

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Moushumi Bhattacharya

WPA 17375 of 2021

Seikh Abdul Majed & Ors.

vs

The State of West Bengal & Ors.

With

WPA 17757 of 2021

Abdul Kader Mondal & Ors.

vs

State of West Bengal

For the Petitioner : Mr. Saktinath Mukherjee, Sr. Adv..
Mr. Shyamal Sarkar, Sr. Adv.
Mr. Ram Anand Agarwal, Adv.
Mr. Kumar Gupta, Adv.
Mr. Rajesh Gupta, Adv.
Ms. Nibedita Pal, Adv.
Mr. Ananda Gopal Mukherjee, Adv.

For the State : Mr. S.N. Mookherjee, Learned Advocate General.
Mr. Anirban Ray, Learned Govt. Pleader.
Mr. Tapan Mukherjee, Adv.
Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Pinaki Dhole, Adv.
Mr. Arka Nag, Adv.
Mr. Avishek Prasad, Adv.

Mr. Piyush Agarwal, Adv.

Ms. Usha Dasgupta, Adv.

For the U.O.I. : Mr. Ajay Chaubey, Adv.

Ms. Shakshi Rathi, Adv.

Last Heard on : 15.12.2021.

Judgment on : 23.12.2021.

Moushumi Bhattacharya, J.

1. The challenge in these Writ Petitions is to a Scheme notified by the Department of Food and Supplies of the Government of West Bengal, for reaching ration to the doorstep of the consumer; named as the “*West Bengal Duare Ration Scheme, 2021*”. The words “*Duare Ration*” in Bengali translate to “ration at the doorstep” in English.

2. The petitioners are fair price shop dealers who seek a declaration that the Scheme is *ultra vires* the Constitution of India and for a writ of Mandamus on the State and the Director, Food Supplies Department, Government of West Bengal, to cancel the Scheme. The underlying ground of the challenge is essentially that the State cannot frame any Scheme in relation to distribution of ration items which is already occupied by a Central Government Order passed under the Essential Commodities Act, 1955 and the National Food Security Act, 2013.

3. Although the relief in the Writ Petition is in relation to Guidelines framed by the State for piloting the *Duare Ration Scheme* of 23rd September, 2021, the challenge was subsequently extended to the *Duare Ration Scheme*

notified by the Government of West Bengal on 16th November, 2021 upon the Learned Advocate General producing a copy of the Scheme during the course of hearing. The petitioners thereafter extended the challenge to the Scheme by way of a Supplementary Affidavit followed by a response filed by the State. Counsel have restricted the challenge only to the question of law.

4. A preliminary objection taken by the learned Advocate General and the learned Government Pleader on behalf of the State respondents is that the grounds of challenge in the present writ petition were substantially argued in an earlier Writ Petition filed by a group of fair price shop dealers and covered in a Judgment dated 15th September, 2021 in WPA No. 14013 of 2021 (*Mrityunjoy Garang & Ors. vs. State of West Bengal & Ors.*) by which the Writ Petition was dismissed. This Court is informed that the Judgment was unsuccessfully challenged before the Division Bench and the Supreme Court in the Special Leave Petition by the fair price shop owners referred the matter to the Division Bench. It should be clarified that counsel appearing for the parties invited the Court to only consider the matter on the point of law without going into the practical aspects of implementation of the Scheme. On the request of counsel the decision only addresses the legal arguments advanced on behalf of the parties.

5. Mr. Saktinath Mukherjee, learned Senior Counsel appearing for the petitioners outlines the challenge in the writ petition on the premise of an earlier Order of a superior legislature occupying the field on the date when the State Scheme was notified. The Order in this case is the Targeted Public Distribution System (Control) Order, 2015 notified by the Ministry of

Consumer Affairs, Food and Public Distribution of the Central Government issued in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955. Counsel submits that the *Duare Ration Scheme* of the State cannot be permitted to operate in a field which is already occupied by the Central Government.

6. The arguments advanced on behalf of the petitioners and the State will be stated in detail with reference to the decisions cited in the following part of this judgment.

7. The decisions cited by learned counsel in support of their respective arguments may be divided into two categories; i) finality of orders and ii) the concept of occupying the field.

8. The decisions with regard to finality of orders are in the background of the Judgment passed by a learned Single Judge of this Court in WPA No. 14013 of 2021 (*Mrityunjoy Garang & Ors. vs. State of West Bengal & Ors.*) dated 15th September, 2021 by which the Writ Petition filed by a group of Fair Price Shop owners aggrieved by the *Duare Ration Scheme* was dismissed. The position of the State Respondents is that the issues urged in the present writ petition were decided by the co-ordinate Bench in the said Judgment. Learned Counsel appearing for the petitioners disputes the said position by contending that writ petitioners before this Court were not parties in *Mrityunjoy Garang* and the question of an earlier order occupying the field was not argued in the earlier proceedings.

9. This Court is of the view that in *Mrityunjoy Garang*, the challenge was to a pilot project in the form of certain guidelines framed by the Government of West Bengal for the implementation of the *Duare Ration Scheme*. Although the arguments made on behalf of the parties in that matter were also on the provisions of the Essential Commodities Act, 1955 and the National Food Security Act, 2013 but were confined to the Guidelines for August and September 2021. The challenge in this Writ Petition was later expanded to include the “*West Bengal Duare Ration Scheme, 2021*” which came into force with effect from 16th November, 2021, subsequent to the Judgment in *Mrityunjoy Garang*. The Scheme notified on 16th November, 2021, admittedly does not form part of the proceedings which are presently before the Appeal Court pursuant to the order of the Supreme Court dated 8th October, 2021. The decisions with regard to finality of a decree and order or when such finality would be destroyed by reason of an appeal from the order are hence not relevant and are therefore not being discussed.

10. This Court proceeds on the basis that the present writ petition, read with the Supplementary Affidavit and other pleadings, embodies a fresh challenge to the *Duare Ration Scheme*, of the State Government as notified on 16th November, 2021.

11. In respect of the second issue i.e. the concept of a legislation ‘occupying the field’, the position of the parties is this; the petitioners claim that the State Government is not permitted to frame a Scheme for delivering ration at the doorstep of the consumer when a Central Order under the

Essential Commodities Act is already occupying the field. The Order concerned is that of the Ministry of Consumers Affairs, Food and Public Distribution dated 20th March, 2015 issued under Section 3 of the Essential Commodities Act.

12. The petitioners have relied on several decisions in support of the proposition that a central legislation is superior and that the intention of the Parliament to cover the whole field is a relevant factor for deciding the question of conflict between the two order/ schemes. Learned Counsel for the petitioners place emphasis on the concept of 'competent legislation with a superior efficacy' evincing an intention to cover the whole field in relation to a particular legislation. The State on the other hand, urges co-existence of both the Orders without any prospect of a conflict.

13. The Supreme Court in *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust vs. State of Tamil Nadu And Ors.*; (1996) 3 SCC 15 and *Animal Welfare Board of India vs. A Nagaraja And Ors.*; (2014) 7 SCC 547, held that repugnancy between two statutes may also arise if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation and intention to cover the whole field. In *West Uttar Pradesh Sugar Mills Association And Ors. vs. State of Uttar Pradesh And Ors.*; (2020) 9 SCC 548, a five-Judge Bench of the Supreme Court explained that repugnancy would arise if both the legislations fell under the Concurrent list of the Seventh Schedule under Article 254 of the Constitution. The Supreme Court further clarified that under Article 254, there must be a repugnancy between a

Central and a State Act (*Rajiv Sarin vs. State of Uttarakhand (2011) 8 SCC 708*).

14. The Union of India, which supports the case of the petitioners, states that a statutory corporation can only act under a statute and not otherwise: *Scotts (P) Ltd. & Ors. vs. Corporation of Calcutta & Ors.*; 79 CWN 883 and *Kolkata Municipal Corporation & Ors. vs. Asian Leather Limited & Anr., Mayor in Council, Kolkata Municipal Corporation & Ors.*; 2007 (3) CHN 476.

15. The test of whether the *Duare Ration Scheme* notified by the State Government on 16th November, 2021 encroaches upon the field which is already occupied by the Order dated 20th March, 2015 of the Government of India must result from a comparison of the Order and the Scheme together with their dominant purpose and objects. The 2015 Order of the Central Government was notified in exercise of the powers conferred under Section 3 of the 1955 Act, under which the Central Government is empowered to provide for regulating the production, supply and distribution of essential commodities if it considers necessary to do so. The Order of 20th March, 2015 has been named as the Targeted Public Distribution System (Control) Order, 2015 and aims to make foodgrains available from the Central pools to the State Government for distribution under the Targeted Public Distribution Scheme to eligible households at such scales and prices as specified under the Food Security Act, 2013. The dominant purpose of the Order would be expressed by Clause 8 which provides for allocation of foodgrains by the Central Government under the Targeted Public

Distribution Scheme to the State Government for distribution under the Food Security Act; Clauses 9 and 10 provide for regulation of Fair Price Shops. Clauses 7, 8 and 9 bring the State Government within the ambit of the Order in relation to allocation and distribution of foodgrains and essential commodities and for devising a suitable mechanism for transportation of foodgrains. The State Government has also been given the power to issue an Order under Section 3 of the 1955 Act, subject to the said Order not being inconsistent with the 2015 Order for regulating the distribution of essential commodities (Clause 9). Clause 17 empowers the Central Government to give necessary directions to the State Government for execution of the Order.

16. The underlying object of the Order, is for regulating the operations of Fair Price Shops, defined under Section 2(4) of the National Food Security Act, with the assistance of the State Government and regulating disbursement of foodgrains under the Targeted Public Distribution System by requiring the Fair Price Shops to follow certain requirements outlined in Clause 10. The 2015 Order regulates the distribution and allocation of foodgrains by the Central Government to the Fair Price Shops for distribution to the ration card holders from the Fair Price Shops. Clause 7(11) of the Order charts the movement of foodgrains in the following manner;

“Clause 7. Lifting of foodgrains by States. –

(11). The State Government shall devise suitable mechanism for transportation of foodgrains from the Corporation godown to the intermediate godown and the door-step delivery of the foodgrains to the fair price shop:

Provided that the State Government may also transport foodgrains directly to the fair price shop from the Corporation godown and ensure its door-step delivery to the fair price shop.”

17. It is clear from the above that the delivery of the foodgrains to the Fair Price Shops starts from the Food Corporation of India godown and ends at the Fair Price Shops. The expression ‘door-step’ delivery used in Clause 7(11) signifies the doorstep of the Fair Price Shops which is reiterated by the proviso to the sub-clause. The Order does not contain any Clause which contemplates delivery of the foodgrains or essential commodities to the doorstep of the consumer from the Fair Price Shops.

18. In contrast, the *Duare Ration Scheme* of the Government of West Bengal clarifies in Clause 2(e) that the Scheme entails the fair price shop dealer being under an obligation to deliver ration at the doorstep of the ration card holder. Clause 4 reiterates the features of the Scheme and highlights that the Scheme ensures ‘*doorstep delivery of ration*’ under the National Food Security Act and *Rajya Khadya Suraksha Yojana* and that the fair price shop dealers shall visit different neighbourhoods, villages and hamlets divided in small clusters for delivering of ration items to the targeted beneficiaries. The dealers have been given the option to engage workers for this purpose and make their own arrangements for transportation of ration items by their own or hired vehicles depending on the volume of work, the number of beneficiaries to be covered and the area of coverage. The facilities outlined in Clause 5 provide that the beneficiaries shall be delivered the ration items at their doorstep without any additional

financial burden on them. Clause 5(2) gives the option to the beneficiary to lift the ration from the fair price shop on designated days if the ration items cannot be received at his/her doorstep. "Beneficiary" has been defined in Clause 2(a) to mean a ration card holder who has been granted a ration card under the Control Orders of the State Public Distribution System, 2013. Clause 6 continues in the strain namely, that ration item shall be delivered at the doorstep of all beneficiaries under the National Food Security Act and *Rajya Khadya Suraksha Yojana* on pre scheduled day of the month. The objective of the Scheme to deliver ration items at the doorstep of the beneficiaries' houses continues through Clauses 6, 7, 9 and 10 of the Scheme where the dealer shall be provided with essential commodities for distribution of ration items under the *Duare Ration Scheme* at such rate as the State Government may specify.

19. The statutory bulwark of the State *Duare Ration Scheme* and the Central Government Order is of the Essential Commodities Act, 1955 and the National Food Security Act, 2013. Section 3 of the Essential Commodities Act empowers the Central Government to regulate or prohibit the production, supply and distribution of foodgrains and brings within its fold, the power to regulate the storage, transport and distribution of any essential commodity [3(2)(d)]. Section 5 preserves the delegation of powers by the Central Government by making orders or issuing notifications under Section 3 and Section 6 contemplates the overriding effect of orders made under Section 3 of the Act. The Order of 20th March, 2015 and that of 9th June, 1978 issued under Sections 3 and 5 of the Act, respectively, preserve

the power of the Central Government to regulate the transportation of any foodstuff. The order of 9th June, 1978 provides that before making any order relating to any matter with regard to distribution or disposal of foodstuffs to places outside the State or for regulation of transport of any “foodstuffs”, the State Government shall first obtain the prior concurrence of the Central Government. Doubtless, the provisions of the Essential Commodities Act points to the Central Government retaining control over the production, supply and distribution of an essential commodity.

20. The National Food Security Act, 2013, on the other hand, carves out a wider and a defined space for the State Government to give effect to the “Targeted Public Distribution System” as defined under Section 2 (23) of the said Act. Sections 12, 24, 25, 30, 31 and 32 bear testimony to the shared role of the Central and State Governments for implementing and monitoring schemes for ensuring food security. Section 12- Reforms in Targeted Public Distribution System- indicates that the State Government is an equal partner in the matter of doorstep delivery of foodgrains to the Targeted Public Distribution System outlets. The State Government is made responsible under Section 24 for implementation and monitoring of the schemes of the Central Government together with their “*own schemes*” for ensuring food security to the targeted beneficiary. Section 32 proceeds to grant an independent power to the State Government for continuing or formulating other food or nutrition based welfare schemes. Section 32(2) articulates the intention of Parliament in the matter of empowering the State Government for formulating food or nutrition based schemes for providing

benefits from its own resources higher than those under the Act. Section 32 also makes it clear that the Act shall not preclude the Central or the State Government from continuing or formulating other food based welfare schemes while Section 36 mandates that the National Food Security Act shall have overriding effect notwithstanding any other law inconsistent thereto.

21. It can thus safely be assumed that Parliament did not intend to exclude participation of the State Government in formulating welfare schemes from its own resources in addition to or in excess of the benefits contemplated by the National Food Security Act, 2013. This construction would be in line with the Statement of Objects and Reasons of the 2013 Act which is in furtherance of Article 47 of the Constitution of India- *“Duty of the State to raise the level of nutrition and the standard of living and to improve public health”*- to provide for nutritional security and ensuring access to adequate quantity of quality food at affordable prices. The paradigm shift from the Essential Commodities Act, 1955 to the National Food Security Act, 2013 marks the transition from a welfare to a right-based approach to the problem of food security. While control over the supply and distribution chain of essential commodities was retained by the Central Government in the 1955 Act, the State Government was inducted as an equal partner to address the issue of food security for implementing new and effective schemes, under the 2013 Act.

22. The more significant aspect is none of the two legislations contemplate doorstep delivery of foodgrains to the targeted beneficiary.

Section 12(2)(a) of the National Food Security Act 2013, contemplates reforms including doorstep delivery of foodgrains to the Targeted Public Distribution System outlets. The Targeted Public Distribution System (Control) Order, 2015 issued under Section 3 of the Essential Commodities Act, 1955 envisages transportation of foodgrains to the fair price shops. Hence, the *field* covered by both the existing legislations, read with the relevant Orders, is transportation of foodgrains from the Food Corporation of India godowns to the doorstep of the fair price shops (words are underlined for emphasis). The *Duare Ration Scheme* therefore stretches the boundaries of the Central Government Order of 2015 and walks the metaphorical last mile, so to speak. This court is unable to accept the contention of the petitioners that the *Duare Ration Scheme* encroaches upon the space already taken by the Order dated 20th March, 2015 of the Central Government.

23. The Supreme Court explored the concept of repugnancy under Article 254 of the Constitution and held that repugnancy would arise only when there is a direct and irreconcilable inconsistency between a Central and a State Act and would result in a direct collision with each other (*M. Karunanidhi vs Union of India; (1979) 3 SCC 431*). By the aforesaid explanation the present case is evidently not one of repugnancy. Learned Counsel for the petitioners also accepts this position but urges that since the *Duare Ration Scheme* encroaches upon the earlier 2015 Order of the Central Government which already covers the field, there is every possibility of a direct conflict between the two.

24. The Court is unable to accept this position. The argument of the State Scheme being emasculated or rendered inert by the Central Government Order of 2015 presumes a direct and irreconcilable conflict in the working of the two schemes. The presumption is also of a tussle for space by the later Scheme in a field already covered by the Central Order where it would be impossible for both to coexist or to obey one without disobeying the other. The correctness of this presumption is however not borne out from a careful reading of the two Schemes on the face of it. The reasons for this view are as follows:

i) The *Duare Ration Scheme* of the State Government has been notified under Sections 12 and 32 of the National Food Security Act, 2013 which provide for an equal partnership of the Central and State Governments to undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for both under the said Act. An overview of several of the provisions of the 2013 Act strengthens this view as are:

- Section 12 (2) of the 2013 Act indicates a non-exhaustive list of reforms which shall be undertaken by both the Central and the State Governments including doorstep delivery of foodgrains to the Targeted Public Distribution System Outlets.

- Section 24 carves out a defined space for the State Government in relation to implementation and monitoring of schemes for ensuring food security in the words “...and their own schemes...” in section 24(1). The duty cast on the State Government is articulated in terms of specified delivery

areas which finds further definition in section 24(2) (b) which is reproduced below;

“ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.”

- Section 24(2) (b) is the kernel – to use a contextual metaphor- of the idea bearing fruition in the *Duare Ration Scheme* of November 2021 and finds statutory support in the 2013 Act flowing from Article 47 of the Constitution of India.

- The obligation on the State Government reverberates in section 31 of the Act which widens the chain of command to include the Central, State Governments as well as local authorities for the purpose of realizing the object of food and nutritional security.

- Section 32(2) of the Act begins with a *non-obstante* clause and empowers the State Government to continue with or formulate, from their own resources, schemes providing for benefits higher than those provided under the Act. The nomenclature of Section 32- *Other Welfare Schemes*- makes the intention of Parliament clear, namely, that the burden of discharging the goal of food security should be shouldered equally by the Central and State Governments.

Having been notified under the specific provisions of the National Food Security Act, the legislative competence of the State Government to formulate the Scheme cannot be doubted.

ii) The provisions of the National Food Security Act, 2013, under which the State Scheme has been notified, is a subsequent legislation which is mandated to have overriding effect notwithstanding any inconsistency with any other law for the time being in force; Section 36 of the Act.

iii) The implementation of the *Duare Ration Scheme* does not contain any provision which contemplate a conflict, direct or otherwise, with any existing order or scheme formulated by the Central Government. The object of the Scheme is to regulate the distribution of ration items under the Targeted Public Distribution System for the beneficiaries for providing ration at the doorstep of the beneficiaries and has been described in Clause 2(e) as a Scheme under which “*fair price shop dealers shall deliver ration to the ration card holder at his door-step*”.

Clause 6 delineates the functions of a dealer under the scheme namely delivering ration items on the doorstep of all beneficiaries under the National Food Security Act and *Rajya Khadya Suraksha Yojana* including special packages on designated days. Hence, the Scheme charts the path from the fair price shops to the doorstep of the ration card holder for delivery of ration. The Scheme does not disturb or seek to disrupt the existing mechanism of lifting or transportation of foodgrains from the Corporation godowns to the intermediate godowns and finally to the doorstep of the fair price shop; Clause 7(11) of the Central Government Order of 20th March, 2015.

iv) The Scheme contemplates a workable and effective co-existence with other schemes which are already in place and aims to provide additional

benefits to consumers by way of other welfare schemes under Section 32 of the National Food Security Act.

v) Even if it is assumed that the Central Government Order of 20th March, 2015 covered the field on the date of notification of the State Government Scheme in November 2021, Clause 9 of the Central Government Order empowers the State Government to make an Order under Section 3 of the Essential Commodities Act which is not inconsistent with the Order of 20th March, 2015.

vi) The argument that the Central Government Order covers the whole field is unacceptable since the outer limits of that field extends to and ends at the doorstep of the fair price shop. The *Duare Ration Scheme* covers the additional, unexplored and exclusive space from the fair price shop to the doorstep of the ration card holder. The Scheme is hence a field yet to be covered as far as the defined end-point of the Central Government Order is concerned.

vii) The argument of the Central Government being the '*competent legislature with a superior efficacy*' which has evinced an intention to cover by its legislation the whole field (ref *Thirumuruga Kirupananda and Animal Welfare Board of India*) must also be rejected on the following grounds. First, the argument rests on the superior power of the competent legislature, which is inconsistent with the stated purpose and provisions of the National Food Security Act. Second, the concerned legislation must reflect the intention of the superior legislative authority to cover the whole field which subsequently becomes the disputed space in relation to the later legislation

of the subordinate legislative authority. Having already held that the occupied/ covered field proposition is without substance in the facts of this case, the argument is accordingly rejected.

25. The concept of occupying the field arises where the field occupied leaves no space for any subsequent legislation to cover the same field. The jostling for space pre-supposes a conflict between the two legislations, such that the conflict cannot be reconciled in favour of one to the exclusion of the other. The same conflict is also felt at the level of compliance where it is not possible to obey one without disobeying the other. The concept is thus one of encroachment of a common space by a later entrant resulting in an eclipse of the field already covered. *Rajiv Sarin* made an exception in the context of repugnancy where a provision in one legislation for giving effect to its dominant purpose may partially cover the same area in a different context or to achieve a different purpose. The present Scheme of the State Government is in sync with the exception in *Rajiv Sarin* since the State Government's purpose of the Scheme is to reach the benefit of the Targeted Public Distribution System to the doorstep of the beneficiaries. The last leg of the distribution journey hence does not admit of any clash or fight for space with the Central Government Order.

26. Shorn of statutory interpretations, it appears that the *Duare Ration Scheme* was born out of the restrictions imposed on the mobility of ordinary citizens during the pandemic. It may be envisaged as an extension of the across-the-board initiatives to deliver essentials at the doorstep of consumers. The noticeable trend during the period of lockdown was the

exponential increase in online delivery of goods to consumers without the consumers having to physically travel for purchasing such goods. The Scheme can hence be seen as a step in the direction to help ordinary ration card holders to tide over the difficulties in the wake of the pandemic. From this perspective, the *Duare Ration Scheme* may be perceived as a reform in the targeted public distribution system and a welfare scheme formulated for reaching food and nutritional security as a necessity-driven measure to tide over the extant existential challenge.

27. 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.

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

Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities

(Moushumi Bhattacharya, J.)