A study of the recent judgments of the Apex court reflects that, in the law and in its exercise of the inherent powers for the making of control orders and issue of notifications there is requirement of removal of latent defects and ambiguities for its proper implementation.

8.1. JUDICIAL TREND ON THE DEFECTS IN THE LAW AND REMOVAL OF AMBIGUITIES:

The perusal and analysis of the Judgements shows that the judicial trend is in favour of the overriding effects of the Law vis a vis., other statutory enactments of similar nature, including the powers of delegation and delegated legislations in exercise of these powers.

The Fruit Products (control) Order, 1955, which was made under Sec. 3j of the principal Act had been held to override the provisions of the Prevention of Food Adulteration Act, 1954, in Hamdard Dawakhana v. Union of India. It was held by the Courts that, "...there is no doubt that the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990, will prevail over all other statutory enactments".

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229 Hamdard Dawakhana v. Union of India AIR 1965 SC 1167 at p. 1172.
Hence, it is beyond doubt that the Principal Act has overriding powers over other enactments, however, the overriding powers are held not absolute and unlimited as held in Arvind Kumar & Brothers v State of Gujarat\(^ {231}\)

There are however, certain ambiguities in the Law and the judicial trend in this regard is in favour of a construction which is in the strict sense.

"Interpretation of Statutes-Section 6-A(2)-"May", held, keeping in mind object of the statute and the contest in which it is used, to be read as shall-"Speedy and natural decay", held, not an expression of art and must be understood in a commonsense manner-"It is expedient in the public interest", held, to be understood so as to advance the legislative objective of ensuring that the goods do not suffer either in quality or quantity."\(^ {232}\)

As observed by the Apex Court in Bhagaban Das and another v Kamal Abrol and others\(^ {233}\) that, "mere connection with a place on account of husband of applicant having some personal and ancestral property in the said districts could not fulfill criteria of de-facto residence needs to be clearly specified in detail in the light of the various other judgments as to one who merely works in certain locality and as to one who resides in place or one who dwells in place for considerable period of time".

In another judgment, in the case of Kailash Prasad Yadav and another v. State of Jharkhand and another\(^ {234}\) again the Apex Court has held regarding confiscation of vehicle order liable to be set aside.

\(^ {233}\) Bhagaban Das and another v. Kamal Abrol and others [AIR 2005 SC 2583]
\(^ {234}\) Kailash Prasad Yadav and another v. State of Jharkhand and another.
The judicial trend in this regard is that in the absence of concrete evidences prosecution should not be initiated and investigation should be strengthened before initiation of prosecution proceedings.

So also in proceedings under Section 6A the ambiguities such as confiscation and fine in lieu of confiscation should be clearly mentioned and specified in the Principal Act, for removal of ambiguities in interpretation by the confiscating authorities and the various Courts. This will also educate the persons related to essential commodities activities and would also go along way for elimination of harassment of innocents.

Due to the ambiguous nature of the law the interpretation of the provisions has also been suitably taken advantage of by certain class of persons/operators of the provisions relating to the issue of licenses requiring intervention, and as aptly clarified, by the Apex Court in Bhagaban Das235 that,

"a mere connection with a place on account of the husband of applicant having some personal and ancestral property in the said districts could not fulfill criteria of de-facto residence as to one who merely works in certain locality and as to one who resides in a place or one who dwells in a place for considerable period of time"236.

The decisions of this type provide genuine safeguards and needs to be taken care of by the licensing authority in implementation while fulfilling the criteria in granting the licenses in future. This will also reduce the litigation in this regard.

Another ambiguity was clarified in the Law in this case by the Supreme Court that, where a learned Single Judge of the Orissa High Court had set aside part of the order imposing fine in lieu of confiscation and directed the Collector, Ganjam to pass orders under second proviso to Section 6-A(1) of the Essential

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235 *Bhagwan Das and another v. Kamal Abrol and others* [AIR 2005 SC 2583]
236 *Ibid*
Commodities Act, 1955 in the writ petition filed against the order dated 29.5.2006 of Collector, Ganjam in a proceeding under Section 6-A of the Act.

The facts leading to initiation of the aforesaid case is that on 21.12.2004 while the Marketing Inspector, Jaganathprasad Block, while following the Sub-Collector, Bhanjariagar 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.

The Question before the Apex Court was -- whether fine should or not exceed the market price of the seized essential commodity or whether it should or 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 lay's that, "... 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”237.

"Regarding disposal of the seized commodities due to their perishable nature the proviso lays down a third mode of disposal, the first two having been mentioned earlier in the section. Where the seized essential commodity was directed to be disposed of at levy rate, i.e. at the purchase price, it was held that this price was neither the controlled price nor the retail sale price, and hence the order was not sustainable, under the proviso”238.

The finding of the Collector to the effect that the seized commodities was subject to natural and speedy decay, order for interim sale of seized commodity was passed in presence of the petitioner and his advocate and he got the opportunity to be heard. It was felt that the impugned order could not be said to have been passed in violation of principles of natural justice. Interference in the order of interim sale of seized commodity not justified by the court as placed reliance in a case decided in Swadesh Sugar Supplies v State of W.P.239, when the collector exercised power under Section 6A (2).

237 Ramesh Chandra Padhi v. Collector of Ganjam, Supreme Court Dt.
238 Sri eshwar Rice Mill Industries v. Deputy Commissioner 1985 Cr. LJ 944 (Kar.)
239 1980 (1) CHN 338
Regarding interference in offer of an adequate opportunity to be heard to the offender it was held that, "principles of natural justice require that a person whose right to property in being affected be given an opportunity of having his say. This decision nowhere obligates the Collector to give specific notice in this behalf. As such non-service of notice cannot be fatal to the prosecution"\textsuperscript{240}.

The power to sell can be exercised by the Collector under sub-section (2) of Section 6-A of the Act in two circumstances. The first is when the commodity seized is subject to speedy and natural decay and the other is in cases where it is considered 'otherwise expedient in public interest so to do'. In the present case, the action is taken under the first clause. But it seems that the provision to empower the Collector to make a sale of property seized whenever he considers it otherwise expedient in public interest, essentially postulates an enquiry. It is difficult to conceive that on the very basis of the section, no enquiry is contemplated. Public interest as well as expediency are both justifiable matters and capable of being demonstrated as either not existing or not expedient. Both would require to be defended where they are called in question. It was, therefore, held prima facie, even according to the terms of sub-section (2), "an enquiry is necessarily contemplated"\textsuperscript{241}.

But that does not mean that the Collector can delay, as much as he likes, the passing of the order under the sub-section. "Where the passing of the order was delayed by the Collector for almost over a year, and the fact that the matter was still being investigated by the police to find out which particular Order had in fact been violated, and the nature of the offence committed by the petitioner, it

\textsuperscript{240} Taleb Sk v. State of W. B. 1998 Cri LJ 909.
was held that in these circumstances the ordering of auction of the commodities seized could not be said to be justifiable"242.

"The Collector has no jurisdiction to go into the validity of the seizure; he could only confiscate goods, out of those seized, in respect of which contravention is established. Only if the seizure is valid would the Collector have jurisdiction to go into the question whether there has been any contravention of the Control Order in respect of the whole or portion of the goods seized. But this is entirely different from saying that the Collector could go on with the enquiry, postulated, in Sections 6-A and 6-B, when the seizure itself, on which alone his jurisdiction to make an enquiry depends, is found to be illegal"243.

"Second Proviso to Section 6-A provides an option to the owner of vehicle, etc. to pay, in lieu of confiscation, a fine not exceeding the market price of the date of seizure of the essential commodity. Therefore it is the duty of the Collector to give such an option to the owner before directing the confiscation of the truck"244.

"Section 6-A of the Act confers the power on the Collector for being exercised in his capacity as a part of the administration. This section cannot be pressed into service by a Court while dealing with a case whether under investigation, enquiry or trial. The language of Section 6-A makes it abundantly clear that the same is to be exercised by the Collector if he thinks expedient so to do"245.

"The contention that power under Sec. 6-A can be exercised only by a Judicial Magistrate in view of Sec. 3 (2) Cr. P. C. has been rejected (See Sec. 6-

244 Krishna Bhima v. State 1979 Cr. LJ 977 at p. 979
E) holding that confiscation under Sec. 6-A is not in the nature of penalty or punishment as forfeiture is under Sec. 7 (1) (b) or 7 (1) (c) 246.

"The order of confiscation is a judicial order which is subject to an appeal before the Appellate Authority and revision to the High Court" 247 [But in G.C. Venkataswarulu v State of Andhra Pradesh 248, held, Collector and appellate authority, the State Government not inferior criminal courts under Section 6C and hence not amenable to revisional jurisdiction]. It is true that an order under Section 6-A does not involve a conviction for an offence and to that extent it may be stated that the proceedings are of civil nature. But, in so far as an order under Section 6-A involves confiscation of articles it is deterrent in nature. Since the violation of order under the Essential Commodities Act involves penal consequences like confiscation it is only fit and proper that the appeal is entertained by the District and Sessions Judge on the criminal side and the revision petition is disposed of by the High Court under the Code of Criminal Procedure" 249.

Having regard to the scheme of Sections 6-A, 6-B and 6-C of the Act, the policy of the law, becomes abundantly clear. Section 6-A confers power on the Collector of the District, in which the essential commodity is seized in pursuance of an order made under Sec. 3, to order confiscation of the essential commodity, any package, covering etc. and any animal, vehicle, etc. if he is satisfied that there has been a contravention of the order. Patently enough, this power is penal in nature. Under Sec. 6-B an opportunity of making a representation and also of being heard is provided. Now, the Legislature was conscious of the fact that while in its wisdom it was empowering the Collector to order such confiscation,

246 Jhabarmal Mukim v. State of Bihar 1984 PLJR 568 DB.
247 N. Pandurangarao v. State of A. P. (1976) 1 Andh WR 41 at p. 64
248 (1986) 2 Cr. L.J. 1713(A.F.)
249 State of Kerela v. P. K. Hussain Palakuzhi 1978 Mad LJ (Cri) 542 at p. 547(Ker).
his order would be penal in character and also that questions relating to rights and liabilities based on general law may be involved. It was, therefore, deemed just and proper that the Collector's exercise of that power should be judicial and it should be open to scrutiny by Judicial Court. Therefore, an appeal has been provided and the State Government has been enjoined to appoint a Judicial Authority to treat appeals from the Collector's order. In the setting of the provisions, it must be said that the Judicial Authority, although to be appointed by the State Government, must necessarily be a Judicial Court in the hierarchy of courts 'Judicial Authority' is defined in Black's *Law Dictionary* as 'power and authority appertaining to the office of Judge, jurisdiction, the official right to hear and determine question in controversy'.

In 14 *American jurisprudence.* Courts, Sec. 4, page 248, it is stated:

While there is a well defined and generally recognised distinction between a Judge and a Judicial Tribunal and while it takes a Presiding Officer to constitute a court, yet the Judge of a Court while presiding over it is by common courtesy called "the Court" and the words 'Court' and 'Judge' are frequently used in the statutes of various States as synonymous and convertible terms.

In Madhya Pradesh, District and Sessions Judge has been appointed Judicial Authority. He being a Court in the hierarchy of Courts, he acts as a Court and his jurisdiction is enlarged. "Where by a statute matters are referred to the determination of a Court of record with no further provision, the necessary implication is that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision remain the same."250

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“Sections 194 and 408 of the Code of Criminal Procedure, 1973 empower a Sessions Judge to transfer cases to Additional Sessions Judges. The powers of a Sessions Judge under the Code of Criminal Procedure are thus no less than the powers of a District Judge under the Bengal, Agra, Assam and Oudh Civil Courts' Act 1887. Therefore, a District and Sessions Judge is empowered to transfer cases to Additional District and Sessions Judge by virtue of the powers conferred upon him by the Civil Courts' Act as by the Code of Criminal Procedure.”251

"Where in an ex parte proceeding, the Collector passed the confiscation order, dated 25-10-1976 and as soon as the applicant came to know of this confiscation order, he gave an application for its review. The Collector felt that injustice had been done to the applicant and he agreed to hear its review application on merits. He then heard the applicant and passed the impugned order, dated 22-2-1977 against confiscating the truck in favour of the State. Held, obviously, order, dated 25-10-1976 stood superseded by order 22-2-1977. There was, therefore, no point in filing an appeal against the order, dated 25-10-1976. The order which held the field at that time was order, dated 22-2-1977 and the appellant, therefore, rightly filed an appeal against it in the Court of Session. The view taken by the Sessions Judge that the applicant was barred from assailing the order, dated 22-2-1977 because it did not file any appeal against the order, dated 25-10-1976 was patently wrong. The only order against which the applicant could have filed an appeal effectively was order, dated 22-2-1977.”252

"Powers of revision under Section 401 of the Criminal Procedure Code, 1973 are to be exercised very sparingly in those cases where there is manifest miscarriage of justice. Where the Collector ordered confiscation of the whole

251 Kailash Chand & Co v. District Magistrate; Patna 1980 BLJR 182 at p. 185.
quantity of oil seized and the appellate court in its discretion directed confiscation of only a part of the seized oil, the High Court declined to interfere in revision as no ground were made out for its intervention.\textsuperscript{253} In another case the impugned order which was passed by the Collector was that the rice shall be sold and its proceeds deposited in the Treasury for disposal in accordance with the law, and if the accused is ultimately found not guilty in the trial, he would get the price of the rice deposited in the manner aforesaid. "No prejudice would be caused to him, as a result of the sale of the rice at this stage. As such the confiscation order cannot be interfered with in revision."\textsuperscript{254}

Sec. 6-A does not impinge on the jurisdiction or power of the High Court, when it lays down the line of jurisdiction of the Joint Collector or other officer competent to make inquiry therein. High Court is competent, in its writ jurisdiction to release the seized commodity even while proceedings under Sec. 6-A in respect thereof may be pending. Of course, in exercising its powers under Art. 226, the High Court would certainly be guided by the provisions of the Act, the object of a particular provision and the enactment as a whole, and if there is an express prohibition against passing certain orders, imposed by statute, the High Court, while exercising jurisdiction under Art. 226 will not ignore those specific provisions.

Whereas the High Court can interfere in proceeding under Sec. 6A of the E.C. Act, the matter was raised in the case of \textit{P.K. Bhawasinka v State of Orissa}. The petitioner is a dealer in essential commodities and has the licence for purchase, sale or storage of free sale sugar. His godown was raided and proceeding under Sec. 6-A of the E.C. Act was initiated. Again his premises were raided on subsequent date and 13 quintals of sugar were seized for

\textsuperscript{253} \textit{Moolchand Kishanchand (M/s) v. State of M.P.} 1987 E.F.R 87 (M.P.).
\textsuperscript{254} \textit{Balram Lal Srivastava v. State of U.P.} 1982 EFR 112 at p. 114 (All).
contravention of Sugar Control Order 1966. The petitioner challenged the detention order passed against him for prevention of black-marketing and maintenance of Supplies Act. It was held that, "if the proceeding has been initiated under Sec. 6-A of the E.C. Act that expeditious action is imperative. But at the same time a person cannot take advantage of his own evasive action to plead that there was delay in executing the order of detention. Mere delay in arresting the detenu does not whittle down nor the proceeding under Sec. 6-A will undergo any change".

In another case the petitioner is a business partnership. He has sent a consignment of wheat by railways and the goods were seized by the authorities under the Essential Commodities Act for contravention of rules. The Collector held an inquiry but he did not pass any orders regarding confiscation of goods. The articles were sold and sale proceeds were returned but the petitioner prayed that interest @ 6% on the price of the goods should also be paid to the firm. It was held, "that there is a duty under subsection 2 of Sec. 6-C passed upon the authorities that reasonable interest paid and that is a statutory liability to pay the interest".

The petition was allowed but, while finally disposing the case, it was held that, "Sec. 6-A does not contemplate payment of any interest and it is only Sec. 6C that deals with the situation arising out of appeal filed by a trader. The Collector has held that there was no contravention of the act or the rules committed by petitioner and therefore the Department will only pay the sale proceeds of the goods. As Section 6C is not applicable, the petitioner is not entitled to interest".

So also the ambiguities such as confiscation and fine in lieu of confiscation should be clearly defined in the Principal Act, for removal of ambiguities in

\[256\] Shankarlal Purnimal v. Commissioner of Civil Supplies 1989 (1) ALT 51.
\[257\] Ibid.
interpretation. As has been observed in this regard by the Apex Court that, "S.6A regarding confiscation of essential commodity the vehicle confiscation provision is defective and needs a relook"258.

The above provision being subject to erroneous interpretation has also been reflected in the following words that, "even while the power of confiscation of the commodity is absolute, the confiscation of the container vehicle is not an inevitable corollary and the owner of the container vehicle can always plead innocence"259.

Hence, as observed in the above decision, if the pleading of innocence is entertained by the Court then it gives rise to two aspects, firstly, in section 6B of the principal Act, the words "...or from whom it is seized", becomes meaningless in case the plea of innocence is accepted and as a result the person is acquitted. This part of the provision only serves the purpose of delay and time consumption in the number of pending litigation, as well as, providing a scope for manipulation to the prosecution. Secondly, there is every chance that a genuine innocent person may be convicted due to lack of strong defensive evidence, since, the onus of proving his innocence is on him as per the present provisions of the Law and presence of mens rea not being fundamental in essential commodity related offences. As is witnessed in various cases that the actual conspirators and offenders go scot free and innocents harassed.

Although, profit motive or making of a profit is not a sine qua non for the dealers, but, as held/ observed in various cases that the efforts of the authorities, "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"260; "...the propose of the administrative ought to be to maintain a rational balance in favour of the consumer, so also the producer and investor as 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.."261; and also that "...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) ......"262

Hence, provision for payment of a reasonable interest on the sale proceeds due to delay in finalization of the case under Section 6C of the principal Act may be made to eliminate unnecessary harassment and undue loss to the investors.

Under Section 6B (3) the Order for confiscation of vehicle, etc., shall not be invalid if substantial compliance of provision is made. However, substantial compliance must be defined in the provision to eliminate ambiguous interpretation.

The judicial trend in relation to offences by companies is in favour of making all the partners of a firm liable for offences. Prima facie Section 10 of the Principal Act does not make all partners liable. It should make all partners liable and put the onus on them to disprove allegations against them (including sleeping partners) as held in Sham Sundar V. State of Haryana263.

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260 Prime Automobile v. Union of India AIR 1972 SC1690
261 Ibid.
8.2. JUDICIAL TREND ON DELEGATION OF POWERS AND POWER
TO CONTROL PRODUCTION, SUPPLY AND DISTRIBUTION, ETC:

The elimination of errors in the implementation goes a long way in reducing the litigation and facilitating equitable distribution of essential commodities. Therefore, making of the control orders and the clarifications of the various aspects of the Law of essential commodities must be in a simplified way. The orders must define and explain in clear language criteria for minimum and maximum price fixation, allotment of fair price shops, allotment of petrol pumps, gas agencies, punishment for violation etc.

The judicial trend in this regard is in favour of strict interpretation but still the law has been taken advantage of in the process of granting of licenses as aptly clarified by the Apex Court in Bhagaban Das264 that, "a mere connection with a place on account of the husband of applicant having some personal and ancestral property in the said districts could not fulfill criteria of de-facto residence as to one who merely works in certain locality and as to one who resides in a place or one who dwells in a place for considerable period of time"265.

This decision has provided a genuine safeguard and needs to be taken care of by the licensing authority in implementation while fulfilling the criteria in granting the licenses.

264 Bhagawan Das and another v. Kamal Abrol and others AIR 2005 SC 2583
265 Ibid
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 leading to initiation 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.

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 say's "... 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.266

Hence, it is crystal clear that it is up to the discretion of the authorities in imposing the fine in lieu of confiscation of essential commodity as well as the vehicle or other carrier but, it has to be uniform and some basis has to be arrived at by the authorities and it is not incumbent to pass the maximum sentence by virtue of the powers conferred on them. The law leaves the measure of punishment to the discretion of the Court. Hence, “In deciding the measure of punishment, fine or penalty considering the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, his age, character and antecedents”267. It must be borne in mind the necessity of proportion between an offence and the penalty. “The maximum penalty provided for any offence is meant only for the worst cases”268. The law has been made very stringent and this discretion must be judiciously exercised for proper and effective implementation.

The overriding effect of the delegated powers under the law is, however, not absolute as was held in Arvind Kumar & Brothers v State of Gujarat269 that,

268 Ibid
an irregularity in declaration of stock of foodgrains found by the authority and the order confiscating entire stock passed by the District Supply officer while inspecting the places of the business of the petitioner who was carrying on business of sale and purchase of food-grains and having a licence issued under the provisions of Gujarat Essential Articles (Control & Stock Declaration) Rules, 1991, was quashed.

It was held, that, “the entire quantity of food-grains is not liable to be confiscated only on the ground that there were certain irregularities in the declaration of the stock position. Nevertheless, there are instances where the dealers and license holders are forced to resort to corrupt practices in likewise situations due to the arbitrary decisions of the public authorities abusing the delegated powers and also imposing penalty without application of mind”270.

In another recent judgment, in the case of Kailash Prasad Yadav and another v. State of Jharkhand and another271, again, the Apex court has said regarding confiscation of vehicle order liable to be set aside and for the undermentioned reasons, setting aside the impugned judgments which could not be sustained, accordingly allowing the appeal, held272:-

“Indisputably, confiscation of goods and the vehicles and vessels carrying the same amounts to deprivation of property. Confiscation of an essential commodity or a truck is permissible only if the provisions of any order made under Section 3 of the Essential Commodities Act.1955 (for short “the Act”) are violated. When a vehicle is used for carrying an essential commodity, it may be seized and ultimately directed to be confiscated in terms of Clause 8 of subsection (1) of Section 6-A of the Act. Violation of an order made under Section 3

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270 Ibid
271 Kailash Prasad Yadav & another v. State of Jharkhand & another, SC dt. 02.05.2007
272 Ibid
of the Act, therefore, is a pre-condition for passing an order of confiscation. We have to consider the matter from another angle. The order of confiscation is not passed only because it would be lawful to do so. The authorities must arrive at a clear finding in regard to the violation made under Section 3 of the Act. The issues which have been raised before us have not been considered either by the Deputy Commissioner or by the learned Sessions Judge as also by the High Court. The matter is pending before the criminal court. We, therefore, do not intend to delve further into the matter. Keeping in view the facts and circumstances of this case we are of the opinion that it was not a fit case where an order of confiscation could have been passed.”

Hence, the above decisions of the Courts bring to light the improper and careless implementation of the law by the executive in the exercise of the powers granted to them. Proper implementation of orders and notifications to eliminate corruption and bribery and to reduce litigation and for securing even distribution of essential commodities is indispensable.

Another acute problem in the distribution process faced is that the budgetary Subsidies are not reaching the beneficiaries in the form of highly subsidized commodities meant for the poor and other vulnerable sections of the society are being manipulatively diverted to open market, etc.

Pertinent to mention in this context is the *U.P. Flour mills Association & Ors* where a writ petition was filed invoking the extraordinary jurisdiction of the Constitution of India, 1950-Article 32, in the matter of Allocation of subsidized wheat stocks by Government of India through Public Distribution System in the States of West Bengal and Assam diverting the same to open market on subsidized rates instead of intended beneficiaries, causing loss of several crores.

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273 *Ibid*

274 *U.P. Roller Flour Mills Association & Ors v. Govt. of India & Ors. AIR 2008 SC 130*
In deciding the Writ Petition the Supreme Court held that "Directions be issued to the concerned Associations/Gram Panchayats/Local bodies to assess the need of wheat/atta for the intended beneficiaries which would be conveyed to the State Government who would then supply it to the Fair Price Shop to be finally supplied to the consumer" for effective control over the supply and distribution. This direction introduces the need for the involvement in the decision making process of the local people/beneficiaries.

8.3. **JUDICIAL TREND ON PROSECUTION AND NALTIES**

The Judicial trend for offences relating to essential commodities is in favour of imposing strict penalty to the guilty and to prosecute the actual offenders, i.e., the real conspirators and the persons as observed by the Supreme Court in *Precious Oil Corporation* that, "No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white-collar criminals who are likely to go scot free and are committing offences by neither casual provocation nor motive against particular persons but, for whom 'planned profit-making from numbers of consumers furnishes the incentive', who are systematically organizing the offences through adulteration, hoarding, black marketing, etc., of essential commodities.

However, the judicial trend also cautions not to harass innocents and to upkeep the larger interests of society.

In this instant case, the tanker of the petitioner was taken into custody on 12.8.97. So far, the collector had not passed any order whether the tanker

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275 Ibid.
276 *M/S Precious Oil Corp & Ors. v. State of Assam*, SC dt. 05.02.2009.
should not be confiscated. The tanker was standing idle in the police station. It was likely to suffer damage if it remained unattended in the police station. Besides, the tanker was earning something to the owner. If the tanker remained idle in the police station without being put to use not only will it be a loss for the owner but to society at large. It was held that, "keeping in view the larger interest of the society the tanker in question was entered to be released in favor of owner on Superdari on furnishing the security to the satisfaction of Special Court under EC Act 1955".

An appeal has been preferred against the order of High Court of Gujarat which quashed the order of Special Judge who affirmed the confiscation of cement stored in 42,658 bags. The order of confiscation was passed under Section 6A. It was held that, "in absence of adverse relevant evidence and inference of violation of control order cannot be made because in this case there was delay in transportation of remaining cement and therefore Gujarat Control Order is not applicable".

However, in the instant case, "the applicant-dealer knew and was supposed to know that under the terms of the licence and under the provisions of the Essential Commodities Act and the Orders of the State Government made in exercise of the powers under Section 3 of the Act, he was required to make certain compliances in time in the particular registers which he was required to maintain in the matter of his purchases and sales and the existing stock of food-grains. Since, the applicant-dealer had failed to make the necessary entries in time, for whatever reason it be and with whatever explanation he may have in this regard, he would be held to be consciously and deliberately violating the

278 State v. Devika Devi 1996 SCC (Cri) 184.
provisions of law, with a guilty mind". In such cases the penalty and punishment should no doubt be more stringent.

Strict penal liability has also been favoured in the decisions of the Supreme Court as in *Icchu Devi Chhoraia* held that, "whatever is the Law laid down by the Courts in the case of smugglers would be clearly applicable in the case of preventive detention under any other Law."281.

In other cases, "the Collector, having been satisfied under Section 6-A of the Act that the applicant committed the contravention of Cl. 3 of the Licensing Order by carrying on business as a 'dealer' in rice without obtaining a licence for the purpose from the licensing authority, rightly ordered the confiscation of eleven quintals of rice seized from the applicant. The contravention as regards carrying on business without a licence was committed by the applicant in respect of the entire quantity seized from him and as such no fault could be found with the Collector ordering confiscation of the entire quantity".282

In this instant case, the contraband rice which had been seized by the Police, belonged to the fair price shop of G. As such the rice should have been sold and stored at that place. The rice, as a matter of fact, was seized while it was being negotiated for sale in the market. The defence set up by B, father of the Licensee G has been repelled by the courts below. "It is thus clear that the rice belonged to the fair price shop. As such, its sale at a place other than the fair price shop was a clear contravention of the provisions of U. P. Grain Dealers

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280 *AIR 1980 SC 1983.*
281 *Ibid*
Licensing and Restriction was a clear contravention of the provisions of U. P. Grain Dealers Licensing and Restriction question.\footnote{Balram Lal Srivastava v. State of UP 1982 EXCISE AND FOOD ADULTERATION REPORTS 112 at p. 114 (All).}

"Section 6-A of the Act does not make it obligatory upon the authorities finding a person guilty of contravention of the Act, Order or conditions of licence to confiscate the entire stock, though it is permissible. Confiscation of entire stock depends upon the facts and circumstances of each case.\footnote{M/S Raj Traders v. Dy Commissioner (1984) 28 MLJ 178.} In \textit{Dilip Kumar v. State of U.P.} entire quantity of \textit{gur} found in the shop was confiscated and it was held to be justified and called for no interference.

It has also been held that, "It is not a harsh penalty for contravention of Control Orders and no prejudice is caused if the appellate authority modifies the confiscation order to 5 quintals of oil from a confiscation order of total quantity of oil seized.\footnote{Himmat Singh v. State of M.P. (1985) 2 Crimes 43 (M.P.).} As far as section 6A is concerned "it vests a wide discretion in the authorities concerned. The authority may order confiscation of the entire stock or may not order confiscation of any stock at all. The order of confiscation is a judicial order. Relevant facts and circumstances should be taken into account by a Court in determining the penalty to be imposed.\footnote{Nakirikanti Panduranga Rao v. State of AP (1976) 1 Andh WR 41.}"

In another case where the petitioner was a company and petitioner no. 2, a share holder. A certain quantity of \textit{Vanaspati ghee} was seized. This was challenged. It was held and direction was given that, "the petitioner may move the Collector of Jaipur for giving interleaf and decide the application in accordance with law and be not influenced by the Order of the Court.\footnote{Raghuvar India v. State (1996) 1 W.L.C. 67.}"
So also with regard to Section 10 of the Essential commodities Act, 1955, it does not make all partners liable. The judicial trend asserts that the Law "should make all partners liable and put the onus on them to disprove allegations against them (including sleeping partners)". As such corporates and firms are taking advantage of the provision and proliferating benami (anonymous) trade and transactions in the process increasing white collar crime.

\[^{289}\ Sh\ a\ m\ S\ u\ n\ d\ a\ r\ v.\ S\ t\ a\ t\ e\ o\ f\ H\ a\ r\ y\ a\ n\ a\ AIR\ 1989\ SC\ 1982.\]

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