

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH
AT JABALPUR
(Division Bench)

Writ Petition No.9398/2021

Nagendra Singh and anotherPetitioners

Versus

State of Madhya Pradesh and othersRespondents

Coram:

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Presence :

Shri Devendra Kumar Tripathi, learned counsel for the petitioners.

Shri Pushpendra Yadav, learned Additional Advocate General for the respondents/State.

Whether approved for reporting- Yes

Law laid down:

- The question for consideration before the Division Bench upon a reference made by the learned Single Judge is “whether action for prosecution is mandatory if deviation is more than 10% of monthly quota and only discretionary if deviation is less than 10% of monthly quota or there shall not be any prosecution if deviation is less than 10% of monthly quota?”
- **Held:-** It is evident from the plain reading of Clause 16(2) of the Control Order, 2015 that in case of violation of its Clause 13 for quantity more than 10 percent of the monthly allocation or repetition of violation under the same clause, a person shall mandatorily be prosecuted under Section 7 of the Essential Commodities Act, 1955. Thus as far as the first part of question is concerned, if the deviation is more than 10 percent of monthly quota, no discretion is left with the competent authority except to order prosecution. But it would not be mandatory for the competent authority to direct prosecution, if the deviation is less than 10 percent of monthly quota, as in such cases, he may in his discretion impose any other penalty. In the facts of the present case, since finding of violation of various sub-clauses of Clauses 10 and 11 of the Control Order, 2015 has been recorded, the Collector may with reference to sub-clause (8) of Clause 16 in his discretion direct prosecution but if the allegations are not very serious, he may instead impose any other suitable penalty.

Reference made to

V.K.Ashokan Vs. Assistant Excise Commissioner and others (2009) 14 SCC 85

Commissioner of Income Tax Vs. Hundustan Bulk Carriers, (2003) 3 SCC 57

Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and others, (2001) 4 SCC 139

Balbir Chand Vs. Food Corporation of India Ltd. & others (1997) 3 SCC 371

Krishan Kumar Vs. State of Rajasthan and others, AIR 1992 SC 1789

Mohinder Singh Gill and Another Vs. The Chief Election Commissioner New Delhi and Others (1978) 1 SCC 405

Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 225

Commissioner of Police Vs. Gordhandas Bhanji, AIR 1952 SC 16

Madhya Pradesh Public Distribution System (Control) Order, 2015, Clauses 16(2) and 16(8)

Significant Paragraphs:- 10 to 19

Heard on 22.09.2021

ORDER

(Passed on this 30th day of September, 2021)

Per: Mohammad Rafiq, C.J.

This matter has come up before the Division Bench upon a reference made by the learned Single Judge vide order dated 19.07.2021, who, thereby expressing disagreement with earlier Single Bench judgment of this Court in Writ Petition No.13958/2016 (Suresh Patel Vs. State of Madhya Pradesh and another) dated 31.3.2017, has referred the following question to be answered by the Division Bench:-

“Whether action for prosecution is mandatory if deviation is more than 10% of monthly quota and only discretionary if deviation is less than 10% of monthly quota or there shall not be any prosecution if deviation is less than 10% of monthly quota?”

2. Shorn of unnecessary details, the brief facts of the case are that petitioner No.1 Nagendra Singh is a salesman of Fair Price Shop, Chhathi Bamhori and petitioner No.2 Dharmendra Singh alias Gattu Singh is an agriculturist and ex-member of Janpad Panchayat, Lavkushnagar, Ward No.22, District Chhatarpur, who was at the relevant point of time holding the post of Chairman of Block Jal Samwardhan Samiti, Lavkushnagar, the Fair Price Shop Licensee. According to the petitioners, a false complaint was made by political rivals of petitioner No.2 against him for committing irregularities in the fair price shop. The respondent No.3-Junior Supply

Officer, Food Civil, Supplies and Consumer Protection, Lavkushnagar, District Chhatarpur held an enquiry without informing him and prepared the report behind his back. The respondent No.2-Collector, Chhatarpur on the basis of said exparte enquiry report issued a show cause notice to the petitioners on 01.04.2021, which was served on them on 03.04.2021, fixing 06.04.2021 as the date by which time the reply was to be submitted by the petitioners. However, documents mentioned in the show cause notice were never supplied to the petitioner No.2 inasmuch as no enquiry report was served upon him, which were necessary for preparing the reply. The petitioner No.2 therefore appeared before the respondent No.2-Collector through his counsel and filed an application for providing these documents and sought time to file a reply. It is contended that the allotment of the commodities in the fair price shop is controlled by the officers of the Food Department. The Collector without awaiting reply of the petitioners, proposed action for prosecution of the petitioners under different clauses of the Madhya Pradesh Public Distribution System (Control) Order, 2015 (for short "the Control Order, 2015") and vide impugned order dated 06.04.2021 directed lodgement of FIR against the petitioners under Section 3/7 of the Essential Commodities Act, 1955 for breach of Clauses 10(3) and (4), 11(1),(3), (6) and (8) and Clause 16 of the Control Order, 2015 and also for violation of conditions No.6, 21, 22 and 25 of the licence.

3. Argument of the petitioners before the learned Single Judge was that in view of Clause 2(j) of the Control Order, 2015, the Sub-Divisional Officer is shop allotment authority and as per clause 2(c) thereof, the Collector is the Appellate Authority. Action under Clauses 16 and 17 of the Control Order, 2015 could have been taken only by the Sub-Divisional

Officer. The Collector by passing the impugned order exceeded his jurisdiction. There is total non-compliance of Clauses 13 and 16(2) of the Control Order, 2015. Therefore, action contemplated under Clause 16(8) of the Control Order, 2015 is wholly without jurisdiction. Reliance was placed upon Single Bench judgment of this Court in **Suresh Patel Vs. State of Madhya Pradesh and another** in Writ Petition No.13958/2016 decided on 31.03.2017, in paras 17 and 18 of which, it was held as under:-

“17. As per the discussion made hereinabove and after going through the provisions of the Essential Commodities Act, Control Order, 2009 (repealed) and Control Order, 2015, it is apparent that in case of violation of any Central Order or the State Order, an action may be taken for suspension or revocation of a fair price shop which also includes the forfeiture of the security amount and the recovery of the diversion of the food grains either from the society or salesperson or employee or manager or chairman as the case may be. In case the violation of Clause 13 of the Control Order, 2015 has been shown more than 10% of the food grains supplied, action must be taken under the provisions of E.C. Act. In the order impugned finding showing violation of clause 16(2) has not been recorded, however, even on having competence, the District Magistrate without indicating deviation of more than 10% of the food grains supplied, action under Section 7 of the E.C. Act cannot be directed.

18. As this Court has set aside the order impugned passed by the District Magistrate because he do not have any authority to exercise the power under the Control Order, 2009 (repealed) or under Control Order, 2015 to suspend or revoke the license and also on the ground of non application of mind, without considering the justification of the allegation on merit, therefore, direction sought by the petitioner for initiation of departmental enquiry against respondent no.2 is hereby refused.”

4. The learned Single Judge in the order under reference has differed from the view taken in the earlier Single Bench judgment in **Suresh Patel** (supra) while recording the following reasons:-

“8. Occurrence of word 'Collector' wherever it occurs in Food Control Order, 2015 does not mean that Collector is appellate authority. Whether Collector is appellate authority or not is to be construed in reference to context. Appellate authority means Collector of the concerned district unless context otherwise requires. Action under Clause 16 for suspension of fair price shop and cancellation of license is to be taken by shop allotment authority, which is Sub Divisional Officer. However, it is specifically provided that when there is irregularity in operation of fair price shop then Collector has to form an opinion for prosecution against chairman or head of the

society/salesperson/employee of institution. Collector in Clause 16(8) of Food Control Order, 2015 does not mean appellate authority as he has to form its independent opinion regarding lodging of prosecution. Collector is not to act as appellate authority but authority exercising original jurisdiction under Clause 16(8) of Food Control Order, 2015. Context spells that Collector is not appellate authority. There is no force in first submission made by counsel for the petitioner.

9. Secondly, counsel for the petitioner has relied on judgment dated 31.03.2017 passed by learned Single Judge in W.P. No. 13958/2016. Learned Single Judge has held that if violation of Clause 16(2) has not been recorded and it has not been shown that there is deviation of more than 10% of food grains supplied, action under Section 7 of Essential Commodities Act cannot be directed.

10. Clause 16(2) of Food Control Order, 2015 reads as under:-

"(2) In case of violation under clause 13 for quantity more than 10 percent of the monthly allocation or repetition of violation under the same clause, a person shall mandatorily be prosecuted under section 7 of Essential Commodities Act, 1955 (No. 10 of 1955)."

11. Plain wordings of aforesaid clause say that if there is violation of clause 13 and there is deviation of 10 percent or more of monthly allocation or there is repetition of violation under same clause then person shall mandatorily be prosecuted under Section 7 of Essential Commodities Act, 1955. Clause 16(2) does not lay down that there cannot be any prosecution if deviation of quantity is less than 10% and Collector cannot form its opinion under Clause 16(8) without compliance of provision under clause 16(2) of Food Control Order, 2015."

5. We have heard Shri Devendra Kumar Tripathi, learned counsel for the petitioners and Shri Pushpendra Yadav, learned Additional Advocate General for the State.

6. Shri Devendra Kumar Tripathi, learned counsel for the petitioners has referred to the judgment of the learned Single Judge in **Suresh Patel** (supra) arguing that since the Collector happens to be the Appellate Authority, he could not have passed the impugned order directing prosecution of the petitioners. Such an order could be passed only by the shop allotment authority, who in this case was the Sub-Divisional Officer and in that event, the petitioners would have had the remedy of filing an appeal before the Collector. The learned counsel in order to buttress his argument, referred to para 12 of the judgment in **Suresh Patel** (supra) and

also relied upon the judgment of the Supreme Court in **Commissioner of Police Vs. Gordhandas Bhanji, AIR 1952 SC 16**, wherein it was held that if the statute confers the power on some authority, that power has to be exercised by the said authority alone and not by the higher authority.

7. Learned counsel for the petitioners further argued that unless finding is recorded by the shop allotment authority in terms of Clause 13 of the Control Order, 2015 for deviation of quantity more than 10 percent of the monthly allocation of the foodgrains/essential commodities, prosecution of the petitioners under Section 7 of the Essential Commodities Act could not have been directed. This argument is sought to be supported by the ratio of the judgment of the learned Single Judge in **Suresh Patel** (supra), wherein it was held that order passed by the Collector in such circumstances would be wholly incompetent and without jurisdiction.

8. Per contra, Shri Pushpendra Yadav, learned Additional Advocate General submitted that sub-clause (2) of Clause 16 of the Control Order, 2015 deals with the cases of violation under Clause 13 for quantity more than 10 percent of the monthly allocation or repetition of violation under the same clause, but the case of the petitioners would fall under Clause 16(8) of the Control Order, 2015, which covers any other kind of irregularities with reference to Clause 10 and 11 of the Control Order and provides that on finding an irregularity in operation of a fair price shop, if it is expedient in the opinion of the Collector, prosecution against the Chairman or Head of the Society/salesman/employee of institution, may be initiated. Sub-clause (8) of Clause 16 is independent of sub-clause (2) of Clause 16 of the Control Order, 2015. Learned Additional Advocate

General in particular referred to sub-clauses (3) and (4) of Clause 10 of the Control Order, 2015. While sub-clause (3) of Clause 10 provided that opening and closing time of fair price shop shall be determined by respective urban body/Zila Panchayat but fair price shop shall remain open for minimum six hours daily except on Sundays and public holidays. Sub-clause (4) of Clause 10 provided that the salesperson of fair price shop shall maintain such updated information in such manner as is directed by the Commissioner from time to time. If the Collector by himself or through any of his authorised officers finds any irregularity in operation of fair price shop with reference to Clause 10 of the Control Order, 2015 and forms an opinion to that effect, he may direct prosecution. Similarly, Clause 11 in its various sub-clauses provides for the procedure and manner of distribution of the foodgrains/essential commodities under PDS system, violation of which would attract action under Clause 16(8) of the Control Order, 2015.

9. We have given our anxious consideration to the rival submissions and examined the material on record.

10. A perusal of the impugned order dated 06.04.2021 indicates that several complaints were received against the petitioners on CM helpline for not distributing the commodities under the Public Distribution System. The Junior Supply Officer went to village Chhathi Bamhori on 04.02.2021 to conduct an enquiry and found the fair price shop in question closed. No notice was affixed outside the fair price shop as to why the shop was closed. Neither the salesman Nagendra Singh nor his assistant salesman Dharmendra Singh was found there. The enquiry officer recorded the statements of the manager of the Seva Sahkari Samiti Maryadit, Chhathi

Bamhori and certain villagers/ration card holders, according to whom, no ration/essential commodities from the fair price shop in question were distributed from November, 2020 to January, 2021 and the fair price shop was mostly lying closed during those days. It was thereafter that the Junior Supply Officer again inspected the shop on 13.03.2021 and made further enquiries from the consumers, who again stated that no foodgrains/essential items were distributed from the shop in the months of December, 2020 and January, 2021. The Collector therefore directed for taking action against the petitioners for depriving the eligible persons of foodgrains/essential items. The petitioners were not only regularly not opening the shop but were also not maintaining the stock register. Distribution register and records were also not produced by them before the Enquiry Officer. When physical verification of shop was made for the period subsequent to January, 2021, it was discovered that there was shortage of 421 quintals of wheat, 166.54 quintals of rice, 16.82 quintals of salt, 3.97 quintals of sugar and 1283.5 litres of kerosene. The Collector thus found violation of Clauses 10(3) and (4), 11(1),(3), (6) and (8) and Clause 16 of the Control Order, 2015 and also violation of conditions No.6, 21, 22 and 25 of the licence. Significantly, however in the order dated 6.4.2021, there is no specific finding about violation of Clause 13 of the Control Order, 2015.

11. It is not clear from reading of judgment of the learned Single Judge in **Suresh Patel** (supra) as to what were the facts of that case. But the show cause notice issued in that case was not only for violation of the Control Order and the provisions of the Essential Commodities Act, 1955 but also

Madhya Pradesh Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Order, 1980. According to the show cause notice, serious irregularities under Clauses 13, 15, 18, 21, 22, 23 and 24 of the Control Order were found. The learned Single Judge in that case while interpreting Clause 11 regarding punishment and penalty under the Control Order, 2009 held that sub-clause (1) applies to the co-operative institution running the fair price shop. In the event of contravention of any provision of the Control Order, the authority may suspend or revoke the licence and forfeit the security amount, apart from recovering the said amount from the erring employee of the society. According to sub-clause (2) of Clause 11, such power can be exercised by the shop allotment officer after issuing show cause notice and after affording opportunity of hearing. He may even suspend the licence by passing a reasoned order. The final order may be passed within three months after affording opportunity of hearing to the fair price shop dealer. The appeal against the order of the shop allotment officer would lie to the Collector under Clause 17 of the Control Order. Therefore, the learned Single Judge in **Suresh Patel** (supra) held that since the Collector happens to be the Appellate Authority, he cannot exercise the power of the shop allotment officer. Moreover, as per Clause 16(2) of the Control Order, it was incumbent on the District Magistrate to record finding of variation of more than 10 percent of the commodities for proposing action under Section 7 of the Essential Commodities Act, 1955. Since no such categorical finding has been recorded by the District Magistrate, the prosecution under Section 7 of the Essential Commodities Act cannot be directed.

12. It is settled principle of interpretation that where there appears to be any inconsistency in two sections of the same enactment, the principle of harmonious construction should be followed to avoid a head on clash. It should not be lightly assumed that what the rule making authority has given with one hand, it would take away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile them. Reference in this connection may be made to judgment of the Supreme Court in **Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 225 at page 268**, wherein it was held as under :-

"The rule of construction is well-settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction."

Relying on the aforesaid judgment, the Supreme Court in **Krishan Kumar Vs. State of Rajasthan and others, AIR 1992 SC 1789** held that if there appears to be some inconsistency between two provisions of the statute, the essence of harmonious construction is to give full effect to both the provisions. Another significant principle of the interpretation of statute is that the intention of the legislature must be found by reading a statute as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act so as to make a consistent enactment of the whole statute. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the legislature. The Courts will have to

reject that construction which will defeat the plain intention of the rule making authority even though there may be some inexactitude in the language used. Reference in this connection may be made to judgment of the Supreme Court in **Commissioner of Income Tax Vs. Hundustan Bulk Carriers, (2003) 3 SCC 57**. A reference to the Constitution Bench judgment of the Supreme Court in **Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and others, (2001) 4 SCC 139** would also not be out of place, wherein it was held as under:-

“17.....While examining a particular statute for finding out the legislative intent it is the attitude of judges in arriving at a solution by striking a balance between the letter and spirit of the statute without acknowledging that they have in any way supplement the statute would be the proper criteria. The duty of judges is to expound and not to legislate is a fundamental rule. There is no doubt a marginal area in which the courts mould or creatively interpret legislation and they are thus finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing”.

13. Applying the aforesaid principle of Interpretation of Statute, we are inclined to hold that in the present case, contextual, harmonious as well as purposive interpretation will have to be given to both Clauses 16(2) and 16(8) of the Control Order, 2015. Even though both these sub-clauses operate in different sphere but in cases where there is allegation of only violation of Clause 13 for quantity of more than 10 percent of monthly allocation, Clause 16(2) would be attracted. The Fair Price Shop Allotment Authority would be competent in such a situation to pass the original order for prosecution under Section 7 of the Essential Commodities Act, 1955. However in cases where the case exclusively pertains to irregularities in the operation of fair price shop relatable to Clauses 10 and 11 of the

Control Order, 2015, like the present one, Clause 16(8) of the Control Order, 2015 would be attracted and the Collector would be the original authority for deciding the question whether or not a prosecution should be initiated. If however, in a case where breach/violation is of not only Clauses 10 and 11 but also of Clause 13, it becomes combined case referable to both Clause 16(2) and Clause 16(8) of the Control Order, 2015. Therefor upon harmonious construction of these two provisions, it has to be held that the Collector, being the higher authority than the SDO, would be competent to take a call and decide on the question of directing or otherwise, of the prosecution. Critical analysis of the language of Clause 16(2) thus makes it clear that if the deviation is more than 10% of the monthly allocation or repetition of the violation of this clause, “a person shall mandatorily be prosecuted”, thus leaving no discretion with the competent authority. This however is not the position in regard to the prosecution envisaged under Clause 16(8) which confers the discretion on the Collector to decide “if it is expedient in the opinion of the Collector” and then further says that “prosecution” “may be initiated”. It should thus be clear that if the deviation of the quantity of essential commodities foodgrains to be distributed under Public Distribution System is more than 10 percent of the monthly allocation or there is repetition of violation under Clause 16(2), the authority shall be left with no discretion and shall have to mandatorily direct the prosecution. If however it is less than 10 percent, he shall have the discretion to decide not to direct the prosecution and instead impose any other suitable penalty. Similarly, in regard to operation of Fair Price Shop, if the breach/violation of various sub-clauses

of Clauses 10 and 11 of the Control Order, 2015 is attracted and the Collector is of the opinion that it is expedient to do so depending upon gravity of allegations, he may or may not direct prosecution against the Chairman or Head of the Society/salesperson/employee of institution or instead impose any other penalty.

14. The judgment of the Supreme Court in **Gordhandas Bhanji** (supra), relied upon by the learned counsel for the petitioners is an authority for the proposition of law that the public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. So the public orders are meant to have public effect and are intended to affect the action and conduct of those to whom they are addressed, they must be construed objectively with reference to the language used in the order itself. This law was reaffirmed by the Constitution Bench of the Supreme Court in the case of **Mohinder Singh Gill and Another Vs. The Chief Election Commissioner New Delhi and Others** [(1978) 1 SCC 405]. In **Gordhandas Bhanji** (supra), the Commissioner of Police though initially refused but later on granted permission to the respondent on the advice of the Advisory Committee set up by the Government to erect a cinema hall. Subsequently, however, the Government upon considering representation of those of the “public”, who were opposing the scheme, directed the Commissioner of Police on 19/20th September, 1947 not to allow the construction. The Commissioner of Police under the direction of the Government informed the respondents by order dated 27/30th September, 1947 that the permission to erect the cinema at the given site granted to him

under the letter dated 16th July, 1947 is hereby cancelled. It was in the context of these facts the Supreme Court held that discretion under Rule 250 of the Rules for Licensing and Controlling Theaters and Other Places of Public Amusement in Bombay City, 1914 was vested with the Commissioner of Police, which has been conferred upon him for public reasons involving convenience, safety, morality and public at large, coupled with a duty to exercise it when the circumstances so demanded. Whether the order is his order or is an order of the State Government, it is obviously one which prima-facie compels obedience as a matter of prudence and precaution. In those facts, it was held that the order of cancellation was not an order by the Commissioner but merely an intimation by him of an order passed by another authority, namely, the Government of Bombay. As the only person who could effect the cancellation was the Commissioner of Police, there was no valid order of cancellation. Their Lordships in this view of the matter held that licence still held good. Such are not the facts in the present case because here we are called upon to construe not only Clause 16(2) of the Control Order, 2015, which does not specifically refer to any particular authority, who can exercise the power to direct prosecution but also Clause 16(8) of the Control Order, 2015, which specifically mentions the Collector as the competent authority. The two provisions will have to be therefore construed in such a way as to give effect to the scheme of the Control Order, 2015.

15. Argument before the Supreme Court in **V.K.Ashokan Vs. Assistant Excise Commissioner and others** reported in (2009) 14 SCC 85 was that the Commissioner of Excise being a higher authority had already expressed

his opinion that application of Rule 6(28) of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 is automatic consequent upon the cancellation of licence in terms of rule 6(30) of the said Rules, therefore the Assistant Commissioner of Excise could not have taken a different view. The Supreme Court, as noticed in para 45 of the report, held that where a function is entrusted to a statutory authority, the order passed by it may not be held to be invalidated only because no provision of law was mentioned or the provision of law incorrectly mentioned. The Supreme Court held that there cannot be any dispute with regard to the aforementioned legal proposition but it is a basic rule of administrative law that where two statutory authorities could exercise the same power if a matter has been heard by one authority, the other could not have exercised the power. Further argument was that the Assistant Commissioner of Excise had served notices before the recovery proceedings had been initiated pursuant to the order passed by the higher authority i.e. the Commissioner of Excise and since the higher authority had already made up his mind and confirmed forfeiture of the security as also cancellation of license, the issuance of such notices was a mere formality. Reliance in that case was placed on judgment of the Supreme Court in **Gordhandas Bhanji** (supra). The Supreme Court in para 52 of the report distinguishing the judgment in **Gordhandas Bhanji** (supra) held that if only the Assistant Commissioner of Excise had the original authority to issue such a notice and not the Commissioner of Excise being a higher authority, the law laid down in **Gordhandas Bhanji** (supra) would have been applicable. Where the statutory authority, it is well known, exercises its jurisdiction conferred on it by a statute, it has to apply its own mind and the procedures laid down

therefor must be scrupulously followed. In the present case also, the Collector has exercised the power under Clause 16(8) of the Control Order, 2015 as the original authority.

16. In Balbir Chand Vs. Food Corporation of India Ltd. & others reported in (1997) 3 SCC 371, the petitioner was working as Manager in the Food Corporation of India. After a joint departmental enquiry against several officials of the Corporation including the petitioner, he was removed from service by the Managing Director. The petitioner challenged the order of his removal on the ground that the same could be passed only by the Zonal Manager and not by the Managing Director. Rejecting the argument of the petitioner, the Supreme Court held that a joint enquiry was conducted against all the delinquent officials. The highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances, the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee to avail of right of appeal. An authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that in doing so there will be discrimination violating Article 14 of the Constitution or causing material prejudice. When more than one delinquent officers are involved, then with a view to avoid multiplicity of the proceedings, needless delay resulting from conducting the same and overlapping of

would be evident from Clause 16(8) (supra), the Collector has also got the original power under sub-clause (8) of Clause 16 of the Control Order, 2015, which provides that “on finding an irregularity in operation of a fair price shop, if it is expedient in opinion of the Collector, the prosecution against the Chairman/Head of the Society/salesperson/employee of institution may be initiated”. The impugned order of the Collector indicates that it was a composite order for breach of Clauses 10(3) and (4), 11(1), (3), (6) and (8) and also Clause 16 of the Control Order, 2015. There being no categorical finding about breach or violation of Clause 13, Clause 16(8) would be attracted in the present case. Reading of Clause 16(8) would make it clear that the Collector has specifically been mentioned therein as the competent authority to decide about prosecution of the Chairman/Head of the Society/salesperson/employee of the Society. Mere fact that Collector would be Appellate Authority with reference to similar decision under Clause 16(2) would not denude him (the Collector) of the power to pass an order under sub-clause (8) of Clause 16. In that case, the Collector by necessary implication would cease to be the Appellate Authority as obviously; he cannot hear the appeal against his own order. Even if therefore the appellate powers have been given to the Collector under Clause 17 of the Control Order against the order of the Fair Price Shop Allotment Authority/SDO, the Clause 16(8) of the Control Order, 2015 having itself conferred original power upon the Collector, the appeal against the order of the Collector thus by necessary implication would lie to the State Government.

19. Adverting now to the question referred to the Division Bench by the learned Single Judge as to whether prosecution is mandatory if deviation is more than 10 percent of monthly quota, it is evident from the plain reading of Clause 16(2) of the Control Order, 2015 that in case of violation of its Clause 13 for quantity more than 10 percent of the monthly allocation or repetition of violation under the same clause, a person shall mandatorily be prosecuted under Section 7 of the Essential Commodities Act, 1955. Thus as far as the first part of question is concerned, if the deviation is more than 10 percent of monthly quota, no discretion is left with the competent authority except to order prosecution. But it would not be mandatory for the competent authority to direct prosecution, if the deviation is less than 10 percent of monthly quota, as in such cases, he may in his discretion impose any other penalty. In the facts of the present case, since finding of violation of various sub-clauses of Clauses 10 and 11 of the Control Order, 2015 has been recorded, the Collector may with reference to sub-clause (8) of Clause 16 in his discretion direct prosecution but if the allegations are not very serious, he may instead impose any other suitable penalty.

20. The referred question is answered accordingly. Let the main matter be listed before the Single Bench for decision on merits.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge