

PETITIONER:

K. JANARDHAN PILLAI & ANR. ETC. ETC.

Vs.

RESPONDENT:

UNION OF INDIA & ORS. ETC. ETC.

DATE OF JUDGMENT 23/01/1981

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

SEN, A.P. (J)

CITATION:

1981 AIR 1485

1981 SCR (2) 676

1981 SCC (2) 45

1981 SCALE (1) 193

ACT:

Kerala Essential Articles Control (Temporary Powers) Act, 1961-Section 2(a) and Section 3-Raw cashewnuts-Whether "foodstuff" within the meaning of section 2(a)(v) of the Essential Commodities Act, 1955- State Government if competent to declare raw cashewnuts as essential article-Declaration, whether contravenes section 2(a) of the Kerala Act.

HEADNOTE:

By an order made on March 20, 1976 the Kerala State Government declared that raw cashewnut was an essential article under section 2(a) of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 and thereafter promulgated the Kerala Raw Cashewnuts (Procurement and Distribution) Order 1977 under section 3 thereof, regulating the procurement and distribution of raw cashewnuts in the State of Kerala. The expression "essential article" is defined in section 2(a) of the Kerala Act as "an article (not being an essential commodity as defined in the Essential Commodities Act, 1955) which may be declared by the Government by a notified order to be an essential article". Under Section 2(a) (v) of the Essential Commodities Act, 1955 essential commodity means "foodstuffs, including edible oilseeds and oils."

In their petitions under Art. 32 of the Constitution the petitioners who were engaged in the processing of raw cashewnuts urged that raw cashewnut being a foodstuff, which was an essential commodity under the Central Act, the State Government could not make a declaration that it was an essential article under section 2(a) of the State Act and that for this reason the declaration and the impugned order were ultra vires the State Act.

On behalf of the State Government it was contended that the expression "foodstuffs" meant only those articles which could be directly consumed without any kind of processing since the order regulated only the procurement and distribution of raw cashewnuts which were used as industrial raw material, they could not be called foodstuffs in the strict sense and were not an "essential commodity" within the meaning of that term under the Central Act.

Allowing the petitions,

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HELD: Raw cashewnut is a foodstuff under section 2(a)(v) of the Central Act and hence cannot be declared as an essential article under section 2(a) of the Kerala Act. No order could therefore be made by the State Government under section 3 thereof in respect of raw cashewnuts. Therefore the declaration made by the State Government to the effect that raw cashewnut is an essential article under the Kerala Act and the impugned order made thereunder are liable to be quashed. [694 B-C]

The words in parenthesis in section 2(a) of the State Act make it clear that the State Government can declare as an essential article under the State Act
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only an article which is not an essential commodity under the Central Act. It is a well known rule of interpretation that associated words take their meaning from one another and that is the meaning of the rule of statutory construction *noscitur a sociis*. When the term 'foodstuffs' is associated with edible oilseeds which have to be processed before the oil in them can be consumed, it is appropriate to interpret 'foodstuffs' in the wider sense as including all articles of food which may be consumed by human beings after processing. [687 C]

Having regard to the fact that the object of the Central Act is to regulate production, supply and distribution of essential commodities amongst the people, the expression 'foodstuffs' should be given a wider meaning as including even raw materials which ultimately result in edible articles. [687 D-E]

The dictionary meaning of 'foodstuff' is 'a substance with food value' and 'the raw material of food before or after processing'. Therefore 'foodstuff' need not necessarily mean only the final food product which is consumed. It also includes raw food articles which may, after processing, be used as food by human beings. [688 F]

State of Bombay v. Virkumar Gulabchand Shah [1952] S.C.R. 877 and Tika Ramji & Ors. etc. v. The State of Uttar Pradesh & Ors. [1956] S.C.R. 393 at 418 referred to.

Although as a result of large exports of cashewnut it is now in short supply and its price is beyond the reach of the common man, it is an article of food eaten in raw form and is used in various preparations. It is eaten in all parts of the country though it is grown in a few States. It is exported as foodstuff. It is, therefore, a foodstuff and must be classified as an essential commodity.

[692 M-G]

There is no substance in the argument that cashewnuts can be treated as an essential article only for the purposes of export and not an essential commodity under the Central Act. The Central Government can make an Order under the Central Act even when an essential commodity is used for industrial purposes or for purposes of export. Essential commodities do not cease to be essential commodities under the Central Act merely because they are exported after they are processed in India. [693 B]

The argument that so long as the Central Government had not made an order in respect of raw cashewnuts the State Government can pass an order is not available in the circumstances by reason of the definition of essential article in the Kerala Act. [693 E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 116, 186-189/77, 3935-63/78 3922-24/78, 1221/77, 3821-27/78, 3828-31/78, 44-50/77, 4237/78, 4400/78, 92-97/77.

(Under Article 32 of the Constitution)

F. S. Nariman, R. N. Banerjee, J. B. Dadachanji and K. J. John, for the Petitioners in W.P. No. 116/77.

R. M. Poddar for Respondent No. 1 in W.P. No. 116/77.
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Lal Narain Sinha Attorney Genl., P. K. Pillai and T. P. Soundara Rajan, for Respondents 2-3 in W.P. No. 116/77.

N. M. Abdul Khader, M. A. Feroze and K. M. K. Nair, for the Respondent.

R. N. Banerjee, J. B. Dadachanji and K. J. John, for the Petitioners in W.P. Nos. 186-189/77.

Lal Narain Sinha Att-Genl. and R. M. Poddar, for Respondent No. 1 in W.P. Nos. 186-189/77.

P.K. Pillai and T. P. Soundra Rajan, for Respondents 2-3 in W.P. Nos. 186-189/77.

N. M. Abdul Khader, M. A. Feroze and K. M. K. Nair, for the State.

F. S. Nariman, R. N. Banerjee, J. B. Dadachanji and K. J. John, for the Petitioners in W.P. Nos. 3935-63/78.

N. M. Abdul Khader, M. A. Feroze and K. M. K. Nair, for Respondent No. 1 in W.P. Nos. 3935-63/78.

A. S. Nambiar and P. Parameswaran, for Respondents 2-3 in W.P. Nos. 3935-63/78.

P. Govindan Nair and K. Sukumaran, for the Petitioners in W.P. Nos. 3922-24/78.

K. M. K. Nair, for the Respondent in W.P. Nos. 3922-24/78.

R. N. Banerjee, J. B. Dadachanji and K. J. John, for the Petitioner in W.P. No. 1221/77.

K. M. K. Nair for Respondent No. 1.

A. S. Nambiyar for Respondent No. 2.

Miss A. Subhashini for Respondent No.5.

P. Govindan Nair and K. Sukumaran for the Petitioners in W.P. Nos. 3821-27/78.

K. M. K. Nair for Respondent No. 1 in W.P. Nos. 3821-27/78.

A. S. Nambiar and P. Parameswaran for Respondents 2-3 in W.P. Nos. 3821-27/78.

P. Govindan Nair and K. Sukumaran for the Petitioner in W. P. Nos. 3828-31/78.

K. M. K. Nair for Respondent No. 1 in W.P. Nos. 3828-31/78.

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A. S. Nambiar and P. Parameswaran for Respondent No. 2 in W.P. Nos. 3828-31/78.

R. N. Banerjee, J. B. Dadachanji and K. J. John for the Petitioners in W.P. Nos. 44-50/77.

Miss A. Subhashini for Respondent No. 1 in W.P. Nos. 44-50/77.

K.M.K. Nair for Respondent No. 2 in W.P. Nos. 44-50/77.

P. Govindan Nair, Mrs. Baby Krishnan and Mrs. V. D. Khanna, for the Petitioners in W.P. Nos. 4237/78.

K. M. K. Nair for the Respondent in W.P. No. 4237/78.

D. Govindan Nair and Mrs. Baby Krishnan for the Petitioners in W.P. No. 4400/78.

K. M. K. Nair for the Respondent in W.P. No. 4400/78.

R. N. Banerjee, J. B. Dadachanji and K. J. John for the Petitioners in W.P. Nos. 92-97/77.

Miss A. Subhashini for Respondent No. 1 in W.P. Nos. 92-97/77.

K. M. K. Nair for Respondent No. 2 in W.P. Nos. 92-97/77.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The common question which arise for consideration in the above writ petitions under Article 32 of the Constitution of India relates to the validity of the declaration made by the State Government of Kerala on March 20, 1976 declaring that raw cashewnut was an essential article, in exercise of the power under clause (a) of section 2 of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 (Act 3 of 1962) (hereinafter referred to as 'the Kerala Act') and the Kerala Raw Cashewnuts (Procurement and Distribution) Order, 1977 (hereinafter referred to as 'the Order') made by the State Government of Kerala in exercise of the powers conferred by section 3 of the Kerala Act regulating the procurement and distribution of raw cashewnuts grown in the State of Kerala. The petitioners are persons engaged in the cashewnut processing industry in the State of Kerala. Since the impugned declaration and the Order seriously interfered with the right of the petitioners to purchase sufficient quantities of raw cashewnuts for processing in their factories and imposed several other restrictions on them, they have filed the above petitions. Although the validity of several other orders was also questioned in the present petitions, the petitioners confined their challenge only to the impugned declaration and the

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Order in the course of the arguments since according to them it was not necessary to urge their contentions as against those orders.

The recital in the preamble to the Order states that it was being made in order to ensure the maintenance of supplies of raw cashewnuts which was considered to be essential for the continued employment of a large number of workmen in the State of Kerala and for their equitable distribution and availability at fair prices. It is further recited that the Order was being made as the State Government felt a doubt about the question whether the Kerala Raw Cashewnuts (Marketing and Distribution) Order 1976 issued under the Defence and Internal Security of India Rules, 1971, for the very same purpose would continue to remain in force.

The main provisions of the Order broadly related to the prohibition of sale of raw cashewnuts to any person other than an agent authorised to purchase by clause 3 thereof, appointment of Co-operative Societies as subagents, imposition of restrictions on processing or conversion of raw cashewnuts and their distribution amongst the occupiers of cashewnut processing factories, appointment and powers of Cashew Special Officer and other incidental and ancillary matters. The explanatory note attached to the Order stated that it was intended to regulate the procurement and distribution of raw cashewnuts by the State Government.

The Order is issued by the State Government of Kerala under section 3 of the Kerala Act, the object of which is to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in certain articles which, is the title of the Act indicates, are considered to be essential for the community. The Kerala Act as originally enacted was intended to be in force for a period of five years from the date of its commencement. By successive amendments, its life is extended to twenty years from the commencement of the Act. Although it makes provision for conferring power on the State Government to make appropriate orders regarding regulation of production, supply and distribution of

essential articles substantially on the lines on which the Essential Commodities Act, 1955 (Act 10 of 1955) (hereinafter referred to as the Central Act') passed by the Parliament provides for the regulation of production, supply and distribution of essential commodities as defined in the Central Act. the Kerala Act does not itself specify any article as an essential article. But the expression 'essential article' is defined by section 2(a) of the Kerala Act thus :

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

(a) "essential article" means any article (not being an essential commodity as defined in the Essential Commodities Act, 1955) which may be declared by the Government by notified order to be an essential article."

From the above definition it is clear that the State Government can declare as an essential article under the Kerala Act only an article which is not an essential commodity as defined in the Central Act. When such a declaration is made in respect of any article, the State Government acquires the power to make an order under section 3 thereof in respect of such article. The State Government is, however, precluded from declaring any article which is an essential commodity under the Central Act as an essential article and from making an order for the purpose of controlling its production, supply and distribution. This is obvious from the words in the parenthesis in section 2(a) of the Kerala Act defining the word 'essential article'. That the object of the Kerala Act is only to provide for regulation of production, supply and distribution of an article which is not an essential commodity as defined under the Central Act is also clear from what is stated by the Kerala Government in the letter dated December 5, 1961 addressed by the Law Secretary, Government of Kerala to the Central Government seeking the assent of the President to the Bill passed by the Kerala Legislature. The relevant part of the letter reads:

".....
Sub: The Kerala Essential Articles Control (Temporary Powers) Bill 1960.

I am to forward herewith two copies of the Kerala Essential Articles Control (Temporary Powers) Bill, 1960, as passed by the Legislative Assembly and reserved by the Governor for the consideration of the President.

2. The Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949, as amended by the Kerala Acts 24 of 1958 and 3 of 1959, was in force in the Kerala State till 25-1-1960 when it expired by efflux of time. The Essential Commodities Act, 1955 (Central Act 10 of 1955) applies only in the case of essential commodities specified in that Act. At present there is no law in the State to control the production, supply and distribution of, and trade and commerce in, essential articles required for industrial

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and other purposes, which do not fall within the ambit of the Central Act. For the implementation of the scheme under the programme of industrialisation during the Third Five Year Plan it may become necessary to control the production,

supply and distribution of, and trade and commerce in, articles which are not essential commodities and unless the Govt. have such powers, difficulties are likely to arise.

3. The object of the present legislation is to take power for the control of essential articles which are not essential commodities within the meaning of the Central Act. It empowers Govt. to declare any article, not being an essential commodities within the meaning of Essential Commodities Act, 1955, to be an "essential article" and to control, by notified order, the production, supply and distribution of, and trade and commerce in, any such article. This is an enabling measure and is modelled on the Central Essential Commodities Act. It is intended to be in force only for a period of five years.

4. The subject-matter of the legislation falls within the scope of entries 26 and 27 of the State List in the Seventh Schedule to the Constitution, namely:-

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

Hence the State Legislature is competent to enact the measure.

5. The provisions of the Bill may attract Articles 301 and 304(b) of the Constitution as imposing a reasonable restriction on the freedom of trade and commerce. Accordingly the previous sanction of the President for the introduction of the Bill in the State Legislature has been obtained as required by the proviso to article 304(b) in the letter of the Ministry of Commerce and Industry referred to as third paper above".

One of the grounds urged on behalf of the petitioners in support of these petitions is that raw cashewnut being a foodstuff (which is an essential commodity under the Central Act), the State Government of Kerala could not make a declaration to the effect that it was an essential article under section 2(a) of the Kerala Act and consequently the impugned Order was outside the scope of the Kerala Act. On 683

behalf of the State Government, it is contended that raw cashewnut is not a foodstuff and even if it is held to be a foodstuff having regard to the nature and object of the Order, it should be treated as being within the competence of the State Government. The relevant part of section 2(a) of the Central Act containing the definition of the expression 'essential commodity' read thus:

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

(a) "essential commodity" means any of the following classes of commodities:-

(i) cattle fodder, including oilcakes and other concentrates;

(v) foodstuffs, including edible oilseeds and oils;

Since it is argued on behalf of the State Government that foodstuffs' only mean those articles which can be directly consumed without any kind of processing and that raw cashewnuts which are intended to be used as industrial

raw material cannot, therefore, be called as 'foodstuffs' in the strict sense, it is necessary to examine the history of legislation relating to the trade and commerce within a State and production, supply and distribution of goods in India.

Under the Government of India Act, 1935, entries 27 and 29 of List II in the Seventh Schedule read as follows:

- "27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.
29. Production, supply and distribution of goods; development of industries, subject to the provisions of List I with respect to the development of certain industries under Federal control."

Entry 34 of List I read as:

- "34. Development of industries where development, under a Federal control is declared by Federal law to be expedient in the public interest."

From the above entries it is clear that the subject of trade and commerce within the Province and subject to entry 34 of List I, the subject of production, supply and distribution of goods were within the competence of the Provincial Government. As a result of the emergency proclaimed by the Governor-General under section 102 of

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"2. (1) Notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the period mentioned in section four of this Act have power to make laws with respect to the following matters-

(a) trade and commerce (whether or not within a Province) in, and the production, supply and distribution of cotton and woollen textiles, papers (including newsprint). foodstuffs (including edible oil seeds and oils) petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica; and

(b)

(c)

but any law made by the Indian Legislature which that Legislature would not but for the provisions of this section, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of the

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said period except as respects things done or omitted to be done before the expiration thereof."

Section 4 of that Act specified the duration of the legislative power conferred on the Federal Legislature by section 2 and section 5 prescribed the duration of laws passed by virtue of a Proclamation of Emergency. It is seen from section 2(1)(a) of the above British Act that for the first time, the subject of foodstuffs (including edible oil seeds and oils) was dealt with separately in a constitutional document. The Governor-General in exercise of the extended legislative power granted by the British Act promptly issued within the specified period the Essential Supplies (Temporary Powers) Ordinance 1946 (XVIII of 1946) extending the controls in respect of certain essential commodities including foodstuffs beyond the first day of October, 1946 and the said Ordinance was repealed and replaced by the Essential Supplies (Temporary Powers) Act, 1946 (Act No. XXIV of 1946) enacted by the Federal Legislature in November, 1946. Section 2(a) of that Act defined the expression 'essential commodity' as meaning 'foodstuffs' and certain other articles mentioned therein. Section 2(e) defined 'foodstuffs' as including edible oil seeds and oils. The operation of the said Act was extended by competent legislative acts upto March 31, 1950. Since by Entries 26 and 27 of List II of the Seventh Schedule to the Constitution, the subject of trade and commerce within the State subject to the provisions of Entry 33 of List III and the subject to production, supply and distribution of goods subject to the provisions of Entry 33 of List III had been assigned to the States and Entry 33 of List III only dealt with trade and commerce in, and the production, supply and distribution of the products of industries where the control of such industries by the Union was declared by Parliament by law to be expedient in the public interest, having regard to the then existing conditions, Article 369 was enacted as a temporary and transitional measure conferring legislative power on the Parliament during a period of five years from the commencement of the Constitution to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely:

(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica;

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(b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court.

It was provided that any law made by Parliament which Parliament would not but for the provisions of Article 369

of the Constitution have been competency to make would, to the extent of the incompetency, cease to have effect on the expiration of the period of five years from the commencement of the Constitution except as respects things done or omitted to be done before the expiration thereof. It may be noticed that clause (a) of Article 369 of the Constitution specifically referred to foodstuffs (including oilseeds and oil) and cattle fodder (including oil-cakes and other concentrates). By virtue of the power under Article 369, the Parliament extended the life of the Essential Supplies (Temporary Powers) Act, 1946 till January 26, 1955. As the subjects referred to in Article 369 of the Constitution were of national importance and it was thought that it was desirable that the Parliament should also have concurrent power to make laws with respect to them, the Constitution (Third Amendment) Act, 1954 was enacted on February 22, 1955 substituting Entry 33 of List III by the following new Entry:

"33. Trade and commerce in, and the production, supply and distribution of, -

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

It was pursuant to the new Entry 33 of List III of the Seventh Schedule to the Constitution that Parliament enacted the Central Act (i.e. the Essential Commodities Act, 1955).

It is not disputed by the State Government that if raw cashewnut is foodstuff within the meaning of the Central Act, it cannot be declared as an essential article under the Kerala Act. What is, however, 687

urged is that since the Order regulates only procurement and distribution of raw cashewnut as industrial raw material for processing in the factories it is not being dealt with as foodstuff. Hence it should not be treated as an essential commodity under the Central Act. There are at least two good reasons to reject this contention advanced on behalf of the State Government—first, the language used in section 2(a) (v) of the Central Act and secondly the purpose of the Central Act. Section 2(a) (v) of the Central Act reads: 'foodstuffs, including edible oilseeds and oils'. It is a well known rule of interpretation that associated words take their meaning from one another and that is the meaning of the rule of statutory construction, *noscitur a sociis*. When 'foodstuffs' are associated with edible oilseeds which have to be processed before the oil in them can be consumed, it is appropriate to interpret 'foodstuffs' in the wider sense as including all articles of food which may be consumed by human beings after processing. It is in this wider sense that the said term has been understood by Indian courts as can be seen from some of the decisions to which we shall presently refer. Secondly, having regard to the history of legislation relating to foodstuffs dealt with above and the object of the Central Act which regulates the production, supply and distribution of essential commodities amongst the poverty stricken Indian people, the expression 'foodstuffs' should be given a wider meaning as including even raw

materials which ultimately result in edible articles. Any interpretation that may be given in this case should not be governed by its consequence on the impugned Order but in the light of the importance of the Central Act in the context of the national economy. A narrow interpretation may result in the exclusion of several articles from the purview of the Central Act although nobody has entertained any doubt so far about their being essential commodities.

We shall now see what cashewnut means. Cashewnut is an edible seed or nut belonging to the family of anacardiaceae and grows mostly in tropical and sub-tropical regions where humidity is great. It is generally grown in the States of Kerala, Karnataka and Tamil Nadu, in India, in East Africa and in the tropics of Central and South America. Cashewnut is shaped like a kidney or a large thick bean. 'It appears as though one of its ends had been forcibly sunk into the calyx end of a fleshy pear-shaped fruit, called the cashew apple which is about three times as large as the nut and of reddish or yellow colour. The cashew apple is much used where the tree grows, in beverages, jams and jellies but is unimportant commercially. The nut has two walls or shells, the outer of which is smooth and glass-like over the surface thin and somewhat elastic but stout and of olive green

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colour until mature when it becomes strawberry roan. The inner shell is considerably harder and must be cracked like the shells of other nuts..... The fruits are picked by hand and the nuts are first detached, then thoroughly dried in the sun.....By improved methods of roasting, the nuts pass through large revolving cylinders of sheet iron with perforated sides, which are made to revolve above well-controlled flames. The oil drains into containers below and is salvaged..... Later, the inner shells are broken open by hand labour and the kernels given further heating treatment by which the skins are removed and the kernels made ready for consumption'. (Vide Encyclopaedia Britannica 1962 Edn. Vol. 4, pp. 958-959). It is not disputed that the raw cashewnut with which we are now concerned is used by the petitioners for processing in their factories in order to make it fit for human consumption. It is also stated that even the raw cashewnut kernel is eaten by human beings.

It is well known that the food eaten by human beings consists of cereals like wheat, rice or other coarse grains, pulses, oilseeds, vegetables, sugar, fruits and nuts, animal foodstuffs and sea food like meat, beef, mutton and fish and dairy products like milk, butter, eggs etc. According to Webster's Third New International Dictionary, the word 'food' means 'fodder' also. One of the meanings of the word 'food' given in that Dictionary is 'material consisting of carbohydrates, fats, proteins and supplementary substances (as minerals vitamins) that is taken or absorbed into the body of an organism in order to sustain growth, repair, and all vital processes and to furnish energy for all activity of the organism'. In the same Dictionary 'foodstuff' is defined as 'a substance with food value' and 'the raw material of food before or after processing'. One of the usages of the said word is given as 'a bountiful crop of cereal foodstuffs'. Therefore, 'foodstuff' need not necessarily mean only the final food product which is consumed. It also includes raw food articles which may after processing be used as food by human beings.

The earliest of the Indian cases cited before us on the interpretation of the expression 'foodstuffs' is Shrinivas Pannalal Chockhani & Ors. v. The Crown. In that case the conviction of the appellant of an offence punishable under

section 7 of the Essential Supplies (Temporary Powers) Act, 1946 had been challenged. The charge of which the appellant had been found guilty by the judgment under appeal was that he had transported 'bharda' or 'chuni bharda' which was a foodstuff without the required permit. The contention of the appellant was that it was just cattle feed which was not fit for human consump-

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tion and therefore it could not be said that he had violated the law on the footing that the material transported was 'tur dal' a foodstuff the transport of which alone without a permit was an offence. The said argument was rejected by the Nagpur High Court with the following observations:

"The learned counsel for the appellants further contended that as the Essential Supplies (Temporary Powers) Ordinance, 1946 [XVIII (18 of 1946)] and the Essential Supplies (Temporary Powers) Act, 1946 [XXIV (24) of 1946], dealt with "foodstuffs" and not "cattle feed" export of chuni, a cattle feed was not prohibited under the Food-grains Export Restrictions Order, 1943. The term "foodstuff" has not been defined either in the Ordinance or in the Act. In common parlance, foodstuffs mean "materials used as food". The term is not used only for material which is immediately fit for human consumption but it also applies to material which can be used as food after subjecting it to processes like grinding, cleaning etc. For instance, paddy as such is not fit for human consumption but rice in it is, and yet paddy is called foodstuff. So also tur. There is no reason to suppose that the word "food stuffs" is not used, in these laws, in this usual sense but is used in the restricted sense of material which is fit for human consumption immediately without subjecting it to any process. If such a restricted meaning is accepted, it would lead to evasion of the Law in question by mixing some foreign matter with the stuff that is immediately fit for human consumption. The test is not whether it can be immediately used for human consumption but whether it can be so used after subjecting it to the usual processes. The uncleaned tur dal (ie. tur dal without separating from it wastage and foreign matter) which was being exported on 26-12-1946 in this case was such a foodstuff and comes within the provisions of the Essential Supplies (Temporary Powers) Ordinance 1946, and the Essential Supplies (Temporary Powers) Act, 1946".

In the State of Bombay v. Virkumar Gulabchand Shah this Court was called upon to decide whether 'turmeric' was 'foodstuff' in a case arising under the Essential Supplies (Temporary Powers) Act, 1946. Vivian Bose, J. who delivered the judgment after observing:

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"So far as "food" is concerned it can be used in a wide as well as a narrow sense and, in my opinion, much must depend upon the context and background. Even in a popular sense, when one asks another, "Have you had your food", one means the composite preparations which normally go to constitute meal-curry and rice, sweetmeats, pudding, cooked vegetables and so forth. One does not usually think separately of the different preparations which enter into their making of the various condiments and spices and vitamins, any more than one would think of separating in his mind the purely nutritive elements of what is eaten from their non-nutritive adjuncts.

So also, looked at from another point of view, the various adjuncts of what I may term food proper which enter into its preparation for human consumption in order to make it palatable and nutritive, can hardly be separated from the purely nutritive elements if the effect of their absence would be to render the particular commodity in its finished state unsavoury and indigestible to a whole class of persons whose stomachs are accustomed to a more spicily prepared product".

held:

"As we have seen, turmeric falls within the wider definition of 'food' and 'foodstuffs' given in a dictionary of international standing as well as in several English decisions. It is, I think, as much a "foodstuff", in its wider meaning, as sausage skins and baking powder and tea. In the face of all that I would find it difficult to hold that an article like turmeric cannot fall within the wider meaning of the term "foodstuffs".

Following the above decision of this Court, the High Court of Calcutta held in *Atulya Kumar De & Ors. v. The Director of Procurement and Supply & Ors.* that paddy was foodstuff within the meaning of that expression used in the Essential Supplies (Temporary Powers) Act, 1946 even though paddy could not be consumed without further processing. The relevant part of the decision runs thus:

"The first point taken is that the power conferred by the Act (read with the notification) upon the State of West Bengal is only in relation to foodstuffs and that paddy is not foodstuff. It is stated that the description of paddy at "Rice in

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the "husk" is a colourable attempt to avoid this difficulty. In- '*The State of Bombay v. Virkumar Gulabchand Shah*' (AIR 1952 S.C. 335), it was held that turmeric is "foodstuff" within the meaning of the Spices (Forward Contract Prohibition) Order 1944" read with S. 2(a) of the Act. It was held that the term "foodstuff" is ambiguous and may have a wide meaning or a narrow one. Whether the term is used in a particular Statute in its wider or narrower sense cannot be answered in the abstract but must be answered with due regard to the background and context. Thus in- '*James v. Jones*' [(1894) 1 Q.B. 304], baking powder was held to be an article of food while in- '*Hinde v. Allmond*' (1918) 81 L.J.K.B. 893, it was held that tea was not. Now the act had been passed to control the production and distribution of essential commodities. What can be looked upon more of an essential commodity than both rice and paddy? In West Bengal, the two things most essential for the sustenance of human life are rice and paddy. Mr. Mukherjee admits that rice is an essential commodity & a foodstuff, but he says that paddy is not because nobody can eat paddy. But that is a very narrow view to take. Paddy is only a stage in the production of rice and the one cannot be food without the other being food as well. Nobody eats the husk in paddy; but nobody eats the skin of mango or the shell of an egg and yet they are unquestionably articles of food. In my opinion paddy is 'foodstuff' within the meaning of that expression as used in the Act and the notification."

To the same effect is the decision of the Calcutta High Court in *Nathuni Lal Gupta & Ors. v. The State & Ors.* in which wheat and wheat products were held to be foodstuffs.

The High Court of Punjab and Haryana in *Sujan Singh Matu Ram v. The State of Haryana* and the High Court of Orissa in *Bijoy Kumar Routrai & Ors. v. State of Orissa & Ors.* also lay down the same principle.

In *Tika Ramji & Ors. etc. v. The State of Uttar Pradesh & Ors.* this Court observed:

"The essential commodities therein comprised inter alia foodstuffs which would include sugar as well as sugarcane

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and both sugar and sugarcane therefore came within the jurisdiction of the Centre."

The above observation makes it manifest that even a raw material like sugarcane used in the manufacture of sugar is a 'foodstuff'.

Younus v. Sub-Inspector of Police is a case in which the question whether raw cashewnut was foodstuff or not directly arose for consideration. The learned Judge who decided the case held:

"The reasoning adopted for holding that wheat and paddy are foodstuffs applies with equal force in the case of cashewnuts. There is no scope for doubt that cashew kernel is an eatable commodity both in its raw form and also when fried. It is taken in as part of the food and is also used in the preparation of food. That its kernel should be separated from the shell or outer covering or that it should be processed before use does not make raw cashewnuts any-the-less "foodstuff."

It is also significant that 'raw cashewnut' is included in the group of edible fruits in Chapter 8 of section II dealing with vegetable products of the First Schedule to the Customs Tariff Act, 1975.

It was, however, urged that even though cashewnut was an article which could be eaten, it was an article which was eaten by very few persons on rare occasions and hence it is difficult to conceive cashewnut as an essential commodity. It is no doubt true that cashewnut having become expensive, it is now more of a luxury. Due to export of cashewnut on a large scale, it is a commodity which is in short supply in the country and therefore the price at which it sells is beyond the reach of the common man. But nevertheless it is an article of food. It is eaten in raw form and after it is fried. It is also commonly used in various preparations of food like pulav, sweets etc. There is no basis for the assertion that it is a rare commodity outside the State where it is grown. It is eaten not only in Kerala but also in other parts of the country. When cashewnut is exported, it is exported as a foodstuff. Now it cannot be that cashewnut eaten abroad is a foodstuff, and whatever is consumed within the country is not a foodstuff. It is therefore, a foodstuff and must be classified as an essential commodity. Its importance as a foodstuff can also be seen from the statements filed in these cases in which is stated that in the State of Kerala in the year 1976-77 the total quantity of raw cashewnut procured was in the order of 60,000 tonnes, the number of workers

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engaged in the cashewnut processing industry was about 1,20,000 and that there were 269 cashew factories.

It was next urged that cashewnut could be treated as an essential article only for the purpose of export and not an essential commodity under the Central Act. This again is not correct. The Central Government can make an Order under the Central Act even when an essential commodity is used for industrial purpose or for purposes of export. Essential

commodities do not cease to be essential commodities under the Central Act merely because they are exported after they are processed in India. Foodgrains (Prohibition of Use in Manufacture of Starch) Order, 1971, The Fruit Products Order, 1955, The Gur (Regulation of Use) Order, 1978, Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977, Rice (Prohibition of Use in Wheat Products) Order, 1971. Vegetable Oil (Standards of Quality) Order, 1972, Vegetable Oil Product Producers (Regulation of Refined Oil Manufacture) Order, 1973 and the Essential Commodities (Regulation of Production and Distribution for purposes of Export) Order, 1966 demonstrate the diverse purposes for which an Order can be made under the Central Act.

It was next urged that as long as the Central Government had not passed an order in respect of the same matter, it was open to the Government of Kerala to pass the impugned Order. Reliance was also placed on the decision of this Court in Tika Ramji's case (supra), in which U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 was upheld even though sugarcane was an essential commodity under the Central Act. In that case this Court was concerned with the question whether there was any repugnancy between a Central law and a State law. We are not concerned here with such a question. If a question of application of Article 254 of the Constitution had arisen, it would have been open to consider whether there was any repugnancy at all between the two laws having regard to the scope and extent of the field occupied by the Central law and the State law. But the real question which now arises for decision in these petitions is whether the Kerala Legislature ever intended to treat any article which comes within the scope of the Central Act as an essential article. The language of section 2(a) of the Kerala Act steers clear of all essential commodities under the Central Act by excluding them from the operation of the Kerala Act. The power of the Central Government to make an order under the Central Act in respect of raw cashewnut which is a foodstuff cannot be doubted. If that is so the Kerala Act cannot apply to it. The argument that as long as the Central Government had not made an Order in respect of raw cashew-

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nut, the Kerala Government can pass an Order is not available in the circumstances by reason of the definition of the 'essential article' in the Kerala Act. It might have been open to consideration if the said definition had not contained the words in the parenthesis.

On a careful consideration of the matter, we are satisfied that raw cashewnut is a foodstuff falling under section 2(a) (v) of the Central Act and hence cannot be declared as an essential article under section 2(a) of the Kerala Act. It follows that no Order can be made by the Government of Kerala under section 3 thereof in respect of raw cashewnut. The action of the Kerala Government is beyond the power conferred on it by the Kerala Legislature.

In the result, we hold that the declaration made by the Government of Kerala to the effect that raw cashewnut is an essential article under the Kerala Act and the impugned Order made thereunder are liable to be quashed and they are accordingly quashed.

All the other contentions including those relating to the alleged infringement of the fundamental rights of the petitioners raised in these petitions are left open.

Before concluding, we propose to advert to the last submission made before us on behalf of the State Government. It was submitted that the cashewnut industry in Kerala was a

labour-oriented industry and if the declaration and the Order were struck down, a number of workmen would be adversely affected. It was also submitted that the entire economy of the State of Kerala which largely depended on the export trade in cashewnuts would be disrupted. If any such serious problem arises, it can always be set right by the competent Legislature or the appropriate Government taking needful remedial action in the light of Entry 33 of List III of the Seventh Schedule to the Constitution.

The petitions are accordingly allowed. In the circumstances of the case, there shall be no order as to costs.

P.B.R. Petitions allowed.

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JUDIS