

AFRReserved on 28.10.2013Delivered on 09.12.2013Court No. - 37**Case :-** WRIT - C No. - 24620 of 2013**Petitioner :-** Indrapal Singh**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Ajay Bhanot,J.K.S. Sikarwar**Counsel for Respondent :-** C.S.C.,Pramod Kumar Sharma**Hon'ble Ashok Bhusan,J.****Hon'ble V.K. Shukla,J.****Hon'ble Vipin Sinha,J.****(Per: Hon'ble V.K. Shukla,J.)**

For getting an authoritative pronouncement, as to whether the definition of family as interpreted in the case of *Ram Murat and others Vs. Commissioner, Azamgarh Division, Azamgarh and others reported in (2006) (5) ADJ 396* is correct or not, the matter has been referred to this Full Bench for answering the following two questions'

- (i) Whether the judgment of the Division Bench in the case of *Ram Murat (supra)*, defining the word 'Family' as given in Government Order dated 3.7.1990 (Para 4.7) lays down the correct law specially after the enforcement of order 2004 ?
- (ii) Whether the definition of family as given in Clause 2(o) of U.P. Scheduled Commodities Distribution Order,2004, shall override the definition of family given in para 4.7 of Government order dated 3.7.1990 ?

The factual background in which the aforementioned issues have been raised are that petitioner of present writ petition was appointed as a fair price shop dealer in the year 1993. Petitioner's son Raj Bahadur was elected as Pradhan in

the year 2010. A show cause notice dated 5th November, 2012 was issued to the petitioner to show cause as to why the shop be not cancelled, since, he is running the shop, living in the joint family, and his son has been elected as Pradhan. Petitioner submitted reply to the show cause notice dated 31.1.2013 and same was followed by the order dated 3rd April, 2013 by which petitioner's fair price shop agreement has been cancelled.

Petitioner at this juncture has approached this Court questioning the validity of the decision so taken cancelling his fair price shop agreement on 3rd April, 2013 and his submission has been to the effect that petitioner's son is living separately and cannot be treated to be a member of family and, accordingly, ground on the basis of which petitioner's fair price shop has been cancelled is unsustainable. Petitioner's submission has been to the effect that the definition of family as given in Government Order dated 3rd July, 1990 and as has been interpreted in Ram Murat's case (supra) does not take into consideration Clause 2 (o) and further Clauses 30 and 31 of U.P. Scheduled Commodities Distribution Order, 2004, in its correct reference and correct perspective and, in view of this, the definition of family contained in Government Order dated 3rd July, 1990 has to be accepted as superseded and effaced after the enforcement of U.P. Scheduled Commodities Distribution Order, 2004. The Division Bench of this Court noticed the arguments raised from the side of petitioner and proceeded to refer the matter in the direction of getting authoritative

pronouncement.

Shri Ajay Bhanot, learned counsel for the petitioner, opened his arguments by contending that the Division Bench's judgment in the case of *Ram Murat (supra)* by accepting the definition of the word 'family' as given in Government Order dated 3rd July, 1990 paragraph 4.7 has not at all laid down the correct law after enforcement of U.P. Scheduled Commodities Distribution Order, 2004 wherein a different concept and a different definition has been introduced in the shape of "house hold" which is synonyms to "family" and in such a situation definition of family as mentioned in Government Order dated 3rd July, 1990 has to be accepted as effaced and, accordingly, by placing reliance on the definition of family as given in paragraph 4.7 of Government Order dated 3rd July, 1990, such a punitive action could not have been taken, as has been done in the present case and the issue in question ought to have been dealt with on the parameters of the definition of "household", which is synonymus to family as is provided under Clause 2 (o) of in U.P. Scheduled Commodities Distribution Order, 2004, as same has the overriding effect over the definition of family given in paragraph 4.7 of the Government Order dated 3rd July, 1990 and, as such, reference in question should be answered in favour of petitioner and the view as taken by the Division Bench of this Court in the case of Ram Murat's case be reversed in total and entire doubts on the subject be removed.

Countering the said submission Shri Ramesh Upadhyaya,

Chief Standing Counsel appearing with Shri S.M. Iqbal Hasan, Advocate contended that petitioner is labouring under a misconception and the Division Bench of this Court in the case of Ram Murat (supra) has taken rightful view except at a place where 'brother' has been sought to be excluded and it has been submitted by him that the definition as given in Clause 2 (o) of in U.P. Scheduled Commodities Distribution Order, 2004 describing "household" in no way would override or efface the definition of family given in paragraph 4.7 of the Government Order dated 3rd July, 1990, inasmuch as, at both the places definition in question is in all together different context and under different scheme of things and, in view of this, the reference in question is to be answered in negative by taking the view that Division Bench of this Court in Ram Murat's Case (supra) has rightly been decided and the definition of family given in paragraph 4.7 of the Government Order dated 3rd July, 1990 should be read in its entirety which should be inclusive of 'brother' also as well as other members, who are found to be dining in the same kitchen and, in view of this, purposive and contextual construction should be made, as in case the arguments so advanced by petitioner is accepted then it would render the other provisions redundant and otiose and would defeat the very purpose for which it has been introduced.

In order to appreciate the respective arguments, as has been advanced and canvassed before this Court, this Court

proceeds to take note that the Parliament has enacted the Essential Commodities Act, 1955 and Section 3 of the said Act empowers the Central Government to enact different control orders for controlling production, supply, distribution etc. of essential commodities and Section 5 of the said Act empowers the Central Government to delegate this power by notified order to the State Government also and the Central Government has, accordingly, in the said direction delegated this power to the State Governments for maintaining of supply of food grains and other essential commodities and for securing of their equitable distribution through fair price shops.

Under the aforesaid provision State of Uttar Pradesh came up with the Uttar Pradesh Food Grains & Other Essential Articles Distribution Order, 1977, which has been published in U.P. Gazette, Extraordinary, dated 3rd December, 1977 and has been substituted by First Amendment Order dated 4th January, 1978, and under the aforementioned Control Order, Clause 2 dealt with the Definition clause and therein Clause 2 (a) defined 'adult' as any person who has completed the age of five years and 'child' as any person who has not completed that age. Clause 2 (b), which was substituted by First Amendment Order dated 4th January, 1978, defines the 'authorized retail distributor' as a person appointed as 'Agent (Retail)' by the District Magistrate, City Magistrate or Sub Divisional Magistrate for sale of Government food grains and other

essential articles. Clause 2 (d) defined 'other essential article' as a commodity other than food grains specified in the Schedule II appended to this order, which is supplied or allotted by the State Government for distribution to identity card holders, as a price, fixed, from time to time, by the Central or the State Government or any other authority or office of such Government or the manufacturer, as the case may be, in respect of such commodity. Clause 2 (h) proceeds to define 'holder' in relation to an identity card as a person whose name or designation appears as such on that identity card. Clause 2 (i) proceeded to define 'house hold' means the collection of individuals who normally eat food prepared in the same kitchen. Clause 2 (j) defined identity card, Clause 2 (k) defined qualified resident. Clause 3 proceeded to mention that sale shall be made only through the authorized retail distributor. Clause 8 deals with the preparation of identity cards and therein a clear cut mention was made that a Food Officer may either of his motion or on an application made to him by a qualified resident issue or cause to be issued to such resident for himself and his household or establishment, if any, an identity card authorizing purchase of food grains and other essential articles. Household thus has been used in the context of issuance of identity card.

The State Government at the said point of time took a policy decision vide Government Order dated 28.07.1985 providing therein that in the matter of allotment of fair price

shop i.e. for being appointed as authorized retail distributor, the Pradhan and his family members would be all together outside the zone of consideration, as Pradhan has a major role to play in effectuating distribution of essential commodities. The Government Order dated 28.07.1985 imposing restriction on being appointed as authorized retail distributor, qua Pradhan and his family members, has once again been reiterated in Government Order dated 10.01.1986.

Thereafter by means of notification dated 31st August, 1989 U.P. Scheduled Commodities (Regulation of Distribution) Order, 1989 has been enforced as the State Government in its wisdom and opinion had thought it necessary and expedient for maintaining supplies of food grains and other essential commodities and for securing its equitable distribution and availability at fair price. The said control order has been issued in exercise of its powers under Section 3 of the Essential Commodities Act, 1955 read with notification of Government of India in the Ministry of Agriculture and Irrigation (Department of Food) published under GSR 800, dated 9th June, 1978 in the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation), published under Ka As 681 (A) and Ka Aa 682 (A) dated 30th November, 1974 and all other powers enabling on this behalf. The said order in question has also been extended to the whole of Uttar Pradesh and therein also definition had been given in Clause 2.

The definition of 'adult' in Clause 2 (a) was the same as

was provided for in the 1977 Control Order. In the 1989 Control Order, Clause 2 (f) defines holder in relation to an identity card and Clause 2 (g) defines household. The definition of holder is one and the same, as is provided for under the 1977 Control Order, mentioning therein that holder in relation to identity card means the person whose name or designation appears as such on the identity card and household here has been defined as individuals who are held together in the same house and normally eat food prepared in the same kitchen. Earlier under 1977 Control Order, household has been described as collection of individuals who normally eat food prepared in the same kitchen.

The said control order then defines the 'identity card' in Clause 2 (h), 'qualified resident' in Clause 2 (i), Clause 9 deals with preparation of identity card and here it has been clearly provided that Food Officer may either of his motion or of an application made to him by a qualified resident issue or cause to be issued to such resident for himself and his household or establishment, if any, an identity card authorizing purchase of Scheduled Commodities. Clause 10 dealt with the contents of identity card by providing that Food Officer shall prepare or cause to be prepared an identity card correctly with clearly marked on it the name and the address of the identity card holder, the number of persons of the household or establishment and the name or some other indication of the Authorized Retail Distributor from whom the identity card

holder is entitled to purchase Scheduled Commodities.

The U.P. Food Grains and Other Essential Articles Distribution Order, 1977 published in U.P. Gazette Extraordinary dated 3rd December, 1977 and the U.P. Scheduled Commodities (Regulation of Distribution) Order, 1989 published in gazette vide notification dated 31st August, 1989 have been repealed and the provisions of Sections 6, 8 and 24 of the General Clauses Act, 1897 has been made applicable as they apply in relation to the repeal and re-enactment of Central Act by introducing U.P. Scheduled Commodities Distribution Order, 1990. The State Government has proceeded to issue the same once again for maintaining supplies of food grains and other essential commodities and for securing equitable distribution and availability of the same on fair price. The same has been framed under Section 3 of the Essential Commodities Act, 1955 (Act No. X of 1955) read with notification of Government of India in the Ministry of Agriculture and Irrigation (Department of Food) published under GSR 800, dated 9th June, 1978 in the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation), published under Ka As 681 (A) and Ka Aa 682 (A) dated 30th November, 1974 and all other powers enabling on this behalf.

Under U.P. Scheduled Commodities Distribution Order, 1990, Clause 2 (b) defines the 'adult' in the same way and manner, as has been described in the past, Clause 2 (c) defines the 'agent' as one who is authorized to run fair price shop

whereas on the earlier occasion in 1977 Control Order as well as in the 1989 Control Order in place of agent the word 'Authorized Retail Distributor' has been used and same proceeds to mention that it means a person appointed as agent by the District Magistrate, City Magistrate or Sub Divisional Magistrate for sale of food grains and other essential commodities. Clause 2 (g) again borrows the same definition as has been provided under Control Orders of 1977 and 1989 by defining the holder in relation to an identity card as a person whose name or designation appears as such on that identity card, Clause 2 (h) defines household in the same way and manner as has been defined in the Control Order of 1977 as collection of individuals who normally eat food prepared in the same kitchen, Clause 2 (i) defines identity card means a card issued under Clause 5 of this order, Clause 2 (k) defines the qualified resident as a resident of an area to which this order extends and authorized under general or special order to receive identity card on behalf of himself or a household or an establishment. Clause 3 and 4 deals with the setting up of fair price shop and running of fair price shop, relevant extract of the same is quoted below;

“3. Setting up of fair price shop – With a view to effecting fair distribution of Scheduled Commodities the State Government may issue directions to set-up such number of fair price shops in an area as it deems fit.

4. Running of fair price shop – (1) A fair price shop shall be run through such person and in such

manner as the Collector subject to the directions of the State Government, may order.

(2) A person appointed to run a fair price shop under sub-clause (1) shall act as the agent of the State Government.”

A bare perusal of those particular provisions of Clause 3 and 4 would go to show that with a view to effectuate fair distribution of Scheduled Commodities, the State Government has been conferred an authority to issue direction for setting up such number of fair price shop in an area as it deems fit and the said fair price shop are to be run through such person as the Collector subject to direction of the State Government may order and the person so appointed to run fair price shop is to act as agent of State Government. The State Government under the scheme of things provided for has ample authority to take decision as to in what way and manner the fair price shop is to be set-up and is to be run.

The State Government on 3rd July, 1990 has accordingly proceeded to formulate a scheme as per which fair price shop are to be opened and therein a full fledged procedure has been provided for as per which the said fair price shop are to be run and managed. The said Government Order in question has clearly proceeded to provide for that, in the matter of opening of fair price shops, the family member/relatives of Pradhan or Up-pradhan would not at all be given fair price shop. Clause 4.7 of the said Government Order reads as follows;

“4.7. ग्राम प्रधान या उप प्रधान के परिवार के

सदस्यों/संबंधियों के पक्ष में उचित दर की दुकान के आबंटन का प्रस्ताव नहीं किया जायेगा। परिवार की परिभाषा निम्नलिखित मानी जायेगी स्वयं स्त्री, पुत्र, अविवाहित पुत्री, माता, पिता, भाई या अन्य कोई सदस्य जो साथ में रहता हो तथा एक ही चूल्हे का बना खाना खाता हो”

The said Government Order in question clearly restricts the field of being authorized to run fair price shop qua Pradhan/Up-pradhan and his family member as defined, plus such members who stays together and eats food prepared in common kitchen. Accordingly under the 1990 Government Order a person who was elected as Pradhan/Up-pradhan and his family members and other members residing and dining with him were prohibited from getting license for running of fair price shop. Subsequent to the same, this particular Government Order has been modified by Government Order dated 18.07.2002, and by means of such modification, so introduced, the license of fair price shop has to be cancelled, in case the licensee or his family members as mentioned therein are elected as Pradhan/Up-pradhan. Relevant extract of Government Order dated 18.07.2002 is as follows;

“प्रेषक,

श्री खंजन लाल,

प्रमुख सचिव,

उ०प्र० शासन।

सेवा में,

समस्त जिलाधिकारी,

उ०प्र०।

खाद्य रसद अनुभाग-6

लखनऊ दिनांक 18 जुलाई, 2002

विषय- सार्वजनिक वितरण प्रणाली के अंतर्गत ग्रामीण क्षेत्र में उचित दर के दुकानदारों का चयन।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या-एफ 3967 / 29-ख-6-दिनांक 03 जुलाई, 1990 का कृपया संदर्भ ग्रहण करें।

2— इस संबंध में सम्यक विचारोपरांत अधोहस्ताक्षरी को यह कहने का निदेश हुआ है कि उक्त शासनादेश के प्रस्तर-4.7 के आगे प्रस्तर-4.7 अ निम्नानुसार जोड़ दिया गया है:-

“यदि किसी दुकानदार या उसके परिवार के किसी सदस्य को जिसकी परिभाषा प्रस्तर-4.7 में दी गई है प्रधान या उप प्रधान चुन लिया जाता है तो उसकी दुकान का आवंटन निरस्त कर दिया जायेगा।

3— कृपया उक्त शासनादेश इस सीमा तक संशोधित समझा जाय।

भवदीय,

ह0अ0

(खंजन लाल)

प्रमुख सचिव।”

Earlier, Pradhan/Up-pradhan and his family members were prohibited from getting shop for distribution of scheduled commodities, and by means of subsequent modification, in case of being elected as Pradhan/Up-pradhan, the license of fair price shop of Pradhan/Up-pradhan or his family members and members as mentioned therein has to be necessarily cancelled, as on being elected, same has to be treated as a disqualification to run a fair price shop.

Under Control Order of 1990, Clause 5 deals with the preparation of identity card and Clause 6 deals with the contents of identity card and therein a clear cut mention has been made that the Food Officer shall prepare or cause to be prepared an identity card correctly with clearly marked on it the name and the address of the identity card holder, the number of persons of the household or establishment and the

name or some other indication of the agent from whom the identity card holder is entitled to purchase Scheduled Commodities.

Subsequent to the same State Government once again substituted the U.P. Scheduled Commodities Distribution Order, 1990, by issuing a new order in the year 2004 commonly termed as U.P. Scheduled Commodities Distribution Order, 2004, and therein with the same objective the State Government formed opinion that for maintaining of supply of food grains and other essential commodities and for securing of their equitable distribution and availability at fair prices, in exercise of the powers conferred under Section 3 of the Essential Commodities Act, 1955 (Act No. 10 of 1955) read with order of the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, published under GSR 630 (E), dated August 31, 2001 and all other powers enabling him on this behalf.

The said control order in question proceeded to retain the same definition of adult but in clause 2 (b) it was mentioned that 'adult' or a ration unit means any person who has completed the age of five years and 'child' or a half ration unit means any person who has not attained the age of five years. For the first time under the aforementioned control order pursuant to Public Distribution System (Control) Order 2001, framed by Central Government, in exercise of powers conferred by Section 3 of Essential Commodities Act, concept of

identification of families below poverty line (BPL) by the State Government has been introduced, and same also inheres in itself concept of identification of Antyodaya families, and in the said direction State Governments have been asked to formulate suitable guidelines. Clause 14 of the said Control Order, has an overriding effect, as it proceeds to mention, that the provisions of the order shall have effect notwithstanding anything to the contrary contained in any order made by a State Government or by an officer of such State Government.

Toeing the lines of Public Distribution System Control Order, 2001, provision has been introduced for identifying 'Antyodaya families' by defining Antyodaya families' in Clause 2 (d) those poor families from amongst Below the Poverty Line (BPL) families identified by a 'Food Officer' and entitled to receive food grains under the Antyodaya Anna Yojana' and Clause 2 (e) defines the 'APL' as those families who have been issued Above Poverty Line ration cards under this order, Clause 2 (g) defines 'BPL' as those families who have, under the guidelines of the State Government, been identified by a Food Officer for issue of food grains at specially subsidized rates, and again the definition of 'Holder' and 'Household' in Clause 2 (n) and (o), has been provided in the same way and manner, as has been dealt with in the past, holder has been defined as a person whose name or designation appears as such on that ration card and household means the collection of individuals who normally eat food prepared in the same

kitchen. Clause 2 (p) defines 'Ration Card', Clause 2 (q) defines 'Person', Clause 2 (r) defines 'Qualified Resident' means a person resident of any part of the State of Uttar Pradesh and authorized under general or special order of the State Government for the time being in force, to receive ration card on behalf of himself or a household or an establishment, Clause 2 (s) defines 'Regional Food Controller' and Clause 2 (t) defines 'Scheduled Commodity'.

Clause 3 and 4 deals with the setting up of fair price shop and running of fair price shop, relevant extract of the same is quoted below;

“3. Setting up of fair price shop – With a view to effecting fair distribution of Scheduled Commodities the State Government may issue directions under Section 3 of the Act to set-up such number of fair price shops in an area and in the manner as it deems fit.

4. Running of fair price shop – (1) A fair price shop shall be run through such person and in such manner as the Collector, subject to the directions of the State Government, may decide.

(2) A person appointed to run a fair price shop under sub-clause (1) shall act as the agent of the State Government.

(3) A person appointed to run a fair price shop under sub-clause (1) shall sign an agreement, as directed by the State Government regarding running of the fair price shop as per the draft appended to this order before the competent authority prior to the coming into effect of the said appointment.”

This particular provision of setting up of fair price shop

and running of fair price shop is also on the same line as it was there in the Control Order of 1990, as here also a fair price shop is to be run and managed through such a person and in such a manner, as the Collector may decide subject to the directions of the State Government and once again it has been clarified that a person appointed to run a fair price shop under sub-clause (1) shall act as the agent of the State Government and further a person appointed to run a fair price shop under sub-clause (1) shall sign an agreement, as directed by the State Government regarding running of the fair price shop as per the draft appended to the order before the competent authority prior to the coming with effect of the said appointment. Thus the earlier provision in pith and substance has been incorporated. Clause 5 deals with the identification of families living below the poverty line. Clause 6 deals with ration card and proceeds to mention that Food Officer shall ensure that no qualified resident is denied a ration card under this order and Food Officer is to ensure issuance of distinctive ration cards to APL, BPL and Antyodaya families in accordance with the orders issued by the State Government from time to time. Sub-clause (3) of Clause 6 proceeds to mention that the designated authority on being directed by the Food Officer is to issue a ration card of appropriate category within one month of the date of receipt of the application after necessary checks and verification but only after the approval of the Food Officer, Sub-clause (4) of Clause 6 deals with contents of ration card and

requires that same should have clearly marked on the same, the name, sex, age, address, occupation of holders, the number of persons residing with the holder including their name, age, sex, occupation and relationship with the holder alongwith other essential details of the agent from whom the holder is entitled to purchase scheduled commodities.

Clauses 30 and 31 deals with the savings and provisions of the order to prevail over previous order of State Government, which is hereby quoted below;

“30. Savings - Any act performed under the provisions of the Uttar Pradesh Scheduled Commodities Order, 1990, which is hereby repealed prior to commencement of this order, shall be deemed to have been validly performed under the provisions of this order.

31. Provisions of the order to prevail over previous orders of State Government - The provisions of this order shall have effect notwithstanding anything to the contrary contained in any order made by the State Government before the commencement of this order excepts, as respects anything done, or omitted to be done thereunder before such commencement.”

On the parameters of the provisions noted above the arguments, as have been advanced qua the questions raised are being examined as to whether, after the enforcement of 2004 Order, the judgment of Division Bench in the case of Ram Murat, defining the word “family” as given in Government Order dated 3rd July, 1990, Paragraph 4.7 lays down the correct law, and as to whether the definition of family as given in

Clause 2 (o) of 2004 Order, overrides the definition of family given in Paragraph 4.7 of Government Order dated 3rd July, 1990.

Concept of “household” is there right from the beginning, inasmuch as, the definition of “household” finds place in the Control Order of 1977 as collection of individuals who normally eat food prepared in the same kitchen. Similar definition of household is there in the Control Order of 1989 with slight modification, by mentioning, where individuals who are held together in the same house and normally eat food in the same kitchen and in 1990 Control Order the same definition in question has been incorporated as it has been in 1977 Control Order i.e. collection of individuals who normally eat food in the same kitchen. Once again at the point of time when Control Order of 2004 has been introduced, same definition of household as mentioned in 1977 Control Order and 1990 Control Order has been reiterated i.e. “household” means the collection of individuals who normally eat food prepared in the same kitchen.

“Household” under the scheme of things provided for has always been used in reference to holder of a ration card and in the matter of preparation of ration card, inasmuch as, it has to be ensured by the Food Officer that such a card is issued to qualified resident for himself and his household or establishment, authorizing purchase of food grains and other essential articles. Once ration card in question is issued to a

resident for himself and his household or establishment and the said ration card in question has to carry on it the name and address of card holder, the number of persons of the household with their name and relationship with the holder, and the name of the authorized retail distributor from whom the card holder is entitled to purchase food grains and other essential commodities and based on the said ration card, based on unit, once food grain and other essential commodities are purchased by the holder from the authorized retail distributor and the ultimate destination of said essential commodity is the kitchen of the holder, then in the said context, household has to be understood as the collection of individuals who normally eat food prepared in the same kitchen.

At the point of time when Control Order of 1990 has been introduced the definition of household has been there as collection of individuals who normally eat food prepared in the same kitchen but the State Government in its wisdom in the matter of setting up of fair price shop and running of fair price shop has not at all proceeded to borrow the aforementioned definition of 'household' in question and to the contrary in order to maintain transparency in Public Distribution System and in order to avoid conflict of interest, in exercise of its authority vested under Clauses 3 and 4 of the U.P. Scheduled Commodities Distribution Order, 1990 framed Government Order dated 3rd July, 1990 and therein a clear cut policy decision was taken clearly providing therein that the family members and relative of Pradhan and Up-pradhan such as himself, wife,

son, unmarried daughter, mother, father, brother or any other member who stays together and has a common kitchen in no eventuality shall be entitled to be appointed as an agent to run fair price shop. Said policy decision has been taken by the State Government anticipating therein that there would be conflict of interest in running and managing the Public Distribution System, as such, prohibition should be imposed on such incumbent being engaged as agent. The definition of family, under Paragraph 4.7 of Government Order dated 3rd July, 1990 is specific, as it clearly proceeds to define family in the context of prohibition being imposed upon Pradhan/Up-pradhan and their family members and other members staying and dining together in being appointed as authorized retail dealer. Family has been defined as self, wife, son, unmarried daughter, mother, father, brother or any other member who stays together and takes meal cooked in one kitchen. This particular definition is extensive as it takes within its fold the closest of relations such as self, wife, son, unmarried daughter, mother father, brother and even those members have been taken within the fold of family i.e. who stay together and mess in a common kitchen.

The State Government acquired knowledge that various incumbents in spite of the fact that they were fair price shop agents their family members/relatives falling within the prohibited category as provided under paragraph 4.7 of the Government Order dated 3rd July, 1990, have been contesting the

elections and have been winning the same and such a situation has been leading to conflict of interest and, in view of this, the State Government on 18th July, 2002 in order to remedy such a situation has proceeded to issue Government Order and has clearly mentioned therein that in case any shopkeeper or his family member, who has been defined in paragraph 4.7 of the Government Order dated 3rd July, 1990, is elected as Pradhan or Up-pradhan, then his shop in question would be cancelled.

The said provisions in question would go to show that in the matter of setting up of fair price shop and running of fair price shop there has been a deliberate departure made by the State Government in the matter of defining family so that all those incumbents who fall within the definition of family know this fact as a matter of course that they cannot be appointed as Agent and this much has also been clarified that even if they are elected subsequent to the same, then also the shop in question would be cancelled. The State Government being conscious of such a situation that in the matter of setting up of shop and running of fair price shop anomalous situation would be created by people with vested interest by placing reliance on the definition of household as collection of individuals who normally eat food prepared in the same kitchen only, then there would be room for manipulation and maneuvering has taken a deliberate departure in the matter of defining family by specifically including self, wife, son, unmarried daughter, mother father, brother and apart from this any other member

who stays together and has a common mess, has also been included. Definition of family is of wider amplitude here as specific family members as well as other members who fall within the definition of household have also been included therein who not only dine but reside also. Wider and specific relationship has deliberately been used in order to make the scope of defined word correspondingly wider and precise.

“Household” and “family” in the present case has to be interpreted and understood in the context in which they have been used.

In Francis Bennion's Statutory Interpretation, purposive construction has been described as under :

“A purposive construction of an enactment is one which gives effect to the legislative purpose by (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).”

In 'The Interpretation and Application of Statutes' by Reed Dickerson, the author at p.135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

“... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called “conceptual map of human experience”.’

In *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* [(1987) 1 SCC 424] Apex Court stated as follows:

".....If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act....."

In the case of **Bombay Dyeing & Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and others** 2006 (3) SCC 434 Apex Court after noticing the principle of purposive construction concluded as follows;

"It is well-settled principle of law that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the latter as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. When the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words."

Apex Court in the case of **Chairman, Indore Vikas Pradhikaran Vs. M/s. Pure Industrial Cock & Chemicals Ltd** AIR 2007 SC 2458 has mentioned that an act should be interpreted having regard to its history and the meaning given

to a word cannot be read in a different way than what was interpreted in the earlier repealed section and the words have to be incorporated in the context in which they are used. Apex Court, once again in the case of *State of Gujarat Vs. Justice R.A. Mehta, 2013 (1) scale 7*, has once again reiterated the same principle, that every statute has, therefore, to be construed in the context of a scheme as a whole. Consideration of context, it is trite, is to be given the meaning to legislative intention according to the terms it has been expressed.

On these principles of interpretation of statutes, the history of the Control Order in question, as already noted above, clearly reflects that household has always been used in reference of preparation of ration card the document that would ensure scheduled commodity, to the holder and the persons residing with the holder, from authorized fair price shop and same contextually is referable to collection of individuals i.e. holder and persons residing with the holder, who normally eat food in the same kitchen, and at no point of time in the matter of engagement of agent and disqualification of agent, the said definition has ever been used.

Clause 2 (o) of U.P. Scheduled Commodities Distribution Order, 2004 defines household as collection of individuals who normally eat food prepared in the same kitchen. Suggestion is to treat and accept "Household" as synonyms to "Family" for the simple reason that in the Hindi version of U.P. Schedule Commodities Distribution Order, 2004, "Household" has been

defined as “Parivar” with the embracment of all individual who normally eat food in the same kitchen.

Once the State Government who otherwise is empowered to issue Government Order controlling the subject of way and manner in which fair price shop dealer is to be appointed and the fair price shops are to be run and the State Government in its wisdom has proceeded to pose restriction and disqualification on an incumbent and his family members as defined in Paragraph 4.7 from being appointed as agent on Pradhan/Up-pradhan being there or being elected subsequently as Pradhan or Up-pradhan, then in said context the provision of U.P. Scheduled Commodities Distribution Order, 2004, containing the definition of household cannot be pressed into the services as by virtue of the provision of Section 24 of the U.P. General Clauses Act, 1904, the aforementioned Government Orders dated 3rd July, 1990 and 18th June, 2002 stands saved and are operating with full force as no inconsistent provision has been re-enacted. Relevant extract of Section 24 reads as follows;

“24. Constitution of appointments, notifications, orders etc. issued under enactments repealed and re-enacted:- Where any enactment is repealed and re-enacted by an (Uttar Pradesh) Act, with or without modification, then, unless it is otherwise expressly provided, any appointment, (or statutory instrument or form) made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been

made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, (or statutory instrument or form) made or issued under the provisions so re-enacted.”

Apex Court in the case of *State of Punjab Vs. Harnek Singh reported in 2002(3) SCC 481* has proceeded to mention that Section 24 of the General Clauses Act deals with the effect of repeal and re-enactment of an Act and the object of the section is to preserve the continuity of the notifications, orders, schemes, rules or bye-laws made or issued under the repealed Act unless they are shown to be inconsistent with the provisions of the re-enacted statute. Anything duly done or suffered thereunder, are used by legislature and saving clause, is intended with the object that unless different intention appears, the repeal of an Act would not effect. The General Clauses Act has been enacted to avoid superfluity and repetition of language in various enactments. The object of this Act is to shorten the language of Central Acts, to provide as far as possible, for uniformity of expression in Central Acts, by giving definition of series of terms in common use, to state explicitly certain convenient rules for the construction and interpretation of Central Acts, and to guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted expressly in every Central Act. In other words the General Clauses Act is a part of every Central Act and has to be read in such Act unless specifically excluded. Even in cases where the provisions of the

Act do not apply, courts in the country have applied its principles keeping in mind the inconvenience that is likely to arise otherwise, particularly when the provision made in the Act are based upon the principles of equity, justice and good conscience.

Apex Court in the same case of *State of Punjab Vs. Harnek Singh reported in 2002(3) SCC 481* has considered in great detail for applicability of the Section 6 and Section 24 of the General Clauses Act and has held that Section 24 of the General Clauses Act, are specifically applicable to the repealing and re-enactments statute, and its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. It has also been mentioned therein that once contention as has been raised by the petitioner is accepted, it would render the provision of the 1988 redundant, inasmuch as appointments notifications, orders, schemes, rules bye-laws made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof.

On the provisions as contained under Section 24 of the U.P. General Clauses Act, 1904, it is clearly manifested that the Government Order, which has been so issued on 3rd July, 1990 and 18th June, 2002, covers the field of appointment and that of disqualification and once the said Government Order is in

force and therein family has been defined in a different context altogether by mentioning who are the specific family members who are disqualified along with others i.e. who can also be treated alternatively as family member i.e. who are dining with the family, then looking into the area and the field of operation of the two, it could not be said that there is any conflict in between the definition of household or in the definition of family. The suggestion that has come forward on behalf of petitioner that after enforcement of Control Order of 2004, the definition of family as provided in Government Order dated 3rd July, 1990, is effaced and superseded, cannot be accepted on contextual interpretation of provisions.

The State Government once again has reiterated the same position by issuing Government Order dated 17th May, 2010 in following terms;

“प्रेषक,
डी०के० गुप्ता,
विशेष सचिव,
उ०प्र० शासन।
सेवा में,
जिलापूर्ति अधिकारी,
लखनऊ।

खाद्य एवं रसद अनुभाग-6

लखनऊ: दिनांक 17, मई 2010

विषय: सार्वजनिक वितरण प्रणाली के अन्तर्गत उचित दर दुकान के आवंटन के सम्बन्ध में दिशा निर्देश।

महोदय,

उपर्युक्त विषयक जिलापूर्ति अधिकारी लखनऊ को सम्बोधित शासन के पत्र संख्या-555/29-6-2007-162सा/01टीसी, दिनांक 28 फरवरी, 2007 का कृपया सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा यह मार्ग दर्शन दिया गया है कि यदि कोई व्यक्ति पूर्व से उचित दर दुकानदार है एवं बाद में ग्राम प्रधान निर्वाचित हो जाता है तो उसका

अनुबन्ध पत्र निरस्त नहीं होगा।

2— इस सम्बन्ध में पूर्व में निर्गत शासनादेश दिनांक 03-07-90 को अंशतः संशोधित करते हुए शासनादेश संख्या-276/29-6-2002-162सा/01 दिनांक 18.7.2002 द्वारा प्राविधानित किया गया है कि यदि किसी दुकानदार या उसके परिवार के किसी सदस्य को—जिसकी परिभाषा शासनादेश दिनांक 03.07.90 के प्रस्तर-4.7 में दी गयी है—प्रधान या उपप्रधान चुन लिया जाता है तो उसकी दुकान का आवंटन निरस्त कर दिया जायेगा। शासन का पत्र संख्या संख्या-255/29.6.2008-162सा/01टीसी दिनांक 28 फरवरी, 2007 निर्गत किये जाने के पूर्व उक्त शासनादेश दिनांक 18.7.2002 का संज्ञान नहीं लिया गया है।

3— अतएव शासन स्तर पर सम्यक विचारोपरान्त शासन का पत्र संख्या-555/29.6.2007-162 सा/01टीसी दिनांक 28 फरवरी, 2007 एतद द्वारा निरस्त किया जाता है। पुनः यह स्पष्ट किया जाता है कि इस सम्बन्ध में शासनादेश दिनांक 18.7.2002 (सुलभ सन्दर्भ हेतु प्रति संलग्न) में उल्लिखित प्राविधान ही लागू होंगे। शासन के पत्र दिनांक 28.2.2007 का लाभ जिन दुकानदारों को दिया गया हो तो कृपया उनके अनुबन्ध भी तत्काल प्रभाव से निरस्त कर दिये जाय।

कृपया उक्त आदेश का कड़ाई से अनुपालन सुनिश्चित किया जाय।

भवदीय
(डी०के० गुप्ता)
विशेष सचिव

A bare perusal of the aforementioned Government Order would go to show that therein once again State Government has proceeded to provide that all those incumbents, who fall within the definition of family, as is provided in Government Order dated 3rd July, 1990 and in case their family members, are elected as Pradhan or Up-pradhan, then the agreement of fair price shop in question should be cancelled. Thus the State Government is clear in its mind as to in what way and manner essential commodities are to be distributed and who is entitled to distribute and in the said direction of maintaining transparency in Public Distribution System and in order to avoid conflict of interest, such a stand has been taken. Once

from the background of different control orders issued from time to time, household has been used in context of preparation of ration cards and not at all in reference to allocation of fair price shop, then it cannot be said in the context of statutory provisions that in order to cancel the fair price shop agency of petitioner one will have to go strictly by the definition of household as mentioned in 2004 Control Order, as household is conceptually different in the background of the present case. "Household" has to be understood in the context it has been defined and is to be utilized, and merely because in the Hindi version of 2004 Control Order, in place of "Household", "Parivar" has been mentioned same would efface the definition of family as provided for in Government Order dated 3rd July, 1990, cannot be accepted in the facts of case as Hindi version cannot be accepted as authoritative text even otherwise, as Full Bench of this Court in the case of *Jaswant Sugar Mills Vs. P.O.*, AIR 1962 All 240, has taken the view that both English and Hindi version can be looked into, and in case of conflict or divergence between the two versions, the English version may reign supreme and supersede the same.

"Household" and "Family" are not synonyms to each other, and both the provisions would take its colour, in reference to the context it has been used, keeping in view the object and purpose sought to be achieved. This Court also proceeds to take note of the fact that the Word 'Family' is not

capable of any precise definition. According to Concise Oxford English Dictionary 'family' means a group consisting of two parents and their children living together as a unit; a group of people related by blood or marriage; the children of a person or couple; all descendants of a common ancestor.

Black's Law Dictionary defines 'family' as (i) A group of persons connected by blood, by affinity or by law especially within two or three generations (ii) A group consisting of parents and their children (iii) A group of persons who live together and have a shared commitment to a domestic relationship.

According to Law Lexicon term 'family' may be said to have a well defined, broad and comprehensive meaning in general, it is one of great flexibility and is capable of many different meaning according to the connection in which it is used. Thus, it may be 'children', 'wife and children', 'blood relations' or the 'members of the domestic circle'. According to context, it may be of narrow or broad meaning as intention of the parties using the word, or as the intention of law using it, may be made to appear.

In its ordinary and primary sense the word 'family' signifies the collective body of persons living in one house or under one head or manager or one domestic government. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio-

religious customs of the community to which such persons may belong.

According to Law Lexicon 'family' may include even domestic servants and some times persons who are merely boarders.

On the other hand the term "household" means the collection of individuals who normally eat food prepared in the same kitchen. In *Black's Law Dictionary* household has been mentioned belonging to the house and family as well as a family living together or a group of people who dwell under the same roof and in the *Law of Lexicon* it has been described as number of persons dwelling under the same roof and composing a family and by extension all who are under one domestic head.

The term 'family' and 'household' are capable of wide and varying meaning and same cannot be left to be assigned a meaning in its general terms and same has to be interpreted in reference to the context it has been used keeping in view the overall object and purpose sought to be achieved.

The question as to whether incumbents are living together and are dining together shall always essentially be question of fact always giving a room to an incumbent to handle the situation and manipulate the situation and in order to remove all the doubts to be more precise in the matter of appointment of an agent a clear cut categorical policy decision

has been taken at the first instance that Pradhan/Up-pradhan and their relatives so specified cannot be appointed as agents and secondly when Pradhan/Up-pradhan or such category of relatives in case they are elected as Pradhan or Up-pradhan, then his/her agency in question has to be terminated. The State has deliberately and intentionally defined “family” in the said context so that there is no element of doubt left on the spot that such category of incumbents who happen to be the blood relations and relations on account of marriage and also on account of dining and messing together on being elected, then the near and dear one will have to loose his/her fair price shop as there would be conflict of interest. In the definition of family there are blood relations plus relations which has been developed on account of marriage having taken place due to social orders plus members who are residing and dining together, whereas the definition of household keeps within its fold, the one who normally eat food prepared in the same kitchen. All the incumbents who fall within the definition of family may or may not be a member of household, in such a situation and in this background, the State having the absolute authority to formulate the policy for fixing the terms and conditions of appointment of agent as well as the terms and conditions for disqualification of agent the definition of family has to be seen in the said context and “household” has to be read in the context of issuance of ration card and in no other context under the scheme of things provided for. In the matter

of according of agency and in the matter of incurring disqualification on relative being elected as Pradhan or Up-pradhan, there is no escape route and agency has to be cancelled.

Accordingly, this Court is of the view that there is no conflict whatsoever in between the provisions of Clause 2 (o) Clauses 30 and 31 of U.P. Scheduled Commodities Distribution Order, 2004 vis.a.vis with the definition of “family” as given in Government Order dated 3rd July, 1990 paragraph 4.7 and the Division Bench in Ram Murat's case 2006 (5) ADJ 396, defining the word “family” as given in Government Order dated 3rd July, 1990, Paragraph 4.7 lays down the correct law, even after enforcement of Control Order 2004, except to the extent of introducing concept of joint residence and joint kitchen in reference of Brother, whereas the definition of family is clearly inclusive of brother also and the definition of family as given in Clause 2 (o) of U.P. Scheduled Commodities Distribution Order, 2004 in no way would override the definition of family given in Paragraph 4.7 of the Government Order dated 3rd July, 1990 and the said definition has to be read in the context of issuance of ration cards and nothing beyond the same.

The Full Bench proceeds to clarify that in the case of Ram Murat (supra) the brother has been taken outside the scope of the defined family members as it has been mentioned therein that agency would be cancelled only in the event if

brother is found that he has been dining together and has been staying under the same roof.

The Full Bench does not approve of the aforementioned portion of judgment in the case of Ram Murat (*supra*), inasmuch as, it is running contrary to the spirit of the Government Order dated 3rd July, 1990 and the purport and intention of Government Order when it proceeds to define the family members in the matter of engagement as well as disqualification of agent as himself, wife, son, unmarried daughter, mother, father, brother or any other member who stays together and who shares common kitchen, then by no stretch of imagination as per the spirit of aforementioned Government Order brother could have been disjuncted from the definition of family members and could have been clubbed with such category of members who were residing together and dining together. The definition of family members is specific i.e. inclusive of himself, wife, son, unmarried daughter, mother, father, brother or any other member who stays together and dines together in the common kitchen. "Or" word is normally disjunctive and same in its natural sense denotes an alternative, and intention of using such a word has to be gathered from its context. Here contextual situation clearly reflects that self, wife, son, unmarried daughter, mother, father, brother are identified class of family members, and on anyone of them being elected as Pradhan/Up-pradhan, the agency will have to be terminated/cancelled. Not only this,

other members who are residing and dining together, on their being also elected as Pradhan/Up-pradhan disqualification is to be incurred. Distinction drawn by the Division Bench, in the case of Ram Murat, by putting the brother along with other members who are residing and dining together, has no rational for it and merely on the assumption and presumption that brother don't have such close tie as compared to other family member defined, brother should be clubbed with other incumbents who are residing together and dining together cannot be approved of. On plain reading of the provision, i.e. definition of family, there are defined category of relatives such as self, wife, son, unmarried daughter, mother, father, brother and there are undefined category of relatives, who can be accepted at par with relatives defined, provided they are dining and residing together. The Courts have no authority to re-write the definition, and specially when same on its plain reading is clear and categorical, with no ambiguity worth name. Apex Court in the case of Phool Patti Vs. Ram Singh 2009 (13) SCC 22 has clearly ruled that Courts cannot add words to statute, or change its language, particularly when on plain reading meaning becomes clear. In view of this, the definition of family which includes brother cannot be read in a fashion to exclude brother from defined family members and throw him and club him in the category of any other member, who has been staying together and has been dining together, in view of this, the said portion of the *Ram Murat's Case (supra)*

is not being approved of.

In view of the above, our answer to the referred questions is as follows:-

- (i) The Division Bench judgment in *Ram Murat's* case (supra) defining the word 'family' as given in the Government order dated 3.7.1990 (Paragraph 4.7) lays down the correct law except that the word 'brother' shall also be included in self, wife, son, unmarried daughter, mother, father and the condition of having living together and taking food from common kitchen shall apply only to 'any other member (अन्य कोई सदस्य)' which has been separated by word 'Or (या)' in the definition.
- (ii) The definition of word 'family' as given in Clause 2 (o) of U.P. Scheduled Commodities Distribution Order, 2004 shall not override the definition of word 'family' as given in Paragraph 4.7 of the Government order dated 3.7.1990.

Let our answer be placed before the appropriate Bench hearing the writ petition.

I agree

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(Hon'ble Ashok Bhusan,J.)

.....

(Hon'ble V.K. Shukla,J.)

I agree

.....

(Hon'ble Vipin Sinha, J.)

Order Date :- 9.12.2013

Shekhar