**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 2nd OF NOVEMBER, 2022

WRIT PETITION No.24352 OF 2022

Between:-

1. **BEEJ UTPADAK SAHKARI SANSTHA MARYADIT THROUGH ITS PRESIDENT SEETADEVI, OFF.- STATION ROAD GOHAD CHAUK, GOHAD, BHIND (MADHYA PRADESH).**

2. **KISAN SEWA KRAY VIKRAY SAHKARI SANSTHA MARYADIT MALANPUR THROUGH ITS PRESIDENT RANI JAIN, OFF.- MALANPUR, BHIND (MADHYA PRADESH).**

3. **SHRIRAM BEEJ UTPADAK AVUM PRASANSKARAN SAHKARI SANSTHA MARYADIT THROUGH ITS PRESIDENT CHANDRASHEKHAR, OFF.- BANDA ROAD, GOHAD, DISTRICT- BHIND (MADHYA PRADESH).**

…....PETITIONERS

(BY SHRI S.K. SHARMA WITH SHRI KRISHNA KARTIKEY SHARMA - ADVOCATES)

AND

1. **STATE OF MADHYA PRADESH, THROUGH ITS PRINCIPAL SECRETARY, COOPERATIVE DEPARTMENT, VALLABH BHAWAN BHOPAL, (MADHYA PRADESH).**

2. **MANAGING DIRECTOR MADHYA PRADESH STATE COOPERATIVE MARKETING FEDERATION LIMITED, OFF. - JAHANGIRABAD BHOPAL, MADHYA PRADESH – 462008.**

3. **DISTRICT MARKETING OFFICER, MADHYA PRADESH STATE COOPERATIVE MARKETING FEDERATION LIMITED, DISTRICT-BHIND (MADHYA PRADESH).**

…....RESPONDENTS

(SHRI DEVENDRA CHOUBEY – GOVERNMENT ADVOCATE FOR STATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

"(i) That, the impugned order Annexure P/1 be held to be declared illegal and arbitrary and be quashed and the system of procurement and

distribution as existing prior to the order be allowed to continue.

(ii) That, any other relief which this Hon'ble High Court may deem fit including cost of the petition."

2. It is submitted by the counsel for the petitioners that the petitioners are the registered cooperative societies, which are functioning in the rural area for the benefit of its members, who are mostly farmers and agricultural dependent persons. The respondent no.1 in order to achieve the object of cooperation movement has empowered the societies to engage in the business of selling fertilizers in wholesale / retail for industrial use by issuing Form "O" to the societies and the said Form "O" were also issued to the petitioners societies. By the impugned order dated 30/6/2022 the respondent no.2 has stopped supply of fertilizers to the petitioners societies. Although petitioners have approached the respondent no.2, but no action has been taken and thus, this petition has been filed on the ground that stoppage of supply of the fertilizers to the cooperative societies amounts to discrimination. It is further submitted that it is beyond understanding that how the situation of shortage of fertilizers can be dealt with by stopping supply of fertilizers to the cooperative societies ? On the contrary the respondents should have increased the centers of distribution and should not have monopolized the distribution of fertilizers through Pacs, Vipanan Societies and Vipanan Sangh. It is further submitted that the impugned order is unsustainable because of the fact that the basic purpose of the Government behind passing the impugned order is to maintain the ratio

of 70 : 30 which is violative of Article 19 (1) (g) and 19 (1) (c) of the Constitution of India. Stoppage of supply of fertilizers to the petitioners societies has resulted in loss to the farmer members.

3. During the course of arguments a specific question was put to the counsel for the petitioners with regard to the reasons for issuance of the impugned order dated 30/6/2022. It is mentioned in the impugned order that because of lack of availability of racks and fertilizers, the supply of fertilizers is getting affected. Lot of cooperative societies have been issued Form "O", which are distributing fertilizers, as as result, the pre-decided ratio of 70 : 30, i.e. the Government and private sector, is getting adversely affected and accordingly, it was directed that the fertilizers shall be distributed through Pacs, Vipanan Societies and Vipanan Sangh on cash basis and the fertilizers shall not be supplied to any other society or institution. The counsel for the petitioners was specifically asked as to whether the reasons of lack of availability of racks and fertilizers have been challenged or not? It is submitted by the counsel for the petitioners that the reasons assigned in the impugned order dated 30/6/2022 are correct and in this petition they have not challenged the same.

4. Under these circumstances, where the petitioners have not challenged the reasons for passing the impugned order, then the only question which remains to be decided is "as to whether the restriction imposed by the impugned order on supply of fertilizers to the cooperative societies can be said to be reasonable restriction or not?"

5. When the counsel for the petitioner was directed to argue on the question "as to whether the fundamental right as enshrined under Article 19 (1) (g) of the Constitution of India is absolute in nature or not and

whether the reasonable restrictions can be imposed in the light of Article 19 (6) of the Constitution of India or not", then it is submitted by the counsel for the petitioners that although he has not taken this stand specifically in the writ petition, but once he has claimed that such a restriction is violative of Article 19 (1) (g) and 19 (1) (c) of the Constitution of India, then unless and until the contention of the petitioners is rebutted by the State Government, this Court cannot decide the question of reasonable restriction.

6. This submission made by the counsel for the petitioners is shocking. First of all it is for the petitioners to show their *prima facie* case for issuance of notice. Article 19 (6) of the Constitution of India reads as under:-

> (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
>
> (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
>
> (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

7. From the plain reading of this Article, it is clear that the fundamental right to practice any profession or to carry out any

occupation, trade or business is not absolute and shall not affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing in the interest of general public reasonable restrictions on the exercise of right conferred by Article 19 (1) (g) of the Constitution of India. Thus, in order to claim the protection of Article 19 (1) (g) of the Constitution of India, it is imperative upon the petitioners to *prima facie* show that the restriction imposed by the State agency is not in the interest of general public and does not amount to reasonable restriction. The entire writ petition is completely silent about this fact. However, during the course of arguments, an opportunity was given, but it was not availed by making the submission that unless and until return is filed by the State Government, this Court cannot decide the question of reasonable restriction.

8. Be that whatever it may.

9. The Supreme Court in the case of **Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and otheres** reported in **(2016) 7 SCC 353** has held as under:-

> **57.** It is well settled that the right under Article 19(1)(*g*) is not absolute in terms but is subject to reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common

man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.

58. Let us carry out this discussion in some more detail as this is the central issue raised by the appellants.

59. Undoubtedly, the right to establish and manage the educational institutions is a fundamental right recognised under Article 19(1)(*g*) of the Act. It also cannot be denied that this right is not "*absolute*" and is subject to limitations i.e. "*reasonable restrictions*" that can be imposed by law on the exercise of the rights that are conferred under clause (1) of Article 19. Those restrictions, however, have to be reasonable. Further, such restrictions should be "*in the interest of general public*", which conditions are stipulated in clause (6) of Article 19, as under:

> "**19. (6)** Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to—
>
> (*i*) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
>
> (*ii*) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

60. Another significant feature which can be noticed from the reading of the aforesaid clause is that the State is empowered to make any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any

occupation or trade or business. Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as "*doctrine of proportionality*". Jurisprudentially, "*proportionality*" can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied [Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press 2012).] , a limitation of a constitutional right will be constitutionally permissible if:

(*i*) it is designated for a proper purpose;

(*ii*) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;

(*iii*) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally

(*iv*) there needs to be a proper relation ("*proportionality stricto sensu*" or "*balancing*") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.

61. Modern theory of constitutional rights draws a fundamental distinction between the scope of the constitutional rights, and the extent of its protection. Insofar as the scope of constitutional rights is concerned, it marks the outer boundaries of the said rights and defines its contents. The extent of its

protection prescribes the limitations on the exercises of the rights within its scope. In that sense, it defines the justification for limitations that can be imposed on such a right.

62. It is now almost accepted that there are no absolute constitutional rights [Though, debate on this vexed issue still continues and some constitutional experts claim that there are certain rights, albeit very few, which can still be treated as "absolute". Examples given are:(*a*) Right to human dignity which is inviolable,(*b*) Right not to be subjected to torture or to inhuman or degrading treatment or punishment.Even in respect of such rights, there is a thinking that in larger public interest, the extent of their protection can be diminished. However, so far such attempts of the States have been thwarted by the judiciary.] and all such rights are related. As per the analysis of Aharon Barak [Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press 2012).] , two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some certain

freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. This phenomenon—of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. On the one hand is the right's element, which constitutes a fundamental component of substantive democracy; on the other hand is the people element, limiting those very rights through their representatives. These two constitute a fundamental component of the notion of democracy, though this time in its formal aspect. How can this tension be resolved? The answer is that this tension is not resolved by eliminating the "*losing*" facet from the Constitution. Rather, the tension is resolved by way of a proper balancing of the competing principles. This is one of the expressions of the multi-faceted nature of democracy. Indeed, the inherent tension between democracy's different facets is a "*constructive tension*". It enables each facet to develop while harmoniously coexisting with the others. The best way to achieve this peaceful coexistence is through balancing between the competing interests. Such balancing enables each facet to develop alongside the other facets, not in their place. This tension between the two fundamental aspects—rights on the one hand and its limitation on the other hand—is to be resolved by balancing the two so that they harmoniously coexist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspects when considered in proper context.

The Supreme Court in the case of **Cellular Operators Association**

of India and others Vs. Telecom Regulatory Authority of India and others reported in **(2016) 7 SCC 703** has held as under:-

> **45.** When we come to Article 19(1)(*g*) of the Constitution, the tests for challenge to plenary legislation are well settled. First and foremost, a sea change took place with the eleven-Judge Bench judgment in *Rustom Cavasjee Cooper (Banks Nationalisation)* v. *Union of India* [*Rustom Cavasjee Cooper (Banks Nationalisation)* v. *Union of India*, (1970) 1 SCC 248] , in which the impact of State action upon fundamental rights was stated thus : (SCC p. 288, para 49)
>
> "*49*. We have carefully considered the weighty pronouncements of the eminent Judges who gave shape to the concept that the extent of protection of important guarantees, such as the liberty of person, and right to property, depends upon the form and object of the State action, and not upon its direct operation upon the individual's freedom. But it is not the object of the authority making the law impairing the right of a citizen, nor the form of action taken that determines the protection he can claim : it is the effect of the law and of the action upon the right which attracts the jurisdiction of the Court to grant relief. If this be the true view and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the legislature nor by the form of the action, but by its direct operation upon the individual's rights."

> **46.** Under Article 19(6) of the Constitution, the State has to conform to two separate and independent tests if it is to pass constitutional muster — the restriction on the appellants' fundamental right must first be a reasonable restriction, and secondly, it should also be in the interest of the general public. Perhaps the best exposition of what the expression "reasonable restriction" connotes, was laid down in *Chintamanrao* v. *State of M.P.* [*Chintamanrao* v. *State of M.P.*, 1950 SCR 759 : AIR 1951 SC 118] , as follows : (SCR p. 763 : AIR p. 119, para 7)
>
> > "*7.* The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(*g*) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

The Supreme Court in the case of **Karnataka Live Band Restaurants Association Vs. State of Karnataka and others** reported in **(2018) 4 SCC 372** has held as under:-

> **45.** Similarly, so far as Article 19(1)(*g*) of the Constitution is concerned, this article accords fundamental rights to carry on any profession, occupation, trade or business. However, the right

guaranteed under sub-clause (*g*) is made subject to imposition of appropriate reasonable restrictions by the State in the interest of general public under clause (6).

46. As and when the question arises as to whether a particular restriction imposed by law under clause (6) of Article 19 is reasonable or not, such question is left for the court to decide. The test of reasonableness is required to be viewed in the context of the issues, which faced the impugned legislature. In construction of such laws and while judging their validity, the court has to approach the issue from the point of furthering the social interest, moral and material progress of the community as a whole. Likewise, while examining such question, the Court cannot proceed on a general notion of what is reasonable in its abstract form nor can the court proceed to decide such question from the point of view of the person on whom such restriction is imposed. What is, therefore, required to be decided in such case is whether the restrictions imposed are reasonable in the interest of general public or not.

The Supreme Court in the case of **Christian Medical College Vellore Association Vs. Union of India and others** reported in **(2020) 8 SCC 705** has held as under:-

38.3. The Court further considered the criteria of proportionality and emphasised for proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. The concept of proportionality is an appropriate criterion. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose. If the measures taken to achieve such a goal are rationally connected to the object, such steps are necessary. The Court considered the concept of proportionality thus : (*Modern*

Dental College & Research Centre case [*Modern Dental College & Research Centre* v. *State of M.P.*, (2016) 7 SCC 353 : 7 SCEC 1] , SCC pp. 411-15, paras 57-64)

"*57*. It is well settled that the right under Article 19(1)(*g*) is not absolute in terms but is subject to reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.

58. Let us carry out this discussion in some more detail as this is the central issue raised by the appellants.

Doctrine of proportionality explained and applied

59. Undoubtedly, the right to establish and manage the educational institutions is a fundamental right recognised under Article 19(1)(*g*) of the Act. It also cannot be denied that this right is not "*absolute*" and is subject to limitations i.e. "*reasonable restrictions*" that can be imposed by law on the exercise of the rights that are conferred under clause (1) of Article 19. Those restrictions, however, have

to be reasonable. Further, such restrictions should be "*in the interest of general public*", which conditions are stipulated in clause (6) of Article 19, as under:

'**19. (6)** Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to—

(*i*) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(*ii*) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.'

60. Another significant feature which can be noticed from the reading of the aforesaid clause is that the State is empowered to make any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business. Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is

what is known as "*doctrine of proportionality*". Jurisprudentially, "*proportionality*" can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied [Aharon Barak, *Proportionality : Constitutional Rights and Their Limitation* (Cambridge University Press, 2012).] , a limitation of a constitutional right will be constitutionally permissible if:

(*i*) it is designated for a proper purpose;

(*ii*) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;

(*iii*) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally

(*iv*) there needs to be a proper relation ("*proportionality stricto sensu*" or "*balancing*") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.

61. Modern theory of constitutional rights draws a fundamental distinction between the scope of the constitutional rights, and the extent of its protection. Insofar as the scope of constitutional rights is concerned, it marks the outer boundaries of the said rights and defines its contents. The extent of its protection prescribes the limitations on the exercises of the rights within its scope. In that sense, it defines the justification for limitations that can

be imposed on such a right.

62. It is now almost accepted that there are no absolute constitutional rights [*Per Sikri, J.*— Though, debate on this vexed issue still continues and some constitutional experts claim that there are certain rights, albeit very few, which can still be treated as "absolute". Examples given are : (*a*) Right to human dignity which is inviolable, (*b*) Right not to be subjected to torture or to inhuman or degrading treatment or punishment. Even in respect of such rights, there is a thinking that in larger public interest, the extent of their protection can be diminished. However, so far such attempts of the States have been thwarted by the judiciary.] and all such rights are related. As per the analysis of Aharon Barak [Aharon Barak, *Proportionality : Constitutional Rights and Their Limitation* (Cambridge University Press, 2012).] , two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be

accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some certain freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. This phenomenon—of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. On the one hand is the right's element, which constitutes a fundamental component of substantive democracy; on the other hand is the people element, limiting those very rights through their representatives. These two constitute a fundamental component of the notion of democracy, though this time in its formal aspect. How can this tension be resolved? The answer is that this tension is not resolved by eliminating the "*losing*" facet from the Constitution. Rather, the tension is resolved by way of a proper balancing of the competing principles. This is one of the expressions of the multi-faceted nature of democracy. Indeed, the inherent tension between democracy's different facets is a "*constructive tension*". It enables each facet to develop while harmoniously coexisting with the others. The best way to achieve this peaceful coexistence is through balancing between the competing interests. Such balancing enables each facet to develop

alongside the other facets, not in their place. This tension between the two fundamental aspects—rights on the one hand and its limitation on the other hand—is to be resolved by balancing the two so that they harmoniously coexist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspect when considered in proper context.

63. In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of "*proportionality*", which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in *R.* v. *Oakes* [*R.* v. *Oakes*, 1986 SCC OnLine Can SC 6 : (1986) 1 SCR 103] in the following words (at p. 138) : (SCC OnLine Can SC paras 69-71)

'*69*. To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a *Charter* right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutional protected right or freedom …

70. Second … the party invoking Section 1 must show that the means chosen are

> reasonable and demonstrably justified. This involves "a form of proportionality test"… Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be … rationally connected to the objective. Second, the means … should impair "as little as possible" the right or freedom in question … Third, there must be a proportionality between the effects of the measures which are responsible for limiting the *Charter* right or freedom, and the objective which has been identified as of "sufficient importance".
>
> *71*. … The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society.'
>
> (emphasis in original)
>
> *64*. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests."
>
> (emphasis in original)

10. Therefore, even for the purpose of issuing notice, this Court can look into the aspect as to whether the petitioners have *prima facie* succeeded in pointing out that the restriction imposed by the State is

neither in the interest of general public nor is a reasonable restriction. As already pointed out, the petitioners have accepted that the reasons assigned by the respondents about the lack of availability of fertilizers and racks are correct. Once the reasons for issuing the order has been accepted by the petitioners, then the only question which remains to be decided is "as to whether the restriction imposed by the respondents amounts to discrimination or not?"

11. It is not the case of the petitioners that the other cooperative societies of similar in category are being supplied fertilizers and only the petitioners societies have been deprived. A particular class / category of societies have been denied supply of fertilizers by the respondents. The petitioners societies and the other societies of similar category form a separate class in itself. There is no discrimination amongst the societies forming the separate and distinct class, as it has been decided that the fertilizers shall be supplied to cash counter of Pacs, Vipanan Societies and Vipanan Sangh and shall not be supplied to all other societies. If the State Government is running short of fertilizers and in order to maintain smooth supply of the same to the farmers has decided to regulate the supply of fertilizers, then it can always be said that the said decision is in the public interest or in the interest of the farmers. The Supreme Court in the case of **John Vallamattom and another Vs. Union of India** reported in **(2003) 6 SCC 611** has held as under:-

> **19.** The equality clause enshrined in Article 14 of the Constitution of India is of wide import. It guarantees equality before the law or equal protection of the laws within the territory of India. The restriction imposed by reason of a statute, however, can be upheld in the event it be

> held that the person to whom the same applies, forms a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved.

12. It is not the case of the petitioners that because of the restriction imposed by the respondents, the farmer members of the petitioners would not be able to purchase fertilizers from Pacs, Vipanan Societies and Vipanan Sangh or any other source. When the interest of the farmers has not been put in jeopardy and the farmers have not been denied fertilizers, then merely because the petitioners societies will not be able to distribute the fertilizers, cannot be said to be discriminatory in nature or not in the interest of general public. Under these circumstances, when the petitioners themselves have failed to make out a *prima facie* case to show that the restriction imposed by the respondents is not in the public interest or does not amount to reasonable restriction, then in the light of Article 19 (6) of the Constitution of India, the respondents are well within their rights to impose reasonable restrictions in order to regulate the smooth supply of fertilizers to the farmers.

13. Further, so far as the submission made by the counsel for the petitioners that unless and until return is filed by the State, this Court cannot adjudicate the matter at the stage of admission is concerned, the said argument is misconceived and shocking. No one can claim that his petition should be admitted as a matter of right. The petitioners are under an obligation to *prima facie* establish that they have an arguable matter. Merely by saying that the restriction would amount to violation of Article 19 (1) (g) of the Constitution of India is not sufficient unless and until the petitioners *prima facie* show that the restriction imposed by the

respondents does not come within the purview of Article 19 (6) of the Constitution of India.

14. In the present case, when the petitioners themselves have admitted that the reasons assigned by the respondents for imposing restriction are correct, then the scope of interference becomes more narrow. Since the petitioners have failed to *prima facie* establish that the restriction imposed by the respondents amounts to discrimination amongst the same category of co-operative societies, this Court is of the considered opinion that the petitioners have failed to make out any *prima facie* case for even issuing notice to the respondents.

15. Accordingly, the petition fails and is hereby **dismissed in *limine.***

(G.S. AHLUWALIA)
JUDGE

Arun*