The analysis of the crucial operational sections and other provisions relating to the essential commodities Central Acts and the Odisha amendments is made for finding out the defects in the various provisions, Control and licensing Orders made in implementing the Law relating to Essential Commodities.

All crucial operating sections in the Essential Commodities Act, 1955, the major controlling law are analysed in a very reasoned and critical manner below keeping in mind the history of defects in the Act.

5.1. **ESSENTIAL COMMODITIES ACT, 1955**

In view of the Constitutional mandate that the Central Government should continue to exercise control over the production, supply and distribution, etc. of certain essential commodities, the need of a permanent legislation on the subject was felt and enacted for this purpose. The present Essential Commodities Act, 1955, as amended in 2006, contains 15 effective sections. The major salient feature of the Act is that it extends to the whole of India.

The other salient features of the Act are exercising Control over the production, supply and distribution, etc. of essential commodities; Conferment of power for imposition of duties on State Government, and Central Government's power to delegate its powers to the State Governments or its officers for implementation of the Law through the issue of Control and licencing orders and regulation through execution of the control orders and notifications. Provisions have also been made for the removal of difficulties arising by reason of inconsistency of any order made by the Central and State Governments which
may arise in the day to day functioning having overriding effect in case of conflict with any other law for the purpose.

Punishments, both corporal and pecuniary, have been provided for securing obedience to provision or orders made and directions issued under the Act by making the contravention and attempt to contravene such provisions, orders and directions, punishable as offence including attempts and abetment and offences by companies.

Provision for imposition of fine is also provided under the Act for the deterring prospective offender and for delay in carrying out the orders or in lieu of confiscation.

The Act benefits the poor and needy in the achievement of the social and Constitutional goal of distributive justice through equitable distribution of essential commodities irrespective of regional and other diversities.

Maintenance of equitable distribution is also to be made at a fair and reasonable price to the beneficiary consumers taking into account their economic condition, geographical, as well as, production disadvantages.

However, certain difficulties noticed in the Act are that, it makes no specific provision creating a bar to the questioning of orders made there under in any Court of Law. So also, the Act does not specifically confer upon the Government any rule-making powers in the absence of which the rules are frequently changed creating confusion and ambiguity in interpretation. Nevertheless, as held by the Supreme Court in *Thakorelal Chaturbhuj Dalal v. State of Bombay* AIR 1959 Bom 511 that, “Under this section the Central Government is invested with an innate power for issuing notified orders which may provide for regulation of prohibition in the matter of production, supply and distribution of the essential commodities. The term ‘notified order’ is wide

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enough to cover special as well as general orders relating to matters specified in the Section. The notified orders intended to be made by the Central Government are customary legislative orders and not executive orders"71.

Hence, frequently changing notifications and intrinsic ambiguity in the control orders is due to defects of the executive and not the legislature.

The Act also follows the provisions contained in the Essential supplies (Temporary Powers) Act, 1946, but the penalty clause has been simplified and some other provisions have been omitted as unnecessary.

It includes within the definition of ‘essential commodities’ those commodities which had to be left out by reason of lack of legislative power.

This Act enables the Government, whenever there is need or it is expedient to do so, to exercise the powers under the Act. But the Act by itself is not an emergency provision. It only arms the Government with powers to meet certain emergencies, and difficulties in the economic trade and commerce fronts, difficulties in the production and distribution of essential commodities including food grains.

"The dominant purpose of the Act is to secure equitable distribution and availability at fair price of specified commodities"72.

The various relevant provisions are analysed below.

71 Ibid
5.1.1. **Control Over the Production, Supply and Distribution, etc., of Essential Commodities.**

The crucial provision pertaining to the power for the control over the production, supply and distribution, etc., of essential commodities is contained in Section 3 of the Essential Commodities Act, 1955.

"(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

Section 3 authorizes the Central Government, whenever it is of the opinion that it is necessary and expedient so to do for maintaining or increasing supplies of any essential commodity, which are defined in the Act or declared by the central government, or for security their equitable distribution and availability at fair price, or for securing any essential commodity for the defence of India or efficient conduct of military operation, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof, of such commodities and commerce, therein.

[(a) for regulating by licenses, permits or otherwise the production or manufacture of any essential commodity;]

[(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the]

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The Central Government, for the purpose of controlling the price at which any essential commodity may be bought or sold; for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity; for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale.

For the above purpose confers upon the Central Government the power of issuing notified orders which may provide for regulation or prohibition in the matter of production, supply and distribution, etc, of any essential commodity. It lays down that an order made under Sec. 3 may confer powers and impose duties upon the Central or State Government or officers and authorities of the Central or State Government, and may contain directions to any State Government or to officers and authorities thereof, as to the exercise of directions to any State Government or to officers and authorities thereof, as to the exercise of any such powers or the discharge of any such duties.

**Price Control**

Section 3 also authorizes the Central Government for the purpose of exercising control over price of essential commodities and in the process for ascertainment of fair price of an essential commodity.

[Section 3 (A) Price Control, If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the

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Ibid
price at which the foodstuff shall be sold in the locality in compliance with an order made with reference to Cl. (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section. 75

A balance must be endeavoured to be stuck in the fixation of price of the various commodities taking into consideration the interests of the producers/manufacturers, beneficiaries/consumers as well as the traders to sub serve the purpose of the Act. The conventional economics of trade may not be fully applicable in the exercise of control over essential commodities production, supply and distribution etc., but public interest does not mean any prejudice to any section of the community.

Reasserting the role of the Central Government, the Supreme Court has observed in the following words that, "It is just left to the discretion and judgement of the executive for fixing the price. The only check is that there must not be any hostile description against a class of operators otherwise the processual basis has to be accepted" 76.

So far as the aim of price control and fixation, as observed by the Apex Court, "must be to see that there is no patent injustice to the producer and also a reasonable return goes to the investor but any profit is not the sine quo of validity of the section" 77.

Therefore, the executive is fully empowered to control the price of the essential commodities however it must be very reasonable, judicious and balanced in their decision in the making of orders for fixation of price of the controlled commodities also ensuring a reasonable return on investment.

75 Ibid
76 Prime Automobile v. Union of India AIR 1972 SC1690.
77 Ibid
The critical purpose of Section 3(1) being the ensuring of the availability of the essential commodities at fair and reasonable price, the propose of the administrative ought to be "to maintain a rational balance in favour of the consumer, as well as, the producer and investor so far as a realistic return on their investment is concerned, without the drive for profit generation, which is never a criteria of the law, but, to avoid, any prima facie prejudice or bias to them, however, since the Act aims at the benefit of the consumer, the interest of the consumer and through the price consideration available to the consumer at reasonable rate at the fair price are the pronater of the legislation, even if the order passed has rendered loss to the producer or the seller ..."78.

Hence, it can be reasonably deduced from the above decisions of the Supreme Court that any order for price control of essential commodities by invocation of powers provided in Section 3 for fixation of fair and reasonable price shall not become illegal, challengeable or subject to judicial review and for this reason (profit to the traders), but, the executive is duty bound to be responsible, indiscriminating and meticulous in the exercise of the powers under this Section. The above view is rightly sufficed by the Supreme Court, in *Priman Basian Area Road*79 that, "the government is entitled to make any adjustment considering the particular surrounding circumstances and no order can be held discriminatory and irrelevant till it is found patently arbitrary, discriminatory and irrelevant to the policy of the legislature."80

Further, this Section is applicable under two conditions, firstly, that there must be an order in existence with reference to Sub-Section (2) clause (F) and secondly, that there is no notification in existence under Sub-Section 3(A) or if there is any notification it must have elapsed.

78 Ibid
79 Ibid
80 AIR 1972 SC 1690
Ibid
Another pertinent observation by the Supreme Court, in this regard is that, "...the Central Government is empowered to fix price for different Grades of sugar.... The underlying idea is that the reasonable return under Clause (D) is in respect of sugar as a whole and not in respect of levy sugar and in this way it would meet the requirements of Clause (D) .......

Thus, Section 3 is the heart of the Principal Act and it empowers the Central Government to control, whenever it is considered necessary or expedient to do so, for maintaining or for increasing supplies of the essential commodities which are defined in the Act as well as controlling their price and ascertain a fair price of the commodities.

However, as has been observed by the Supreme Court in Narendra Kumar that, "...the powers conferred should not encroach the fundamental rights and it is not unlimited liberty of the Central Government".

**Excessive legislation**

Sometimes an order may suffer on the ground that there is vice of excessive legislation. Section 3 of the Principal Act lays down their policy and principles and the standard laying guidance of the authorities to whom delegation is made to make Orders and the Parliament cannot be challenged on the ground that it has exceeded its power of delegation. If the guideline for issue of control orders for the State Government is determined, as has been held in Makan Lal Chanda v. State of Bihar that, " different states may frame different orders

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83 Ibid
regarding the Act having taken into account the circumstances and other prevailing conditions and it cannot be struck down on excessive legislation"84.

5.1.2. POWER TO IMPOSE DUTIES ON STATE GOVERNMENT, ETC.

Section 4 of the Essential Commodities Act, 1955, states the policy of the law and the legal principles which are to control any given cases and have provided a standard to guide officials or the body in power to execute the law. The provisions of the section adequately formulate the legislative policy and the realm and spirit of the Act is such that the details of the policy can be worked out for delegating the power to a subordinate authority within the framework of that policy [Section 485 IMPOSITION OF DUTIES ON STATE GOVERNMENTS, ETC., An order made under Sec. 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties].

Hence, the section enables the Central Government to validly delegate its inherent powers to the State Government or its officers and authorities.

The Supreme Court in Thakorelal Chaturbhuj Dalai66 has held that, "Under this section the Central Government is invested with an innate power for issuing notified orders which may provide for regulation of prohibition in the matter of production, supply and distribution of the essential commodities. The term 'notified order' is wide enough to cover special as well as general orders relating

84 1975 Cr. LJ 1821 at pp.18 24-25(Pat.)
85 ESSENTIAL COMMODITIES ACT, 1955.
to matters specified in the Section. The notified orders intended to be made by
the Central Government are customary legislative orders and not executive
orders.  

"The well known maxim delegatus non potest delegare, implies the
general principle that a delegated authority cannot be further delegated. Where
the Legislature confers judicial power upon a specified person, he cannot re-
delegate that function to another. But, the executive power can, however, be
validity delegated.

The power of delegation as has been explained in a crystal clear manner
by the Supreme Court that, "the power of making laws vests in a particular body.
But, when it is transferred to some other body, it is called delegation and that
power, to which it is delegated, has all the powers of making laws consisting the
norms of delegation. It is thus decentralization of powers vested in a particular
body. Without delegation of power, effective control cannot be made in
administrative fields and at different places it is required that State should also
look after certain affairs for which laws have been made by the Central
Government. It is thus an involvement of the authority to which the power is
delegated. By delegation of power, the authority transfers the supervisory
jurisdiction and confers powers to make details regarding the implementation in
day to day work. It is not transferring of power but it is only delegation of power
and therefore, the ambit of power is only to the extent to which it is delegated."
5.1.3. DELEGATION OF POWERS OF CENTRAL GOVERNMENT TO
STATE GOVERNMENTS AND OTHERS.

The principle of law discussed above also applies to the delegation of
powers under Section 5 of the Act.

[Section 5. Delegation of Powers.
The Central Government may, by notified order, direct that the power to make
orders or issue notification under Sec. 3 shall, in relation to such matters and
subject to such conditions, if any, as may be specified in the direction, be
exercisable also by,-
(a) such officer or authority subordinate to the Central Government, or
(b) such State Government or such officer or authority subordinate to State
Government; as may be specified in the direction.]

As is evident from the body of the provision, "sec. 5 permits the delegation
of powers conferred on it by the Central Government to make order or issues
relating to such matters the way the powers are to be exercised by such Officer
or authority subordinate to the Central Government or State Government or such
Officers or authority subordinate to the State Government as specified in the
direction".

Thus, the Central Government, while dealing policy matters can make
rules by modification or by legislation. Delegation is just to facilitate the
implementation of the Act, implementation of the law and it also coordinates the
functions of the Central Government and the State Government and enables the
Central and the State Governments to coordinate and concentrate.

91 THE ESSENTIAL COMMODITIES ACT, 1955.
92 Ibid
The generality of the powers of delegation under this section was also declared that, "delegation also prevents the burden on the main legislative body. It also defines the sphere of the exercise of power and any delegating powers, an infrastructure is established, and it impresses the administrative machinery in implementing law policies on the Central and the State Government and abides by the Act and its notification/s passed. Delegation is general as defined in Section 5. It manages to confer power to Officer or authority subordinate to the Central Government or to such State Government or such Officer or authority subordinate to the State Government.

The delegation of power conceived in Section 5 is not confined to any particular commodity. It is wide in scope and the delegation of power may cover any essential commodity as defined in Section 2 (a). The interpretation, when the powers are delegated, must be construed in a broader sense\textsuperscript{93}. Hence, upon analysis it is observed that the provisions under Section 5 facilitates expediency and administrative convenience necessary for the efficient implementation of the purpose of the Act.

As far as the scope and applicability of Section 5 is concerned, "it imposes liability on the licensee for maintaining the terms and conditions of the license. Therefore, any other persons other than the licensee cannot be held liable for contravention of the conditions or terms of the license\textsuperscript{94}.

There is no limit for the legislature for laying down law the extent to which the powers of delegation can be passed and the manner in which it is to be exercised. Enactment may be made to implement the policy and the intention of the law. The Central Government and the State Government in exercise of the powers under Section 3 act to regulate the supply of essential commodities and

\textsuperscript{93} S.C. Gupta v. State of U.P. AIR All 650.
\textsuperscript{94} Krishan Chaudhary v. State of Bihar (1990) 200 BLJR.
are thus authorized to pass orders relating to it. The Central Government can also delegate the State Government for making laws in consonance with the provisions of the Act but the delegation as envisaged in Section 5 and its concept is regulated by notifications which lays down in detail the matters to which the delegation is permitted and the power it exercised.

The section empowers the Central Government to direct by notified order that the power to make orders under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Central Government or such State Government or such officer or authority subordinate to a State Government as may be specified in the direction. The words in this section are clearly empowering and the use of the words 'if any' clearly shows that there is a discretionary power vested in the Government whether to specify conditions or not. However, in State v Haider Ali, in which the scope of the corresponding Section 4 of the Essential Supplies (Temporary Powers) Act 1946 was considered, it was held that:

"where there is need for conditions they must be specified in the direction because the essence of delegation is to make the delegates conform to the requirements of the Act and to the policy laid down, therein".

It is beyond doubt that while delegating powers as held that, "which is exclusive and within the competence of Parliament, it can specify matters and the conditions for which the power is delegated and the manner it is to be exercised".

96 Ibid  
97 District Collector v. Ibrahim AIR 1966 AP 310 (314).
Also in certain cases the “delegated powers may be for a limited object and it is not necessary that the Central Government should confer all the powers to the State Government under Sec. 5 by delegation. Any order passed by the Central Government would be termed as subordinate legislation. Re-delegation of powers under Section 5 is within the competence of the Parliament”98.

By delegating power the Central Government does not lose its federal structure. The important question here is its proper implementation.

“Sometimes re-delegation of power is challenged on the ground of maxim delegates non potent delegate, which means that the delegated authority cannot be further re-delegated. Once the power is conferred by legislature then that person cannot re-delegate powers to another person”99. But, power of re-delegation has been conferred on the Central Government by virtue of this section.

As discussed earlier, there is difference between judicial function and executive function. The powers derived from delegation regarding judicial function cannot be re-delegated but the executive power can be legitimately re-delegated, but no equal or co ordinate delegation is permitted.

As the Supreme Court has declared that, “Delegation can be made either in favour of a State or power may be conferred to specify person. But, there can be no equal or co-ordinate delegation of power, simultaneously in favour of the State Government and also any particular officer or authority of the State Government”100.

"By delegating the powers to the State Government or to the specified authority the power of re-delegation is also vested in the Parliament. It would not

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100 H. Bagla v. State of M.P. (1955) 1 SCR 380
be illegal for the Central Government nor it would amount to the abandonment of this authority if any delegation of power provides re-delegation and there is delegation by the Central Government. The responsibility remains with the Central Government under Sec. 3 of the Act and Sec. 5 is not ultra vires of the Constitution"101.

The essence of Section 5 of the Act is the power of the Central Government to delegate powers to the State Government or Officer or authority subordinate to the State Government or Officer or any authority subordinate to the Central Government.

The power conferred through delegation must be exercised judiciously and with rationale. If it is properly exercised by a person so authorised, it cannot be called invalid as has been held in H. Bagla102 that, "Sec. 5 confers the powers to the Central Government for delegation relating to the matter as provided in Sec. 3 of the Act"103.

However, it was held in Vanamamalal Mutt Anguneri 104 that, "It is mandatory under Sec. 2 of Sub-Sec. (6) that any order passed under Sec. 3 by the Central Government or any Officer or authority of the Central Government shall be laid before both the Houses of Parliament and this is the safeguard and check against the mis-use or abuse of powers by the authority or person to whom it is delegated"105 as is evident in actual practice. Therefore, the power must not be delegated to unspecified persons. The delegation must be unambiguous and to specific authority or officer so that it could be checked whether the powers have been exercised properly by the Government or its

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103 Ibid
105 Ibid
Officer to make them accountable which has become a necessity to measure efficiency and effectiveness for achievement of purpose of delegation and render it legality. It has been held by the Calcutta High Court that, "the Additional District Magistrate cannot exercise the power of a District Magistrate as a specified Officer who is exercising authority under delegated powers by the Central Government under Sec. 3 (1) specified by the Act under Sec. 5. The District Magistrate includes Additional District Magistrate under the Criminal Procedure Code, 1973, but the matters of delegation of powers to the District Magistrate means only District Magistrate". It has been also held that, "the delegation must not be excessive and it is not to be arbitrary". Nevertheless, it is within the competence of the legislature to select the body or bodies to whom the power is delegated. The following case laws are cited as few instances regarding the scope, applicability and validity of the powers of delegation under section 3:

(i) The Gram (Rajasthan) Price Control Order, 1955, upholding the validity of the order, it has been held that, "the order made by the Central Government and exercise of the powers under Sec. 3 (2) of the Act is not in excessive of powers or unauthorised delegation".

(ii) The Kerala Paddy (Restriction on Milling) Order 1967. This order has been issued by the State Government by virtue of delegation of power by the Central Government under Sec. 5. It was held that, "there is no conflict between the Parliament and the State Legislature relating to order made. It was held that the provision of Sec. 3 (6) of the Act were applicable to an order passed by any authority in exercise of power under Sec. 5 (b) of the Act".

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106 Sambhu Nath Ghosal v. State of West Bengal AIR 1966 CAL 577
107 Bajoria Agency (p) ltd. v. Deputy iron and steel controller AIR 1963 Cal 355, 357, 358.
109 AIR 1969 Kerala 154 (160, 161)
(iii) Rajasthan Gram and Barley (Regulation of Distribution) Order 1964. This was issued by the State Government as a delegatee of the Central Government. It was held that the delegation was proper and the order was valid.\[110\

(iv) Sugar Control Order, 1955. The order was held that delegation vide an order is effective law and does not suffer from excessive legislation.\[111\

(v) Rajasthan Milk (Export Control) Order, 1964, was passed by the State Government. It was held that, “even if there is a wrong mention of G.S.R. it would not affect the validity of the order. However, ex post facto concurrence is not invalid”.\[112\

However, the Courts have held invalid certain orders as excessive delegation exceeding the powers conferred such as:

The Central Government has conferred power on the Government of M.P. to make the order relating to matters specified in Clauses A to J of sub-section 2 of Section 3, but, there was a condition laid down that the State Government shall obtain prior concurrence of the Central Government before making an order. The State Government issued a notification and included the milk in the schedule of Exhibition of Prices and Price Control Order 1977. It fixed the price of milk for Jabalpur by order dated August 4, 1984. As no prior concurrence was obtained by the Central Government, it was held, “the State Government has exceeded the powers”.\[113\

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\[110\] Banki Dass Moolraj v. State of Rajasthan AIR 1966 Raj 105 (108 to 110).....
\[111\] Harish Chandra Gupta v. State of U.P. AIR 1960 All650 (651)
A full Bench verdict of Bihar High Court has held that, "Sec. 5 read with notifications delegating power to the State Government to make orders or issue notifications—the power is to be exercised only by the Central Government which is delegated on the Central Government and cannot be delegated by it to any Officer or Officers"114.

The Amending Act 66 of 1971 was replaced by the new act by which the words and figures 'the power to make orders under Section 3' were replaced by the words and figures 'the power to make Orders or issue notifications under Section 3'. Thus, now the scope of Section 5 of the Act enables the Central Government to delegate the powers to pass orders under Section 3 of the Act to State Government and to other officers or authorities and sub-section (3-A) of Section 3 facilitates the issue of a notification. The power to issue notification can also be delegated. This section is reminiscent of Section 4 of the Essential Supplies (Temporary Powers) Act 1946. The Central Government has directed that the powers conferred by Section 3 of the act to make orders providing for the matters given in clause (h), (i) and (j) of Sub-section (2) of Section 3 in relation to 'food-stuffs held in stock' shall be exercisable also, Similarly, in relation to 'processing of paddy' and grinding of wheat, gram, barley, jowar, maize and other millets, this power has been conferred on the Central Government to make orders under Clause (a) of Sub-section (2) of Section 3 and the Administrator of the Union Territory.

Regarding edible oils and the stock held in the State of Uttar Pradesh, "the power to make orders under Clause (1) of the Sub-section (2) of Section 3 are to be exercisable by the Government of Uttar Pradesh or an officer subordinate to the Government not below the rank of the District Magistrate"115.

Regarding 'Drugs' State Government of Uttar Pradesh also confers powers for, "a period of three months".116

Regarding mixed fertilisers the Central Government confers powers specified in clause (c) of sub-section (2) of Section 3. The scope of delegation does not cognate legislature of laying down its legislative policies regarding the measures to be taken and formulate the rule of conduct, the legal principles are to be formulated by the legislature and provide a standard for guidance to the officers regarding the manner in which the law is to be executed. Therefore, the choice of the legislative policy vests in the legislature which will lay down the rule of conduct. Same principle has been held117 by the Supreme Court.

Section 5 of the Act also empowers the Central Government to delegate its power to the State Govt. or to subordinate to it as specified in the order in relation to such matters and subject to such conditions as it may specify in the order. While delegating such powers, the Central Government may further but, restrictions and conditions for the exercise of the delegation of powers apply. Any order issued under Sec. 3 of the 'act is legislative in nature and required to be notified in the Official Gazette'.

Punjab Govt. in exercise of powers delegated to it under Sec. 5 promulgated the Punjab Regulation of Compounded Feed Concentrates and Mineral Mixture Order 1988. The order was challenged before High Court. The Writ Petition was dismissed by the High Court and it was held that, “the Central Govt. has empowered the State Govt. to exercise the powers of the Central Govt. under Sub-section (1) of Section 3 in relation to food stuffs which is commonly specified in Sections 2(a) and 5 of the act".118. It was contended by the appellant...

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117 In re The Delhi Laws Act 1912 v. Part C States (Laws) Act, 1930 AIR 1931 SC 332
that in absence of delegation in respect of essential commodities specified under Section 2 (a) which was in respect of commodity constituting 'Cattle fodder'. But, the Supreme Court has held that essential commodities have been defined under Section 2(a) of the Act and commodities mentioned in relation to food stuffs and Cattle Fodder have been given inclusive definitions. "The main purpose is to bring all essential commodities within the purview of the Act. Various classes of commodities enumerated in Sec. 2 (a) cannot be confined in watertight compartments. Since 'food-stuffs' covers more than one clause under Sec. 2 (a) there is no justification in restricting the same only to one clause." The appeal was dismissed.

Under both the provisions, viz. Clause 11 of the Sugar Cane Control Order, 1966, and Section 5 of the ESSENTIAL COMMODITIES ACT, power is exercisable only by the Central Government. The procedural requirement for publication of Gazette notification is common to both. Hence, the Central Government is duly empowered to delegate to the Cane Commissioner, Uttar Pradesh the powers exercisable under Clause 8 of the Sugarcane Control Order 1966. The sub-delegation in favour of the Cane Commissioner has been established in the instant case. The delegation, although, was made under Clause 1, could be treated as one under Section 5 of the Essential Commodities Act as well inasmuch as if an authority is competent to do certain actions, "mere recitation of a wrong provision would not invalidate the exercise of that power." The State Governments have delegated/ redelegated their powers:

3. Delegation of powers by U.P. Government:

(a) G.S.R. 788 dated September 8, 1955, the powers have been delegated to make orders for providing the matters specified in

119 Ibid.
Clauses (0, (h), (i) and (j) in so far as they relate to clause (f) of sub-section (2) of Section 3 of Essential Commodities Act, 1955, relating to stock of wheat held in the State of Uttar Pradesh and the powers are also exercisable by the District Magistrate within his jurisdiction.

(b) **G.S.R. 784, dated September 5, 1955**, the power have been delegated and Regional Food Controllers in the State has also been authorised to exercise powers in relation to stock of rice including broken rice and paddy. The powers to make order for matters specified in Clause(f) and orders specified in Clauses (h) (i) and (j) in so far as they relate to Clause (f) of Sub-section (2) of Section 3 of the Essential Commodities Act, 1955.

(c) **Wheat Roller Flour Mills (Licensing and Control) Order** the State of U.P. in exercise of the powers under sub-clause (c) of clause 2 of the above order promulgated an order to appoint with effect from March 1, 1969 all Regional Food Controllers, Uttar Pradesh to exercise the powers and perform the duties of Licensing authority under the said order within the respective jurisdiction.

In the above order the following Officers have been authorised to exercise the power and functions of inspectors within their respective jurisdiction:

1. All Regional Food Controllers, Uttar Pradesh
2. AH Deputy Commissioners, Food and Civil Supplies, U.P.
3. Provincial Marketing Officer (Food), Uttar Pradesh
4. All Deputy Regional Food Officers, U.P.
5. All Regional Marketing Officers, U.P.
6. All Deputy Regional Marketing Officers, U.P.
7. All District Supply Officers, U.P.
8. All Senior Marketing Inspectors, U.P.

In the aforesaid order the Governor was pleased to appoint the Superintendent of Police or Deputy Superintendents of Police and all Inspectors of Crime Branch to exercise powers and perform the duties of the Inspectors under the said order.

(d) *U.P. Uchit Mulya Tatha Vitran (Khadya) Aadesh, 1966,* the Governor was pleased to authorise all the District Supply Officers and some of the Government Officers of U.P. to exercise the power and perform the functions of enforcement officer.

(e) *U.P. Uchit Mulya Tatha Vitran (khadya) Aadesh, 1966* By order of the Uttar Pradesh Uchit Mulya Tatha Vitran (Khadya) Aadesh, 1966 the Governor was pleased to authorise the following officers to perform the power and functions of Enforcement Officer in the whole of Uttar Pradesh—

1. Food Commissioner, Uttar Pradesh.
2. Additional Food Commissioner, Uttar Pradesh.
3. All Deputy Commissioner, Food, Uttar Pradesh.
4. Provincial Marketing Officer, Food, Uttar Pradesh.
5. Assistant Commissioner, Food, Uttar Pradesh.
6. Regional Marketing Officer (Head-quarters); and Deputy Regional Marketing Officer attached to the provincial Marketing Officer (Food).
7. Inspectors of all ranks attached to the Assistant Commissioner, (Food).
In exercise of the powers under sub-paragraph (1) of paragraph 23 of the Drugs (Prices Control) Order 1970, the Governor was pleased to authorise all the Assistant Directors of Medical and Health Services, Civil Surgeons, District Medical Officers of Health and Family Planning, District Family Planning Officers-cum-Additional District Medical Officers of Health and Municipal Medical Officers of Health in Uttar Pradesh with a view to securing compliance with the said Order or satisfying themselves that the said Order has been complied with, within their respective jurisdictions, to—

i. enter and search any place;

ii. seize any drug, along with the containers, packages or coverings in which the drug is found in respect of which they suspect that any provision of this order has been or is being or is about to be contravened and thereafter take all measures, necessary for securing production of the drug, containers, packages or coverings so seized in a Court of Law for their safe custody pending such production; and

iii. seize any case memo or credit memo books, accounts and records of purchase and sale of the drugs in respect of which they suspect that any provision of the said Order has been or is being or is about to be contravened.

(g) **U.P. Paddy and Rice (Restrictions on Movement) Order 1970**

This order was passed in pursuance of the provisions of Clause 4 of the Uttar Pradesh Paddy and Rice (Restrictions on Movement) Order and authorised the Senior Marketing Inspector or the Marketing Inspector be incharge of a centre and also to issue permits under Clause 3 except for movement to the border districts specified below—

(h) U.P. Essential Commodities (Price Display and Control of Supply and Distribution) Order 1971 This order has been passed in exercise of the powers under Clause 2 (d) of the above order published in U.P. Gazette Extraordinary." and the Governor was pleased to authorise all the Tahsildars, Judicial Officers (Revenue) and Public Officers not below the rank of Sub-Inspector within their respective jurisdiction as enforcement officer to exercise the powers and perform the function of enforcement Officer under the said order." The Governor has been pleased to authorise all Naib-Tahsildars, Area Rationing Officers, Senior Marketing Inspectors, Marketing Inspectors, Chief Inspectors, Senior inspectors, Supply Inspectors, Circle Inspectors, Enquiry Inspectors Food-grains Inspectors and Assistant Food-grains Inspectors within their respective jurisdiction as enforcement officer under the said Order.

(i) U.P. Milk and Milk Product Control Order 1974 In pursuance of provision of Clause (a) of para 2, the Governor is pleased to appoint District Magistrate of Lucknow, Bara Banki, Rae Bareli, Hardoi, Sitapur, Sultanpur, Kanpur, Etawah, Fatehpur, Dehradun and Moradabad to exercise the powers and perform the duties of Controlling Officer as Enforcement Officer in respect of the above distribution respectively.

5.2. POSITION OF THE LAW IN THE STATE OF ODISHA

In Odisha the State has amended Section 3 of the Essential Commodities Act, 1955 (herein referred as the Principal Act) has been enacted in Sub-Section (2), for Clause (F), the following Clause shall be and shall be
deemed always to have been substituted, namely: substituted by Section 2 of the Essential Commodities (Orissa) Act, 1976.

5.2.1. Odisha Amendments:

[(f) For requiring any person holding in stock or engaged in the manufacture or production of, or in the business of buying or setting, any essential commodity to sell the whole or a specified part of the quantity held in stock or manufactured or produced by him or received or likely to be received by him in the course of the said business, to the Central Government or a State Government or to an office or agent to such Government or to such person or class of person and in such circumstances as may be specified in the order.

Explanation – An order relating to food grains made with reference to this clause –

(i) May specify the prices, fixed by the State Government in this behalf, after taking into account the recommendations, if any, of the Agricultural prices commission and with the prior concurrence of the central government, as the amount which shall be paid for the food grain required to be sold under order.

(ii) May fix a provide for the fixation of the quantity to be sold by a producer with reference to the area under cultivation and the availability of irrigation for production of the particular food grain to which the order relates, and also fix or provide for the fixation of such quantities on the graded basic having regard to the aggregate area held by or under the cultivation of the different producers.

(iii) In sub-section (3), for clause © the following clauses shall be and shall be deemed always to have been substituted, namely:
(c) in the case of food grains, where neither clause (a), nor clause (b) applies, the price, if any, specified in the said disorder:

(d) where neither clause (a), nor clause (b), nor clause (c) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(iv) In the sub-section (3-B) after clause (i), the following clause shall be inserted and shall be deemed always to have been inserted, namely:

(i-a) in the case of food grains where no controlled price is fixed by an order made with reference to clause (c) of sub-section (2), the amount specified in the said order made with reference to clause (f) of sub-section (2) for such grade or variety of food grains; Orissa.]

5.2.2. The relevant Orissa Control and Licensing Orders.

The following licensing orders have been issued by the State Of Odisha pursuant to the amendments and derived delegated powers from the Central Government.

(a) ORISSA FOODGRAINS DEALERS’ LICENSING ORDER, 1959

Under the Orissa Food-grains Dealers’ Licensing Order 1959, any person who stores any food grains in excess of the quantity fixed therein is validly deemed to have stored the same for the purposes of sale and is a dealer within the meaning of the said order. Therefore, "the burden is always on the person who is in possession of the excess commodity that he obtained it from the producers or by any other lawful authority, permit, license or other document"121.

The "statutory presumption raised by Clause 3(2) of the order is, however, a rebuttable presumption and only amount to this and nothing more, that the stock

121 Taber Ali Khan v. State 28 Cut Li 17.
found with a given individual of excess food grains had been stored by him for the purpose of sale"\textsuperscript{122}.

Pertinent to mention in this context is that in \textit{Subba Rao}\textsuperscript{123}, the accused was prosecuted for not having a license under clause 3(1) of the Orissa Foodgrains Dealers' Licensing Order, 1959. For the purpose of the said clause, the prosecution needed to prove that the accused was carrying on business as a dealer in foodgrains without necessary license as required under the Order. The question arose whether possession by itself would amount to contravention of clause 3 of the Order so as to make the petitioner liable under Section 7 of the Essential Commodities Act, 1955. It was held that, "the prosecution must further prove that the person was carrying on business as a dealer in foodgrains without a license and mere purchase would not make him a dealer within the meaning of clause 3(2) of the said Order"\textsuperscript{124}.

\textit{(b) ORISSA KHANDASARI AND GUR DEALERS LICENSING ORDER, 1963}

Clarifying the definitions of the commodities the licencing order the High Court has held that, " 'Gur' means articles commonly known as Gur, Gul, Zaggery, Palmyra Zaggery Shakar and Rab and includes raw sugar as also uncrystallised sugar in any other form comprising original and convertible molasses and other impurity inherent or foreign prepared by boiling cane or palmyra juice. So molasses cannot be termed as Gur, which is apparent from the plain reading of the language employed in the Control Order.

The definition is wide and in addition to the articles specifically referred to therein as meaning Gur, it also contains an inclusive part. The definition indicates

\textsuperscript{123} Ibid
\textsuperscript{124} Ibid
that 'Gur' includes raw sugar and also uncrystallised sugar in any other form comprising original and convertible molasses. It is clear from the definition that raw sugar and also uncrystallised sugar in any other form is brought within the definition by way of the inclusive device. The question then is whether original or convertible molasses can be equated to raw sugar or uncrystallised sugar which is brought within the inclusive definition. The definition while bringing in raw sugar and uncrystallised sugar in any other form, indicates that uncrystallised sugar may comprise of original or convertible molasses. 'Comprise' would normally mean "to contain, to include, to consist of, object as parts or towards". Therefore, uncrystallised sugar in any other form could have as its part or can consist of original molasses or convertible molasses. But, this does not mean that original molasses or convertible molasses can be equated to uncrystallised sugar in any other form or can be brought within the description "uncrystallised sugar in any other form". A component may be a must for making the substance, but that cannot make the component, the substance-itself. In fact the definition indicates that uncrystallised sugar in any other form may be made from original molasses, convertible molasses and from other materials. Thus, going by the definition of 'Gur' in the Licensing Order, we are of the view that molasses in original form or convertible form, cannot be understood as uncrystallised sugar. Molasses, going by the dictionary meaning, is 'a thick dark brown liquid made from sugar plants and is used for cooking'. Such a liquid, unless it is brought in specifically in its pristine form cannot be understood as uncrystallised sugar in any other form, and brought within the definition of 'Gur' in Clause 2(f) of the Licensing Order. Since in this case, the seizure is alleged to be for contravention of Clause 3 of the Licensing Order, 1963, we are satisfied that the said seizure is without legal authority and hence illegal and without jurisdiction".

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125 Nathuram Agrawal v. State Of Orissa And Ors. (2002 IIOLR 457)
In this instant case the petitioner had approached the High Court complaining that the molasses kept by him under storage for the purpose of sale thereof to consumers was illegally seized under Annexure-1 seizure list and entrusted to him on zima. The petitioner questioned the authority of the officer who seized the molasses and submitted that the seizure was without jurisdiction.

The seizure list Annexure-1 stated that "it was found that 210 metric tons of molasses was stored in an underground tank in the premises of the petitioner and the same was discovered on a search. When demanded, the petitioner could not produce the books of accounts, the licence for import, storage and sale of molasses as required under the provisions of the Orissa Khandasari and Gur Dealers Licensing Order, 1963, and in view of this, the stock was being seized for contravention of Clause 3 of the aforesaid Licensing Order" \(^\text{126}\). What was contended on behalf of the petitioner is that the molasses seized does not come within the purview of Clause 3 of the Licensing Order referred to in Annexure-1, and consequently, the seizure was without authority. This was sought to be met by the learned Additional Government Advocate by contending that molasses seized from the petitioner comes squarely within the definition of 'Gur' as found in the Licensing Order and since admittedly the petitioner had no licence under the Licensing Order for storing the molasses, it was rightly seized by the authority concerned. He submitted that the seizure was well within the jurisdiction of the authority.

Hence as observed, the ambiguous nature of interpretation also contributes to improper implementation of the law and the issue of control orders leading to harassment by the public authorities. There is a need for making of crystal clear

\(^{126}\) Ibid.
notification and orders in the light of the above decision which will also keep a check on the intending adulterer.

(c) **THE ORISSA SPECIFIED FOODSTUFFS (STOCKS HOLDING LIMIT) ORDER, 2010.**

In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955), read with the notifications of Government of India in the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) the Orissa Specified Foodstuffs (Stock Holding Limit) Order, 2010, was made extending to the whole of State of Orissa.

(d) **ORISSA HIGH SPEED DIESEL LICENSING ORDER, 2005.**

This Order was made in 2005 further to amend the Orissa High Speed Diesel (Dealers Licensing) Order, 1979.

This case relating to the above Order, a learned Single Judge of the Orissa High Court setting aside part of the order imposing fine in lieu of confiscation and directing the Collector, Ganjam to pass orders under second proviso to Section 6-A(1) of the Essential Commodities Act, 1955. The writ petition was filed against the order dated 29.5.2006 of Collector, Ganjam in a proceeding under Section 6-A of the Act.

Facts of the aforesaid case is that, on 21.12.2004 while the Marketing Inspector, Jaganathprasad Block, while following the Sub-Collector, Bhanjanagar during tour to Jaganathprasad Block, found one bus bearing registration No.OIG-185 parked at the Bus Stand and kerosene oil was being poured in the oil tank of the bus. Looking at them, both the driver and the conductor of the vehicle fled away. He drained out the kerosene oil from the oil tank of the bus which contained 42 liters of kerosene, and prepared the sample list by taking 2 liters out of the seized kerosene oil for its chemical examination. The bus as well as
kerosene were seized and a proceeding bearing EME No.37 of 2004 was
initiated against the respondent and another under Section 6-A of the Act. The
proceeding was initiated for contravention of Clause 8 of Orissa Kerosene
Control Order, 1962 read with Clause 3 of Kerosene Control (Restriction on use
and Fixation of Ceiling Price), 1993. In the said proceeding, the respondent who
is the owner of the bus filed an application for release of the vehicle. While
deciding the aforesaid application, the Collector concluded the proceeding under
Section 6-A of the Act and directed confiscation of the vehicle. However, the
Collector in view of the provisions contained in Section 6-A of the Act directed the
respondent to pay a fine of Rs.20,000/-. The stand of the writ petitioner was that while considering the application
for release of the vehicle, the Collector could not have concluded the
proceedings under Section 6-A(1) of the Act. It was also pointed out that if the
Collector concluded the proceedings under Section 6-A(1) of the Act, there was
no reason for him to impose conditions such as payment of fine of Rs.20,000/-. With reference to second proviso to section 6-A(1) of the Act it was submitted
that if fine is imposed in lieu of confiscation, the same shall not exceed the
market price of the essential commodities seized. This plea found favour with
learned Single Judge.

On appeal the question before the Apex Court was -- whether fine
should not exceed the market price of the seized essential commodity or whether
it should not exceed the market price of the vehicle. For this purpose, the Apex
Court has clarified the scope and ambit of the Law as it says ".... it appears that
there is some ambiguity in the section. It is not specifically provided that in lieu of
confiscation of the vehicle a fine not exceeding the market price of the vehicle or
of the seized essential commodity is to be taken as a measure. Still however, it is
difficult to say that the measure of fine is related to the market price of the
essential commodity at the date of its seizure. It nowhere provides that fine should not exceed the market price of the essential commodity at the date of seizure of the vehicle. The proviso requires the competent authority to give an option to the owner of such vehicle to pay in lieu of confiscation a fine not exceeding the market price. What is to be confiscated is the vehicle and, therefore, the measure of fine would be relatable to the market price of the vehicle at the date of seizure of the essential commodity sought to be carried by such vehicle. This would also be consistent with the scheme of Section 7 which provides for levy of penalty. It empowers the court trying the criminal case to pass an order forfeiting to the Government any property in respect of which the order under Section 3 has been contravened. It also empowers forfeiture to the Government of any package, covering or receptacle in which the property is found and in addition any animal, vehicle, vessel or other conveyance used in carrying the commodity. Therefore, not only the essential commodity which is seized is to be forfeited, but the vehicle also could be forfeited to the Government. Hence, the measure of fine which is required to be levied in lieu of confiscation under the second proviso to Section 6-A(1) would be relatable to the market price of the vehicle and not of the seized essential commodity. And, the fine amount in lieu of confiscation is not to exceed the market price of the vehicle on the date of seizure of the essential commodity. That is to say, the limit of such fine would be up to the market price of the vehicle on the relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case.\(^\text{127}\)

Hence, it is crystal clear that discretion of the authorities has to be uniform in imposing the fine in lieu of confiscation of essential commodity as well as the vehicle or other carrier. The law has been made very stringent and this

\(^{127}\text{Ramesh Chandra Padhi v. Collector of Ganjam SC 2008, 6.02.2009}\)
change must be incorporated in the statute to remove the present ambiguity in interpretation.

The Supreme Court has observed that for removal of ambiguities such statutes must be interpreted as a whole and not piece meal, "it is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act."128