declaration made by the State Government under section 6 was without jurisdiction and the conclusiveness provided for in section 6(3) did not attach to it. In *Lonappan* v. *Sub-Collector, Palghat* (2) (Supra), the Division Bench ruled that where the provisions of section 5-A have not been complied with, the declaration made by the State Government under section 6 is without jurisdiction and even if the act of the Collector and the State Government is an administrative act, if it was made in violation of the mandatory provisions of section 5-A, it is without jurisdiction and the High Court has power under Article 226 of the Constitution to interfere even in the case of administrative orders which are made in defiance of mandatory provisions of law and without any jurisdiction. No authority to the contrary has been cited by the learned counsel for the State. In fact, he has not been able to controvert any of the arguments or contentions put-forward by the petitioners' learned counsel.

In the view that I have taken of the non-compliance with the provisions of section 5-A, it is unnecessary to deal with the subsequent proceedings or their validity as the conclusiveness which attaches to a Notification under section 6 vanishes.

As a result of the above discussion, I allow both the petitions and direct the necessary writs to issue. The petitioners shall have the costs in both the cases against the respondents.

R.N.M.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

M/S HUKAM CHAND-JAGAN NATH,—Petitioner.

versus

UNION OF INDIA AND OHTERS,—*Respondents.*

Civil Writ No. 2848 of 1967

March 5, 1968

Essential Commodities Act (X of 1955)—Ss. 3, 6A, 6B, 6C, 6D—The Northern Inter-Zonal Maize (Movement Control) Order, 1967—Clause 3—Policy declaration by Chief Minister—Whether amounts to general authorisation to export—Section 3(2)(d)—Whether encompasses total prohibition of export—Section 6A

to 6D—Whether invalid—Export of maize originating in one territory—Collector of a place of its destination—Whether can order confiscation—Order of the Collector of Howrah—Whether can be challenged in High Court of Punjab and Haryana.

Held, that the open declaration of policy by a Chief Minister, did not amount a general permit under clause 3 of the Northern Inter-Zonal Maize (Movement Control) Order,1967. Under the said clause a person is prohibition to export maize except under and in accordance with a permit issued by the Central Government or by the Government of the State". No doubt, the State Government is authorised to issue a permit. It cannot justifiably be inferred from this that the Chief Minister by his mere fiat could validly proclaim that every individual is free to export maize from the State. That would indeed lead to chaos and would tend to put the entire economic policy of the Government of India in confusion. For this purpose a notification was issued on 24th July, 1967, that the action contemplated in sub-clause (1) of clause 3 shall have to receive the prior concurrence of the Government of India. Any policy decision subsequent to this notification made by a Chief Minister even though relayed from All-India Radio cannot be in compliance with the requirement of sub-clause (1) of clause 3 of the Order. It could not amount to a general authorisation to the public to export surplus maize in defiance of clause 3 of the Order. If no permit in writing is granted, the general permission announced by the Chief Minister cannot be projected as a valid sanction for exporters under clause 3 of the Order.

Held, that the power of registration in clause (d) of sub-section (2) of section 3 of the Act does not encompass total prohibition of export. The *raison d'etre* of the Order is a fair distribution of maize throughout India. There are scarcity and surplus areas in relation to the production of foodgrains like maize. The surplus stocks in States are to be preserved and distributed according to the general economic policy which is to be laid down and enforced by the Central Government. In its wisdom the Central Government has thought it fit to impose a ban on exports from surplus areas to scarcity areas. The powers of relaxation are contained in the Order itself and permits may be granted by the Central Government or the State Government with its prior concurrence. The grant of permits is to be subject to certain principles of policy, so that the movement of grains from surplus area to scarcity areas is properly regulated.

Held, that the provisions of section 6A to 6D of the Act are not invalid. The powers conferred on the Collector under the amended provisions of the Act at his discretion may be exercised against a defaulter. The confiscation of foodgrains under section 6A is to be made "whether or not a prosecution is instituted for the contravention of such order." In other words, it is not an alternative remedy which is provided by section 6A. Indeed, section 6D makes it clear that the award of any confiscation under this Act by the Collector shall not prevent the

infliction of any punishment to which the person effected thereby is liable under this Act. A person who is found contravening the Order is liable to confiscation of the goods exported under section 6A and this is not related at all to the penalties which are mentioned in section 7. In other words, the penalties under section 7 would still be leviable on the contravener.

Held, that the jurisdiction to make an order of confiscation also vest in the Collector of the place of destination of the maize even though its export commenced from the territories of another State.

Held, that the action of the Collector of Howarh cannot be challenged in the proceedings before the High Court for Punjab and Haryana. If the goods are seized at Howrah and were taken possession of by the Collector, the export of foodgrains alone having taken place from the State of Haryana, the Punjab and Haryana High Court has no jurisdiction to quash the orders of confiscation made by the Collector of Howrah.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the action of the Railway Authorities in holding the maize at Howrah Railway Station and the action of the Collector, Howrah, respondent No. 5 intaking illegal proceedings for confiscation of the maize belonging to the petitioner and all actions taken by the respondents concerned be quashed the goods of the petitioner be released forthwith and in case they are spoiled by the illegal action of the respondents concerned, suitable relief be given to the petitioner.

H. S. Doabia and T. S. Doabia, Advocates, for the Petitioners.

Partap Singh and Birinder Singh, Advocates, for Respondent Nos. 1 and 5.

Anand Swaroop, Advocate-General, Haryana, with J. C. Verma, Advocate, for respondent No. 2.

Gopal Singh, Advocate-General, Punjab and G. R. Majithia, Deputy Advocate-General, for respondent No. 4.

ORDER

Shamsher Bahadur, J.—This judgment will dispose of 14 writ petitions Civil Writs Nos. 2843 to 2856, 2683, 2780, 2923, 2930 of 1967 and 73 of 1968, all involving common questions on which arguments have been addressed by Mr. Doabia for the petitioners, and the Advocate-General of Haryana for the respondents. The Collector of Howrah has been represented by the Advocate-General, Punjab. The facts

in all these petitions, except those in Civil Writ Nos. 2683, 2780, 2923 and 2930 of 1967, are almost identical some of these even being printed copies of original.

In all the cases, the petitioners carry on the business of sale and purchase of foodgrains in the State of Haryana. It is the case of the petitioners that Haryana being a surplus State, its State Government had lifted the ban for export of maize under the Northern Inter-Zonal Maize (Movement Control) Order, 1967 (hereinafter referred to as the Order). The ban on export of maize imposed by clause 3 of the Order is said to have been lifted in pursuance of a speech made by the Chief Minister of Haryana on 11th October, 1967, at a public meeting, and the announcement having been repeated from All-India Radio Station Jullundur, Chandigarh, in the local bulletin of 6.10 p.m. on that date. Reliance is also placed on a news item of the Tribune of 12th October, 1967, to this effect:—

> "Haryana Ban on Coarse Grain Movement goes ..... The Haryana Government has decided to remove the restriction on the movement of coarse grains produced in the State of Haryana during the current Kharif Season, says an official press note. The major coarse grains are Bajra, Maize and Jowar."

Impelled by the declaration of policy enunciated by the Chief Minister of Haryana, the petitioners despatched wagon-loads of maize between 11th and 16th of October, 1967, to Howrah in West Bengal. The consignments were made from various places in the Haryana State. When the goods reached the destination, the petitioners were informed through their representatives that the Railway authorities had refused to permit the removal of the foodgrains from the wagons. A letter is then said to have been issued under the signatures of Shri R.I.N. Ahuja, Secretary to Government, Haryana, Industries, Food and Supplies to the Chief Commercial Superintendent, Eastern Railway, Howrah, asking the latter to deliver the consignments to the consignees. This was followed by a telegram of 2nd of November, 1967, from the Director, Food and Supplies, Haryana, to the Deputy Chief Commercial Superintendent, Eastern Railway, to this effect:—

> "Railway have no authority under the Northern Inter-Zonal Maize (Movement Control) Order, 1967, to seize maize. Kindly unload maize immediately."

In reply, the Railway sent the following telegram on 7th of November, 1967:—

"Railway has not seized maize. Consult Government of India."

A notice was subsequently issued under section 6-B of the Essential Commodities Act, 1955 (hereinafter called the Act) to the various petitioners from the Collector, Howrah. The petitioners were asked to make their representations in writing by 18th of December, 1967. In the notice, it was stated that the petitioners on various dates had exported maize from Haryana to West Bengal without the requisite permit in violation of clause 3 of the Order and that the Collector was empowered under section 6-A of the Act to confiscate the maize which had been exported without permit. The petitioners thereupon moved this Court in writ proceedings to challenge the orders of the Collector of Howrah and to restrain him from taking proceedings in pursuance of his notice which followed the unlawful refusal of the Railway to hand over the consignments of maize to the consignees. This Court has been asked to quash the actions taken both by the authorities of the Eastern Railway at Howrah, and the Collector of Howrah District. The Goods Accountant of the Eastern Railway, Howrah, respondent No. 5, the Chairman, Railway Board, representing the first respondent Union of India have been impleaded as respondents along with the Collector, Howrah.

The affidavit in this case have been filed on behalf of the Secretary, Ministry of Food, Agriculture, Community Development and Co-operation, Government of India respondent No. 2, and the Goods Accountant, Eastern Railway, Howrah, respondent No. 5. The interim stay order was declined by Gurdev Singh, J., in Civil Writ No. 2848 of 1967, on 8th of January, 1968.

In reply to the allegations made by the petitioners, it has been submitted in the affidavit of the second respondent that the State Government neither had any authority to lift the ban imposed by the Order, nor had it been done by any process known to law, either by way of Gazette notification or a formal order recorded under Article 166 of the Constitution of India. In any event, it is submitted that the prior concurrence of the Government of India was essential

before any permission could have been granted in individual cases for the export of maize. It was not denied that the maize had been seized by officers of the Central Bureau of Investigation at Howrah Railway Station in exercise of their powers under clause 5 of the Order and these authorities had subsequently moved the Collector to issue notices in accordance with sections 6-A and 6-B of the Act. The communications sent by the Haryana Government, according to the affidavit, did not reflect the true legal position. The proceedings of the Collector, Howrah, as stated by the second respondent, were in accordance with law and in any event ample remedies are provided under the Act to safeguard the interests of the exporter whose goods may have been confiscated by what is alleged to be an "arbitrary action". In brief, the exports, according to the respondents' pleas, having been made without the requisite permits, were wholly unjustifiable and illegal and the orders of confiscation are a logical corollary and in pursuance of the statutory requirements and provisions.

The statutory provisions on which the arguments of the learned counsel are based may first be set out. The Essential Commodities Act, 1955; was enacted to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. Sub-section (1) of section 3 vests power in the Central Government to control production, supply, distribution, etc.; of essential commodities; and under clause (d) of sub-section (2), and order can be made for this purpose "for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity."

The Northern Inter-Zonal Maize (Movement Control) Order, 1967 (referred hitherto as Order) was made on 3rd May, 1967, in pursuance of the powers conferred on the Central Government by section 3 of the Act. Sub-clause (1) of clause 3 of this Order says:—

> "No person shall export or attempt to export or abet the export of maize except under and in accordance with a permit issued by the Central Government or by the Government of the State from which such maize is to be exported or by an officer authorised in that behalf by the

Central Government, or, as the case may be, by the Government of that State."

Sub-clause (1) of clause 5 says:—

"Any Police Officer not below the rank of a Head Constable or any other person authorized in this behalf by the Central Government or the State Government having jurisdiction, with a view to securing compliance with this Order or to satisfying himself that this Order has been complied with—

(a) stop and search, or authorize any person to stop and search any person or any boat, motor or other vehicle or any receptacle used or intended to be used for the export, import or transport of maize;

(b) . . .

(c) seize or authorize the seizure of any maize in respect of which he suspects that any provision of this Order has been, is being or is about to be contravened along with the packages, coverings or receptacles in which such maize is found ..... and thereafter take or authorize the taking of all measures necessary for securing the production of the packages, covering, receptacles, animals, vehicles, vessels, boats or other conveyances so seized in a court and for their safe custody pending such production.

By a notification of 24th of July, 1967 (G.S.R. 1111) the Government of India directed "that the powers conferred on it by sub-section (1) of section 3 of the said Act (Essential Commodities Act, 1955); to make orders to provide for the matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions—

(1) . . . .

(2) that before making an order relating to any matter specified in the said clauses (a) and (c) or in regard to regulation of transport of any foodstuffs under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government."

The provisions of the Act have been modified by the Essential Commodities (Amendment) Act, 1966 (Central Act No. 25 of 1966). Under section 3 of the amended 9ct, sections 6-A to 6-D have been newly inserted, these being:—

"6A. Where any foodgrains ... are seized in pursuance of an order made under section 3 in relation thereto, they may be produced, without any unreasonable delay, before the Collector of the district or the Presidency-town in which such foodgrains . . . are seized *and whether or not a prosecution is instituted for the contravention of such order,* the Collector, if satisfied that there has been a contravention of the order, may order confiscation of the foodgrains.

6B. No order confiscating any foodgrains ..... shall be made under section 6A unless the owner of such articles or the person from whom they are seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the articles;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

6C. (1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to any Judicial authority appointed by the State Government concerned and the Judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) . . .

6D. The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act."

In the first place, it is contended very vehemently by Mr. Doabia that the open declaration of policy announced by the Chief Minister of Haryana amounted to a general permit under the Order. Under clause 3 a person is, prohibited to export maize "except under and in accordance with a permit issued by the Central Government or by the Government of the State". No doubt, the State Government is authorised to issue a permit. It cannot justifiably be inferred from this that the Chief Minister by his mere fiat could validly proclaim that every individual is free to export maize from the State. That would indeed lead to chaos and would tend to put the entire economic policy of the Government of India in confusion. For this purpose a notification was issued on 24th of July, 1967, that the action on contemplated in sub-clause (1) of clause 3 shall have to receive the prior concurrence of the Government of India. It would be manifest that this notification was in existence when a policy decision is said to have been announced by the Chief Miister of Haryana on 11th of October, 1967, and it may be assumed that it was even relayed by the All-India Radio, Jullundur-Chandigarh, in the evening bulletin at 6-10 p.m. was this action in compliance with the requirement of sub-clause (1) of clause 3 of the Order? I have no hesitation in saying that the speech of the Chief Minister did not and could not amount to a general authorization to the public of Haryana to export surplus maize in defiance of clause 3 of the Order, nor could statutory weight be lent to the authorisation by the letter issued by Shri Ahuja. Concededly, no permit in writing in favour of any of the petitioners was granted and the general permission announced by the Chief Minister could not be projected as a valid sanction for exporters under clause 3 of the Order.

It has also been faintly canvassed by Mr. Doabia, that the power of regulation in clause (d) of sub-section (2) of section 3 of the Act cannot encompass total prohibition of export. It is to be remembered that the *raison d'etre* of the Order is a fair distribution of maize throughout India. There are scarcity and surplus areas in relation to the production of foodgrains like maize. The surplus stocks in States are to be preserved and distributed according to the general economic policy which is to be laid down and enforced by the Central Government. In its wisdom the Central Government has thought it fit to impose a ban on exports from surplus area to scarcity areas. It is to be observed that powers of relaxation are contained in the Order itself and permits may be granted by the

Central Government or the State Government with its prior concurrence. The announcement of policy made by the Chief Minister did not have the prior concurrence of the Central Government nor admittedly any written permits were issued to the petitioners as envisaged in clause 3 of the Order.

Undoubtedly, the grant of permit is to be subject to certain principles of policy so that the movement of grains from surplus to scarcity areas is properly regulated. Two decisions of the Supreme Court may be noted in this connection. In *Harishankar Bagla* v. *The State of Madhya Pradesh* (1), it was held that the requirement of a permit under clause 3 of the Cotton Textile (Control of Movement) Order, 1948, cannot be regarded as an unreasonable restriction on the citizen's right under sub-clauses (f) and (g) of Article 19(1). As put by Chief Justice Mahajan, speaking for the Court, "if transport of essential commodities by rail or other means of conveyance was left uncontrolled it might well have seriously hampered the supply of these commodities to the public. The contention, therefore, that the clause is invalid as abridging the rights of the citizen under Article 19(1) of the Constitution cannot be upheld." The reasoning equally applies to the case of maize which undeniably is a foodgrain used by the general public. To the same effect is the later decision of the Supreme Court in *Narendra Kumar* v. *The Union of India* (2), where Mr. Justice Das Gupta, said that:—

> "It is reasonable to think that the makers of the Constitution considered the word 'restriction' to be sufficiently wide to save laws inconsistent with Article 19(1), or taking away the rights conferred by the Article . . . The contention that a law prohibiting the exercise of a fundamental right is in no case saved cannot, therefore, be accepted . . . It is undoubtedly correct, however, that when, the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court."

(1) A.I.R. 1954 S.C. 465.
(2) A.I.R. 1960 S.C. 430.

In the case of the Order, with which we are concerned, the scrutiny is exercised by the Central Government and the State Government in granting permits in suitable cases.

The next contention of Mr. Doabia is that the seizure of maize is illegal, the suggestion being that only an officer of Haryana could have seized maize at Howrah station. Now, the powers of search and seizure in clause 5 are given to any police officer not below the rank of Head Constable or any other person authorised in that behalf by the Central Government or the State Government having jurisdiction. If the prior concurrence of the Central Government was required for the permit under which the petitioners are stated to have exported the maize, I do not see how the authority of the Central Bureau of Investigation as the representative of the Union could be seriously challenged. The whole matter is to be looked in the backgroud of the principal connection of the State that the export was unwarranted, unauthorised and illegal, it being rightly asserted that the State Government had not consulted the Union Government before granting a general permit to the traders to export maize.

It is next submitted that the provisions of the newly inserted sections 6A to 6D are invalid. The argument, so far as I understand Mr. Doabia, is that the Act itself having provided the remedy of confiscation through the Court, it is not open to the Collector to make an order of confiscation under sections 6A and 6B. Reliance for this contention is sought from recent decision of the Supreme Court in *Northern India Caterers (Private) Ltd.* v. *The State of Punjab* (3), where the validity of section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, came to be considered. The Supreme Court, in view of the fact that a discretion vested in the Collector either to exercise his summary powers of eviction under section 5 of the Act or to proceed for the same purpose by a regular suit, held that it involved a discrimination which could not be sustained, both the remedies being simultaneously available to the Government. Section 5 of the Act not laying down any guiding principle or policy under which the Collector has to decide in which case he should follow one or the other procedure and the choice being entirely left to his arbitrary will, the section by conferring such unguided and absolute discretion violated the right of equality, and was accordingly struck down. It is argued by Mr. Doabia that section 7 of the Act prescribes penalties for a person who contravenes

(3) 1967 P.L.R. 781.

any order made under section 3 of the Act. The penalty for contravention of clause (d) of sub-section (2) of section 3 of the Act is imprisonment extending to three years and fine, and also forfeiture of the property in respect of which the order has been contravened. All this has to be done through a Court. The powers conferred on the Collector under the amended provisions of the Act at his discretion may be exercised against a defaulter. It is, however, to be pointed out that the confiscation of foodgrains under section 6A is to be made "whether or not a prosecution is instituted for the contravention of such order". In other words it is not an alternative remedy which is provided by section 6A. Indeed, section 6D makes it clear that the award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act. A person who is found contravening the Order is liable to confiscation of the goods exported under section 6A and this is not related at all to the penalties which are mentioned in section 7. In other words, the penalties under section 7 would still be leviable on the contravener. I do not think, therefore, that the principle of the decision in the Supreme Court can be invoked in aid of the argument which has been advanced by Mr. Doabia. The Parliament itself has promulgated the amended sections 6A to 6D, the assumption presumably being that the seizure of the goods is essential to enforce a policy of regulation of exports. The learned Advocate-General for Haryana submits that in all Control Orders the powers of seizure are conferred on the authorities and has cited the instance of the Essential Supplies (Temporary Powers) Act, 1946, and the Iron and Steel (Control of Production and Distribution) Order, 1941, promulgated under it. In short, when the goods are in the course of unauthorised export and are seized under the provisions of the Order these are produced before the Collector who after giving an opportunity may make order for confiscation. Such a confiscation will not bar a penalty being imposed under section 7 of the Act and in fact it is so provided in section 6D itself. In the case, on which reliance has been placed *Northern India Caterers (Private) Ltd.* v. *The State of Punjab* (3), two alternative procedures were to be adopted and unguided and uncanalised discretion had been vested in the Collector.

The learned Advocate-General has also brought to my notice that some of the petitioners have actually availed of the remedy which is available to them under section 6C of the Act. Mr. Doabia has not been able to controvert this assertion. The alternative remedy is

available by way of appeal under section 6C and many aggrieved persons, including some of the petitioners, have actually made appeals to the Judicial authority under this section. It is further pointed out by Mr. Anand Swaroop that in respect of four writ petitions, to which I adverted earlier, the maize has not yet been exported from the territories of Haryana. It is again not denied that in these writ petitions the maize which was consigned had not actually started moving for the destination.

Mention may also be made of the objection with regard to jurisdiction. It is argued by Mr. Doabia that the export of maize having commenced from the territories of Haryana, no jurisdiction vested in the Collector of Howrah to make an order of confiscation. There does not seem to be much substance in this objection. The confiscation has been made in respect of goods which were during the course of transit and the Collector's action was taken at Howrah which is not within the jurisdiction of this Court. It is truly and in effect the action of the Collector which is challenged in these proceedings and *ex facie* this Court cannot determine the validity of that order. The goods were seized at Howrah and were taken possession of by the Collector. The export of foodgrains alone took place from the State of Haryana in respect of the consignments covered by ten of these petitions, and this is one of the many points raised by the petitioners that the transport had taken place under a valid permit. The substance of the dispute relates to the jurisdiction of the Collector, Howrah, and though I have decided the question otherwise on merits this Court does not seem to have the jurisdiction to grant the mandate for quashing the orders of confiscation made by the Collector of Howrah.

Consequently, these petitions must fail and are dismissed with costs.

R.N.M.

APPELLATE CIVIL

Before Mehar Singh, C. J. and R. S. Narula, J.

MST. GURDIAL KAUR,—*Appellant.*

versus

MANGAL SINGH,—*Respondent.*

Regular Second Appeal No. 563 of 1960

March 11, 1968.

Custom—Succession—Mother—Whether entitled to succeed to son after remarrying—Constitution of India (1950)—*Articles* 13 *and* 15—*Custom by which mother*