

NAGRIK UPBHOKTA M. MANCH

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v.

UNION OF INDIA AND ORS.

MAY 2, 2002 .

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

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*Essential Commodities Act, 1955: Sections 3 and 5.*

*Fixation of price of Kerosene oil, a controlled commodity—Central Government notified Kerosene Order—State Government issuing a Scheme fixing the rates of Kerosene oil at wholesale/semi-wholesale/retail level—Included Sales Tax, surcharge, profits and Transportation charges—Uniform price by rounding off method—Challenge of—High Court dismissed writ petitions—State Government framed Rules justifying the Scheme—On appeal, held, Kerosene Order does not empower the State Government to prescribe by themselves and levy any charges, rates, duties and taxes—The collection so accrued due to such levy in the guise of rounding off, is wholly an unauthorized collection and violative of Article 265 of the Constitution—Accountant General of the State to carry out audit and submit report—Till then the funds shall stand frozen—Constitution of India, Article 265.*

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Central Government has made the Kerosene (Restriction of Use and Fixation of Ceiling Price) Order, 1993. In pursuance of the said Order, Director, Department of Food, Civil Supplies and Consumer Rights, Madhya Pradesh had informed all the District Collectors to fix the rate of Kerosene for Retailers as per Scheme of rounding off and to receive the amount of rounding off at the level of wholesalers and to utilise it for purchasing tankers, drums etc. for the purpose of distribution of Kerosene oil to the consumer. Collector of Jabalpur district exercising the power conferred by Clause 2(d)(i) of Kerosene Order issued an order fixing the rates of Kerosene at wholesale, semi-wholesale and retail level; Ex depot price per kilo-litre, sales tax, surcharge on sales tax and profit of wholesale per kilo litre was kept uniform throughout the district but transportation charges per kilo litre varied. Appellants filed writ petitions challenging the price so fixed by including rounding off charges. The writ petitions were dismissed by the High Court. In the meanwhile, State Government framed rules justifying the issuing of Scheme of rounding off, stating its purpose in ensuring supply of Kerosene at uniform

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A rate after rounding off the rates and to utilise the amount of saving from rounding off to strengthen the Public Distribution System. Hence these appeals.

B It was contended for the appellants that levy and recovery of any amount over and above the price fixed after taking into consideration the relevant factors is without any authority of law and amounts to taxation in disguise which is ultravires the Constitution; and that it results in the increase of price of kerosene by 5.13%. It was contended for the respondents that the purpose sought to be achieved by rounding off is to maintain a uniform price of kerosene throughout the State and the funds so available serves the laudable purpose of maintaining and strengthening supply and availability of kerosene to consumers; and that levy of such rounding off charges is protected by the powers of the State Government in terms of clause (d) of Para 2 of the Kerosene Order.

Allowing the appeals, the Court

D HELD : 1.1. Kerosene Order defines the 'declared price' being the maximum selling price by reference to an area. Apart from the cost of production, what can be included therein are other charges, rates, duties, taxes prescribed by the State Government/District Collector. The term 'prescribed' contemplates the determination of charges, rates, duties and taxes which are leviable on kerosene under the law of the State or local legislation and are, therefore, better known to the State Government or District Collectors and would be available to be added to the maximum selling price declared by the Central Government or by the State Government subject to the delegation of power by the Central Government. The definition of 'declared price' cannot be so read as empowering the State Government, the Director or the District Collectors to prescribe by themselves any levy on kerosene, any charges rates, duties and taxes in purported exercise of power under the Control Order. The term 'charges' must be read *eiusdem generis* taking colour from the succeeding terms-rates, duties and taxes. [748-D-E-F-G]

G 1.2. State Government, the Director and the Collectors have abrogated to themselves a power of levying a tax, as it were, and to collect an amount in the name of rounding off for the purpose of building up a separate fund of their own to be utilized for the purpose of administering public distribution system of kerosene. This is wholly an unauthorized collection. [748-H; 749-A]

H 2.1. If the State Government undertakes to ensure distribution and

availability of an essential commodity by public distribution system, it has to provide for a system and make the commodity available. Provision has to be made for maintaining the system independent of the price of the essential commodity sought to be distributed. Any tax or fee or levy, for the matter of that, must satisfy the requirement of Article 265 of the Constitution apart from the legislative competence. Not only the levy in the guise of rounding off is unlawful and unauthorized but the manner in which the fund has been operated and utilized makes the position worst. The Rules framed by the State, during the pendency of these petitions before this Court, are shocking. In the name of rounding off, the sale price by wholesaler and the sale price by retailer have been appointed so strategically as to generate a substantial fund. A huge fund stands accumulated to the credit of several Collectors in several districts and the Director without even stipulating the purpose for its utilisation. Rules so framed by executive go to show that the amount from the sale of condemned vehicles and articles purchased out of the fund, the rental amount of godowns, shops, tankers, drums etc. generated out of the fund any other amount which is receivable under the Rules shall be utilized for augmenting the fund. Para 6 of the Rules indicates works of permanent nature being constructed, vehicles purchased and several other activities such as information and training and giving away the awards being drawn out of the fund. All this is to be done from the amount collected in the name of rounding off from the poorest of the citizens for whom kerosene is the cooking medium. [749-G; 750-E-F-G-H; 751-A]

2.2. It was understandable if the State Government had taken a policy decision to sell kerosene at a uniform price at all the retail supply points within a district or region or entire State and for that purpose it would have so appointed the wholesale and the retail prices as to work out deficit somewhere and surplus elsewhere but the deficit and the surplus being fully set off against each other. Any fund devised for the purpose of collecting the surplus and utilizing the amount so collected for compensating the deficit, would have enable uniformity of fair price being maintained throughout the district or region where it was sought to be so maintained. Then the State Government could not have been accused of having brought into being a levy for its own purpose. The beneficiary would have been the consumer by availing the kerosene at a uniform fair price. But it was not done. Instead, the Director, the Collectors and the executive wing of the State have developed a local administration, levy charges for developing a fund at their own level, being administered by them for running a department or system of governance. Such collection and fund has no sanctity in law and is violative of Article 265 of the Constitution. [751-B-C-D]

A *Shri Meenakshi Mills Ltd. v. Union of India*, [1974] 1 SCC 468; *State of Kerala and Ors. v. K.P. Govindan, Tapioca Exporter and Ors.*, [1975] 1 SCC 281 and *Sharat Chandra Tiwari v. State of M.P.*, relied on.

B 2.3. The system of rounding off the price so as to build up a fund available with the Director and the Collectors is quashed being *ultra vires* of Articles 265 of the Constitution and Section 3 of the Essential Commodities Act and Para 2(d) of Kerosene Restriction on Use and Fixation of Sale Price Order, 1993. Accountable General of Madhya Pradesh is directed to carry out the audit of the available fund. Till then the amount collected in the said fund by the Director of Food and Civil Supplies and the Collectors of the Districts shall stand frozen. [751-E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3249 of 2002.

From the Judgment and Order dated 1.9.1999 of the Madhya Pradesh High Court in W.P. No. 747 of 1999.

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C.A. No. 3250 of 2002.

E G.L. Sanghi, Pramod B. Aggarwala, Ms. Praveena Gautam, Satish K. Agnihotri, K.C. Kaushik for B.V. Balaram Das and Prakash Shrivastava for the appearing parties.

The Judgment of the Court was delivered by

F **R.C. LAHOTI, J.** Challenge in the two writ petitions, to fixation of price of kerosene, a controlled commodity, wherein the Director of Food and Civil Supplies of the State of Madhya Pradesh and the Collectors of districts have included an amount by way of rounding off charges, has been turned down by the High Court of M.P.. The aggrieved petitioners have filed these petitions for leave to appeal.

G Leave granted.

H Admittedly, kerosene is a controlled commodity to which the Essential Commodities Act 1955 (hereinafter 'the Act', for short) applies. Under sub-Section (1) of Section 3, if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodities or for securing their equitable distribution and

availability at fair prices, it may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Without prejudice to the generality of such power, under clause (c) of sub-Section (2), the Central Government may by an order provide for controlling the price at which essential commodity may be bought or sold. Under Section 5, the Central Government may, by notified order, direct that the power to make orders or issue notifications under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercised also by such State Government or such officer or such authority subordinate to a State Government as may be specified in the direction. By Central Government Order No. 682(E) dated the 30th November, 1974, the Central Government, exercising the power conferred by Section 5, directed that the powers conferred on it by sub-Section (1) of Section 3 of the Act to make orders to provide for the matters specified in clause (c) of sub-section (2) thereof shall, in relation to all essential commodities, other than food stuffs and fertilizers, be exercisable also by a State Government.

Under Section 3 of the Act the Central Government has made the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 (hereinafter referred to as 'the Kerosene Order', for short). Clauses (d) and (j) define 'declared price' and 'public distribution system' as under:-

“(d) “declared price” in relation to kerosene sold under the public distribution system means the maximum selling price declared by the Central Government, from time to time with reference to an area and shall include such other charges, rates, duties and taxes, prescribed:-

- (i) by the State Government or District Collector in the case of an area in a State, or
- (ii) by the Administrator of the Union Territory, in the case of an area in a Union Territory;

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

(j) “public distribution system” means the system of distribution, marketing or selling of kerosene at declared price through a distribution system approved by the Central or State Government;”

On 25.5.1998, the Director, Department of Food, Civil Supplies and

A Consumer Rights, Madhya Pradesh issued a letter to all the Collectors of districts in Madhya Pradesh which reads as under:-

B “1. The rates of kerosene for Retailers in the rural areas have been fixed for Rs. 3.20 per litre. The calculation of savings from rounding off should be done in a manner that the amounts of savings from round off could be recovered from wholesalers. At first the Retailer’s commission, and expenses of transport from Semi-wholesaler to Retailer should be deducted from the rates fixed for retailers and it will fix the rates for Semi-Wholesalers. After deducting the semi-wholesaler’s commission and transport expenses from wholesaler to semi-wholesaler the rates for wholesaler will be fixed. The amount remaining after deducting the amount to be paid to the Oil Company by wholesaler, tax and transport expenses will be the round off amount. The amount of rounding off should be received directly from wholesalers in the Collector’s account by operating an account at District level.

D 2. The above scheme was implemented in the Murena District and *in the last one and a half year approximately Rs. 62.00 lacs were received on this account.* During the visits to Bilaspur and Raipur the Food Officers informed that in *both the Districts approx. Rs. 10.00 lacs are being received from each district in this account.*

E 3. Therefore, *in the interest of administration, you are required to collect the amount of rounding off savings at the level of wholesalers and deposit the same in Collector’s Bank Account. The tankers and drums, required for the distribution of kerosene oil to the District Co-operative Bank’s Institutions, be provided from this account.*

F 4. The guidelines on the above mentioned subject are being issued separately containing clear instructions regarding maintaining of account. Till then please proceed with the above procedure.”

[emphasis supplied]

G In the State of Madhya Pradesh, kerosene was being distributed and made available for sale to consumers through public distribution system and by appointing fair price shops/retailers. On 27.1.99/1.2.99, the Collector, Jabalpur, exercising the powers conferred by clause 2(d)(i) of kerosene order fixing the rates of kerosene at wholesale, semi-wholesale and retail level in the Jabalpur  
H district, as per the chart enclosed with the order, directed as under:-

“2. As per practice the Wholesalers will deposit the amount of difference in the bank account of Collector, Jabalpur upto the 7th of every month. This amount will be *used only for development of structure regarding arrangements of kerosene oil.* A

3. In the rural areas the wholesalers are supplying the kerosene to Link Committees, therefore, it will be the responsibility of Link Committees that the commission of semi-wholesaler or concerned Lead Institution at the rate of Rs. 12.60 per drum (200 Lt), which is included in the retail sale price is transferred to the concerned Lead Institution at the end of month. B

4. As the maximum retail sale price includes the Retailers/Fair Price Shopkeeper's transport expenditure @ Rs. 20 per drum (200 Lt.), therefore, it will be the responsibility of Link Institution to provide the kerosene at the concerned Sale Centres (Fair Price Shops) according to allotment.” C

[emphasis supplied] D

A perusal of the chart annexed with the order shows that an uniform price of Rs. 650 per barrel and Rs. 3.25p. per litre for Fair Price Shop/Retailer was appointed by the Collector, Jabalpur with respect to 62 supply points in the district. The chart has 19 columns. It will suffice for our purpose to extract and set out briefly the data relating to fixation of price in Jabalpur city and one of the centres. Ex-depot price of producer per kilo litre, sales tax, surcharge on sales tax and profit of wholesaler per kilo litre is uniform throughout the district but transportation charges of wholesaler per kilo litre vary. These transportation charges cause a variation in the price of wholesale price per kilo litre and per barrel at the supply point. The Collector appointed selling price of wholesaler per barrel for Jabalpur city at Rs. 613.80p. The profit of Fair Price Shop/Retailer per barrel is Rs. 36.20p. Thus, the price per barrel of Fair Price Shop/Retailer comes to Rs. 650. Out of the centres, other than Jabalpur city, we will take Sivni by way of illustration. For supply, selling price of wholesaler per barrel is appointed at Rs. 581.20p. Wholesale price per barrel after taking into consideration sales tax, surcharge, profit of wholesaler, transportation charges comes to Rs. 544.67p. Thus, there is a difference of Rs. 36.53p. between the wholesale price per barrel arrived at by taking into consideration the permissible additions and selling price of wholesaler appointed by the Collector at Rs. 581.20p. The price per barrel and per litre of Fair Price Shop/Retailer remains the same, i.e. Rs. 650 and Rs. 3.25p. E  
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A throughout the district. It is the difference of price per barrel between the wholesale price arrived at by taking into account permissible additions and the selling price appointed by the Collector which varies for different supply points. For example, for Sivni it is Rs. 36.53p., for Sehanpuri it is Rs. 27.13p., for Mohas it is Rs. 32.53p. and so on.

B On 20.8.2001 the Court directed the State of Madhya Pradesh to file a statement supported by an affidavit giving details of the amount collected under the impugned orders of the Director, Food & Civil Supplies and the Collectors showing how it has been utilized. On 22.11.2001, a statement has been filed supported by an affidavit dated 20.11.2001 of the Director, Food, Civil Supplies & Consumer Protection, setting out details of the amount collected upto 31.7.2001. In the 45 districts of Madhya Pradesh, an amount of Rs. 50,00,61,083 was collected. Out of this an amount of Rs. 50,000 was spent on constructing godown at Ratlam. An amount of Rs. 5,39,01,190 is said to have been spent on tanks, drums, mobile tankers under the head of 'storage kerosene oil infrastructure'. Substantial amount has been incurred on 'computers, office assets and miscellaneous', the exact details whereof cannot be known. The total expenditure has been Rs. 6,77,62,052. An amount of Rs. 40,07,86,498 was available in Collectors' accounts of different districts and an amount of Rs. 3,15,12,533 was available in Director's account. On 20/21.3.2001, the State Government has framed rules and published the same in Government Gazette. The relevant part of the rules is extracted and reproduced hereunder:-

E "No. F-8-125-2000-XXIX-1.—For the purpose of ensuring supply of Kerosene at uniform rate to the consumers of the State, after rounding off the rates to utilize the amount of saving from rounding off to strengthen the Public Distribution System the State Government hereby makes the following rules, namely:-

F xxx                      xxx                      xxx                      xxx

xxx                      xxx                      xxx                      xxx

G (n) "Saving amount from rounding off" means the remaining balance amount, which comes after deduction of transport expenditure, commission, and supplies price of distributor, tax, fee, transport charges and commission from consumer price of kerosene.

H (o) "Food Officer" means the Food Controller or Food Officer of the district or any other officer who has been authorized by the Collector to work as Food Controller as Food Officer.

(p) "Assistant Registrar" means the Assistant Registrar of Co-operative Societies of the District who looks after the Work of Public Distribution System. A

(q) "Deputy Registrar" means the Deputy Registrar of Co-operative Societies of the District who looks after the Work of Public Distribution System. B

(r) "Fund" means the receipts that are receivable under these rules and accumulated interest thereon. C

(s) "Supplier" means the supplier of the oil company as declared by the Government from time to time for any essential commodity.

**3. Source of Income in the Fund.**—The fund will consist of the following:— D

(a) The balance amount from the savings from distribution of kerosene on uniform consumer price.

(b) The amount from the sale of condemned vehicles and articles purchased out of the fund. E

(c) The rental amount of godowns, shops, tankers drums etc. generated out of the fund.

(d) any other amount which is receivable under the rule.

**4. The Calculation of Amount of Saving from Rounding off and Deposit.**—The calculation of amount of savings from rounding off and deposit shall be done as specified below:— F

(a) The Collector shall determine the price of kerosene to be distributed under Public Distribution System as directed by Government. G

(b) The amount of savings accruing from the sale of kerosene at the uniform consumer price shall be deposited in the fund.

(c) The amount of savings shall be deposited in the fund by the wholesaler at the time of lifting kerosene from the Oil Company but not later than seven days from the lifting. H

A 5. **Bank Account.**—The amount of savings from rounding off shall be deposited in the District Central Co-operative Bank in the saving account and/or fixed deposit account in the name of the Collector.

B 6. **Expenditure from fund.**—The amount may be spent from the fund for storage and distribution of kerosene under the Public Distribution System for the following purposes:

(1) The District Planning Committee may spent upto 80% amount received in the financial year in the district as specified below:-

C (a) To purchase drums and storage tankers or construction of drums/ tankers for storage kerosene.

(b) For minor original works amounting to below Rs. 50,000 per godown for the godowns of Lead and Link Societies in the rural areas provided that any minor type of work has not been done from any other sources for the last 3 years in such godowns.

D (c) Construction work of new godown of 50 MTs maximum capacity provided that the amount is available and construction can be completed within 12 months from the date of sanction.

(d) To reimburse the expenditure to the Lead and Link Societies to run fair price shops in the rural areas.

E (e) To purchase replacement vehicle in case of condemned vehicle of District Food Officer or Deputy Registrar or Assistant Registrar or if there is no vehicle with the Food Officer on the recommendation of Collector.

F But vehicle for the Deputy Registrar or Assistant Registrar will be arranged only in case they are supervising the Fair Price Shops.

But prior sanction of the State Government shall be necessary if more than one vehicle is to be purchased.

G (2) The Committee constituted under rule 8 may spend 10% amount of the fund received in the concerning district during the year as specified below:-

Expenditure below Rs. 50,000 at one time.

H (One) For basic infrastructure facilities of the office.

- (Two) For information and training. A
- (Three) For audit expenses
- (Four) For encouraging outstanding activities or services and rewards upto Rs. 50,000 in a year.

(3) The Collector shall make available 10% amount of the amount deposited during the month in the Director by 10th of next month and Director shall deposit such amount in the bank account to be opened in the name of Director in Madhya Pradesh Co-operative Bank, Bhopal. B

The Director may utilize this amount in the following manner:- C

- (One) To reimburse losses in those districts where loss occurred due to fixation of uniform selling price of kerosene.
- (Two) For works in any district as specified in sub-rule (1). D
- (Three) For basic infrastructural facilities upto Rs. One lakh at one time.
- (Four) For information and training upto Rs. One lakh at one time. E
- (Five) For replacement of condemned vehicles in the directorate and the districts.
- (Six) For purchase of new vehicles for the districts with the prior sanction of the State Government. F
- (Seven) For encouragement and rewards upto Rs. One lakh in the year, and,
- (Eight) For audit expenses.

**7. Maintenance of Properties.**—(1) The drums, tankers, vehicles, instruments, constructed buildings, godowns etc. purchased/constructed from the fund shall be property of the State Government. G

(2) The drums and tankers purchased/constructed under rule 6 shall be made available to the Bank for utilization. The Bank shall H

A make them available to Lead and Link Societies with approval of the Collector for strengthening the kerosene oil distribution system.

(3) The repairing expenses regarding tankers and drums shall be borne by the concerning society. In case of tanker and drums becoming unusable the Bank shall deposit the amount received from the sale of such articles in the Collector's Account.

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(4) The Bank shall keep the account of tankers and drums and get physical verification done as on 31st March and submit its report to the Collector by 15th of April.

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(5) The godowns constructed from the fund shall remain under the control of the Bank and Bank shall make them available to Lead and Link Societies for the purpose of Public Distribution System. The concerning societies shall be responsible for the maintenance of these godowns.

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(6) In the case of purchase of official instruments, communication instruments or vehicle etc. the account of the article shall be maintained by maintaining stock register by the District Food Officer at the district level and by the establishment officer of the directorate at the directorate level.

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**8. Committee.**—The Committee constituted under the Chairmanship of the Collector shall take the decision regarding expenditure under sub-rule (2) of Rule 6, District Food Controller/Food Officer, Deputy Registrar or Assistant Registrar of Co-operative Societies and Chief Executive Officer of the Co-operative Bank shall be its ex-officio members. Minister incharge of the District may nominate President of Zila Panchayat or any one member of the District Planning Committee in this Committee.”

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Rule 9 provides for Food Controller/Food Officer to maintain the accounts which the Collector shall have audited by a Chartered Accountant.

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The Deputy Director (Accounts) shall maintain the accounts at the Directorate level and the Director shall have them audited. With the counter affidavit filed on 17.2.2000, a chart has been annexed showing the saving and deficit available to or to be borne by the fund by reference to consumer rate of Rs. 3.25p. per litre. A perusal of the chart shows that in 35 out of 45 districts there is a saving, the minimum and maximum whereof varies by reference to supply

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points in different districts and this saving is available to augment the fund.

In 10 districts there appears to be a minor, almost negligible deficit which will be liable to be borne by the fund. While the figures of saving vary from a minimum of 1 paise to a maximum of 51 paise per litre, the figure of deficit varies from a minimum of 1 paise to a maximum of 21 paise per litre. A

In the submission of the appellants, levy and recovery of any amount over and above the price fixed by taking into consideration the relevant factors is without any authority of law and amounts to taxation in disguise which is *ultra vires* the Constitution. According to the respondents, the purpose sought to be achieved by rounding off is to maintain a uniform price of kerosene throughout the State and the fund at the level of the Director or the Collectors serves the laudable purpose of maintaining and strengthening supply and availability of kerosene to consumers, some of them situated in far off and remote villages. It is pointed out that in appointing fair price shops or retailers preference is given to co-operative societies which are not possessed of transportation and storage facilities. The fund is utilized for making available storage tanks, drums and barrels to such outlets as do not have them. The levy of such rounding off charges is protected by the power of the State Government to add charges prescribed by the State Government or the District Collector within the meaning of clause (d) of para 2 of the kerosene order. In C.A. arising out of SLP (C) 14950 of 1999, in the counter affidavit filed on 17.2.2000, it is stated that the amount collected by way of rounding off is only to be spent for strengthening of and ensuring proper functioning of public distribution system and to ensure adequate and continued supply of kerosene in each and every corner of the State of Madhya Pradesh. Such collection of fund commenced in May, 1998. However, how and in what manner the amount shall be spent was not taken care of. The Writ Petitions were filed in the High Court in the month of February, 1999. In the counter affidavit, it was stated that the rules governing such rounding off and development were to be notified as early as possible. The rules, for whatever worth they are, have been framed and promulgated only on 20/21.3.2001. Needless to say the rules are in the form of executive directions and cannot have the force of law. B C D E F

The challenge of the appellants is that the impugned action of the State Government, the Director and the Collectors has resulted in the prices of the kerosene being increased by 5.13% in different areas in the garb of rounding off. In the rejoinder affidavit dated 26.12.2001 (filed on 10.01.2002) on behalf of the appellants, it is stated that the State of Madhya Pradesh has been able to build up a fund of about 100 to 150 crores, out of which a fraction of G H

A around Rs.6.77 crores is shown to have been spent in about 3 years and a huge sum of money is still available with the State Government not utilized for the purpose for which it purports to have been collected.

We are not, in these matters, so much concerned with the utilization of the fund. Primarily we have to examine whether by an action of the executive, the State Government can build up a fund by including an amount in the sale price of controlled commodity for the purpose of administering the public distribution system of the controlled commodity. Section 3 of Essential Commodities Act, wherefrom the power to fix price of an essential commodity originates spells out the object of fixing the fair price. Under sub-Section (1) of Section 3 the fair price has to be so appointed as would maintain or increase the supply of any essential commodity or secure their equitable distribution and availability at fair prices. Clause (c) of sub-Section (2) of Section 3 contemplates the price being so fixed, as to control its being bought or sold at an appointed price which obviously should be a fair price. Kerosene Order defines the 'declared price' being the maximum selling price by reference to an area. Apart from the cost of production, what can be included therein are other charges, rates, duties, taxes prescribed by the State Government or District Collector in the case of an area of a State. The term 'prescribed' contemplates the determination of charges, rates, duties and taxes which are leviable on kerosene under the law of the State or local legislation and are, therefore, better known to the State Government or District Collectors and would be available to be added to the maximum selling price declared by the Central Government or by the State Government subject to delegation of power by the Central Government. The definition of 'declared price' cannot be so read as empowering the State Government, the Director or the District Collectors to prescribe by themselves and levy on the kerosene, any charges, rates, duties and taxes in purported exercise of power under the Control Order. In other words, the charges, rates, duties and taxes must be pre-existing or originating from a lawful source other than the provisions of the Kerosene Order and can only be quantified by the State Government or District Collector so as to be prescribed for being added to the declared maximum selling price. The term 'charges' must be read *ejusdem generis* taking colour from the succeeding terms-rates, duties and taxes.

What the State Government, the Director and the Collectors have done goes beyond the powers conferred by the Act and the Kerosene Order. They have abrogated to themselves a power of levying a tax, as it were, and to collect an amount in the name of rounding off for the purpose of building up

a separate fund of their own to be utilized for the purpose of administering public distribution system of kerosene. This is wholly an unauthorized collection. In *Shri Meenakshi Mills Ltd. v. Union of India*, [1974] 1 SCC 468, the object of fixing control price under Section 3(1) read with Section 3(2) (c) of the Act, has been stated as under: A

“The control of prices may have effect either on maintaining or increasing supply of commodity or securing equitable distribution and availability at fair prices. The controlled price has to retain this equilibrium in the supply and demand of the commodity. The cost of production, a reasonable return to the producer of the commodity are to be taken into account. The producer must have an incentive to produce. The fair price must be fair not only from the point of view of the consumer but also from the point of view of the producer. In fixing the prices, a price line has to be held in order to give preference or pre-dominant consideration to the interest of the consumer or the general public over that of the producers in respect of essential commodities. The aspect of ensuring availability of the essential commodities to the consumer equitably and at fair price is the most important consideration.” B C D

In the *State of Kerala and Ors. v. K.P. Govindan, Tapioca Exporter and Ors.*, [1975] 1 SCC 281, administrative surcharges were sought to be levied under a Control Order issued in exercise of the powers conferred by sub-Sections (1) and (2) of Section 3 of the Essential Commodities Act, 1955. It was held that such levy and realization were without the authority of law. A tax or fee, as advised, could be levied in accordance with law if permissible, but not the administrative charges, by exercising a power conferred by the Control Order. E F

If the State Government undertakes to ensure distribution and availability of an essential commodity by public distribution system, it has to provide for a system and make the commodity available. Provision has to be made for maintaining the system independent of the price of the essential commodity sought to be distributed. Any tax or fee or levy, for the matter of that, must satisfy the requirement of Article 265 of the Constitution apart from the legislative competence. G

It is interesting to note that in 1983, the Collector, Jabalpur based on an order passed by the Director, Food and Civil Supplies had fixed the price of kerosene at Rs.2.02 paise per litre at which the kerosene could be sold in H

- A retail. 2 paise coins were not available because of minting thereof having been discontinued. The Collector directed the price to be fixed at Rs. 2.05 paise by rounding it off and the difference of 3 paise per litre to be deposited with the Collector to be utilized for the purpose of Samajik Suraksha (Social Security). Such rounding off was challenged in M.P. No. 1944/83 *Sharat Chandra Tiwari v. State of M.P.* By judgment dated 2.5.1984, a Division Bench of the High Court of M.P. struck down the levy of 3 paise per litre and directed the sale price of kerosene price to be re-fixed. During the course of its judgment the High Court observed:
- C “.....It is, therefore, a case where the persons needing care of the State are required to contribute for financing a scheme of general welfare likely to be framed by the State. This cannot be done except by the authority of law. The only law relevant for such charge, is the Kerosene Control Order. The Order does not permit the Collector to charge anything for the State. Its scope is limited only to fixation of selling price. Various components of selling price are given in Rule 3 of the order which does not include such a charge. Under the circumstances, it is obvious that levy of excess amount of 03 paise per litre is outside the authority of the Collector acting under the Order. The impugned order, therefore, cannot be sustained.”
- E Not only the levy in the guise of rounding off is unlawful and unauthorized but on the stand taken by the respondents themselves showing the manner in which the fund has been operated and utilized makes the position worst. The Rules framed on 20/21-3-2001, during the pendency of these petitions before this Court are shocking — to say the least. In the name of rounding off, the sale price by wholesaler and the sale price by retailer have
- F been appointed so strategically as to generate a substantial fund. An amount of Rs. 9,97,817 has been spent for purchasing computers, an amount of Rs. 98,15,689 has been spent for procuring office assets and an amount of Rs. 29,97,358 has been incurred by way of miscellaneous expenditure, the details whereof are not known. A huge fund stands accumulated to the credit of
- G several collectors in several districts and the director and it is not shown for what purpose it is proposed to be utilized. March, 2001 executive instructions, styled as Rules, go to show that the amount from the sale of condemned vehicles and articles purchased out of the fund, the rental amount of godowns, shops, tankers drums etc. generated out of the fund and any other amount which is receivable under the Rules shall be utilized for augmenting the fund.
- H Para 6 of March 2001 Rules indicates works of permanent nature being

constructed, vehicles purchased and several other activities such as information and training and giving away the awards being drawn out of the fund. All this is to be done from the amount collected in the name of rounding off from the poorest of the citizens for whom kerosene is the cooking medium. It was understandable if the State Government had taken a policy decision to sell the kerosene at a uniform price at all the retail supply points within a district or region or entire State and for that purpose it would have so appointed the wholesale and the retail prices as to work out deficit somewhere and surplus elsewhere but the deficit and the surplus being fully set off against each other. Any fund devised for the purpose of collecting the surplus and utilizing the amount so collected for compensating the deficit, would have enabled uniformity of fair price being maintained throughout the district or region where it was sought to be so maintained. Then the State Government could not have been accused of having brought into being a levy for its own purpose. The beneficiary would have been the consumer by availing the kerosene at a uniform fair price. But that is not what has been done. The Director and the Collector and the executive wing of the State, what they have done is to develop a local administration, levy charges for developing a fund at their own level, administered by them for running a department or system of governance. Such collection and fund has no sanctity in law and is violative of Article 265 of Constitution.

For the foregoing reasons, the appeals are allowed. The impugned judgment of the High Court is set aside. The system of rounding off the price so as to build up a fund available with the Director and the Collectors is directed to be quashed being ultra vires of Article 265 of Constitution and Section 3 of the Essential Commodities Act and Para 2 (d) of Kerosene Restriction on Use and Fixation of Sale Price Order, 1993. The appeals stand disposed of accordingly.

However, on the facts brought to the notice of this Court, the matter cannot be left at that alone. We have the figures of the collection and utilization of the fund upto 31.7.2001 brought to our notice. During the pendency of these appeals, further amount must have been collected and also spent. Some directions would be required to be made for utilizing the fund so available with the officers of the State Government. This Court would also like to know how and for what purpose the fund has been utilized and whether timely audits of the fund were carried out. For this purpose we request the Accountant General of Madhya Pradesh to carry out the audit of the fund as available with the Director and the Collectors of the Districts in

- A** the States of Madhya Pradesh and Chhattisgarh, the latter State having been carved out and formed during the pendency of these Special Leave Petitions. Apart from carrying out the usual audit, we request the Accountant General of Madhya Pradesh to compile the expenditure under different heads and sub-heads so as to clearly indicate for what purpose the fund has been utilized.
- B** We hope the audit will be completed in a period of 4 months from the date of communication of this order to the Accountant General of Madhya Pradesh. On receipt of the report of the Accountant General, the same shall be laid before the Court soliciting further directions. Till then, the amount collected in the said fund by the Director of Food & Civil Supplies and the Collectors of the Districts shall stand frozen.
- C** S.K.S. Appeals allowed.