

S. SAMUEL, M.D., HARRISONS MALAYALAM AND ANR.

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v.

UNION OF INDIA AND ORS.

NOVEMBER 6, 2003

[R.C. LAHOTI AND ASHOK BHAN, JJ.]

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*Essential Commodities Act, 1955—Section 2(a)(v), (xi) 3 and 5—Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977—Delegation of powers by Central Government under section 5 in favour of State Government in relation to foodstuff—State Control Order of 1977 making provisions applicable to commodity tea—Constitutional validity of the order—Held: As tea is not a foodstuff and there is no delegation of powers by Central Government under section 5 in relation to tea, State could not have promulgated an order under Section 3 of the 1955 Act making it applicable to tea, thus the provisions of Order in relation to tea ultra vires the power of the State Government—Constitution of India, 1950, Schedule VII—List III—Entry 33—Tea Act, 1953—Section 2.*

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*Words and Phrases :*

*'Food', 'foodstuff', 'tea'—Meaning of—Discussed—In the context of Essential Commodities Act, 1955.*

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**In exercise of powers conferred by section 5 of the Essential Commodities Act, 1955 by a notification Central Government delegated the powers to make orders in regard to certain clauses of sub section 3(2), in relation to 'food stuffs' in favour of State Government. State of Tamil Nadu promulgated the Tamil Nadu Scheduled Articles (Prescription of Standards Order), 1977 for toning up the supply and availability of certain essential articles and also for maintaining and raising the standards of quality of sale and supply. The order was applicable to several articles in the schedule including tea. Furthermore the order prohibited supply or sale of scheduled articles not according to the prescribed standards and the competent officers were conferred with the powers of food inspector, powers of entry, seizure search etc. By a notification the Central Government declared tea to be an essential commodity. Also a fresh notification was also issued which also confined to foodstuffs. Thereafter, by virtue of the Order of 1977 competent officer searched the godown of**

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**A** the appellants and took tea samples. Complaint was lodged against the appellants alleging that the tea samples were found to contain an adulterant in violation of the provisions of the Order. Appellants filed writ petition challenging the constitutional validity of the Order regarding its applicability to 'tea'. Writ petition was dismissed. Hence the present appeals.

**B** Appellants contended that 'tea' is not 'foodstuff'; and that the State could not have, in exercise of the delegated power, issued a Control Order embracing 'tea' within the sweep of its applicability.

Allowing the appeals, the Court

**C** HELD : 1.1. 'Foodstuff' will not include tea as tea either in the form of the leaves or in the form of beverage as it does not go into the preparation of food proper to make it more palatable and digestible. Tea leaves are not eaten. Tea is a beverage produced by steeping tea leaves or buds of the tea plants in boiled water. Such 'tea' is consumed hot or cold for its flavour, taste and its quality as a stimulant. The stimulating effect is caused by the presence of caffeine therein. 'Tea' neither nourishes the body nor sustains or promotes its growth. It does not have a nutritional value. It does not help in formation of enzymes nor does it enable anabolism. In common parlance, any one who has taken tea would not say that he has taken or eaten food. Thus, 'tea' is not 'food' or 'foodstuff'. Also it is not understood as 'food' or 'foodstuff' either in common parlance or by the opinion of Lexicographers. Furthermore it is a wrong assumption to say that many a poor man in the country take a cup of tea more as a food as it keeps them active for some time and enables them to work. High Court has confused a mere stimulant with an article of food or foodstuffs.

**D** A drink or beverage which acts merely as a stimulant is not food.

[310-D-F; 312-A-B]

*The State of Bombay v. Virkumar Gulabchand Shah*, [1952] SCR 877; *K. Janardhan Pillai and Anr. v. Union of India and Ors.*, [1981] 2 SCC 45 and *Collector of Central Excise, Bombay-I and Anr. v. M/s. Parie Exports (P) Ltd.*, [1989] 1 SCC 345, referred to.

*Hinde v. Allmond*, (1918) 87 LJKB 893, referred to.

*Principles of Statutory Interpretation by Justice G.P. Singh*, Eighth Edn 2001, p. 279; *Chambers Dictionary; Words and Phrases, Permanent Edition*, Vol. 17, pp. 306, 313; *The New Oxford Encyclopaedic Dictionary; The New*

*Encyclopaedia Britannica* 15th Edn Vol. 25, pp. 49, 58 and *The New Encyclopaedia Britannica* 15th Edn Vol. 11, p. 596, referred to. A

1.2. The Notification, notifying the delegation of powers by the Central Government to State Governments, is confined to foodstuffs, meaning thereby that the said Notification delegated the powers by the Central Government to the State Governments in regard to certain clauses of sub-section (2) of Section 3 of the Essential Commodities Act but only in relation to 'foodstuffs'. The other Notification specified matters in relation to which delegation has been made are referable to 'foodstuffs'. As 'tea' is not a 'foodstuff', the power vesting in the Central Government in relation to 'tea', cannot be said to have been delegated to any State Government. By Notification the Central Government has declared the commodity 'tea' to be an essential commodity. With effect from the date of the said Notification, tea becomes an essential commodity by reference to the power exercised by the Central Government under Section 2(xi) of the Essential Commodities Act read with Entry 33 in List III in the Seventh Schedule to the Constitution and Section 2 of the Tea Act, 1953. But then there is no delegation of powers by the Central Government under Section 5 of the Act in relation to tea. The other Notification is also confined to foodstuffs which would not include tea. Thus, the State of Tamil Nadu could not have promulgated an order under Section 3 of the Essential Commodities Act, 1955 in the purported exercise of the power delegated by the Central Government to make an order applicable to tea, by wrongly assuming tea to be a foodstuff. The several provisions of the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977, must be held to be *ultra vires* the power of the State Government to the extent to which it makes provisions in relation to tea. [311-D-H; 312-B-C] B C D E

*Administrative Law by Wade & Forsyth* Eighth Edn 2000 p. 322, referred to. F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12746-12747 of 1996. G

From the Judgment and Order dated 8.3.96 of the Madras High Court in W.P. Nos. 1870 and 1871 of 1992.

Altaf Ahmed, Additional Solicitor General, V.R. Reddy, C.N. Sreekumar, Sunil Murarka, Antony Donnie, Ms. Shyjatha, Ms. Deepa S., Ms. Sangeeta Mandal, Kapil Chaudhary, Ms. Jayashree Singh, Ms. Vineeta Bhardwaj, H

A Ms. Swati Sinha, A.T.M. Sampath, V. Balaji, Ms. Aarti Radhakrishnan and P.N. Ramalingam for the appearing parties.

The Judgment of the Court was delivered by

B **R.C. LAHOTI, J.** Challenge to the constitutional validity of the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977 (hereinafter referred to as the Order, for short) in its application to 'tea' having failed, the appellants are in appeal by special leave. The crux of the controversy centers around the question whether 'tea' can be included within the meaning of 'foodstuffs' listed as sub-clause (v) of clause (a) of Section 2 of the Essential Commodities act, 1955 (hereinafter, the EC Act, for short) which defines  
C "essential commodity".

The EC Act was enacted 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 commodities. The phrase 'essential commodity' is  
D defined by clause (a) of Section 2 of the EC Act as under:

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

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

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

(ii) coal including coke and other derivatives;

F (iii) component parts and accessories of automobiles;

(iv) cotton and woollen textiles;

(iva) drugs;

G *Explanation* - In this sub-clause, "drugs" has the meaning assigned to it in clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940)

(v) foodstuffs, including edible oilseeds and oils;

(vi) iron and steel, including manufactured products of iron and steel;

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- (vii) paper, including newsprint, paperboard and straw board; A
- (viii) petroleum and petroleum products;
- (ix) raw cotton, whether ginned or unginned, and cotton seed;
- (x) raw jute; B
- (xi) any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 List III in the Seventh Schedule to the Constitution: C

During the course of this judgment we would be required to concentrate on sub-clauses (v) and (xi) of the abovesaid definition.

On June 20, 1972 the Central Government issued a notification for making a delegation of power in favour of the State Governments. The notification reads as under:- D

*Essential Commodities Act section 3 (a) clauses (a) to (f), (h) (i) and (j) - Central Governments' power to make orders in respect of and in relation to foodstuffs - State Governments empowered to exercise.*

*New Delhi the 20th June 1972* E

*G.S.R. 316 (E) - In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (x of 1955) 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) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions-* F

(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; G

(2) that before making an order relating to any matter specified in the said clauses (a), (e) 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 H

A Government; and

(3) that in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorize only an officer of Government.

B (emphasis supplied)

Exercising the power delegated by the Central Government by the abovesaid notification, the State of Tamil Nadu promulgated the Tamil Nadu Scheduled Articles (Prescription of Standards Order), 1977, in the interest of toning up the supply and availability of certain essential articles, as also for maintaining and raising the standards of quality of supply and sale of such articles. The Order embraced within the sweep of its applicability the several articles specified in Schedule 1. Entry 19 in Schedule I is "tea". Some of the provisions of the order insofar as relevant for the purposes of this judgment are extracted and reproduced hereunder:-

D The Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977

(G.O. Ms.No.180, Food, dated 20th August, 1977)

xxx                      xxx                      xxx

E xxx                      xxx                      xxx

Now, therefore, in exercise of the power conferred by section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955 *read with the Government of India, Ministry of Agriculture (Department of Food) Order No, GSR 316(E), dated the 20th June, 1972* published in the Extraordinary issue of Part-II, Section 3 sub-section (1) of the Gazette of India, dated the 20th June 1972 the Governor of Tamil Nadu hereby makes the following order, namely :-

1. Short title, extent and commencement :-

G This Order may be called the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977,

It extends to the whole of the State of Tamil Nadu.

2. *Definitions* :- In this Order unless the context otherwise requires,

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(a) xxx                      xxx                      xxx                      A

(b) xxx                      xxx                      xxx

(c) "dealer" means any person engaged in the business of purchase, movement, sale, supply, distribution or storage for sale of any scheduled article directly or otherwise including (i) casual traders (ii) commission agents, (iii) brokers or auctioneers or any other mercantile agents engaged in such business and also persons engaged in house-boiling to process paddy but does not include a person who stores for sale of paddy or rice any other scheduled article in a village or town as the case may be, produced by personal cultivation on land owned by him or held on lease.                      B  
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(d) "foreign matter" means any extraneous matter other than food grain and shall comprise organic or inorganic matter;

(e) "Inorganic matter" includes gravel, dirt, pebble, stone jum of earth, clay or mud;                      D

(f) "Organic matter" includes chaff, straw, weed, seed, inedible grain or oilseed;

(g) "scheduled articles" means, an article specified in schedule-I, to this Order.                      E

xxx                      xxx                      xxx

xxx                      xxx                      xxx

Schedule-I  
(See Clause 2(g))                      F

(1 to 18)                      xxx                      xxx

19. Tea  
(20 to 28)                      xxx                      xxx

Schedule-II  
(See Clause 3)                      G

(1 to 5)                      xxx                      xxx

6. Tea means tea derived exclusively from the leaves, buds and tender stems of plants of the Cameilla genus and the species. It shall conform                      H

A to the following specifications :-

(a) Total ash determined on tea dried to a constant weight at 100°C-5.0 to 8.0 per cent.

B (b) Total ash soluble in boiling distilled water-Not less than 40.00 per cent of total ash.

(c) Ash insoluble in HCL-Not more than 1.0 per cent.

(d) Extract obtained by boiling dry tea (dried to constant weight at 100°C) with 100 parts of distilled water for one hour under reflux-Not less than 32 per cent.

C (e) Alkalinity of soluble ash-Not less than 1.0 per cent and not more than 2.2. per cent expressed as K.O.

(f) Crude Fibre determined on tea dried to a constant weight at 100°C Not more than 18%.

D It shall not contain any added colouring matter.

(7 to 15)

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xxx

(underlining by us)

E The Order makes provisions for the prohibition of supply or sale of scheduled articles not according to the prescribed standards, prohibition from possession of adulterants, attempts to contravene the Order and forfeiture of offending scheduled article or adulterant. The competent officers under the Order are conferred with the powers of Food Inspector, powers of entry, seizure, search etc. and so on.

F On June 9, 1978 the Central government superseded the notification dated June 20, 1972 and a instead issued a fresh notification which reads as under :-

G *"Ministry of Agriculture and Irrigation (Department of Food), Noti. No. G.S.R. 800, dated June 9, 1978, published in Gazette of India, Part II, Section 3(i), dated 17th June, 1978, p.1437. [NO. 3 (GENL) (i)/78-D & R(i)-59]*

H 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. GSR 316 (E), dated June 20, 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) of sub-section (2) thereof shall, *in relation to foodstuffs be exercisable also by a State Government* subject to the conditions-

(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 authorize only an officer of government."

(underlining by us)

It appears that on September 26, 1990, the Competent Officer under the Order visited the godown of the petitioners at Vedapatty in Coimbatore and took 13 samples of tea. The samples were subjected to laboratory test by the Public Analyst, based on whose report a complaint was filed before the Special Judge for Essential Commodities Act Cases at Coimbatore, Tamil Nadu, against the petitioners. The principal allegation against the petitioners is that the samples taken were found to contain an adulterant in violation of the provisions of the Order. Though the petitioners have offered an explanation and have disputed the correctness of the allegation so made, however, it is not necessary for us to advert to that aspect of the case. On the prosecution having been filed the petitioners filed a writ petition laying challenge to the constitutional validity of the Order insofar as its applicability to 'tea' is concerned. Several other writ petitions by other tea manufacturers/dealers were filed laying a similar challenge. All the writ petitions were heard together and disposed of by a common judgment turning down the challenge, which judgment is impugned herein by the appellants only.

A We have heard Shri V.R. Reddy, the learned senior counsel for the appellants, Shri Altaf Ahmed, the learned ASG for the Union of India, Shri A.T.M. Sampth, the learned counsel for the State of Tamil Nadu and other counsel appearing in the matter. The principal submission of Shri Reddy has been that 'tea' is not 'foodstuff' and that the State of Tamil Nadu could not have, in exercise of the delegated power, issued a Control Order embracing

B 'tea' within the sweep of its applicability. The details of the submission and merits thereof are dealt with hereunder.

The EC Act defines 'essential commodity' and one of the meanings is "foodstuffs, including edible oil seeds and oils." The terms 'essential commodity' and 'foodstuffs' are by themselves ambiguous terms. Clause (a) of the Interpretation Clause of EC Act defines 'essential commodity' by listing 10 commodities thereunder as included within the meaning of 'essential commodity'. Sub-clause (xi) of the definition of 'essential commodity' is a residuary sub-clause which confers power on the Central government to declare by notification any other class of commodity to be an 'essential commodity',

D though not specifically included within the preceding list of essential commodities in clause (a) abovesaid. To declare by notified Order any commodity to be an 'essential commodity' for the purposes of this Act, is a power conferred on the Central Government which is very wide, and is available to be exercised in respect of any commodities which cannot be exhaustively catalogued. The only rider on the power of the Central

E Government to make such notification is that the commodity with respect to which the power is sought to be exercised must be one with respect to which the Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule of the Constitution, which Entry reads as under :

F 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;

G (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

H (e) raw jute.

Needless to say, clause (b) of Entry 33 abovesaid is the same as sub-clause (v) of the List included within the definition of 'essential commodity', and, therefore if a commodity falls within the meaning of 'foodstuff', it would be included within the meaning of 'essential commodity' even otherwise, and it would not be necessary for the Central Government to exercise its power under sub-clause (xi) of the definition of 'essential commodity'. In other words, a commodity which is a 'foodstuff', need not be declared to be an 'essential commodity' by an Order notified by the Central Government as it is even otherwise an 'essential commodity', 'Tea' cannot be included in clauses (c), (d) and (e) of Entry 33. It can be covered under clause (a). The declaration contemplated by clause (a) is available as made by Section 2 of the Tea Act, 1953 (No. 29 of 1953) which came into force on 1st April, 1964. It provides, "it is hereby declared that it is expedient in the public interest that the Union should take under its control the tea industry."

We would first examine whether 'tea' is a 'foodstuff'. The term 'foodstuff' (including edible oilseeds and oils) is not defined by the EC Act. Resort shall have to be had to the meaning of the term 'foodstuff' in common parlance, in the commercial world and amongst the consumers-where tea is sold, purchased and consumed. 'Food stuffs' and 'tea' are commonly sold and bought in the market and are consumer items. We will have to see whether 'tea' is considered a 'foodstuff' in the market frequented by its dealers and consumers.

Let us first have the opinion of lexicographers. "When a work is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meaning of words and expressions used in an Act must take their colour from the context in which they appear'." (Principles of Statutory Interpretation by Justice G.P. Singh, Eighth Edition, 2001, page 279). 'Foodstuff', according to the Chambers Dictionary means a substance used as food, according to Words and Phrases, Permanent Edition (Vol. 17 page 313) 'foodstuffs' means food which has been subjected to "canning" or similar "preparation". The New Oxford Encyclopaedic Dictionary defines 'foodstuff' as material for food and 'foodstuffs' as articles of food in bulk. So, we should proceed to ascertain what 'food' is.

As per Words and Phrases (Permanent Edition, Vol. 17, at page 306)

A 'food', in the general sense of the term, is that which is eaten or drunk for nourishment. It is a nutritive material taken into the body for the purpose of growth, repair or maintenance; that which is eaten or drunk for nourishment; whatever supplies nourishment to organic bodies. It is a general term applicable to all that is eaten for the nourishment, any substance that is taken in the body which serves, through organic action, to build-up normal structure or supply the waste of tissue, and includes confectionery. At page 310, a distinction is drawn between 'food' and 'drink'. It is stated - "Food" is a nutritive material absorbed or taken into the body of an organism for purposes of growth or repair and for the maintenance of the vital processes, and, while the words "food" and "drink" are, in common usage and understanding, complementary and associate terms, they are far from synonymous, and import a plain and fundamental distinction. Purchaser of beverage in which there was worm could not base action on statutory implied contract that "food" is wholesome, since "food" does not include beverage."

D It is thus clear that in common parlance 'food' is something that is eaten. In a wider sense 'food' may include not only solid substances but also a drink. Still the fact remains that whether a solid or a liquid, the substance called 'food' should possess the quality to maintain life and its growth; it must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body.

E The New encyclopaedia Britannica (15th Edition, Vol. 25, page 49) states the function of 'food' as under:-

*Functions of Food*

F Food serves three functions in most living organisms. First, it provides materials that are metabolized either by oxidative or by fermentative processes to supply the energy required for the absorption and translocation of nutrients, for the synthesis of cell materials, for motility and locomotion, for excretion of waste products, and for all other activities of the organism. Second, food supplies the electron donors (reducing agents) required for the formation of the reduced coenzymes (enzyme components) necessary for the synthetic processes that occur within the cell. Third, food provides the materials from which all of the structural and catalytic components of the living cell can be assembled by processes sometimes called anabolism. The three

H roles of food are not mutually exclusive; energy-yielding substances

in many organisms may function in all three ways, and essential nutrients, if present in excess, may frequently be metabolized to supply energy. A

The essential precursors (i.e., the substances from which other substances are formed) of cell materials can be divided into two groups - nonessential nutrients, which can be synthesized by the cell from other materials, and essential nutrients, which, because they cannot be synthesized by the cell, must be supplied in foods. All of the inorganic materials required for growth, together with an assortment of organic compounds whose number may vary from one to 30 or more, depending on the organism, fall into the latter category. Although organisms are able to synthesize nonessential nutrients, such nutrients are frequently utilized directly if present in food, thereby saving the organism the need to expend the energy required to synthesize them." B C

Having so understood the meaning of 'food', let us now see what is 'tea' and how it is understood in common parlance and by its consumers. The New Encyclopaedia Britannica (15th Edition, Vol. 11, page 596) states that 'tea' is a beverage produced by steeping top leaves and buds of the tea plant (*Camellia sinensis* of the family Theaceae) in freshly boiled water. 'Tea' is consumed as either a hot or a cold beverage by about one-half of the world's population. 'Tea' contains only four calories per cup when consumed without added ingredients but is a source of several B-complex vitamins, including B2 and nicotinic acid. Caffeine is responsible for tea's stimulating effect. Flavour is produced by volatile oils, and astringency and colour by tannin. Astringency and flavour development increase with length of the steeping period. Although some varieties produce colour quickly, satisfactory flavour development requires three to five minutes of steeping to achieve the desired maximum caffeine extraction and moderate amount of tannin. Dealing with 'beverages', the New Encyclopaedia Britannica (15th Edition, Vol. 25, page 58) states-"*Beverages*. Although most adults drink one to two litres (about one to two quarts) of water a day, much of this is in the form of liquids such as coffee, tea, fruit juice, soft drinks, beer, wines, or spirits. In general, these are appreciated more for their taste or for their effect than for their nutritive value. Fruit juices are, of course, useful for their vitamin C content and good sources of potassium while low in sodium. Coffee and tea by themselves are of no nutritive value, except that coffee contains some niacin and tea contains fluoride and manganese, but they may be a vehicle for intakes of sugar, milk, or lemon." D E F G

A It will be useful to make a reference to some decided cases brought to our notice. The most appropriate case in point is a King's Bench decision in *Hinde v. Allmond*, [1918] 87 LJKB 893. The accused was charged and convicted for possessing in her dwelling house considerable quantities of tea in violation of the Food Hoarding Order, 1917. The judgment of conviction appealed against held that tea was a food. Darling, J. opined that food is ordinarily understood as something which is eaten as distinguished from something which is drunk. The Food Hoarding Order did not contain any reference to drink. The Order defined the expression 'article of food' to include every article which is used for food by man, or which ordinarily enters into the composition or preparation of human food. The accused was

B in possession of dried leaves from which a drink can be made. No one sits down to eat tea, and it is not accurate to say that any one drinks tea. What one drinks is, not the tea, but the water which is passed through the tea-leaves so as to make a infusion which is known as tea. His Lordship opined that tea is not at all a food and one would have to strain the meaning of the word 'food' to make it apply to tea. Avory, J. agreed with Darling, J. in holding that tea is not food but opined - partially dissenting - and held that things consumed by drinking may be food. However, the word 'food' must be interpreted in its primary sense - namely, as something taken into they system as nourishment, and not merely as a stimulant. 'Tea' is not taken for nourishment, but is taken as a stimulant and is therefore not food. Sherman,

C D E J. was of the same opinion. His Lordship rested his judgment on the common sense interpretation of the word 'food' and opined that tea-leaves are not used for food by man. Tea is not taken for the purpose of nourishment and therefore cannot be included in the term 'food'.

F The above noted decision in *Hinde v. Allmond* (supra) was cited before this Court in the *The State of Bombay v. Virkumar Gulabchand Shah*, [1952] SCR 877. Therein also the term "foodstuff" came up for interpretation by the Court though in a different context. Their Lordship held that - the term "foodstuff" is ambiguous. In one sense it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper,

G baking powder and turmeric. In a wider sense it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. Two dictionaries were cited with approval before their Lordships, as under:-

H "The Oxford English Dictionary defines "foodstuff" as follows:

“that which is taken into the system to maintain life and growth and to supply waste of tissue.” A

In Webster’s International Dictionary “food” is defined as:

“nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital processes.” B

Then follows this explanation:

“Animals differ greatly from plants in their nutritive processes and require in addition to certain inorganic substances (water, salts etc.) and organic substances of unknown composition (vitamins) not ordinarily classed as foods (*though absolutely indispensable to life* and contained in greater or less quantities in the substances eaten) complex organic substances which fall into three principal groups, Proteins, Carbohydrates and Fats.” C

Next is given a special definition for legal purposes, namely - D

“As used in laws prohibiting adulteration etc., ‘food’ is generally held to mean any article used as food or drink by man, whether simple, mixed or compound, including adjuncts such as condiments etc., and often excluding drugs and natural water.” E

The definition given of “foodstuff” is —

“1. Anything used as food.

2. Any substance of food value as protein, fat etc. entering into the composition of a food.” F

The decision in *Virkumar Gulabchand Shah’s* case (supra) was followed in *K. Janardhan Pillai and Anr. v. Union of India and Ors.*, [1981] 2 SCC 45.

In *Collector of Central Excise, Bombay-I and Anr. v. M/s. Parle Exports (P) Ltd.*, [1989] 1 SCC 345 the question for consideration before this Court was whether non-alcoholic beverage base is either ‘food product’ or ‘food preparation’. Their Lordships noticed with approval a decision by the Andhra Pradesh High Court in *Brooks Bond (India) Limited v. Union of India*, [1980] 6 ELT 65 (A.P) wherein answering the question whether coffee/chicory blend was a food product, a learned judge of the High Court had held that coffee/ H

A chicory blend was neither food nor food preparation. This view of the learned Single Judge was upheld by the Division Bench of Andhra Pradesh High Court reported as (1984) 15 ELT 32 (A.P.). *Virkumar Gulabchand Shah's* case (supra) was referred to by the Division Bench. Thereafter, this Court has observed that the word 'food' has no definition of universal application and it varied from statute to statute. Where the statutory definition is not available, the word should be understood in the same way in which it is understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with the concerned commodity. The Court concluded that non-alcoholic beverage bases in India cannot be treated or understood as any "nutritive material absorbed or taken into the body of an organism which serves, for purposes of growth, work or repair and for the maintenance of the vital processes" and an average Indian will not treat non-alcoholic beverage bases as 'food products' or 'food preparations' in that light.

As an upshot of the above discussion, also keeping in view the judicial exposition of the terms 'foodstuffs' and 'tea', we are definitely of the opinion that tea is not foodstuff. Even in a wider sense as dealt with in *Virkumar Gulabchand Shah's* case (supra) "foodstuffs" will not include tea as tea either in the form of the leaves or in the form of beverage does not go into the preparation of food proper to make it more palatable and digestible. Tea leaves are not eaten. Tea is a beverage produced by steeping tea leaves or buds of the tea plants in boiled water. Such 'tea' is consumed hot or cold for its flavour, taste and its quality as a stimulant. The stimulating effect is caused by the presence of caffeine therein. 'Tea' neither nourishes the body nor sustains or promotes its growth. It does not have a nutritional value. It does not help formation of enzymes nor does it enable anabolism. Tea or its beverage does not go into the preparation of any foodstuff. In common parlance, any one who has taken tea would not say that he has taken or eaten food. Thus, 'tea' is not 'food'. It is not understood as 'food' or 'foodstuff' either in common parlance or by the opinion of Lexicographers.

The Central Government can delegate any of its statutory power to the State Governments, if permitted by law. Three things should be clearly understood, as stated by Wade & Forsyth in *Administrative Law* (Eighth Edition, 2000 at page 322): (i) Since in practice government demands a great deal of delegation, this has to be authorized by statute, either expressly or impliedly; (ii) A statutory power to delegate functions, even if expressed in wide general terms will not necessarily extend to everything; and (iii) Implied power to delegate is not commonly found in peacetime legislation.

Section 5 of the EC Act provides as under:-

"5. *delegation of powers*—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 exercisable also by —

- (a) such officer or authority subordinate to the Central Government; or
- (b) such State Government or such officer or such authority subordinate to a State Government; as may be specified in the direction."

The delegation by the Central Government can be in relation to 'such matter' etc. as may be specified.

The Notification dated June 20, 1972 notifying the delegation of powers by the Central Government to State Governments, is confined to foodstuffs, meaning thereby that the said Notification delegated the powers by the Central Government to the State Governments in regard to certain clauses of subsection (2) of Section 3 of the E.C. Act but only in relation to 'foodstuffs'. In the Notifications dated June 20, 1972 and June 9, 1978 the specified matters in relation to which delegation has been made are referable to 'foodstuffs'. As 'tea,' is not a 'foodstuff, the power in the Central Government in relation to 'tea, cannot be said to have been delegated to any State Government. By Notification dated February 10, 1978, the Central Government has declared the commodity 'tea' to be an essential commodity. With effect from the date of the said Notification, tea becomes an essential commodity by reference to the power exercised by the Central Government under Section 2(xi) of the E.C. Act read with Entry 33 in List III in the Seventh Schedule to the Constitution and Section 2 of the Tea Act, 1953. But then there is no delegation of powers by the Central Government under Section 5 of the E.C. Act in relation to tea. The Notification dated June 9, 1978, is also confined to foodstuffs which would not include tea, as already stated. Thus, it cannot be held that the State of Tamil Nadu had any power conferred upon it by the Central Government to issue any order applicable to tea under Section 3 of the E.C. Act.

A perusal of the judgment of the High Court shows that the Division Bench was of the opinion, as recorded vide para 16 of the impugned judgment,

A that - in this country it is too well known that many a poor man who live under the poverty line take a cup of tea more as a food as it keeps them active for some time and enables them to work. We cannot agree. It is a wrong assumption to say that many a poor man in the country take a cup of tea more as a food. The High Court has confused a mere stimulant with an article of food or foodstuffs. We have already dealt with in detail the issue that a drink or beverage which acts merely as a stimulant is not food.

B  
C As we have held that the State of tamil Nadu could not have promulgated an order under Section 3 of the F.C. Act in the purported exercise of the power delegated by the Central Government to make an order applicable to tea, by wrongly assuming tea to be a foodstuff, the several provisions of the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977, must be held to be *ultra vires* the power of the State Government to the extent to which it makes provisions in relation to tea. The said order cannot apply to tea.

D In view of the above said finding, it is not necessary to deal with the other contention raised on behalf of the appellant viz. that the order is invalid and ineffective as it is not accompanied by the previous concurrence of the Central Government.

E The appeals are allowed. The impugned judgment of the High Court is set aside. The writ petition, filed by the appellants as writ petitioners in the High Court, shall stand allowed.

N.J.

Appeals allowed.