is the fountainhead of all the Central or State Control Orders. He pointed out the Petitioner has not made any allegation on the aspect that the 2024 State Control Order is contrary to the Essential Commodities Act, which is the enabling statute of the State Control Order

6. Refuting the contention of Learned Advocate General, Mr. Debabrata Saha Ray appearing on behalf of the petitioner submits that the point of maintainability as raised by the Learned Advocate General is barred by principle of constructive res-judicata under Explanation-IV of Section 11 of Civil Procedure Code, 1908. He submits that when State Government implemented West Bengal Public Distribution System (Maintenance and Control Order, 2013, (hereinafter referred as Control Order 2013,) constitutional validity of of control order 2013 was challenged in a writ petition being WP No. 33258 (W) of 2013 (West Bengal MR Dealer's Association and Anr. Vs. State of West Bengal and Ors) with WP No. 35302 of 2013 (All Bengal Fair Price Shop's Dealer Welfare Association and Ors. Vs. State of West Bengal and Ors.). Both the writ petitions were disposed of by a single judgment dated 26.10.2017 passed by His Lordship, Hon'ble Justice RK

Bag (His Lordship then was) Mr. Saha Ray argued that the State of West Bengal was contested both writ petitions by filing affidavit but never raised the point of maintainability. Thus they are debarred by raising the same issue of maintainability which they did not raise on the earlier occasion. Thus, it is barred under principle of constructive res-judicata.

7. Mr. Saha Ray argued that Section 3 of the Essential Commodities Act, 1955, empowers the Central Government to issue Order for regulating by licenses for storage, transport, distribution, use of consumption of any essential commodities. Section 5 of the Essential Commodities Act, 1955, empowers the Central Government to delegate the power to the State Governments to issue order u/s 3 of the Act, 1955, by way of issuing notification / order, specifying the conditions in relation to such order. Mr. Saha Ray submits after 66 year of the Republic of India, Central Government for the first time to reach the poor people, targeted a poor section of the society in all over India, so that no people died on hunger, accordingly Central Government vide notification dated 10th September, 2013, promulgated National Food Security Act, 2013. For implementation of NFSA, 2013 (shall be referred to as “NFSA 2013” hereinafter). Central Government framed Targeted Public Distribution System (Control) Order, 2015,

superseding Central Control Order (PDS Control Order), 2001, empowering all the State Governments to issue an order u/s 3 of the Act, 1955 but not inconsistent with the said Central Control Order, 2015, for regulating the sale and distribution of the essential commodities. He submits pursuant to promulgation of TPDS Control Order, 2015, as promulgated for implementing NFSA, 2013, superseding Central Control Order, 2001, State Government promulgated State Control Order, 2024, pursuant to the power conferred by the Section 3 and Section 5 of the Essential Commodities Act, 1955 read with TPDS Control Order, 2015.

8. Heard the Learned Senior Counsel as well as Learned Advocate General, it appears that the point of maintainability has raised by the Learned Advocate General has been countered by Mr. Saharay, on the point that the State is barred to raise the point by principle of res-judicata.
9. To deal with principle of res-judicata, it has to be proved that the earlier litigation between the selfsame parties in respect of selfsame issues were decided or disposed of finally by any court of competent jurisdictions. If I understand properly the argument of Mr. Saharay, it is the submission that state has not raised point of

maintainability when state control order 2013 was under challenge thus State now cannot challenge maintainability.

In the present case, may be the parties are similar but the issues involved herein are totally different, more particularly, grounds of challenge of Control Order, 2013 and present Control Order 2024 are not similar. Merely challenging constitutional validity of a control order is not ipso facto similar or may not construe that the issues are similar of nature. The issues on the earlier proceeding was control order 2013, now in the instant proceeding issues are constitutional validity of State control order 2024, thus it can be safely hold that as the issues involved are different so, the point of maintainability as raised be Learned Advocate General cannot be held to be barred by principle of res-judicata.

10. Learned Advocate General, has submits that an association cannot maintain a writ petition. Facts suggests that the petitioner No. 1 is a registered association of fair price shop owner's of West Bengal. It is also admitted that that State Control Order, 2024, was promulgated on 1st August, 2024 whereby/by strength of which existing ration dealers are to perform and to follow the rules and order mentioned therein. It is not possible for all the fair price shop dealer who holding license in remote village of the State to appear before this court to ventilate their grievances. Furthermore,

the association which was formed since long to protect the interest of its member can approach court to demonstrate/ventilate grievances of its member. The purpose and intent of members of association when sufficiently proved to be the intention and purpose of the association, such association can very well maintained a writ petition before a competent writ court to ventilate grievances of its members for demand of justice. **Kusum Ingots and Ally Ltd. (Supra)** is factually distinguishable.

11. In **Akhil Bharatiya Soshit Karmachari Sangha Vs. Union of India (1981)1 SCC 246** Ho'nble Apex Court has held that ***A technical point is taken in the counter-affidavit that petitioner is an unrecognized association and that, therefore, the petitioner to that extent, is not sustainable, it has to be overruled. Whether the petitioners belong to a recognized union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through "class actions", "public interest litigation" and "representative proceedings". Indeed little Indians in large numbers of seeking remedies in Courts through collective***

proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of “cause-of-action” and “person aggrieved” and individual litigation is becoming obsolescent in some jurisdiction. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognized association maintaining the writ petitions.

12. In the above mentioned observation the Hon'ble Supreme Court has held that an association has right to file writ petition. In this judgment the Hon'ble Apex Court has also held that an association can file writ petition under article 32 of the constitution of India, accordingly, since the scope of article 226 of Constitution of India is much wider than article 32 of the Constitution of India, association has right to file writ petition under Article 226 of the constitution of India.
13. In **Dwarakanath Vs. ITO** reported in **AIR 66 SCC 81**. **“The Hon'ble Apex Court held that article 226 of Constitution is couched in comprehensive phraseology and it ex-facie confers wide power on the High court to reach in justice wherefrom it is found. This article enables the High Courts to mould the relieves to improve the peculiar and extraordinary circumstances**

of the case”. After filing the observations of Hon’ble Supreme court as mentioned hereinabove, it appears to me that when the petitioner being a registered association of fair price dealer has approached this court to safeguard the interest of its member of all over the West Bengal the said writ petition cannot be declared to be not maintainable only on the ground that no legal injury was caused to the association. In my view injury caused to a member of an association, is the injury of the association itself; moreover, association has its own right to ventilate the grievance of its member before writ court to get justice.

14. On the above score point of maintainability, as raised by the Learned Advocate General appears to me not meritorious and this court failed to concur with Learned Advocate General.
15. It has been extraneously argued by the Learned Advocate General that State Control Order 2024 is not in consonance with targeted Public Distribution System, Control Order 2015. It is further argued by Learned Advocate General, that both Essential Commodities Act 1955, and (NFSA, National Food and Security Act) are framed under schedule (vii) Entry-33, of list 3 of Constitution of India. It has further argued by the Learned Advocate General by placing GSR 800 dated 9.6.1978, issued Ministry of Agriculture and Irrigation, Department of Food, Government of India

that State Control Order 2024, is an exercise of executive power framed u/s 3 of the Act 1955 read with GSR 800 dated 9.6.1987. Learned Advocate General, further argued for framing State Control Order, 2003, Control Order 2013, and State Control Order 2024, there was no need to take help of either Central Control Order 2001 or Central Control Order 2015. He submits Section 3 of Act 1955 itself empowers the State to frame rules in exercise of power conferred by GSR 800 dated 09.06.1978; in a gist, learned Advocate General argued that the State Control Order 2024 is an independent legislation of State of West Bengal.

16. Having heard the Learned Counsel for the parties it appears that Central Control Order 2001, is the first concept in all over India regarding Public Distribution System for monitoring Control and granting license to FPS dealers. 2001, Central Control Order was framed for delegating power to the States or Union territories to frame rules in consonance with Central Control Order 2001, as indicated in Section 5 of Act 1955, that a specific order to be notified by Central Government fixing terms and conditions. In terms of said delegating power, State of West Bengal has framed first Public Distribution System (M& C) Order 2003, thereafter, on replying 2003, State Control Order, State Government framed two Controls Orders namely West Bengal Public Distribution System (M&C)

Order 2013 and West Bengal Urban Public Distribution System (M&C) Order 2013 invoking Section 3 of Act 1955 read with Central Control Order 2001.

17. It further appears that Targate Public Distribution System (Control) Order 2015, is the first concept of all over India targetting particular group of poor people to bring them under Public Distribution System and for monitoring, control and granting license to the FPS Shop dealers; Central TPDS Control Order 2015 has been framed for delegating powers to the States or Union Territories to frame rules in consonance with the Central TDPS Control Order, 2015 as enumerated in Section 5, of Act 1955. Following the same principle as enumerated in Section 5 of Act 1955, on suppression of Central Control Order, 2001, State Government promulgated 2024 State TPDS Control Order, 2024 invoking Section 3 of the Act 1955 read with Central Control Order 2015.
18. To understand the situation preciously, the preamble of West Bengal Targeted Public Distribution system (maintenance and control order) 2024 itself elaborately specified the purpose as follows-

No 3139-FS/Sectt/Food/4P-09/2012 (Part)

Dated 1 August, 2024

WHEREAS the Government of India, Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), in exercise of power conferred by section 3 of the Essential Commodities Act, 1953 (Central Act 10 of 1955) has issued Targeted Public Distribution System (Control) Order, 2015, by GSR 213 (E) dated 20 March, 2015 as subsequently amended

AND WHEREAS, in pursuance of clauses 4, 9, 10, 11, 12, 13, 14 and 15 of the Targeted Public Distribution System (Control) Order, 2015, the State Government is empowered

to issue order under section 3 of the Essential Commodities Act, 1955 for regulating the ration cards, licensing and regulation of fair price shops, operation of fair price shops, monitoring, ensuring transparency and accountability, penalty, powers of inspection, search and seizure and appeal, and the matter connected therewith and incidental thereto,

NOW, THEREFORE, the Governor is in exercise of power conferred by section 3 and section 5 of the Essential Commodities Act, 1955 (10 of 1955) read with the Government of India, Ministry of Consumer Affairs, Food Distribution (Department of Food and Public Distribution) Order No. GSR 211 (E), dated 20 March, 2015, pleased hereby to make the following Orders

19. Learned Advocate General, has specifically submitted that the preamble in State Control Order 2024, is a mistake which causes of confusion. This submission appears to me not acceptable at the prevalent facts situation. Thus, I am of a view that State Control Order 2024, is a delegated legislation which must be in consonance with Central TPDS Control Order 2015.
20. Thus, point of maintainability of the instant writ petition as raised by the Learned Advocate General, is hereby dealt with and turned down.

21. **Points of violation of fundamental rights as factually raised before this court**

Point No. 1

Clause 20 under Chapter 3 : it deals with provisions of resignation of a dealer. Petitioner argued that in the said provision a dealer may resign by giving a notice to the licensing authority but he/she shall have to continue to run FPS Shop business till the period his or her resignation is accepted by the licensing authority.

22. It has been argued that one dealer has its fundamental right in to do or not to do a business, by imposing clause 20 the dealer may be forced to do the business till the decision be taken by the authority.

23. In my view I find no violation of fundamental right by promulgating Clause 20. The purpose of business of FPS is distribution of Ration Articles to the targeted group of the society, the same must not be hampered due to sudden resignation of a dealer; for that reason I find no justification to hold that the provision of Clause 20 is ultra vires to the Constitution of India

24. **Point No. 2: clause 39 (4) (ii) under Chapter (vi)**

This provision compels a dealer to produce a medical certificate in case of proving of his physical incapacitation only from Doctors of Govt. Hospital.

25. Petitioner submits that always Government Doctors are not available rather nowadays number of patients are being treated by Private Doctors in Private Hospitals. So the dealers may be allowed to produce certificate from Government Hospitals and well as Private Hospitals.

26. Having heard the submissions of the petitioner it appears that the provisions of Clause 39 (4) (ii) is not violative of fundamental rights of dealer. The State has to make strict rules so that mandatory requirements for the dealer to produce medical certificate only from Government registered doctors be followed. It is only for the purpose of making vigilance upon unscrupulous FPS dealers who tried to transfer their FPS dealership unto their family members on the basis of fake medical certificates. Thus this point also requires no interference by this court.

27. **Point 3: clause 11 (v) criteria for application for grant of licences of FPS Shop**

It appears that by the said provision the State of West Bengal has restricted age of applicants for FPS license within 21 years to 45 years for making an application for grant of license. It

appears that several writ petitions are pending before this court to deal with same issue wherein Clause 11 (v) of control order 2024 is under challenge. In those writ petitions the pleadings have already come up. Thus this court refrain itself to decided this issue in this writ petition.

28. **Point No.4 : Clause 44 45 and 46 under chapter (ix) of State Control Order 2024**

Petitioner submits that this chapter provides offences and penalties against dealers since, there is no such provision for initiation of penal provision by way issuing show case notice asking the concern dealer to submit his reply to defined his case by explaining clarifying the position. Thus, the said clause are ultra vires to the provisions of article 14, article 19 (i) (g) 21 of Constitutions of India. It is contended that by such provision licensing authority shall enjoy unfettered power by asking a dealer to attained the hearing without disclosing the reasons for such hearing and after obtaining his signatures in the table of interview on the date of hearing even without disclosing any reasons, on the next day can issue an order terminating the license of dealer concerned.

Initially this court has passed an interim order of stay against the State of West Bengal in respect of implementation of Clause 44 to 46. The said finding of this court went up to Hon'ble Division Bench by an appeal preferred by the State Authority. In

deciding the said issue the Hon'ble Division Bench in MAT 2345 of 2024 by its judgment dated 10.01.2025 has held that :-

22. This Court records the assurance of the learned Advocate General for the State that the principles of natural justice would be duly complied with and followed, while applying penalty provisions to the FPS Dealers in the State.

23. It is made clear that the State shall not be prevented from making any changes and/or amendments or modifications to the Control Order of 2024 as it may deem fit and proper to ensure due conformity with similar subordinate legislation already framed in the State and other parts of the country, in accordance with law.

29. The observation of Hon'ble Division Bench is always binding upon this court and it appears that the Hon'ble Division Bench has modified the interim order by the assurance of Learned Advocate General, for the State; in that aspect I am of a view that the State must issue a specific notification to amend the control order for the purpose of maintaining principle of natural justice and right to hearing of the dealer may not be violated before initiation of a penal action against them. This clauses appears to be violative to the fundamental rights as well as constitutional rights of the dealers, but as the assurance has been made by Ld. Adv. Gen. on behalf of the State, I find no justification to pass further order. State shall follow direction of Hon'ble Division Bench in this respect.

30. Moreover, in dealing with clause 57 (b) and (c) under heading of appeal and review in Chapter (XII) wherein appellate authority was given power to enhance punishment and also can imposed additional punishment, is also appears to render unfettered power upon the appellate authority. In my view such power can only be entertained after giving reasonable opportunity of being heard to the dealer. As indicated earlier, assurance has already been made by the State Authority to maintain principle of natural justice in all aspect, on taking note of the assurance of the Learned Advocate General, before the Hon'ble Division Bench. I refrain myself for making any further comment on that point.
31. Clause 58 under Chapter (XI) authorises secretary of concerned department which may on the basis of any complaint, can take suo motu review. However, on that score also no order can be passed by secretary without giving reasonable opportunity of being heard to the dealer, the concerned authority must follow the principle of natural justice and scope of fair trial to the dealer against whom a complaint has been lodged; this provision also come under the assurance of the State pleaded by Learned Advocate General before the Hon'ble Division Bench. Thus this court also refrain itself from passing any order on that print.
32. Petitioner has pointed out several inconsistencies in the State Control Order, 2024 for not following some provisions of Central

Control Order, 2015. Perused the alleged inconsistencies. It appears that several writ petitions are pending before this Court against notifications/memos issued by Director, DDP&S for fixing minimum number of DRC's to be retained by existing dealer and number of DRC's for starting new FPS dealer. Merit of alleged inconsistencies for not following provisions of Clause 9(5), 9(8) and 9(7) of TDPS Central Control Order 2015, in State TDPS Control Order, 2024 can be very well dealt with in those writ petitions.

Clause 23 of State TDPS Control Order, 2024, is as emergency and temporary provision, which appears to be very relevant and justifiable in the given circumstances. I find no inconsistencies in Clause 23 of State TDPS Control Order 2024.

Clause 9(9) of Central TDPS Control Order, 2015, allowed sale of commodities other than food grains of PDS in the FPS of dealer solely for the purpose of improve the viability of fair price shop dealer. No such clause was incorporated in State TDPS Control Order, 2024. In my view, not following provision of

Clause 9(9) of Central TDPS Control Order, 2015 is not itself term as inconsistencies. Inconsistencies means lack of compatibility between two provisions. State has not promulgated any clause which is inconsistent with Clause 9(9) of Central TDPS Control Order, 2015. Thus, this court find nothing in the merit of submission of petitioner.

33. Under the above observation the instant writ petition partially allowed and disposed of.

34. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)