

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)**

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 18630 of 2021

Sk. Manowar Ali & Ors.

Versus

The State of West Bengal & Ors.

Mr. Saktinath Mukherjee, Sr. Adv
Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharya
Mr. Neil Basu

.....For the Petitioners

Mr. S.N. Mookherjee, Ld. A.G.
Mr. Anirban Ray, Ld. G.P.
Mr. Sirsanya Bandopadhyay
Mr. Sanjay Basu
Mr. Arka Kumar Nag
Mr. Piyush Agarwal
Ms. Utsha Dasgupta

.....For the State of W.B.

Mr. Ajay Chaubey
Mr. Sunil Gupta
Mr. A. Jaiswal

.....For the U.O.I.

Heard on : 23.02.2022, 25.02.2022, 22.03.2022, 07.04.2022 & 21.04.2022

Judgment on : 16.06.2022

Krishna Rao, J.: The petitioners have filed the instant writ application praying for declaring the notification dt. 13.09.2021 amending Clause 18 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 as ultra vires to Essential Commodities Act, 1955, National Food Security Act, 2013, Central Control Order, 2015 and also Article 14, 19 (I) (g) , 21 and 254 of the Constitution of India and also prayed for declaring the West Bengal Duare Ration Scheme, 2021 dt. 16.11.2021 as ultra vires to the Essential Commodities Act, 1955 and National Food Security Act, 2013, Central Control Order, 2015 and also Article 14, 19 (I)(g) , 21 and 254 of the Constitution of India.

Mr. Saktinath Mukherjee, Ld. Senior Advocate appearing on behalf of the petitioners relied upon Section 3 and Section 5 of the Essential Commodities Act, 1955 and submits that the Central Government is having an authority for regulating and prohibiting the production, supply and distribution of essential commodities. The Ld. Senior Advocate further submits that under Section 5 of the Essential Commodities Act, 1955, the Central Government by way of notification delegates the power to the State but in the instant case, the Central Government has not delegated any power to the State of West Bengal. The Ld. Senior Advocate further submits that the impugned Notification dt. 13.09.2021 does not reveal that the Central Government has delegated the power to the State Government for issuance of the impugned notification.

The Ld. Senior Advocate for the petitioner relied upon the Public Distribution System (Control) Order, 2001 issued by GSR 630 (E) which reads as follows:-

“Whereas the Central Government is of the opinion that it is necessary to expedient so to do for maintaining supplies and securing availability and distribution of essential commodities under Public Distribution System;

Now, therefore, the exercise of powers conferred by Section 3 of Essential Commodities Act, 1955 (10 of 1955), Central Government hereby makes the following order, namely:.....”

The Ld. Counsel for the petitioner relying upon the Control Order and submitted that in clause 7 of the said order, the licensing has been defined which reads as follows:-

“7. Licensing:

(1) The procedure for issue of licenses or authorization to the fair price shops for the distribution of essential commodities under Public Distribution System and duties and responsibilities of the fair price shop owners shall be as per paragraph 5 of the Annexed to this Order.”

The Counsel for the petitioner submits that on 31.08.2001 in exercise of power conferred under Section 3 of the Essential Commodities Act, 1955, the Central Government promulgated Public Distribution System (Control) Order, 2001 for maintaining, controlling and monitoring the Public Distribution System (hereinafter called as PDS) in all over India being GSR 630 (E).

The Ld. Counsel for the petitioner further submits that the State of West Bengal framed West Bengal Public Distribution System (Maintenance

and Control) Order, 2013 (hereinafter called the Control Order, 2013) for rural areas of the West Bengal. The Ld. Counsel for the petitioner further submits that the State of West Bengal in exercise of power conferred under Section 3 of the Essential Commodities Act read with GSR 630 (E) dt. 31.08.2001 framed West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 for urban areas of the West Bengal.

The Ld. Counsel for the petitioner submits that the Central Government promulgated National Food Security Act, 2013 (hereinafter called NFSA, 2013). For implementation of NFSA, 2013 and for maintaining, controlling and monitoring TPDS, the Central Government in exercise of power under Section 3 of the EC Act, 1955 promulgated Targeted Public Distribution System (Control) Order, 2015 by superseding Public Distribution System (Control) Order, 2001 and specifying the terms and conditions of the rules/orders to be framed by the respective State Governments for implementation of NFSA, 2013. The Ld. Counsel for the petitioner further submits that the State of West Bengal amended Clause 18 of the Central Order 2013 and notified "Duare Ration Scheme".

Ld. Counsel for the petitioner further submits that on promulgation of TPDS Control Order, 2015 for implementing NFSA, 2013, superseding Central Control Order, 2001, both Rural and Urban Control Orders, 2013, framed by the State Government lost its force automatically and become redundant on the ground that both 2013 Control Orders have been framed under Section 3 of the Essential Commodities Act, 1955, read with Central Control Order, 2001 and as such amendment of such non existence Control

Orders vide Notification dt. 13.09.2021 under the said non-existent Control Order is nullity in eye of law.

The Ld. Counsel for the petitioner further submits that in addition to the terms and conditions of two State Control Orders, 2013 is also totally inconsistent to the terms and conditions of NFSA, 2013 and TPDS Control Order, 2015.

Ld. Counsel for the petitioner further submits that Section 3 of 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. The Ld. Counsel for the petitioner further submits that Section 5 of the Essential Commodities Act, 1955 empowers the Central Government to delegate the power to the State Government to issue order under Section 3 of the Essential Commodities Act, 1955 by way of issuing notification/order, specifying the conditions in relation to such order.

Ld. Counsel for the petitioner further submits that monitoring and controlling PDS in all over India, exercising power under Section 3 of the Essential Commodities Act, 1955, the Central Government framed Public Distribution System (Control) Order, 2001 (PDS, 2001) empowering the State Government to frame rule or issue order inconsistent with the terms and conditions as specified in the Control Order, 2001.

Ld. Counsel for the petitioner further submits that in exercise of power under Section 3 of the Essential Commodities Act read with Central

Control Order, 2001, the State of West Bengal framed two Control Orders i.e. Control Order for rural areas and Control Order for urban areas of West Bengal. The Central Government at the first time to reach the poor people, targeted a poor section of society in all over India, so that no people died on hunger, accordingly, the Central Government vide Notification dt. 10.09.2013 promulgated National Food Security Act, 2013.

Ld. Counsel for the petitioner further submits that in all over India two classes of poor people have been brought under the umbrella of NFSA, 2013 i.e. (i) Antyodaya Households and (ii) Priority Households.

Ld. Counsel for the petitioner emphasized that in NFSA, 2013, it has been repeatedly stated that ration articles shall be delivered to the consumers from licensed Fair Price Shops. It is further submitted that for the purpose of implementation of NFSA, 2013, the 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 under Section 3 of the Essential Commodities Act, 1955 but not inconsistent with the said Central Control Order, 2015, for regulating the sale and distribution of the essential commodities (Licensing & Regulation of Fair Price Shops i.e. clause 9 of Central Control Order, 2015).

Ld. Counsel for the petitioner further submits that ration articles can only be distributed from the licensed Fair Price Shops by biometric authentication of the consumers using further e-PoS machines to be installed at the Fair Price Shops. It is further submitted that following the

NFSA, 2013 and in exercise of power under Section 3 of the EC Act, 1955 read with Central Control Order, 2015, all the States of all over India, framed rule for controlling and monitoring of targeted Public Distribution System for implementation of NFSA, 2013. It is further submitted that in the State of West Bengal after coming into force of NFSA, 2013 and Control Order, 2015 no rule or order is issued for implementation of NFSA, 2013.

Ld. Counsel for the petitioner further submits that the State Government of West Bengal framed two Control Orders which were notified on 08.08.2013 and 12.08.2013 but the NFSA came into force with effect from 10.09.2013 and Targeted Public Distribution System (Control) Order, 2015 came into force with effect from 20.03.2015 and as such after came into force of NFSA, 2013 with the target to provide for food and nutritional security in human life to the targeted poor people of the country, no rules or orders have been framed by the State Government of West Bengal.

The Ld. Counsel for the petitioner further submits that under the Control Order, 2013 there were four categories of the ration card holders i.e. APL, AAY, Annapurna and BPL, who were entitled to get food grains under the Public Distribution System as provided by the Central Government but under the Targeted Public Distribution System as introduced through NFSA, 2013, only two categories of ration card holders i.e. (i) Antyodaya Households and (ii) Priority Households are entitled to get ration articles.

The Counsel for the petitioner further submits that as per NFSA, 2013 it is mandate upon all the States to frame a Rule/issue Order in exercise of power conferred under Section 3 of the Essential Commodities Act, 1955

read with Central Control Order, 2015. The State of West Bengal is implementing NFSA, 2013 in its full volume by receiving entire quota of subsidized food grains under NFSA, 2013 Scheme from Central Government but till today no Rule or Control Order is framed by the State Government in exercising of power under Section 3 of the Essential Commodities Act, 1955 read with TPDS Control Order, 2015. The Ld. Counsel further submits that at present in the State of West Bengal, the rationing system is being governed and controlled under two non-existing Control Orders which has been superseded by TPDS Control Order, 2015 vide notification dt. 20.03.2015.

The Counsel for the petitioner further submits that the Government of NCT of Delhi sought to deliver ration articles under NFSA, 2013 to the house of the consumers under “Mukhya Mantri Ghar Ghar Rojgar Yojana (MMGGRY)” vide notification dt. 20.02.2021 which was negated by the Central Government and no permission has been given to implement such Scheme vide notification dt. 19.03.2021 and 22.06.2021 with the rider:

“In view of the above, the use of new nomenclature/ scheme name for distribution of NFSA foodgrains by GNCTD as noted above is not permissible but this department will have no objection if a separate scheme is made by the State Government without mixing the elements of NFSA foodgrains. It is therefore requested that GNCTD may follow the norms and provisions of the NFSA in rightful spirit and manner for distribution of NFSA foodgrains to the eligible beneficiaries under the Act.”

“Therefore in view of the above observations and concerns, it is clarified that the proposal of GNCTD does not meet the statutory and functional requirements of the National Food Security Act, 2013 and therefore, proposal made by the GNCTD cannot be accepted.”

The Counsel for the petitioner further submits that for implementation of “Duare Ration Scheme”, Fair Price Shop Dealers are facing the following practical problems:-

“(i) For biometric authentication of consumers through e PoS machine as suggested by the Central Government, e PoS machines cannot be removed from the licensed shop room and use the same in open place.

(ii) In rainy season, ration articles cannot be carried to reach the house of the consumers.

(iii) It is next to impossible, in open area or in remote villages, one or two employees of the ration shop, after measurement of the scale of ration articles, distribute ration articles to the villagers.

(iv) There is every possibility of harassment/ physical assault of the employees and every scope of looting of ration articles in remote places, where people are starving and there is no provision in the State Scheme of ‘Duare Ration’ to give protection to the employees of the F.P.S, during distribution of foodgrains by police administration.”

Ld. Counsel for the petitioner further submits that Duare Ration Scheme encroaches upon the Control Order, 2015 issued by the Central Government which already covers the field and the same is inconsistency between the law made by the Parliament and law made by the State Legislatures.

The Counsel for the petitioner relied upon the judgment reported in (1996) 3 SCC 15 (Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education & Charitable Trust –Versus- State of Tamil Nadu & Ors.) and submits that there is repugnancy between the 2015 Order issued by the Central Government and the Scheme of Duare Ration framed by the State of West Bengal.

Ld. Counsel for the petitioner relied upon the judgment reported in (2014) 7 SCC 547 (Animal Welfare Board of India –Versus- A. Nagaraja & Ors.) and submits that repugnancy will also arise between two enactments even though obedience each of them is possible without disobeying the other, if a competent legislature if a superior efficacy expressly or impliedly evinces by its legislation and intention to cover the whole field.

The Counsel for the petitioner submits that the Government of West Bengal has issued the impugned notification dt. 13.09.2021 by amending clause 18 of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 for delivery of ration articles at the door steps of the ration card holders and subsequently issued a scheme of West Bengal Duare Ration Scheme, 2021 which are not in accordance with law and prayed for setting aside the same.

Mr. S. N. Mookherjee, Ld. Advocate General representing the State of West Bengal submits that the Duare Ration Scheme is an administrative order under the purview of the NFSA, 2013 under which the State Government is responsible to ensure actual delivery to the beneficiaries. The Ld. Advocate General further submits that the NFSA, 2013 shall overwrite the Essential Commodities Act, 1955 as it is a later Act.

The Ld. Advocate General further submits that the 'Duare Ration Scheme' is an administrative order under Section 12 (1) of the NFSA, 2013 and Article 162 of the Constitution of India.

The Ld. Advocate General further submits that NFSA, 2013 stipulates that the State Government shall be responsible for implementation and monitoring of various schemes of the Central Government and their own schemes in accordance with the guidelines issued by the Government of India.

The Ld. Advocate General further submits that on a combined reading of Section 12 (1), 24 (1), 24 (2)(b) and 24(3) of NFSA, 2013 shows that the State Government is empowered to create and implement their own schemes that ensure actual delivery of essential commodities to the ration card holders.

The Ld. Advocate General further submits that Section 36 of NFSA, 2013 stipulates that the Provision of NFSA shall have overriding effect. It is further submitted that the statements of objects and reasons of the NFSA gives power to the respective States and Union Territories, all over the country to frame rules for monitoring TPDS.

The Ld. Advocate General further submits that the Parliament did not intend to exclude the participation of the State Government in formulating welfare schemes from its own resources as contemplated by NFSA. A holistic reading of NFSA makes it clear that the empowerment of the State Government goes beyond their resources. Such a construction is in line with the Statement and Object of NFSA and Article 47 of the Constitution of India.

The Ld. Advocate General further submits that promulgation of NFSA, 2013 while Essential Commodities Act, 1955 is inexistence shows a legislative transition from a welfare rights-based approach to the problem of food security. It is further submitted that the State Government is inducted as an equal partner to address the issue of food security.

The Ld. Advocate General further submits that NFSA came into force in the year 2013 though the Essential Commodities Act came into force in 1955 and thus Section 36 of the NFSA will have overriding effect against Section 6 of the Essential Commodities Act, 1955.

The Ld. Advocate General further submits that the Scheme does not regulate “transportation” essential commodities but rather “distribution” of essential commodities as far as the last mile is concerned, ensuring actual distribution.

The Ld. Advocate General further submits that Duare Ration Scheme does not contravene the Central Acts, Central Control Order, 2015 or WBPDS Control Order. It is further submitted that none of the Statues and Control Orders contemplate door step delivery.

The Ld. Advocate General further submits that as long as the sale of essential commodities is done through the FPS, the State Government has the power to regulate the delivery of essential commodities from FPS to the beneficiaries and as such the same does not violate Article 14, 19 or 254 of the Constitution of India and is not repugnant.

The Ld. Advocate General further submits that none of the Statutes and Control Orders contemplated door step delivery to the ration card holders nor to be an embargo thereupon. It is further submitted that the Statutes and Control Orders only contemplate delivery of essential commodities to FPS owners and thus the actual delivery by the FPS owners to the ration card holders is a space that is unregulated and unlegislated and the said gap at by way of Duare Ration Scheme.

The Ld. Advocate General further submits that Section 2 (23) of the NFSA, 2013 defines “Targeted Public Distribution System” as the system governing the distribution of essential commodities to the ration card holders “through” FPS and as such it is imperative to note that the section does not use the expression “at” but rather “through” signifies that there is no compulsion for Ration Card Holders to buy essential commodities at the FPS. The Scheme of NFSA is satisfied if PDS is sold “through” FPS.

The Ld. Advocate General further relied upon Section 2 (16) of the NFSA, 2013 which defines “ration cards” as a document issued under the authority of the State Government for the purchase of essential commodities from FPS under TPDS, 2015. It is further submitted that the expression “from” only signifies that the sale of essential commodities must be through the FPS and it does not mean that there cannot be delivery of essential commodities from a place other than the FPS, as stipulated in the Duare Ration Scheme. It is further submitted that the sale of essential commodities is still from the FPS and only the delivery is to the doorstep of the ration card holders.

The Ld. Advocate General relied upon Clause 7 (11) of the TPDS, 2015 which describes charts the movement of foodgrains. It is further submitted that the Order does not contain any clause that contemplates delivery of foodgrains or essential commodities to the doorstep of consumers from the FPS but the same is not prohibited. It is further submitted that nowhere the NFSA, 2013 or in the Central Control Order, 2015 contemplated that the essential commodities must be brought “at” the FPS.

The Ld. Advocate General relied upon judgment reported in (2020) 9 SCC 584 (West Uttar Pradesh Sugar Mills Association & Ors. -Versus- State of Uttar Pradesh & Ors.) and submitted that the object of the NFSA under which Duare Ration is created, is food security and ensuring every person belonging to priority households to receive food grains while the TPDS 2015, i.e. framed under the Essential Commodities Act is to provide for the general public, the control of the production, supply and distribution of, and trade and commerce in certain commodities. It is further submitted that Duare Ration Scheme and TPDS are created for entirely different purposes and cannot be repugnant to each other.

The Ld. Advocate General further submits that Duare Ration Scheme is inconsistent with the Central Control Order, 2015 as they operate in its fields. The Duare Ration Scheme regulates the doorsteps delivery to the ration card holders while the Central Control Order, 2015, regulates the transportation of foodgrains from Central depots to FPS and they operate in different fields and therefore, it cannot be repugnant.

The Ld. Advocate General relied upon the judgment reported in (1979) 3 SCC 431 and submits that the presumption is always in favour of the constitutionality of statute and the onus lies on the person assailing the Act to prove that it is unconstitutional.

The Ld. Advocate General further submits that as per the judgment passed by the Hon'ble Supreme Court (supra) before any repugnancy can arise, the following conditions must be satisfied:-

“(i) That there is a clear and direct inconsistency between the Central Act and the State Act.

(ii) That such a inconsistency is absolutely irreconcilable.

(iii) That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.”

The Ld. Advocate General submits that in the instant case, there is neither any inconsistency nor any provision which is irreconcilable. It is further submitted that holistic reading of the Scheme and amendment goes to show that there is no direct collision of the Scheme and amendment with the Central statues or the Central statues or the Central Control Order, 2015.

The Ld. Advocate General further submits that as per the statement of objects of NFSA would demonstrate for implementing the treaties and conventions therein and is therefore, enacted in exercise of powers under

Article 253 of the Constitution of India unlike the Essential Commodities Act. Ensuring delivery of foodgrains to the beneficiaries is covered by Article 2 of the International Covenant of Economic, Social and Cultural Rights under which the NFSA functions.

The Ld. Advocate General further submits that Duare Ration Scheme and the Central acts/orders can coexist. As per Section 24 (1) of NFSA, the State Government can implement their own schemes.

The Ld. Advocate General submits that the State Government can amend WBPDS Control Order as the WBPDS Control Order provides for making orders and amendments and they are not inconsistent to the act.

The Ld. Advocate General further submits that amendment to Clause 18 of the WBPDS Control Order dt. 13.09.2021 provides that every dealer shall arrange the distribution of public distribution commodities against the rations cards either at doorsteps of the ration card holders or through Fair Price Shops. Clause 35 of WBPDS Control Order allows the State Government to amend or introduce fresh provisions that are not inconsistent with the Act.

The Ld. Advocate General further submits that Section 3 (1) of the Essential Commodities Act has no application in the instant writ petition as Section 3 (2) (d) only being an illustration to Section 3 (1) of the ECA also has no application in the instant writ petition.

The Ld. Advocate General further submits that Clause 9 (1) of the Control Order, 2015 provides that the State Government shall issue an

order under Section 3 of the ECA for regulating the sale and distribution of essential commodities. Clause 9 (6) of the Central Control Order, 2015, provides that the State Government must ensure the ration card holders shall not face any difficulty to access the foodgrains and reach the fair price shop.

The Ld. Advocate General further submits that Clause 7 (11) of the Central Control Order, 2015, provides that the State Government shall devise suitable mechanisms for transportation of food grains from the Corporation godown and doorstep delivery of the foodgrains to the fair price shops. It is further submitted that the Central Control Order, 2015, does not contain any clause that prohibits delivery of foodgrains or essential commodities to the doorsteps of the consumer from the FPS, as such there is no bar either to the amendment or the Duare Ration Scheme.

The Ld. Advocate General further submits that as regard the prayer for declaring West Bengal Duare Ration Scheme, 2021 dt. 16.11.2021 as ultra vires has already been decided by two Coordinate Bench of this Court and submitted that prior the filing of the instant writ application, some persons being the licensed fair price shop owners have filed a writ application being WPA No. 14013 of 2021 (Mrityunjoy Garang & Ors. -Vs- State of West Bengal & Ors.) challenging certain guidelines framed by the Government of West Bengal for implementation of the scheme namely “Duare Ration Scheme” issued in the month of September, 2021. WPA No. 14013 of 2021 was dismissed by the Coordinate Bench of this Court on

15.09.2021 and accordingly the Coordinate Bench of this Court passed the following order:-

“It is not at all the schemes under taken by the Government will become successful. Whether the present Scheme will be accepted by the consumers, be successful or beneficial to the consumers, can be assessed only after a period of time. Whether the Scheme will survive or fizzle out after some time is a different question altogether. At the touchstone of the law governing the field it does not appear that the scheme contravenes any provisions of law.

In view of the discussions made hereinabove this Court feels fit not to interfere with the Scheme under reference.

Writ petition stands dismissed.”

Being aggrieved with the said order, the writ petitioners of WPA No. 14013 of 2021 had preferred an appeal before the Hon’ble Division Bench of this Court being MAT 1033 of 2021, MAT 1034 and MAT 1035 of 2021, the said appeals were taken up for hearing on 20.09.2021 and the Hon’ble Division Bench while considering the interim injunction application has passed the following order:-

“This Court is also of the view that notwithstanding the necessity of ultimately reading the pilot project aka the scheme within the four corners of the statutory provisions, i.e. the ECA and the NFSA, the arguments advanced by the appellants of the Scheme being perverse and subversive of the statutory mandate must await a not-too-distant ultimate consideration on merits.

Prima facie therefore, this Court is unable to accept the proposition that the Scheme is/are the Statute(s) itself. In such a premise, the issues in the writ petition and, hence this appeal, require an ultimate judicial engagement inter se the parties.

In other words, the Scheme being in the nature of a State-run project which must not be repugnant to the Central legislation in the field, the State has to discharge the onus of ultimately proving compatibility of the former with the latter. Such proof would undoubtedly lie in the details.

In the backdrop of the above discussion, the prayer for an interim order stands refused at this stage.

Points on being allowed to place the cause-of-action on behalf of the appellants/writ petitioners in representative capacity and, questioning the maintainability of the appeals/writ petitions as respectively taken by the appellants and the State-respondents be kept open.

All the three appeals along with the Cross-Objection filed by the State respondents shall be finally and analogously heard.”

Being aggrieved with the order passed by the Hon’ble Division Bench dt. 20.09.2021, the petitioners being WPA No. 14013 of 2021 had preferred a SLP before the Hon’ble Supreme Court being SLP (C) No. 15714 of 2021 (Ashoke Kumar Gayen & Ors. –Vs- the State of West Bengal & Ors.). The Hon’ble Supreme Court had taken the matter on 08.10.2021 and passed the following order:-

“Learned counsel for the petitioner states that they would be satisfied if the appeals pending before the High Court are decided expeditiously. We notice that the impugned order itself records that the parties are at liberty to mention for listing. On such request being made by a party, the Division Bench would consider the request for early hearing, and if possible the appeals may be taken up for hearing before the end of December, 2021.”

Some other sets of petitioners have filed another writ application being WPA No. 17375/2021 (Seikh Abdul Majed & Ors. –Vs- State of West Bengal & Ors.) and WPA No. 17757 of 2021 (Abdul Kader Mondal & Ors. – Vs- State of West Bengal) challenging the Scheme notified by the Department of Food and Supplies of the Government of West Bengal for reaching ration to the door steps of the consumers named as “West Bengal Duare Ration Scheme, 2021”. The said writ petition is also dismissed by the Coordinate Bench of this Court on 23.12.2021 by passing the following order:-

“In view of the reasons as stated above, this Court finds no basis to declare the West Bengal Duare Ration Scheme, 2021, ultra vires the Constitution of India or to cancel the Guidelines preceding the said Scheme on the grounds enumerated in the present writ petitions.

WPA 17375 of 2021 and WPA 17757 of 2021 are accordingly dismissed without any order as to costs.”

The Ld. Advocate General further submits that as regard declaring the notification dt. 13.09.2021 amending Clause 18 of the West Bengal Public Distribution System Order, 2013 cannot be said to be ultra vires for the reasons as mentioned above and prayed for dismissal of the writ petition.

Mr. Ajay Chaubey, Ld. Advocate representing the Central Government being the respondent nos. 5, 6, 7 & 8 submits that for implementation of NFSA, 2013, the Central Government framed Targeted Public Distribution System (Control) Order, 2015 empowering the State Government to issue an order under Section 3 of the Essential Commodities Act, 1955 but not inconsistent with the Central Control Order, 2015 for regulating the sale of distribution of the essential commodities (Licensing & Regulation of Fair Price Shops i.e. Clause 9 of the Central Control Order, 2015).

Ld. Counsel further submits that following the NFSA, 2013 and in exercise of power 3 of the Act, 1955 read with Control Order, 2015, almost all the States of all over India framed rule/issue orders for controlling and monitoring Targeted Public Distribution System for implementation of NFSA, 2013 but in the State of West Bengal after the promulgation of NFSA, 2013 and Control Order, 2015, no rules or orders were issued for implementation of NFSA, 2013.

The Ld. Counsel further submits that the State Government framed two Control Orders one notified on 08.08.2013 and another was notified on 12.08.2013 though NFSA, came into force subsequent of framing of those State Rules with effect from 10.09.2013 and Targeted Public Distribution System (Control) Order, 2015 came into force with effect from 20.03.2015.

The Ld. Counsel further submits that after coming into force of NFSA, 2013 with the target to provide for food and nutritional security in human life to the targeted people of the country, the State of West Bengal has not issued any Rules/Orders.

The Ld. Counsel further submits that under the Control Order, 2013 there were four categories of the ration card holders i.e. APL, AAY, Annapurna and BPL, who were entitled to get food grains under the Public Distribution System as provided by the Central Government but under the Targeted Public Distribution System as introduced through NFSA, 2013, only two categories of ration card holders i.e. (i) Antyodaya Households and (ii) Priority Households are entitled to get ration articles and it is mandate on the part of the State to frame Rule or issue Order in exercise of power under Section 3 of the Essential Commodities Act read with Central Control Order, 2015.

The Ld. Counsel further submits that since under the NFSA, 2013 and Central Control Order, 2015 prescribed that the ration articles can only be distributed from FPS in consisted with such mandate if ration articles are distributed to the consumers outside the fair price shops in terms of

notification dt. 13.09.2021 and 16.11.2021 issued by the Government of West Bengal is not permissible under law.

Heard the Ld. Counsel appearing for the parties considered the documents available on record and the judgment relied by the parties.

The Essential Commodities Act, 1955 was enacted by the Parliament on 01.04.1955 with the object "To provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities". The said Act was introduced to achieve two objectives (a) maintain supply of essential commodities to consumers and (b) to secure equitable distribution and availability of these essential commodities. The Act provides for framing of rules to regulate and control of production, pricing and distribution of essential commodities.

Section 2A defines "*essential commodity*" to mean a commodity specified in the schedule of the Act. The schedule of ECA enlists essential commodities and at serial no. 3 "*foodstuff including edible oil seeds and oils*" have been scheduled.

Section 3 of the Act empowers the Central Government, for the purpose of maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices to issue orders providing for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein.

Section 3 sub Clause 2 of the ECA, 1955 enumerates some of the aspects on which an order may be issued by the Central Government, which

include aspect of grant of licenses and permits for production or manufacturing of essential commodities for controlling the prices on which any essential commodity may be brought or sold, for regulating by licenses, permits or otherwise storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity, for providing withholding from sale of any essential commodity ordinarily kept for sale etc.

The Public Distribution System was renamed as Targeted Public Distribution System (TPDS) by the Government of India, with focus on the poor. Under TPDS beneficiaries were provided into two categories; households below the poverty line or BPL and households above the poverty line or APL.

Implementation of the Distribution Scheme was achieved through the licensed ration shops where from the beneficiaries would collect foodgrains.

In the year 2001, the Public Distribution System (Control) Order was issued by the Central Government, under Section 3 of the ECA for maintaining supplies and securing availability and distribution of essential commodities under the Public Distribution System. The order extended the whole of India. The said Order defines "*Fair Price Shop*" to mean a shop which has been licensed to distribute essential commodity by an Order issued under Section 3 of the ECA, 1955 to the ration card holders under the Public Distribution System.

In the said Order "*Public Distribution System*" means the system for distribution of essential commodities to the ration card holders thorough the

Fair Price Shops, such as rice, wheat, sugar, edible oils, kerosene and such other commodities as are notified by the Central Government under Clause (a) of Section 2 of the ECA, 1955. The operation to issue ration card to Above Poverty Line (APL), Below Poverty Line (BPL) and Antyodaya families and to conduct a periodical review and checking of ration cards was cast on the State Government, the Central Government was charged with the responsibility of making available to the State Governments, foodgrains for distribution under TPDS at such scales and prices, as provided under paragraph 3 of annexure of this Order.

Clause 6 of Order, 2001 deals with the aspect of distribution. Clause 6 (1) prescribed the procedure for distribution of foodgrains by the Food Corporation of India to the State Governments or their nominated agencies, shall be as per paragraph 4 of the annexure of the Order, 2001.

Clause 6 (2) and Clause 6 (3) of Order, 2001 read as follows:-

“(2) Fair Price Shop owners shall take delivery of stocks from authorized nominees of the State Government to ensure that the essential commodities are available at the Fair Price Shop within first week of the month for which the allotment is made.

(3) The District Authority is interested the responsibility of implementing the Public Distribution System shall ensure that the stocks allotted to the Fair Price Shops are physically delivered to them by the authorized nominee within the stipulated time.”

On 10.09.2013, the Parliament enacted the National Food Security Act, 2013. The said Act was introduced to provide for food and nutrition security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable price to people to live a life with dignity and for matters connected therewith or identical thereto.

Section 2 (4) of NFSA defines "*Fair Price Shop*" to mean a shop which has been licensed to distribute essential commodities by an Order under Section 3 of the Essential Commodities Act, 1955 to the ration card holders under the Targeted Public Distribution System.

Section 2 (16) defines "*Ration Card*" means a document issued under order of authority of the State Government for the purpose of essential commodities from the Fair Price Shops under the Targeted Public Distribution System.

Section 2 (23) defines "*Targeted Public Distribution System*" means the system for distribution of essential commodities to the ration card holders through fair price shops.

Section 3 of the NFSA, right in every persons belonging to priority households, identified under sub-section (1) of section 10, shall be entitled to receive five kilograms of foodgrains per person per month at subsidized prices specified in Schedule I from the State Government Targeted Public Distribution System.

Section 3 (3) provides that subject to sub-section (1) the State Government may provide to the persons belonging to eligible households,

wheat flour in lieu of the entitled quantity of foodgrains in accordance with such guidelines as may be specified by the Central Government.

Section 10 protects the rights of the beneficiaries in the State by providing that the State Government shall continue to receive the allocation of foodgrains from the Central Government under TPDS.

Section 12 mandates that the Central Government and the State Governments shall endeavor to progressively undertake necessary reforms in the Targeted Public Distribution System in accordance with the role envisaged for them in this Act.

The reforms shall also includes preference to the public institutions or public bodies such as Panchayats, self-help groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives.

Section 22 of NFSA, 2013 placed statutory responsibility on the Central Government to allocate from the Central pool the required quantity of foodgrains to the State Government under the TPDS as per entitlements under Section 3, and at prices specified in Schedule I, so as to ensure regular supply of foodgrains to persons belonging to eligible households. In fulfillment of these statutory obligations, the Central Government is, inter alia, obliged to provide for transportation of foodgrains, as per allocation to the depot designated by the Central Government in each State and to provide assistance to the State Government in meeting of expenditure incurred by it towards intra-State movement, handling of foodgrains and

margins paid to fair price shop dealers, in accordance with such norms and manner as may be prescribed by the Central Government.

Section 24 enlists the obligations of State Government to ensure food security to the targeted beneficiaries in their State.

Section 24 reads as follows:-

“24. Implementation and monitoring of schemes for ensuring food security.-

- (1) The State Government shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with guidelines issued by the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State.*
- (2) Under the Targeted Public Distribution System, it shall be the duty of the State Government to-*
 - (a) take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I, organize intra-State allocations for delivery of the allocated foodgrains through their authorized agencies at the door-step of each fair price shop; and*
 - (b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.*
- (3) For foodgrain requirements in respect of entitlements under sections 4, 5 and section 6, it shall be the responsibility of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I for persons belonging to eligible households and ensure actual delivery of entitled benefits, as specified in the aforesaid sections.*
- (4) In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapter II, the State Government shall be responsible for payment of food security allowance specified in section 8.*
- (5) For efficient operations of the Targeted Public Distribution System, every State Government shall,-*
 - (a) create and maintain scientific storage facilities at the State, District and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution System and other food based welfare schemes;*
 - (b) suitably strengthen capacities of their Food and Civil Supplies Corporations and other designated agencies;*

(c) establish institutionalized licensing arrangements for fair price shops in accordance with the relevant provisions of the Public Distribution System (Control) Order, 2001 made under the Essential Commodities Act, 1955 (10 of 1955), as amended from time to time.”

Section 32 of the NFSA clarifies that the provisions of this Act shall not preclude the Central Government, or the State Government from continuing or formulating other food based welfare schemes. It is further provides that notwithstanding anything contained in this Act, the State Government may, continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided under this Act from its own resources.

Section 36 of NFSA provides that the provisions of NFSA or the scheme made there under, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any investment having effect by virtue of such law.

Section 38 empowers the Central Government may, from time to time, give such directions, as it may consider necessary, to State Governments for the effective implementation of the provisions of this Act and the State Governments shall comply with such directions.

Section 39 empowers the Central Government to make rules in consultation with the State Governments and by notification make rules to carry out the provisions of this Act. Rules have been framed in exercise of power conferred by Section 39 of NFSA on various aspects taken note of Section 39 (2) of the Act.

Section 40 empowers the State Government to make rules which have inconsistent with the NFSA and the rules made by the Central Government to carried out the provisions of the Act.

The Food Security Allowance Rules, 2015 were framed under Section 39 (2) (c) read with Section 8 of NFSA by the Central Government, which, inter alia, place the responsibility on the Central Government and the State Governments to adhere to the time limits provided in the Public Distribution System (Control) Order, 2001, or any order issued from time to time by the Central Government, for allocation of foodgrains and make them available for distribution to the person entitled under the Act.

The Central Government also framed "*food security*" (Assistance to State Governments) Rule, 2015 under Section 39 (2) (e) read with Section 22 (4) (d) of the National Food Security Act, after consultation with the State Governments.

Rule 2 (f) defines "Intra-State movement" means movement of foodgrains within a State from the designated depots and delivering it at the door steps of the fair price shops and shall include all stages in this process.

Rule 5 casts a duty on the State Government to take delivery of foodgrains under Targeted Public Distribution System from the designated depots ensure its delivery through their authorized agencies up to the door steps of the fair price shops and to ensure its supply to entitled persons and households at prices specified in Schedule-I of the Act.

The Targeted Public Distribution System (Control) Order, 2015 issued by the Central Government, under Section 3 of ECA, 1955, in supersession of Public Distribution System (Control) Order, 2001.

Now the question whether the Statutory Scheme contain in the NFSA, the rules framed there under and the orders issued by the Central Government under the ECA, 1955 is there any bar or prohibition in case of State Governments wishes to provide an additional benefit or facility to the beneficiaries for delivery of foodgrains at the doorsteps of the beneficiaries so that the beneficiaries are not required to visit the fair price shop to collect their foodgrains.

On reading of NFSA, the rules framed there under as well as the statutory orders issued under Section 3 of the ECA, this Court do not finds anything to indicate the State Governments are not entitled to extend a benefit to the beneficiaries under the NFSA.

Section 24 (2) (b) of the NFSA obliges the State Governments to ensure actual delivery of supply of food grains to the entitled persons at the prices specified in Schedule-I. Therefore, the State Government wishes to travel the extra mile to deliver the foodgrains at the doorsteps of the beneficiaries, such an endeavor cannot be said to fall foul of any provisions of NFSA, the rules framed there under or the orders issued under the ECA, 1955.

Section 32 of the NFSA, enables the Central Government or the State Governments, inter alia, formulate other food based welfare schemes. A reading of section 32 of the NFSA shows any such additional plans/schemes

that the State Government may formulate to provide higher benefits than those provided under the Act has to be out of the own resources of the State Government.

Actual delivery of ration of the doorsteps of the beneficiaries, this Court is of the view that the same is covered within the scope of authority and responsibility vested in the State Government under Section 24 (2) (b) and Section 32 of NFSA.

In the instant case, the Government of West Bengal before issuance of the Scheme namely 'West Bengal Duare Ration Scheme, 2021' had issued a notification dt. 13.09.2021 wherein Clause 18 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 was amended which reads as follows:-

**“Government of West Bengal
Department of Food and Supplies
11A, Mirza Galib Street, Kolkata – 700087**

NOTIFICATION

No.3147-FS/Sectt/Food/4P-09/2012(Pt.II) – Kolkata, the 13th September, 2021. – WHEREAS it has been considered necessary to amend the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (hereinafter referred to as the said Control Order), in the manner hereinafter appearing;

NOW, THEREFORE, in exercise of the power conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Governor is pleased hereby to make, with an immediate effect, the following amendment in the said Control Order, namely:-

Amendments

In the said Control Order, for clause 18, substitute the following clause:-

“18. Distribution of public distribution commodities against ration cards :- Every Dealer shall arrange for distribution of public distribution commodities against the ration cards either at door steps of the ration cards holder or through Fair Price Shops, as the case may be, between 7.00 a.m. to 11.30 a.m. in the morning session and between 3.30 p.m to 6 p.m. in the evening session on Tuesday to Saturday and morning Session on Sunday and shall not deny the distribution of public distribution commodities to any ration card holder during the working hours:

Provided that the timing of distribution of public distribution commodity under the hill areas of the districts of Kalimpong and Darjeeling shall be between 9.00 a.m to 1.00 p.m in the morning session and between 2.00 p.m to 4.00 p.m. in the evening session on Tuesday to Sunday.”

By order of the Governor,

PARWEZ AHMAD SIDDIQUI, IAS

Secretary to the Govt. of West Bengal”

Clause 18 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 reads as follows:-

“18. The distribution of public distribution commodities against ration cards:- Every dealer shall arrange for distribution of public distribution commodities between 7.30 A.M. to 11.30 A.M. in the morning and between 4.00 P.M. to 6.00 P.M. in the evening against the ration cards and shall not deny the distribution of public commodities to any ration card holder, who presence the ration cards during working hours or any distribution day.

Explanation:- Distribution day means Tuesday to Saturday and morning session on Sunday.”

Clause 35 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 which reads as follows:-

“35. The power to amend, vary or introduce fresh provisions:-

The State Government may, if it is considered necessary, vary, amend or introduce fresh provision inconsistent with the provisions of the Act and shall notify in the Official Gazette.”

On conjoint reading of Section 24 (2) (b) and Section 32 of NFSA 2013 and clause 35 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 this Court hold that there is no illegality in amending clause 18 of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 by notification dt. 13th September, 2021.

The West Bengal Duare Ration Scheme, 2021 provides for additional commission to the dealers for distribution of ration items under the Duare Ration Scheme.

Clause 10 of the Scheme of 2021 reads as follows:-

“10. Incentive to dealer for implementation of scheme.

(1) The dealer shall be provided additional commission for distribution of ration items under Duare Ration Scheme at such rate as the State Government may, by order specified.

(2) The State Government may, by order, provide some financial support to the FPS dealer in the form of subsidy to purchase vehicles for distribution of rations items under the Scheme.”

The apprehension of the petitioners with regard to the practical problems for implementation of Duare Ration Scheme is taken care by the State authorities in Clause 6(1) to (17) of the Scheme.

The petitioners have relied upon the judgment reported in 1996 (3)

SCC 15 Para 26 which reads as follows:-

“It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5 (5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country.”

The petitioners also relied upon the judgment reported in (2014) 7

SCC 547 Para 76 reads as follows:-

“76. Instances are many, where the State law may be inconsistent with the Central law, where there may be express inconsistency in actual terms of the two legislations so that one cannot be obeyed without disobeying the other. Further, if the Parliamentary legislation, is intended to be a complete and exhaustive code, then though there is no direct conflict, the State law may be inoperative. Repugnancy will also arise between two enactments even though obedience to each of them is possible without disobeying the other, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field.”

The State respondents relied upon the Judgment reported in (2020) 9

SCC 548 Paragraph 24 & 25 reads as follows:-

“24. Question of repugnancy under [Article 254](#) of the Constitution: concerning laws in List III of the Seventh Schedule of the Constitution of India, where both the Union and the States have the power to enact a law, the question of repugnancy arises only in a case where there is an actual irreconcilable conflict between the two laws. Inconsistency between the two laws is irreconcilable, then the question of repugnancy arises. It is necessary to find the dominant intention of both the legislatures, partial or incidental coverage of the same area in

a different context, and to achieve a different purpose, does not attract the doctrine of repugnancy.

25. In *Rajiv Sarin v. State of Uttarakhand*, the Court held:

*“33. It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under [Article 254](#) of the Constitution, a State law passed in respect of a subject-matter comprised in List **III** i.e., the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e., one made by the State Legislature and another made by Parliament cannot exist together. In other words, the question of repugnancy under [Article 254](#) of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other, and it is impossible without disturbing the other provision, or conflicting interpretations resulted into when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by Parliament and of the State Legislature is raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject-matter or different.*

45. For repugnancy under [Article 254](#) of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a “repugnancy” between a Central and [State Act](#); and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intentions of both the legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In a nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject.”

The State respondents further relied upon the Judgment reported in (1979) 3 SCC 431 Paragraph 24 reads as follows:-

“24. It is well-settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the [State Act](#) and the [Central Acts](#). Before any repugnancy can arise, the following conditions must be satisfied :

- 1. That there is a clear and direct inconsistency between the [Central Act](#) and the [State Act](#).*
- 2. That such an inconsistency is absolutely irreconcilable.*
- 3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.”*

It is settled law that the plea of repugnancy would be attracted only if both the legislation fall under the concurrent List of Seventh Schedule of Constitution. In the instant case Section 24 (2)(b) of NFSA, 2013 obliges the State Government to ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule and the State Government taken decision to deliver foodgrains at the door steps of the beneficiaries which cannot be said to violation of any provision of the NFSA, the Rules framed therein or the order issued under the ECA.

Hon’ble Supreme Court has held that three conditions as mentioned above are to be satisfied for repugnancy but in the instant case none of the conditions satisfied to hold that there is any inconsistent between Central law and State law.

In such circumstances, the Judgment referred by the petitioners is not applicable in the instant case.

This Court also noted that in earlier occasion other sets of persons who are the Fair Price Shop dealers have filed writ petitions as mentioned supra and the co-ordinate benches of this Court have not interfered with the West Bengal Duare Ration Scheme, 2021.

In view of the reasons mentioned above, this Court finds that there is no illegality either in the Notification dt. 13.09.2021 or in the West Bengal Duare Ration Scheme, 2021 dt. 16.09.2021.

WPA 18630 of 2021 is accordingly **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)

Later,

The Counsel for the petitioners prays for stay of the operation of the judgment. Counsel for the respondents opposes the prayer. Considered the submission made by the respective parties. Stay of the operation of the judgment is refused.

(Krishna Rao, J.)