

AFR

Court No. - 9

Reserved

(1) **Case :-** MISC. SINGLE No. - 16086 of 2020

Petitioner :- Haripal

Respondent :- State Of U.P. Thru. Prin. Secy.Food & Civil Supply,Lko.& Ors

Counsel for Petitioner :- O.P. Tiwari,Rajendra Singh,Sudhir Pandey

Counsel for Respondent :- C.S.C.

(2) **Case :-** MISC. SINGLE No. - 18232 of 2020

Petitioner :- Shiv Prasad & Anr.

Respondent :- State Of U.P. Thru. Prin. Secy.Food & Civil Supplies,Lko&Ors

Counsel for Petitioner :- Alok Srivastava

Counsel for Respondent :- C.S.C.

(3) **Case :-** MISC. SINGLE No. - 17570 of 2020

Petitioner :- Ramdev Saroj

Respondent :- State Of U.P. Thru. Secy. Revenue Deptt. & Ors.

Counsel for Petitioner :- Akhilesh Kumar Pandey

Counsel for Respondent :- C.S.C.

(4) **Case :-** MISC. SINGLE No. - 3496 of 2021

Petitioner :- Jai Maa Barahi Mahila Self Helping Group Thru. President

Respondent :- State Of U.P. Thru. Prin. Secy. Food & Civil Supply & Ors.

Counsel for Petitioner :- Vivek Kumar Srivastava,Pradeep Kumar Srivastava

Counsel for Respondent :- C.S.C.

(5) **Case :-** MISC. SINGLE No. - 2662 of 2021

Petitioner :- Nari Sangh Samooh Thru. Member Pushpa Devi

Respondent :- State Of U.P.Thru.Prin.Secy.Food & Civil Supplies,Lko.& Anr.

Counsel for Petitioner :- Praveen Kumar Tripathi

Counsel for Respondent :- C.S.C.,Dilip Kumar Pandey

Hon'ble Attau Rahman Masoodi,J.

Let no one die of hunger is a fundamental duty postulated under Article 47 of the Constitution of India that must be read as a part of the right to life under Article 21 for it is the right to food without which the dignified existence of human beings is inconceivable. In other words, right to food is inherent in Article 21 of the Constitution of India obliging the State to ensure the execution of its duties in the true spirit of Article 47 read

with Article 39-A of the Constitution of India. The discharge of this obligation fundamentally requires the government to have a Public Distribution System to reach out to the underprivileged citizens in order to satiate the basic ingredient of dignified life i.e. right to food. In the State of Uttar Pradesh, the targeted population for the supply of food grains under the Food Security Act, 2013 i.e. *Patra Grahasthi* and *Antyodaya Ann Yojna* is aimed at 15.21 crores out of which 14.69 crores are identified through bio-metric system according to the online report dated 11.2.2021 and this is what the statement on behalf of the State Government reads in para-6 of the counter affidavit filed in Writ Petition No. 16086 (MS) of 2021. For a population of this dimension residing in rural areas, the State Government is obliged to evolve a foolproof mechanism ensuring distribution of food grains as per the policy of the State trammled in law.

Public Distribution System is incorporated under Entry-28 Schedule-XI of the Constitution of India, which by virtue of Article 243G, mandates as under:

"243G. Powers, authority and responsibilities of Panchayats- *Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to -*

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be

entrusted to them including those in relation to the matters listed in the Eleventh Schedule"

In the pursuit of objects under Article 47 of the Constitution of India, the Essential Commodities Act, 1955 was enacted decades back but towards the fulfillment of Article 21 of the Constitution of India, the Food Security Act, 2013 was enacted by the Parliament, whereunder, the targeted population as per the policy of the State is attentively focused for raising their standards of livelihood to a dignified level. It is for the achievement of this object that Public Distribution System is significant and must work to the optimum good of people particularly for the targeted village population. In the first two writ petitions at hand, the Court is concerned with the distribution of food grains through Public Distribution System at the village level which involves creation of an incentive based '**agency**' by the government of which the financial liability payable to the dealers is met with out of the State largesse as a means of purported employment both in rural and urban areas. The targeted population in U.P. for this purpose in urban areas corresponds to 4.5 crores whereas in rural areas, it is figured at 15.51 crores.

In view of the 73rd Amendment in the Constitution of India, an amendment was also made in Section-15 of the Panchayat Raj Act, 1947 i.e. U.P. Act No. 9 of 1994 and thereby the functioning of Gram Panchayats was enlarged to the promotion of Public Distribution System for awareness and distribution of essential commodities

inclusive of monitoring. Section 15 (xxix) of the U.P. Panchayat Raj Act, 1947 being relevant may be extracted below:

"15. Functions of Gram Panchayat. - Subject to such conditions as may be specified by the State Government, from time to time, a Gram Panchayat shall perform the following functions, namely, -

.....

(xxix) Public distribution system: .

(a) Promotion of public awareness with regard to the distribution of essential commodities.

(b) Monitoring the public distribution system."

It is thus clear that the State Government has decentralised the function of awareness relating to distribution of essential commodities and monitoring of the Public Distribution System to the Panchayats in rural areas. In order to give an impetus to the Public Distribution System, the National Food Security Act, 2013 provides for reforms in 'Targeted Public Distribution System'. Section 12 of the Act reads as under:

"12. Reforms in Targeted Public Distribution System. -

(1) The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act.

(2) The reforms shall, *inter alia*, include-

(a) doorstep delivery of foodgrains to the Targeted Public Distribution System outlets;

(b) application of information and communication technology tools including end-to-end computerisation in order to ensure transparent recording of transactions at all levels, and to prevent diversion;

(c) leveraging "aadhaar" for unique identification, with biometric information of entitled beneficiaries for proper targeting of benefits under this Act;

(d) full transparency of records;

(e) preference to public institutions or public bodies such as Panchayats, selfhelp groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives;

(f) diversification of commodities distributed under the Public Distribution System over a period of time;

(g) support to local public distribution models and grains banks;

(h) introducing schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in order to ensure their food grain entitlements specified in Chapter II, in such area and manner as may be prescribed by the Central Government."

The Act by virtue of Section 2(4) defines a fair price shop as under:

"2. Definitions. - In this Act, unless the context otherwise requires,-

(1)

(2)

(3)

(4) "fair price shop" means a shop which has been licensed to distribute essential commodities by an order issued under section 3 of the Essential Commodities Act, 1955 (10 of 1955), to the ration card holders under the Targeted Public Distribution System."

In order to secure equitable distribution of food grains to the targeted population etc., the National Food Security Act, 2013, by virtue of Section 15, has constituted a district level redressal mechanism for distribution related grievances and at the State Level, a State Food Commission is provided for to carry out the functions as embodied under Section 16(6) of the Act. In the present case, however, the issues relate to the establishment of fair price shops through an open meeting of Gaon Sabhas, operation whereof is incentive based and payable directly in the bank account of the dealers

subject to their satisfactory work on monthly basis and that is how it is termed as a means of employment by the State. It is looking to this dimension of fair price shop dealership that the Central Government as well as the State Government have both issued control orders from time to time whereunder the eligibility norms of persons and criteria for their selection as dealers were laid down with due regard to the implementation of reservation policy within the scope of law.

After the enforcement of Food Security Act, 2013, it is necessary to understand the laws having due regard to the object of 'Targeted Public Distribution System' and the purpose of equitable distribution of scheduled commodities through an accountable mechanism for which a fair selection of dealers in village areas, as per the eligibility criteria, is indispensable. The zone of eligibility for licensing as sanctified by law is traceable to Clause-9 of the Targeted Public Distribution System (Control) Order, 2015 issued by the Central Government and the same being relevant is reproduced as under:

"9. Licensing and regulation of fair price shops. - (1) *The State Government shall issue an order under section 3 of the Act, but not inconsistent with this Order, for regulating the sale and distribution of the essential commodities.*

(2) *The licences to the **fair price shop owners** shall be issued under the said order and the order issued by the State Government shall be notified and displayed on web portal.*

(3) *The designated authority appointed by the State Government shall issue the licences to the fair price shop owners.*

(4) The State Government shall accord preference to public institutions or public bodies such as panchayats, self help groups, cooperative societies in licensing of

fair price shops and management of fair price shops by women or their collectives.

(5) The licences to the fair price shop owners shall be issued keeping in view the viability of the fair price shop.

(6) The State Government shall ensure that the number of ration card holders attached to a fair price shop are reasonable, the fair price shop is so located that the consumer or ration card holder does not have to face difficulty to reach the fair price shop and that proper coverage is ensured in hilly, desert, tribal and such other areas difficult to access.

(7) The State Government shall fix an amount as the fair price shop owner's margin, which shall be periodically reviewed for ensuring sustained viability of the fair price shop operations.

(8) The State Government shall put in place a mechanism to ensure the release of fair price shop owner's margin without any delay.

(9) The State Government shall allow sale of commodities other than the foodgrains distributed under the Targeted Public Distribution System at the fair price shop to improve the viability of the fair price shop operations."

The Targeted Public Distribution System (Control) Order, 2015 issued by the Central Government defines 'fair price shop owner' as under:

"2(j) 'fair price shop owner' means a person and includes a cooperative society or a body corporate or a company of a State Government or a Gram Panchayat or any other body in whose name a shop has been licensed to distribute essential commodities under the Targeted Public Distribution System."

A plain reading of the above provision clearly shows that the State Government obliged to issue an order for sale and distribution of essential commodities under Section-3 of the Essential Commodities Act is bound to act in consistence with the Control Order, 2015 issued by the Central Government. Interestingly, the Central Government has also provided for a preference to public institutions or public bodies such as Panchayats, Self help groups, Co-operative Societies in the matter of grant of

licences. The law made by the Central Government also postulates for licencing of an equitable number of shops having regard to the number of ration card holders in a particular urban/village area. The margin of incentive admissible to the fair price shop dealers is also provided to be reviewed periodically. It is in furtherance of the above mandate that the State Government in suppression of earlier Control Orders chose to issue the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016. Clause-7 of the Control Order, 2016 issued by the State Government being relevant is extracted below:

<p>7- Appointment and regulation of fair price shops.- (1)</p>	<p>With a view to affecting fair distribution of foodgrains and scheduled commodities the State Government shall issue directions under section-3 of the Act to such number of fair price shop in an area and in the manner as it deems fit.</p>
(2)	<p>(i)- A fair price shop shall be run through such person and in such manner as the Collector, subject to the directions of the State Government may decide.</p> <p>(ii)- A person appointed to run a fair price shop under sub clause (1) shall act as the agent of the State Government.</p> <p>(iii)- A person appointed to run a fair price shop under sub clause (1) shall sign an agreement, as directed by the State Government regarding running of the fair price shop. as per the draft appended to this order before the competent authority prior to the coming with effect of the said appointment.</p>
(3)	<p>The Food Commissioner shall ensure that the number of ration card holders attached to a fair price shop are reasonable, the fair price shop is so located that the consumer or ration card holder does not have to face difficulty to reach the fair price shop and that proper coverage is ensured in hilly, desert, tribal and such other areas difficult to access.</p>

(4)	The State Government shall fix an amount as the fair price shop owner's margin, which shall be periodically reviewed for ensuring sustained viability of the fair price shop operations.
(5)	The Food Commissioner shall put in place a mechanism to ensure the release of fair price shop owner's margin without any delay.
(6)	The State Government shall allow sale of commodities other than the foodgrains and other scheduled commodities distributed under the Targeted Public Distribution System at the fair price shop to improve the viability of the fair price shop operations.

Reference may also be made to the definition clause-2 whereunder the 'agent', 'fair price shop' and 'fair price shop owner' are defined as under:

"2- Definitions- In this Order, unless the context otherwise requires-,

(b) **"Agent"** means a person or a co-operative society or a corporation of the State Government authorized to run a Fair Price Shop under the provision of this Order;

(n) **"Fair price shop"** means a shop set up as directed by the State Government under this order for distribution of foodgrains, sugar, kerosene oil etc. under various orders of Central and State Government."

(o) **"fair price shop owner"** means a person and includes a cooperative society authorized to run a fair price shop appointed under provisions of this order."

Having regard to definitions extracted above, it is quite clear that an individual, the co-operative societies or a corporation of the State are inclusive in the definition of 'agent' but the definition of 'fair price owner' as per the Control Order, 2015 issued by the Central Government is much wider. It is in the background of above mentioned provisions that the State Government by virtue of Section-3 of the Essential Commodities Act

issued a further government order on **5.8.2019** whereunder the procedure for selection of persons in rural areas having regard to the policy of reservation was laid down. It is evident from the government order dated **5.8.2019** that reservation for various categories of persons was provided under Clause-I as under:

- a. SC - 21%
- b. ST - 02%
- c. OBC - 27%
- d. EWC - 10%

(not included in SC, ST, OBC as per G.O. No. 1/2019/4/1/2002/Ka-2/10TC-11 dated 18.2.2019)

Clause-II of the government order dated **5.8.2019** provides for horizontal reservation for women (20%), Ex-Army Personnel (5%), Freedom Fighters (5%), Physically Handicapped (3%). Clause-III of the government order provides that every allotment of a fair price shop in the rural area shall be made on the basis of an open meeting of the Gaon Sabha and the resolution passed therein shall be forwarded by the Block Development Officer to the Sub-Divisional Magistrate within two weeks so that the same is presented to the tehsil level committee, headed by Sub Divisional Magistrate for appointment of fair price shop dealer.

The tehsil level committee as per the government order dated **5.8.2019** is under a bounden duty to take necessary decision as regards the approval of open meeting within 15 days from the date of receiving the resolution and within the same very period the Sub-

Divisional Magistrate concerned is expected to issue an allotment order on the grant of approval by the Committee or return the resolution by recording reasons.

What is significant to note is that the process of selection is by an open meeting of the Gaon Sabha and rightly so when one may look at the scope of Entry-28 Schedule-XI in the context of Article 243-A of the Constitution of India read with Section 15(xxix) of the Panchayat Raj Act, 1947. It is also to be noted that the eligibility of a fair price shop dealer is dependent upon his being a resident of the same village and the process of selection is through an open meeting of the Gaon Sabha for which the resolution is passed by the registered voters of the same village by majority. This is the basic rule according to which the establishment of Public Distribution System to promote social justice in the rural areas is by law aimed with due regard to the mandate of reservation policy. The zone of consideration for allotment of fair price shops, when looked at in the light of preferential clause embodied under Section 12(2)(e) enables the competent authority to give preference to the public institutions or public bodies when there is an impasse between a person and a public body/institution or two public bodies/institutions on account of the support of villagers being equal. The rule of preference applies when the basic criteria of selection brings the two prospective persons on equal footing in a level playing field. Law does not conceive application of the rule of preference by eroding competition in a level playing field.

It is for this reason that the law makers have wisely phrased the essential legislation i.e. Section 12(2)(e) of the Act, 2013.

A plain reading of the statute attaching preference to the public institutions or public bodies does not suggest that the local residents who for the purposes of grant of licenses fall in the zone of eligibility or consideration are sought to be ousted altogether. The rule of preference is supplementary to the essential rule under which every person including the public institutions or public bodies may compete for allotment of a fair price shop in an open meeting of the Gaon Sabha. The purpose is to design a result oriented delivery system.

The State Government in order to bring the U.P. Control Order, 2016 in line with the definition clause 2(j) of the Central Control Order, 2015 amended the definition of 'fair price shop owner' by Second Amendment Order, 2020, notified on 2.7.2020 as under:

*"(O) "Fair Price Shop Owner" means a person and includes a co-operative society and **self-help group** authorized to run a fair price shop appointed under provisions of this order."*

This amendment however left the definition of 'agent' extracted above as unaltered. The definition introduced stands somewhat at variance as compared to Clause 2(j) of the Central Control Order, 2015. The State Government soon thereafter issued another government order dated 7.7.2020 whereunder self-help groups were allowed preference to the exclusion of all other categories of persons and this is how the resultant dispute has arisen

before this Court in the first two writ petitions which involve common questions of law.

The controversy in the first two writ petitions filed before this Court is centered round the government order issued on 7.7.2020 which *inter alia* is assailed on the ground that it seeks to defeat the very objects of 73rd Amendment made in the Constitution of India. It is thus argued that a whimsical discretion cannot be allowed to operate in place of a democratic norm once the decision making authority is conferred upon the Gaon Sabha to pass a resolution for selection of licencees to distribute essential commodities at the village level. Restricting the zone of consideration, therefore, is also questioned as violative of Article 14 and 19(1)(c) of the Constitution of India. It is further urged that narrowing down the zone of eligibility under the garb of rule of preference and confining it to the self-help groups alone for the purposes of grant of statutorily regulated licence by itself is violative of the object of Section 12(2)(e) of the Food Security Act, 2013 which embodies equal consideration.

The questions that arise for consideration before this Court may broadly be framed as under:

- (i) As to whether the grant of licences for carrying out the objects of Public Distribution System, it is the government order dated 5.8.2019 which is to operate or the so called supplementary government order dated 7.7.2020 running in conflict with the earlier government

order occupying the field and as to whether the impugned government order stands the tests of Article 14 of the Constitution of India and does not offend the mandate of Section 12 (2)(e) of the Food Security Act, 2013.

(ii) As to whether the contemplation and enforcement of exclusive preference in favour of self help groups by means of the impugned government order dated 7.7.2020 that too by sidetracking the role of Gaon Sabhas for passing resolution on the principle of majority vote is not in violation of the mandate of Article 14 read with Article 19(1)(c) of the Constitution of India as well as the relevant statute.

(iii) As to whether a Self-help group without having a juristic character would nevertheless be eligible and would fall within the scope of a public body or public institution for the purposes of allotment of fair price shop in the State of U.P.

Before consideration of the questions framed above, it may be necessary to take note of the prayer in the writ petitions. In Writ Petition No. 16086 (MS) of 2020 and 18232 (MS) of 2020, the validity of the government order dated 7.7.2020 has been questioned on the ground of lack of authority and being in violation of Article 14 read with Article 19(1)(c) and 21 of the Constitution of India. The

scope of other writ petitions depends upon the outcome of aforesaid two writ petitions.

In brief it may also be worthy to note that the Patra Grahasthi Card holders are defined under the following criteria:

General Criteria		
Citizen of India	Family	Landless Farmer
	<ol style="list-style-type: none"> 1. Mukhiya 2. Spouse of Mukhiya 3. Minor Children 4. Major children and dependents 5. Unmarried daughter 6. Mukhiya's Parents dependent on him 	

Primary identification
<ol style="list-style-type: none"> 1. All rural/urban families identified as of now in State as Antyodaya families. 2. All rural/urban families identified as BPL families except excluded.

Exclusion Criteria in rural areas
<ol style="list-style-type: none"> 1. Income Tax payer. 2. Family with four-wheeler vehicles, tractor, AC or generator of 5 KV or more capacity 3. Families with five acres or more irrigated land. 4. Income above two lacs per annum. 5. Family with more than one arm's licence

Inclusion Criteria in urban areas
<ol style="list-style-type: none"> 1. Beggars, domestic helps, cobblers, Pheriwalas (unless excluded on the strength of exclusions as

above).

2. Leprosy patients or acid victims.
3. Orphans.
4. Janitors.
5. Rickshaw Pullers.
6. SC/ST, other landless labourers.
7. Daily Wagers.
8. BPL families
9. Kachcha house dwellers.
10. Where Mukhiya is disabled or of unsound mind.
11. Transgenders.

This is broad classification of the eligibility criteria of beneficiaries and is not exhaustive. The women and children are separately prioritized under the Act, 2013.

Sri Sudhir Pandey, learned counsel for the petitioner has argued that Public Distribution System in the rural areas falls within the domain of U.P. Panchayat Raj Act, 1947 and insofar as the establishment of fair price shops in the rural areas is concerned, the Central and the State Government both in exercise of the powers conferred by virtue of Section 3 of Essential Commodities Act have issued Control Order in the year 2015 and 2016. The Control Orders were supplemented by the State Government order issued on 5.8.2019. The Control Orders lay down a complete mechanism for assessing the eligibility of persons and carrying out the selection process for allotment of fair price shops.

It is submitted that once the State Government by undertaking its composite legislative exercise i.e. essential and statutory devolved the selection process of dealers

upon the Gaon Sabhas to strengthen Public Distribution System, it was thereafter impermissible for the executive authority of the State to act contrary to the object of local self governance. The impugned Government Order dated 7.7.2020 seeking to oust the role of Gram Sabhas defeats the purpose of 73rd Amendment made in the Constitution of India apart from being in conflict with the Government Order dated 5.8.2019 occupying the field.

Learned counsel for the petitioner has argued that the nature and extent of 'executive power' is not defined under law but what is not classified as a legislative or judicial function, is within the realm of executive function of the State in common parlance. Law is clear on the subject that the entries embodied in Schedule-XI of the Constitution of India do not confer authority of any kind upon the Gram Sabhas or Gram Panchayats unless the specific functions are sanctified by law. It is thus submitted that whatever is decentralized by the State in the spirit of Article 243-A and 243-G read with Part-IV of the Constitution of India cannot be frustrated without providing for a stronger reform executable by the third tier of governance itself. In other words, the fundamental rule of democracy must reach and serve the society in the matter of executive decisions too. For this purpose, Article 243-A of the Constitution of India clearly provides a guidance to the effect that the Gram Sabhas may exercise such powers and perform such functions at the village level as may by law be conferred by the State Legislature. This must be read inclusive of the powers and

functions conferred through delegated legislation which accomplishes the purpose of essential legislation promulgated by the Parliament or the State legislature and an inconsistent policy decision must be read subservient to such laws.

According to the learned counsel for the petitioners, the policy of the State is bound to adhere to the existing laws. The distribution of scheduled commodities through fair price shops, according to him, is to be understood by giving a full meaning to the inclusion of Entry-28 in Schedule XI of the Constitution of India and the laws made or applied in relation thereto within the spirit of Article 243-A and 243-G. Article 243-A for ready reference may also be extracted as under:

"243-A. Gram Sabha- A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide."

This Court would note that the executive function of the State may be devolved upon the Local Self-Government by law and supplemented through delegated legislation but once a function through composite legislative process is decentralized, the same would vest in the Gram Sabha or Gram Panchayat till the law reforms or strengthens the Panchayat Raj even further. The local Self-Government to the extent of decentralization of executive functions by law on the subjects mentioned in Schedule-XI of the Constitution of India thus assume legitimacy for carrying out such functions and to that extent, the executive authority of

the State stands devolved upon the local self government. In other words, the Control Order issued by the Central Government in the year 2015 together with the Control Order, 2016 of the State as promulgated under Section 3 of the Essential Commodities Act besides the devolution of functions by the State wide government order dated 5.8.2019 upon the Gram Sabhas, leave no manner of doubt that the allotment of dealership for delivery of scheduled commodities to an agent was devolved upon the Gram Sabhas in the spirit of Article 243-A of the Constitution of India. This is a function akin to the election of Gram Pradhan for which an extraordinary general meeting of the Gram Sabha as per the provisions of Section 11 of the Panchayat Raj Act, 1947 is a condition precedent. The resolution passed by the Gaon Sabha becomes accordingly enforceable as per the provisions of Panchayat Raj Act, 1947 and the Rules framed thereunder.

The devolution of function relating to the selection of fair price shop dealers upon the Gram Sabhas would certainly help the targeted population residing in village areas to be served better and is necessary to reform Public Distribution System for its inclusion in Schedule-XI of the Constitution of India i.e. Entry-28. It may be worthwhile to note that the purpose to institutionalize the third tier of the government i.e. Gram Sabhas/Panchayats was to reach out to the people living in village areas and particularly those who are below the poverty line. The object of three-tier governance is none

other than the effective implementation of the development schemes and projects to uplift the standards of livelihood at the village level through a democratic process. The law makers under Article 243-A and Article 243-G of the Constitution of India have clearly provided that the governance by local authorities must be sanctified by law without which the functional independence of the local self government i.e. Panchayat Raj would not be a reality. Once the laws made by the State or the Central Government segregate the executive functions or any other function in the light of Schedule XI appended to the Constitution of India and devolve specific functions upon the Gram Sabhas or Gram Panchayats, such functions must stand vested with the local self government till they are reformed by law to strengthen the third tier of democracy in the spirit of Section 25 read with Section 26 of the Food Security Act, 2013.

The question as to whether it was right for the State Government to supplant the existing process of selection prescribed under the government order dated 5.8.2019 by a rule exercisable at the discretion of District Magistrate/Collector and that too by ousting the participatory rights of the eligible local villagers, in my humble view, the impugned government order dated 07.07.2020 defeats the very object and purpose of the Article 243-A together with Article 243-G of the Constitution of India when read with Section-15(xxix) of the U.P. Panchayat Raj Act, 1947. The reformation of

selection process by means of the impugned government order dated 7.7.2020 is not only contrary to the own policy of the State but is wholly violative of Article 14 and 19(1)(c) of the Constitution of India. This Court may also take note of the government order dated 14.1.2021 whereby the State Government while reiterating the enforcement of government order dated 5.8.2019 has clarified that self-help groups would also be eligible for participation in the selection process of fair price shop dealership but to apply the rule of preference exclusively in terms of government order dated 7.7.2020 is certainly unconstitutional. Therefore, this Court has no hesitation to hold that the operation of the impugned government order dated 7.7.2020 standing in conflict with the subsisting government order dated 5.8.2019 is not only inconsistent but violative of Article 14 of the Constitution of India, hence liable to be struck down.

The Court may also observe that the control of the State Government to approve a resolution of the Gaon Sabha is the only external control which may be exercised by the executive in relation to the process of selection. This authority is saved to effectuate the purpose of law and attach a finality to the resolutions passed by Gram Sabha in terms of the statutory government order dated 05.08.2019. The control with respect to the discharge of duties by the agents or licencees is also regulated under the U.P. Control Order, 2016 read with the government order dated 5.8.2019. The local redressal mechanism provided under the provisions of National Food Security

Act, 2013 also comes to the aid of beneficiaries to strengthen the Public Distribution System.

Coming to the **second** question, this Court would note that the State Government in the counter affidavits filed has no where stated as to how restricting the zone of eligibility to the self-help groups alone would be just, reasonable or fair and would not offend the mandate of equality embodied under Article 14 of the Constitution of India which again is a fundamental rule of governance.

In the present case, the court is dealing with a controversy which involves the welfare of people at the village level. Raising the standard of nutrition cum living of rural population through distribution of food grains is the duty for which the monetary support is owned by the State out of tax payers money and is thus a State largesse. The supply of food grains at the subsidised rates to alleviate poverty is a lofty object but the same can not be achieved unless there is decentralization of the primary functions to the third tier of governance at the grass root level. An effective and prompt mechanism of redressal of grievances at the local level coupled with legal service is also a condition precedent to actualise the purpose of law.

It cannot be doubted that the most transparent manner of practicing equality under Article 14 of the Constitution of India is either through a process of competition between equals or through the vote of majority by equals. Employment of fair price shop agents

from amongst the local residents of the village is the basic rule. The rule of discretionary preference for certain categories of persons in terms of Section 12(2)(e) of the National Food Security Act, 2013 is aimed to achieve consumer friendly results through an individual or a juristic person. This provision includes participation of public bodies or public institutions such as Co-operative Societies, Gram Panchyats or Self-help Groups as well as the eligible local residents for a competitive service. The inclusion of public bodies/public institutions is not suggestive of any restriction rather it expands the competitive horizon between the various categories of persons so as to achieve the target of distribution of food grains more effectively and competitively. The expansion of competition for effective and faultless service when tested within the scope of definition of a 'person' defined under "The Competition Act, 2002" gives an idea, as to how wide, the connotation of a 'person' in legal parlance can understandably be stretched. In the present case, however, it is restricted to an individual and public bodies/public institutions of the description mentioned under Section 12(2)(e) of the National Food Security Act, 2013. Ousting an individual from the zone of eligibility for selection of an 'agent' is fundamentally wrong as no person has an existence without the presence of an individual. The exercise of the right embodied under Article 19(1)(c) is imaginary without the association of individuals, therefore, for any kind of employment or licencing by the State, an individual person cannot be

ousted once he qualifies the prescribed criteria or the condition fixed under law. It is to be noted that the reservation for various categories of persons being applicable in the matter of allotment of fair price shops further lays emphasis on individual identity within the local limits of the village. The impugned government order dated 7.7.2020, surprisingly, brings altogether a novel identity to the 'Self-help groups'.

Learned counsel for the State has stated that any Self-help group comprising of larger number of individuals belonging to Scheduled Caste would qualify the group as 'Scheduled Caste Group' for the purposes of implementation of reservation policy.

This Court may strike a note of caution that Article 19(1)(c) within its ambit does not empower the State to recognise the identity of a juristic person on the basis of any attributes of caste, creed or religion. Any such association is an entity for the fulfillment of aims and objects enshrined in its Articles of Association and Bye-laws. The welfare state i.e. India as an organisational structure under the Constitution of India does not have any identity based on caste, creed or religion. The sovereign recognition of our welfare state i.e. Bharat is territorial and this position is well defined under Article-1 of the Constitution of India. The right embodied under Article 19(1)(c) enables the individuals to bury all discriminations based on caste, creed or religion. The recognition of linguistic minorities or ethnic groups for

development of their language, culture and faith is different and this liberty is protected within our Constitutional ethos of inclusive growth and unity to shape the universal order of mixed freedom in post-modern socio-liberal democracy.

The government order dated 7.7.2020 undoubtedly is violative of Article 14 of the Constitution of India, once it excludes the participation of eligible village residents and other juristic persons such as cooperative societies or Gram Panchayats at par with the Self-help Groups. The individual's right of consideration as compared to that of a juristic person for employment or grant of licence by the State stands on equal footing and no one can be eliminated or ousted in order to promote a monopoly in favour of any particular category of persons like the situation at hand. This is also against the spirit of service oriented competition that regulates the socio-liberal economy.

Moreover, the mandate of Section 12(2)(e) of the National Food Security is for an inclusive competition between the individuals and various categories of public institutions or public bodies such as Panchayat, Self-help Groups, Cooperative Societies etc. The Self-help Groups which are conceived under Section 12(2)(e) of the Act, 2013 are co-related to an institution like cooperative society, a Gram Panchayat or a registered society. The State Government has not projected any clarity in the matter of Self-help groups except that they are granted a

unique identity number by some agency known as 'National Rural Livelihood Development Mission'.

Mere allotment of a unique ID by National Rural Livelihood Development Mission for the purposes of grant of licence to run a fair price shop on behalf of the State is not enough. Registration of Self-help groups and their functioning under well defined aims, objects and bye-laws coupled with the criteria of credibility are the relevant dimensions to fix accountability. The rural population has already suffered much on account of non-supply of food grains leading to food scams. The recognition of a self help group which is loosely packed, would be counter-productive and shall not serve the real purpose. It is for this reason that clause 2(j) of the Control Order, 2015 issued by the Central Government defines the 'fair price shop owner' slightly rigid.

This Court may note that the constitution of Self-helps Groups as postulated in Section 12(2)(e) is not ordinary. A Self-help Group of which reference is made must qualify the standards of a juristic person for the purpose of its existence and identity both so that there is no difficulty to fix accountability in the matter of irregularities or dereliction of duty coming to the notice of the State.

This does not suggest that the Self-help Groups are ineligible but what the law aims at is an accountable Self-help Group that has a legal existence in the eye of law, i.e., a body, which can sue and be sued besides

having a functional identity above that of an individual. The unregistered Self-help Groups having unique ID from National Rural Livelihood Development Mission are free to promote the individual performance of women fair price shop dealers for whom there is 20% horizontal reservation. The object is to make the services faultless and promote women representation in Public Distribution System in order to achieve the goal of equitable distribution of food grains to the poorest on a competitive basis.

This Court, for the observations made above, has no hesitation to hold that the Government order dated 7.7.2020 insofar as it excludes the consideration of persons other than Self-help Groups is discriminatory and is violative of Article 14 of the Constitution of India. The impugned government order dated 7.7.2020 also offends the mandate of Section 12(2)(e) of the Act, 2013 as well as Clause 7(2) of the Control Order, 2016 issued by the State Government. The government order dated 7.7.2020 impugned herein is equally against the competitive spirit of Section 12(2)(e) of the National Food Security Act, 2013 and seeks to create monopoly in favour of the Self-help Groups having a weak legal identity for the purposes of fixing accountability and thus any such body is susceptible to worsen the objects of Public Distribution System instead of bringing about any reform. For want of juristic sanctity, any benefit exclusively granted is, thus, non-est in the eye of law.

Lastly, when the issue in relation to Self-help Groups projected by the State was examined, it has transpired from the averments made in the counter affidavits that none of the Self-help Groups is a registered body having its perpetual succession in accordance with any Articles of Association and there are no by-laws regulating their functioning. It is rather an arrangement between a group of persons having scattered thoughts. In absence of any common objects and a unified mission to accomplish public services under any bye-laws, it is difficult, rather impermissible, for the State to recognize such Self-help Groups as public bodies or institutions. For recognition as a public body it is necessary that such a group has registered Articles of Association and bye-laws justifying its functioning as a legal entity under some statute. For the purposes of Section 12(2)(e), a Self-help Group is bound to have a legal sanctity so that the State may hold such a public body accountable towards any loss or irregularity.

The law makers in Section 12(2)(c) of the Act, 2013, have used the phrase 'such as' so as to draw a comparison between the legal entities. This Court may note that incentive payable to the fair price shop owner is a State largesse. The Self-help Groups, whose identity for want of registration or any such foundation is doubtful, cannot be termed as juristic persons within the meaning of public bodies or public institutions. Therefore, the registration of a group of persons associated under a scheme of Articles of association and regulation of its

functioning under the by-laws is a condition precedent for the State to recognize the Self-help Groups as Public Bodies or Public Institutions. Even if the services rendered by a so-called Self-help Group are voluntary, yet the relationship of agency between a self help group and State, must have a legal sanctity. The self help groups projected by the State in the present case lack the sanctity of a public body/public institution, in as much as, the associations are neither registered under any statute nor have they any perpetual succession. They can neither sue nor be sued. There are no bye-laws legally crystallized, hence the trappings of a public body or public institution are lacking for any reformative objects as envisaged under Section 12(2)(e) of the National Food Security Act, 2013.

In the result, the government order issued on 7.7.2020 being ultra vires to Article 14 of the Constitution of India and beyond the scope of Section 12(2)(e) of the National Food Security Act, 2013 is hereby declared as null and void. Any action in pursuance thereof is declared illegal and subject to reconsideration in terms of the government order dated 5.8.2019 and other supplementary government orders for finalising the establishment of fair price shops in accordance with law. The preference, if any, to the public bodies or public institutions shall be admissible only in a situation of deadlock i.e. equal voting by the villagers participating in the Gaon Sabha meeting scheduled as per the procedure prescribed under

the government order dated 5.8.2019 or the law applicable in this behalf.

The other submissions put up by the State that there was a preference for the existing kerosene dealers who were granted licences at the village level is also misplaced for the reason that the Control Orders, 2015 and 2016 issued by the Central or State government do not leave any scope for any such preference, therefore, grant of licences on such a premise is also beyond the scope of law and impermissible.

In view of the discussion made above, Writ Petition No. 16086 (MS) of 2020 and Writ Petition No. 18232 (MS) of 2020 are allowed whereas the Writ Petition No. 17570 (MS) of 2020, Writ Petition No. 3496 (MS) of 2021 and Writ Petition No. 2662 (MS) of 2021 being inconsequential are dismissed.

No order as to cost.

Before parting, the Court shall be failing in its duty, if during the ongoing pandemic, the plight of underprivileged people goes unnoticed in the present scenario of mass destruction. The issues relating to distribution of food grains in the present situation of unemployment are larger in size particularly when the Gram Panchayats after election in U.P. have yet to assume functional role to cope with the Pandemic. The unmanaged hunger may equally be contributing to unnatural deaths like mismanaged health services. This Court may also not overlook the lack of mechanism

whereunder the quality check of the food grains supplied to underprivileged is dutifully ensured and it is quite possible that hunger and malnutrition may be a cause of human loss too. This Court would humbly extend a request to this Court or the apex court dealing with suo motu petitions to include consideration on the issue of distribution of food grains to the vulnerable section of people and ensure the accountability of governance in relation to quantity and quality related issues that have undoubtedly multiplied manifold constituting a cognizable cause. The judiciary owes a legal obligation to the underprivileged citizens for which the constitutional courts are duty bound to go into the State's obligation relating to the supply of quality food grains during this crisis failing which the health hazard shall assume unprecedented dimensions and may render the nation helpless.

Let a copy of this order be sent to the Chief Secretary, Government of U.P. as well as to the Ministry of Civil Supplies, Government of India for necessary action. A copy of this order may be sent to the Registrar General, Supreme Court of India, New Delhi and be also placed before the Registrar General of this Court to apprise the concerned Benches of the request extended hereinabove.

May 24, 2021
Fahim/-