

SAURASHTRA OIL MILLS ASSOCIATION, GUJARAT

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v.

STATE OF GUJARAT AND ANR.

FEBRUARY 19, 2002

[V.N. KHARE AND ASHOK BHAN, JJ.]

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*Gujarat Essential Articles (Licensing, Control Stock Declaration) Order, 1981:*

*Clause 24(1)—Order issued under—Validity of.*

C

*Pulses and Edible Oils (Storage Control) Order, 1977:*

*Central Order—Deletion of item from—Effect on State Order.*

*State of Gujarat—Order by—Amendment of earlier order—Substitution of storage limits applicable to dealers in Edible Oils and Edible Oilseeds—Held, valid—Deletion of Item 'Edible Oilseeds and Edible Oils' from Central Order—State Order was not impliedly repealed—There was no conflict between State and Central Order—Both Central Government and State Government had powers to make orders.*

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*Constitution of India, 1950—Articles 136 and 141.*

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*Special Leave Petition—Dismissal in limine—Such a dismissal is not declaration of law—Such a dismissal does not operate as a binding precedent—Doctrine of merger held inapplicable.*

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In exercise of its power under sub-clause (i) of Clause 24 of the Gujarat Essential Articles (Licensing, Control Stock Declaration) Order, 1981 State of Gujarat issued an Order dated 26th July, 2000. This Order amended an earlier Order dated 14th August, 1998 substituting the storage limits in respect of Edible Oilseeds and Edible Oils. The controversy in this case has arisen because on 10th November, 1997 the Central Government decided to amend its Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order of 1977 whereby it deleted the items 'Edible Oilseeds and Edible Oils' from the Order. Accordingly a letter was addressed on 13th November, 1997 by the Directorate of Vanaspati, Vegetable Oils and Fats to the Secretaries, Food and Civil Supplies Department of all the States for compliance with the Central

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**A** Amendment Order. Further by a Notification dated 9.6.1978, Central Government delegated its powers under Section 3 of the Essential Commodities Act, 1955 to State Government for passing orders in relation to foodstuffs subject to prescribed conditions.

**B** The Appellant-Association filed a writ petition challenging the order of 1981 contending that (i) the effect of deleting the words 'Edible Oilseeds and Edible Oils' by the Central Government from the Preamble and various clauses of the Central Order of 1977 was that the State Government too was required to delete these words from the State Order of 1981, (ii) the impugned order was violative of Articles 14, 19(i)(g), 246, 251 and 256 of the Constitution.

**C** Respondents contested the petition contending that (i) there was no conflict between the Central and the State Orders, because the State Government had delegated its power under Section 3 read with Section 5 of the Essential Commodities Act read with the Orders of the Government of India made on 3.11.1974 and 9.6.1978; (ii) it was empowered to pass the impugned Order under clause 24(1) of the State Order of 1981 as these measures were required to be taken for controlling the regular supply and prices of the essential commodities; and (iii) The State of 1981 was issued after prior concurrence of the Central Government.

**E** Union of India supported the action of the State Government in its entirety. It was stated that by its letter dated 19th June, 1998 State of Gujarat brought to the notice of Government of India, the unabated rise in prices of edible oil and requested to reintroduce stock control at the earliest. Government of India by its letter dated 27th July, 1998 responded stating that powers under sub-section (1) of Section 3 had already been delegated to the State Government. Accordingly, the State Government was advised that, if it found appropriate, it could regulate the storage, distribution etc. of 'Edible Oilseeds and Edible Oils'.

**G** A single judge of the High Court allowed the Writ Petition holding that the provisions of State Order of 1981 could not operate because the powers delegated earlier stood withdrawn in view of the amendment in the Central Order of 1977. Against this judgment State of Gujarat preferred appeals which were allowed by the Division Bench.

**H** In appeal to this Court it was contended on behalf of the Appellant-Association that a similar action of the Government of Andhra Pradesh relating to similar provision was struck down by High Court of Andhra

Pradesh and the Special Leave Petition against the said Order of the High Court has also been dismissed by this Court. Therefore with a view to maintaining consistency in orders passed by this Court these appeals should be allowed and the impugned judgment of the Gujarat High Court set aside. A

#### Dismissing the appeals, the Court

**HELD:** 1. Dismissal of special leave petition without a speaking order would only mean that the Court was not inclined to exercise its discretion in granting leave to file the appeal. It does not attract the doctrine of merger and the view expressed in the impugned order does not become the view of this Court. The dismissal of the special leave petition by a non-speaking order would remain a dismissal simpliciter in which permission to file the appeal to this Court is not granted. This may be because of various reasons. It would not mean to be the declaration of law by this Court. [1110-B-C] B C

2. Thus, the dismissal of the special leave petition *in limine* against the judgment of the High Court of Andhra Pradesh would not operate as a binding precedent taking away the jurisdiction of a co-equal Bench to adjudicate on the same point on merits in a case where leave to file the appeal has been granted. Submission that different laws would be prevalent in different States because of the different views expressed by different High Courts thus creating uncertainty and confusion cannot be accepted as the law declared by this Court would be the law prevalent in the country.[1110-F-G] D E

*Kunhayammed and Ors. v. State of Kerala and Anr.*, [2000] 6 SCC 359, relied on.

3. The Gujarat State Essential Articles (Licensing Control Stock Declaration) Order, 1981 had been issued after the delegation of the power to the State Governments by the Central Government and with prior concurrence of the Central Government. Stock limits were provided in the tabulated form in Clauses 3 and further the State Government or its officers were authorised under Clause 24(1) of the State Order of 1981 to issue directions regarding maintenance of stock, storage, display of prices etc. Thus the State Government had the legislative sanction to promulgate the State Order of 1981 as well as the authority to issue directions to the dealers regarding maintenance of stock, storage, display of prices etc. Under the provisions of the State Order. The impugned Order of 26th July, 2000 had been issued in exercise of the jurisdiction conferred under the State Order of 1981 and therefore valid. The State Order of 1981 already contained a stock limit in the tabulated form in Clause 3 thereof in the context of obtaining a F G H

**A** licence. By orders dated 14th August, 1998 and 26th July, 2000 the State Government only modified the stock limits. [1117-C-E; 1116-C-D]

*District Collector, Chittoor and Ors. v. Chittoor District Groundnut Traders Ass. Chittoor and Ors.*, [1989] 2 SCC 58, distinguished.

**B** 4. The State Order of 1981 was issued by the State Government with the prior concurrence of the Central Government under Section 3 read with Section 5 of the Essential Commodities Act. It provided for the licensing, control and stock declaration of certain essential commodities including 'Edible Oilseeds and Edible Oils.' The Pulses, Edible Oilseeds and Edible oils (storage Control) Order, 1977 issued by the Central Government which extended to whole of India, was issued for maintaining supplies and for securing equitable distribution and availability at fair prices of pulses, edible Oilseeds and edible Oils. Thus both the Central Government and the State Government had issued orders in respect of 'Edible Oilseeds and Edible oils'. By virtue of delegation, both the Central Government and the State Government had powers to make orders under Section 3(1) of the Act. The State issued the orders by virtue of delegation of powers under Section 5 by the Central Government to the State Government. This apart, the State Legislature had the power to make laws concurrently with the Parliament, under Entry 33 of the Concurrent List in respect of foodstuffs, Edible Oilseeds and Edible Oils. The State Government, therefore, also had the executive power co-extensive with its legislative power in respect of these items.

**E** [1111-C; H; 1112-A-C]

*Ch. Tika Ramji and Ors. etc. v. The State of Uttar Pradesh and Ors.*, [1956] SCR 393, relied on.

**F** 5. Notification issued by Central Government dated 9th June, 1978 delegated powers to the State Government under Section 5 of the Essential commodities Act, 1955. The exercise of powers to issue orders was made subject to directions that may be issued by the Central Government. A perusal of the notification shows that prior concurrence of the Central Government was required only before making an order relating to any matters specified in clause (a) (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under clause (d). There was no requirement of prior concurrence imposed in respect of orders on matters which relate to intrastate. The State Order of 1981 was enacted with the prior concurrence of the Central Government.

**G** Clause 24 of the State Order conferring powers on the State

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Government to issue directions would therefore be deemed to have been issued after obtaining prior concurrence. Directions, which were issued under Clause 24 did not require any concurrence under the conditions imposed in the Notification delegating powers to the State Government. There was no direction of the Central Government to the effect that the State Government should not impose any stock limit under clause 24 of the State Order. In fact, the Central Government had concurred with the State Government in issuance of the directions under the order dated 14th August, 1998 made under clause 24 of the State Order of 1981. [1113-A-E]

6. By its order dated 10th November, 1997 the Central Government amended its Storage Control Order, 1977, Therefore, on and from 10th November, 1997 there remained no Central Order under Section 3 in respect of 'Edible Oilseeds and Edible Oils'. The State Order of 1981 which also contained stock limit provisions for licensing purposes similar to those tabulated in the Central Order, 1977 however continued to operate. There was no conflict between the provisions of the Central Government Order of 1977 relating to 'Edible Oilseeds and 'Edible Oils' and those covering the same fields in the State Order of 1981. In any case question of conflict or repugnancy would not arise after these items were removed from the Central Order. The question of conflict or repugnancy would not arise as the Central Order 1977 ceased to govern the field as regards the 'Edible Oilseeds and Edible Oils'. Only the provisions of the State Order of 1981 remained in the field. The Order dated 10th November 1997 did not purport to amend the State Order of 1981. The question of implied repeal of the provisions of the State Order of 1981 relating to 'Edible Oilseeds and Edible Oils' would not arise. The omission of 'Edible Oilseeds and Edible oils from the Central Government Order of 1977 would have no effect on the efficacy of the State Order of 1981 which continued to operate having been framed by the State Government under Section 3(1) read with Section 5 of the Essential Commodities Act.

[1113-F-H; 1114-A-C]

7. By letter dated 13th November, 1997, no direction had been issued by the Central Government to the State Government to delete the words 'Edible Oilseeds and Edible Oils' from the State Order of 1981 which was in operation. The Compliance of the circular letter dated 13th November, 1997 would in the context mean that the State should take into account the deletion made in various clauses of the Central Order of 1977 so that it may not insist upon the compliance of the Central Order as it stood prior to its amendment which imposed a duty on the dealers to give intimation regarding stocks of

**A** the 'Edible Oilseeds and Edible Oils' to the Collector (Clause 4 (2) of the Central Order) in respect of the stocks held by him. This letter cannot be construed to be a direction to the State Government to amend the State Order, as the State Order of 1981 did not derive its life from the Central order of 1977. [1114-D-G-H; 1115-A-B]

**B** 8. That the Central Government concurred with the State Government to issue directions for putting the stock limit of Edible Oilseeds and Edible oils can be gathered from the record. The concurrence of the Central Government on issuance of the orders dated 14th August, 1988 and 26th July, 2000 fixing the stock limits of 'Edible Oilseeds and Edible Oils' though not strictly required was writ large in the communications of the concerned Union Minister and the Secretary of the concerned Department of the Central Government. The Central Government in its affidavit filed in the proceedings stood by the Government in respect of issuance of the directions under Clause 24(1) of the State Order of 1981 specifying the stock limits.

[1115-C; 1116-A-B]

**D** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3959-3960 of 2001.

From the Judgment and Order dated 19.4.2001 of the Gujarat High Court in L.P.A. No. 330/2001 in S.C.A. No. 9764 of 2000 with L.P.A. No. 331/2001 in S.C.A. No. 9446 of 2000.

**E** M.L. Verma, Vedule Srinivas, Ms. Sangeeta Pandey and Mr. Suchitra Atul Chitale for the Appellant.

Dushyant Dave, Ms. Hemantika Wahi and Ms. Anu Sawhney for the Respondents.

**F** The Judgment of the Court was delivered by

**G** **BHAN, J.** 1. The appellants herein filed a writ petition in the High Court of Gujarat challenging the constitutional validity of an order made on 26th July, 2000 in pursuance of sub-clause (1) of clause 24 of the Gujarat Essential Articles (Licensing, Control Stock Declaration) Order, 1981 (for short 'the State Order of 1981') amending an earlier order dated 14th August, 1998 by substituting the storage limits in respect of dealers and thereby providing that no dealer shall either by himself or by any person on his behalf store or have in his possession at any time any edible Oilseeds or edible oils in excess of the quantities specified thereunder, which were 1000

**H** quintals for wholesaler of edible Oilseeds including groundnut in shell, and

100 quintals for retailer (all edible Oilseeds taken together); and 300 quintals for the wholesaler of edible Oilseeds including groundnut in shell, and 100 quintals for retailer (all edible Oilseeds taken together); and 300 quintals for the wholesaler and 20 quintals for the retailers (all edible oils including hydrogenated vegetable oils). The order dated 14th August, 1998 in which the amendment was made by the impugned order of 26th July, 2000 provided the stock limits for the aforesaid items which were 2000 quintals for edible Oilseeds including groundnut in shell for the wholesaler and 100 quintals for the retailer. It provided the stock limits of 600 quintals in respect of edible oils for the wholesaler and 20 quintals for the retailer.

2. Before advertng to the grounds of challenge, it is necessary to trace the history of various orders issued by the Central Government and the State of Gujarat under Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act').

3. By virtue of its powers under Section 3 of the Act the Central Government issued the Pulses and Edible Oils (Storage Control) Order, 1977, which contained provisions regarding licence to be obtained by the dealers and the stock limits that will have to be observed by them. The Government of the State of Gujarat issued "Gujarat Pulses and Edible Oils Dealers Licensing Order, 1977" in exercise of its delegated powers and with express reference to the control order already issued by the Central Government in the year 1977. The Central Government repealed the Pulses and Edible Oils (Storage Control) Order of 1977 and issued another Order known as Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977 which contained the provisions relating to the licensing of dealers and stock limits. The only difference between this order and the earlier order of 1977 is that this Order included Edible Oilseeds also within its purview.

4. The Central Government issued GSR 800 dated 9.6.1978 whereby it delegated its power under section 3 of the Act to the State Governments in exercise of its powers under section 5 of the said Act, which reads as under:

"GOVERNMENT OF INDIA  
MINISTRY OF AGRICULTURE AND IRRIGATION  
(DEPARTMENT OF FOOD)

ORDER

New Delhi, the 9th June, 1978

A G.S.R. 800—In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955) and in supersession of the Order of the Government of India in the late Ministry of Agriculture (Department of Food) No. G.S.R. 316 (B), dated the 20th June, 1972, the Central Government hereby directs that the powers conferred on it by sub-Section (1) of Section 3 of the said Act to make orders to provide for the matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) and sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the Conditions :-

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1. that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf;
  2. that before making an order relating to any matter specified in the said clauses (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government and
  3. that in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorise only an officer of the Government.

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No. 3 (Genl) (I)/78-D & R(I)-59  
(Signed) K. Balkrishnan

Deputy Secretary to the Government of India”

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4. The “Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order of 1977” issued by the Central Government and the “Gujarat Pulses and Edible Oils Dealers Licensing Order of 1977”, which was issued with specific reference to the Central Control Order, were in operation from 1977 to 1981 governing the licensing of the dealers in Edible Oils and Edible Oilseeds and prescribing the storage controls.

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6. In the year 1981, the State Government of Gujarat passed State Order of 1981 wherein clause 3 required a licence to be taken for dealing in edible Oilseeds and edible oils. Clause 24 of this order provided for imposition of limits on stocks for Pulses, Edible Oilseeds and Edible Oils. This Control Order was issued by repealing the various existing Control Orders covering

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various essential commodities including the Gujarat Pulses and Edible Oil Dealers Licensing Order of 1977. The State Order was issued with the prior concurrence of the Central Government. A

7. The Central Government after reviewing the situation prevailing in the entire country with regard to the availability of the edible Oilseeds and edible oils decided to remove these commodities from the requirements of licensing and storage control. On 10th November, 1997 the Central Government decided to amend its "Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order of 1977" and accordingly deleted the items 'Edible Oilseeds and Edible Oils' in exercise of its powers under section 3 of the Act. A letter was addressed on 13th November, 1997 by the Directorate of Vanaspati, Vegetable Oils & Fats to the Secretaries, Food & Civil Supplies Department of all the States for compliance with the central amendment order dated 10.11.1997. B C

8. The point raised in the writ petition was whether the Government of Gujarat was justified in issuance of a notification under clause 24 of the State Order of 1981 requiring compliance regarding stock limits from the dealers of Edible Oil and Edible Oilseeds despite the fact that the Central Government by its order dated 10.11.1997 had directed omission of edible Oilseeds and edible oils from the purview of the Pulses and Edible Oils (Storage Control) Order of 1977. D E

9. Invoking the provisions of Articles 14, 19(1)(g), 226, 251, 254 and 256 of the Constitution of India, the appellants challenged the "inaction" on the part of the State Government in not deleting "Edible Oilseeds and Edible Oils" from the list of essential articles in the State Order of 1981 and sought for a declaration that the State Order of 1981 shall not apply to Edible Oilseeds and Edible Oils. That the directions issued in the impugned order dated 26.7.2000 were illegal and void. According to the appellants, the effect of the deleting of the words "Edible Oilseeds and Edible Oils" by the Central Government from the preamble and various clauses of the Central Order of 1977, required the State Government to delete these words from the State Order of 1981. The "inaction" on their part in not deleting the words Edible Oilseeds and Edible Oils from the State Order of 1981 was not permissible. It was contended that whenever there was a conflict between the Central and the State Acts, Rules or Notifications issued thereunder, the conflicting rules, policies, orders or notifications would be illegal and void ab-initio to the extent of inconsistency with the Central Act. According to the appellants, the F G H

A effect of the amendment in the Central Order of 1977 was that no licence was necessary for "Edible Oilseeds and Edible Oils" as earlier required by clause 3 of the Central Order which was now confined only to the pulses. That whenever Central Control Order is amended, such amendment is deemed to be applicable to the Control Order of the State Government, and that the directions issued by the Central Government are binding upon all the State Governments. Any direction issued by the State Government in disregard of the directions of the Central Government would frustrate the very purpose of the amendment in the Central Order of 1977. Referring to the provisions of Articles 251, 255 and 256, it was contended that the executive power of the State is to be exercised so as to ensure compliance with the laws and directions of the Union of India and therefore the impugned order was required to be quashed and set aside being void ab-initio and in violation of the constitutional provisions. It was stated that since Central Government had now permitted import of all types of edible oils such as cotton seed oil, sunflower oil, palmoline, soyabean oil etc. by lifting all the restrictions on their import and as a result thereof it appears that the Central Government had thought it fit to delete "Edible Oilseeds and Edible Oils" from the Central Order of 1977, with a view to ensure smooth business operation without harassment to the dealers, traders and producers from the Government Officers.

10. The State of Gujarat in its affidavit in reply filed in the writ petition contested the petition by contending that there was no conflict between the Central and the State Orders, because the State Government had passed the orders in exercise of its power under section 3 read with Section 5 of the said Act read with the Orders of the Government of India made on 3.11.1974 and 9.6.1978 under Section 5. According to the State Government, it was empowered to pass the impugned order under clause 24(1) of the State Order of 1981 and that these measure were required to be taken for controlling the regular supply and prices of the essential commodities. It was pointed out that the State Order of 1981 was issued after prior concurrence of the Central Government with a view to maintain supplies of essential commodities and securing their equitable distribution and availability at fair price.

11. Union of India in its reply supported the action of the State Government in entirety. It stated that considering the fact that the State Governments would be the proper authorities to assess the situation prevailing in their respective states in respect of certain essential commodities including "Edible Oilseeds and Edible Oils" the Central Government had notified several orders under Section 5 of the said Act delegating powers conferred by Section

3(1) of the said Act to the State Governments. Such orders were notified in the years 1972, 1974 and 1978. The State Governments were duly empowered to take appropriate measures to achieve the purposes mentioned in Section 3 of the said Act subject to the condition specified therein. It was state that, in the earlier orders of 1972 and 1974 there was a condition to the effect that no Order should be issued in pursuance of the powers delegated if it was inconsistent with any of the Orders issued by the Central Government under the Act. However, this condition was deleted in the Order of 1978, while retaining the condition of prior concurrence of the Central Government before issuing an Order, as stated therein. That the Minister for Food, Civil Supplies and Consumer Affairs of the State of Gujarat by his letter dated 19th June, 1998 brought to the notice of the Minister for Food and Consumer Affairs Department of Sugar and Edible Oil, Government of India, the unabated rise in prices of edible oil and in light thereof, he expressed his view that it was absolutely imperative that the State Government must have the power to enforce strict control over the unscrupulous oil traders and millers. It was stated that after the amendment in the Central Stock Control Order of 1977 the oil traders and millers had a free hand, resulting in unprecedented price rise. The Government of India was therefore requested to reintroduced stock control at the earliest. In response to that letter, the Minister for Food and Consumer Affairs, Government of India, sent a reply on 27th July, 1998 drawing the attention of the State Minister to the Central Government's Order dated 9.6.1978 whereby the powers under sub-section (1) of Section 3 of the said Act were already delegated to the State Government under Section 5. The State Government was advised that, if it found appropriate, it could regulate the storage, distribution etc. of "Edible Oilseeds and Edible Oils".

12. The Single Judge allowed the writ petition holding that the provisions of the State Order of 1981 could not operate because the powers delegated earlier stood withdrawn in view of the amendment by the Central Government in its own Central Order of 1977.

13. Aggrieved against the order of the Single Judge the State of Gujarat filed the letters patent appeals, which were accepted by the Division Bench. Aggrieved by the order passed by the Division Bench the present appeals have been filed.

14. Relying upon the judgment of the High Court of Andhra Pradesh in Writ Appeal Nos. 1546 to 1549 of 1998 decided on 30th June 1999 (copy of which has been placed on the record) wherein a similar action of the Government of Andhra Pradesh relating to the similar provision was struck

- A down and against which Special Leave Petitions (C) No..... CC 3461-3464 of 2000 was dismissed by this Court, counsel appearing for the appellants contended that to maintain consistency in the orders passed by this Court these appeals should be accepted and the impugned judgment of the Gujarat High Court be set aside otherwise different laws declared by different High Courts in different States would prevail leading to uncertainty and confusion.
- B The submission is misconceived. Repeatedly, it has been held that dismissal of special leave petition without a speaking order would only mean that the Court was not inclined to exercise its discretion in granting leave to file the appeal. It does not attract the doctrine of merger and the view expressed in the impugned order does not become the view of the Court. The dismissal of
- C the special leave petition by a non-speaking order would remain a dismissal simplicitor in which permission to file the appeal to this Court is not granted. This may be because of various reasons. It would not mean to be the declaration of law by this Court. In a recent judgment of three member Bench in *Kunhayammed and Ors. v. State of Kerala and Anr.*, [2000] 6 SCC 359, after exhaustive consideration of the entire case law this Court has reaffirmed
- D this position. Summing up the conclusion in Clause (iv) of para 44, it was held:

- E “(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.”

- F Thus, the dismissal of the special leave petition *in limine* against the judgment of the High Court of Andhra Pradesh would not operate as a binding precedent taking away the jurisdiction of a co-equal Bench to adjudicate on the same point on merits in a case where the leave to file the appeal has been granted. Submission that different laws would be prevalent in different States because of the different views expressed by different High Court thus creating uncertainty and confusion cannot be accepted as the law declared by this
- G Court would be the law prevalent in the country.

- H 15. It was then contended on behalf of the appellant that the State Order of 1981 to the extent that it retains the essential commodities “Edible Oilseeds and Edible Oils” is repugnant to the Central Order of 1977 from which these items were removed. Analogy was drawn from the legislative repugnancy between the laws of the Parliament and the State Legislature on

the same subject contained in the Concurrent List and it was contended that in case of repugnancy the Central Law will prevail and the State must obey the executive directions of the Central Government in view of the constitutional scheme. It was argued that the State order of 1981 to the extent that it retains these food items which stood repealed by the Central Law after these were deleted from it creates conflict between the Central Order and the State Order. The contention was that the State was duty bound to obey the directions issued by the Union of India and delete "Edible Oilseeds and Edible Oils" from the State Order of 1981.

16. The State Order of 1981 was issued by the State Government with the prior concurrence of the Central Government under Section 3 read with Section 5 of the Essential Commodities Act. It provided for the licensing, control and stock declaration of certain essential commodities including "Edible Oilseeds and Edible Oils". It was issued as the State Government was of the opinion that the same was necessary and expedient for maintaining supplies of certain essential commodities and for securing their equitable distribution and availability at fair prices. Clause 3(1) of the State Order of 1981 provided that no person shall carry on business as a dealer in certain essential commodities including "Edible Oilseeds and Edible Oils" if the stock of such essential articles in his possession at any time exceeded the quantities specified in the table given below Clause 3. Clause 24 of this order provided.

"24. Power to issue directions to dealer or producer :-

1. The State Government, the Director of Civil Supplies, the Director of Food, the Collector of a district or any licensing authority may in accordance with the provisions of this order and for ensuring fair and equitable distribution of essential article by general or special order, issue to any dealer or producer or class of dealers or producers such directions regarding maintenance of accounts, maintenance of stocks, storage sale submission of returns furnishing information, display of prices, issuance of invoice or cash memo, weighment, disposal, delivery or distribution of any essential article as it or he may deem fit.
2. Every dealer or produce to whom any direction is issued under sub-clause (1) shall comply with such direction."

17. The Central order of 1977, which extended to whole of India, was issued for maintaining supplies and for securing equitable distribution and availability at fair prices of pulses, edible oilseeds and edible oils. The Clause

A 3 of the Central order of 1977 required a person to obtain licence under the State Order for doing business as a dealer in these items if the stocks of pulses or edible oilseeds or edible oils in his possession exceeding the tabulated quantities.

B 18. Thus both the Central Government and the State Government had issued orders in respect of "Edible Oilseeds and Edible Oils". By virtue of delegation, both the Central Government and the State Government had powers to make orders under Section 3(1) of the Act. The State had issued the orders by virtue of delegation of powers under Section 5 by the Central Government to the State Government. This apart, the State Legislature had the power to make laws concurrently with the Parliament, under Entry 33 of the Concurrent List in respect of foodstuffs. Edible Oilseeds and Edible Oils. The State Government, therefore, also had the executive power co-extensive with its legislative power in respect of these items.

D 19. The Constitution Bench of this Court in *Ch. Tika Ramji and Ors. etc. v. The State of Uttar Pradesh and Ors.*, [1956] SCR 393, held that the provincial legislatures as well as central legislature would be competent to enact laws on the same subject mentioned in the concurrent list and the exercise of concurrent jurisdiction by the central legislature, [Parliament] would not deprive State Legislature of similar powers. Both would be competent to enact such pieces of legislation and no question of legislative competence would arise. The test of repugnancy would be whether the Parliament and the State Legislature, in legislating under an Entry in the Concurrent List, exercise their powers over the same subject matter or whether the laws enacted by Parliament were intended to be exhaustive so as to cover the entire field. The question of repugnancy under Article 254 of the Constitution would not arise where Parliamentary Legislation and State Legislation occupied different fields and dealt with separate and distinct matters even though of a cognate and allied character. After laying down the above principle it was held that none of the provisions of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 or the Orders issued under the Essential Commodities Act, overlapped, the Centre Act/Order, being silent with regard to some of provisions which were enacted by the State and the State being silent with regard to some of the provisions which were enacted by the Centre. It was held that there being no repugnancy at all, the U.P. Sugarcane (Regulation, Supply and Purchase) Order, 1954 could not be validly repealed by the Central Act, as was purported to be done by Clause 7 of the H Sugarcane Control Order, 1955.

20. Notification issued by Central Government dated 9th June, 1978 A  
 delegated powers to the State Government under Section 5 of the said Act  
 (the contents of which have been reproduced in para 4 above). The exercise  
 of powers to issue orders was made subject to directions that may be issued  
 by the Central Government. A perusal of the notification shows that prior  
 concurrence of the Central Government was required only before making an B  
 order relating to any matters specified in clause (a), (c) or (f) or in regard to  
 distribution or disposal of foodstuffs to places outside the State or in regard  
 to regulation of transport of any foodstuff under clause (d). There was no  
 requirement of prior concurrence imposed in respect of orders on matters  
 which relate to intrastate. The State Order of 1981 was enacted with prior  
 concurrence of the Central Government. Clause 24 of the State Order C  
 conferring powers on the State Government to issue directions would therefore  
 be deemed to have been issued after obtaining prior concurrence. Directions,  
 which were issued under Clause 24 of the State Order of 1981 did not require  
 any concurrence under the conditions imposed in the Notification dated 9th  
 June, 1978 delegating powers to the State Government under Section 5 of the D  
 Act. There was no direction of the Central Government to the effect that the  
 State Government should not impose any stock limit under Clause 24 of the  
 State Order. In fact, the Central Government had concurred with the State  
 Government in issuance of the directions under the Order dated 14th August,  
 1998 made under Clause 24 of the State Order of 1981. Even before the  
 Court the Central Government had filed an affidavit showing that it was E  
 agreeable to the issuance of such directions by the State Government and the  
 Order dated 14th August, 1998 was justified.

21. By an Order dated 10th November, 1997 issued under Section 3 of  
 the Act the Central Government amended its Storage Control Order, 1977 by  
 deleting the words "Edible Oilseeds and Edible Oils" from its preamble, title F  
 and from all other clauses so as to confine the Order to pulses only. Therefore,  
 on and from 10th November, 1997 there remained no Central Order under  
 Section 3 in respect of "Edible Oilseeds and Edible Oils". The State Order  
 of 1981 which also contained stock limit provisions for licensing purposes  
 similar to those tabulated in the Central Order, 1977 however continued to G  
 operate. The point is whether the omission of the "Edible Oilseeds and Edible  
 Oils" from the Central Order would impliedly repeal the provisions relating  
 to "Edible Oilseeds and Edible Oils" from the State Order or would it cause  
 any repugnancy between the two orders. The question of repugnancy would  
 not arise when the field is not governed by both the Central and the State  
 Orders in respect of the same subject matter. There was no conflict between H

- A the provisions of the Central Government Order of 1977 relating to “Edible Oilseeds and Edible Oils” and those covering the same field in the State Order of 1981. In any case question of conflict or repugnancy would not arise after these items were removed from the Central Order. The question of conflict or repugnancy would not arise as the Central Order of 1977 ceased to govern the field as regards the “Edible Oilseeds and Edible Oils”. Only the provisions of the State Order of 1981 remained in the field. The Order dated 10th November, 1997 did not purport to amend the State Order of 1981. The question of implied repeal of the provisions of the State Order of 1981 relating to “Edible Oilseeds and Edible Oils” would not arise. The omission of “Edible Oilseeds and Edible Oils” from the Central Government order of 1977 would have no effect on the efficacy of the State Order of 1981 which continued to operate having been framed by the State Government under Section 3(1) read with Section 5 of the Essential Commodities Act.

22. Referring to the letter dated 13th November, 1977 issued by the Central Government through Ministry of Food and Consumer Affairs, Department of Sugar and Edible Oil Seeds and Edible Oils Directorate of Vanaspat Vegetable Oils and Fats addressed to the Secretary, Food and Civil Supplies Department of all the States and Union Territories to comply with the directions omitting the words “Edible Oilseeds and Edible Oils” from the Central Order of 1977, it was contended by Shri M.L. Verma, senior counsel appearing for the appellants that it was the duty of the State Government to carry out the directions issued by the Central Government and delete the words “Edible Oilseeds and Edible Oils” from the State Order of 1981. We do not find any substance in this submission as well. By this letter the State Governments and the Union Territories were told that since from the Clauses of Central Order the words “Edible Oilseeds and Edible Oils” had been deleted, the State Governments and the Union Territories should ensure compliance with the amendment in so far as the Central Order of 1997 was concerned in relation to “Edible Oilseeds and Edible Oils”. No direction had been issued to the State Government to delete the words “Edible Oilseeds and Edible Oils” from the State Order of 1981 which was in operation. The compliance of the circular letter dated 13th November, 1997 would in the context mean that the State should take into account the deletion made in various clauses of the Central Order of 1977 so that it may not insist upon the compliance of the Central Order as it stood prior to its amendment which imposed a duty on the dealers to give intimation regarding stocks of the “Edible Oilseeds and Edible Oils” to the Collector (Clause 4(2) of the Central Order) in respect of the stocks held by him. The letter dated 13th November,

1997 cannot be construed to be a direction to the State Government to amend the State Order, as the State Order of 1981 did not derive its life from the Central Order of 1977. The State Order of 1981 had been issued by the State Government under Section 3(1) read with Section 5 of the Essential Commodities Act coupled with the delegation of powers to the State to issue such orders and the same continued to operate in the absence of any direction to delete these items from the State Order by withdrawal or by delegation.

23. That the Central Government concurred with the State Government to issue directions for putting the stock limit of Edible Oilseeds and Edible Oils can be gathered from the communications exchanged between State Minister for Food, Civil Supplies and Consumer Affairs of the State of Gujarat and the Minister for Food and Consumer Affairs Department of Sugar and Edible Oil, Government of India. The State Minister in his letter dated 19th June, 1998 had brought to the notice to the Central Minister that in view of the unabated rise in prices of edible oils it was necessary that the State Government must have the powers to enforce strict control over the unscrupulous oil traders and millers. It was stated that after the amendment in the Central Stock Control Order of 1977 the oil traders and millers had a free hand resulting in unprecedented price rise. The Government of India was, therefore, requested to reintroduce stock control at the earliest. In response to that letter, the Central Minister sent a reply on 26th July, 1998 drawing the attention of the State Minister to the Central Government's Order dated 9.6.1978 whereby the powers under sub-section (1) of Section 3 of the said Act were already delegated to the State Government under Section 5. The State Government was advised that, if it found appropriate, it could regulate the storage, distribution etc. of "Edible Oilseeds and Edible Oils". It was stated that the State Government would be the appropriate authority to take decision regarding the permissible stock limits and the turnover period within the area of its jurisdiction. Only thereafter the State Government issued the letter dated 14th August, 1998 in exercise of its power under Clause 24(1) of the State Order of 1981 which was later on amended by the impugned order dated 26th July, 2000.

24. Although, we are of the opinion that no prior concurrence was required before issuing the order dated 14th August, 1998 and followed by the Order dated 26th July, 2000 fixing the stock limits of "Edible Oilseeds and Edible Oils" but even if there was required to be prior concurrence there could never be a clearer concurrence to the State Government's request for applying the State Order of 1981 which was issued by the State with prior

A concurrence after the delegation of the powers to it under the notified order dated 9th June, 1978. The concurrence of the Central Government on issuance of the orders dated 14th August, 1998 and 26th July, 2000 though not strictly required was writ large in the communications of the concerned Union Minister and the Secretary of the concerned Department of the Central Government.

B The Central Government in its affidavit filed in these proceedings stood by the State Government in respect of issuance of the directions under Clause 24(1) of the State Order of 1981 specifying the stock limits.

25. The State Order of 1981 already contained a stock limit in the tabulated form in Clause 3 thereof in the context of obtaining a licence.

C Under Clause 24(1) of the State Order of 1981 the State Government could issue directions to dealers or purchasers, *inter alia*, regarding maintenance of stock, storage, display of prices etc. and every dealer or producer to whom such direction was issued, was required to comply with the same. By orders dated 14th August, 1998 and 26th July, 2000 the State Government only modified the stock limits.

D 26. Reliance placed by the counsel for the appellants on *District Collector, Chittoor and Ors. v. Chittoor District Groundnut Traders Ass. Chittoor and Ors.*, [1989] 2 SCC 58, in support of his case is misplaced. In the said case this Court was concerned with the provisions of the Andhra Pradesh Scheduled Commodities Dealers (Licencing the Distribution) Order, 1982 and the question regarding the validity of imposition of restriction on export of groundnut seed and oil to outside the State and directions for compulsory levy at specified price. In paragraph 6 it was noted that :

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F “.....The 1982 Order which was framed by the State Government in exercise of the delegated powers does not contain any provision placing any restriction on the transport or movement of the edible oil or oil seeds nor it provides for imposition of compulsory levy, further it does not fix any price. The directions issued by the government placing restriction on the movement of oil seeds and oil and imposing compulsory levy and requiring millers and traders to sell oil seeds and oil at a price fixed by it, are outside the purview of the 1982 Order. Those directions have no sanction of law.....”

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27. On this finding it was held that the directions issued by the Government placing restrictions on the movements of oilseeds and oil and imposing compulsory levy and requiring millers and traders to sell oil seeds and oil at a price fixed by it were outside the purview of the 1982 order. The

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directions issued did not have the sanction of law. It was observed that if the State Government was facing any problem, it could have made amendments in the 1982. Order regulating matter specified in Clauses (d) and (f) of Section 3(2) of the Act after obtaining the prior concurrence of the Central Government. As no such course was followed it was held that the directions contained in the Government Order were illegal and void as they were in contravention of the powers delegated to the State Government under notification dated 9.6.1998. The Order issued by the State Government was held to be outside the purview of 1982 Order and thus struck down.

28. Facts situation in the present case is totally different. As has been discussed in the foregoing paragraphs the State Order of 1981 had been issued after the delegation of the power to the State Governments by the Central Government and with prior concurrence of the Central Government. Stock limits were provided in the tabulated form in Clause 3 and further State Government or its officers were authorised under Clause 24(1) of the State Order of 1981 to issue directions regarding maintenance of stock, storage, display of prices etc. Thus the State Government had the legislative sanction to promulgate the State Order of 1981 as well as the authority to issue directions to the dealers regarding maintenance of stock, storage, display of prices etc. under the provisions of the State Order. The impugned order of 26th July, 2000 had been issued in exercise of the jurisdiction conferred under the State Order of 1981 and therefore valid.

For the reasons stated above we do not find any merit in these appeals. Accordingly, the appeals are dismissed with nor order as to costs.

T.N.A.

Appeals dismissed.