

extensive, while the jurisdiction of the High Court under Art. 226 and of the civil Court in a regular civil suit cannot be said to be almost co-extensive and (2) that the High Court in disposing of writs is not required to go into the detailed examination of facts while in regular civil suits facts can be examined meticulously. It was further held that the plaintiff can take such grounds in the civil suit which he could take in a writ petition. A decision of the Court in a writ petition can be *res judicata* only with respect to the matters which have been decided on merits by the High Court or by this Court. Courts do not usually enter into disputed questions of fact but there is no bar to their doing so if they feel disposed to enter into such facts and arrive at a conclusion with respect to them. We do not see why all the grounds which can be urged in support of or against a matter raised for decision in a writ petition cannot be urged in the proceedings on it. It is true that the jurisdiction of the civil Court and the High Court or this Court cannot be said to be co-extensive, but it is plain that the civil Court, in the exercise of its jurisdiction, is subject to the appellate or revisional jurisdiction of the High Court and this Court. We do not consider the reasons for holding that a decision in a writ petition cannot operate as *res judicata* in a subsequent regular suit to be sound and are of opinion that the Punjab Case has been wrongly decided.

(59) On the other hand, the Bombay High Court has held in *Manahem v. Union of India*, AIR 1960 Bom 196, that a decision on merits in a writ petition would operate as *res judicata* in a subsequent suit.

(60) As a result of the above discussion, we are of opinion that the provisions of S. 11, C. P. C., are not exhaustive with respect to an earlier decision operating as *res judicata* between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of *res judicata*, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as *res judicata* in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial.

(61) We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under Arts. 226 or 32 of the Constitution from operating as *res judicata* in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We

therefore, hold that, on the general principle of *res judicata*, the decision of the High Court on a writ petition under Art. 226 on the merits on a matter after contest will operate as *res judicata* in a subsequent regular suit between the same parties with respect to the same matter.

(62) We may make it clear that it was not necessary, and we have not considered, whether the principles of constructive *res judicata* can be invoked by a party to the subsequent suit on the ground that a matter which might or ought to have been raised in the earlier proceeding was not so raised therein.

(63) We, therefore, dismiss this appeal with costs.

(64) **ORDER:** In accordance with the majority Judgment, the appeal is dismissed with costs. EI/R.G.D. Appeal dismissed.

AIR 1965 Supreme Court 1167 (V 52 C 183)

(From Punjab: ILR (1964) 2 Punj 182)

23rd November 1964.

P. B. GAJENDRAGADKAR, C. J.,
M. HIDAYATULLAH, J. C. SHAH, S. M. SIKRI
AND R. S. BACHAWAT, JJ.

The Hamdard Dawakhana (Wakf), Delhi and another, Appellants v. The Union of India and others, Respondents.

Civil Appeal No. 934 of 1964.

(a) Constitution of India. Arts. 132, 226 — New point — Writ petition decided by High Court upon assumption of existence of certain legal position — Existence of such position not challenged before High Court — It cannot be allowed to be challenged in appeal before Supreme Court from order of High Court — Essential Commodities Act (1955), Ss. 2, 3 — Fruit Products Order (1955), Cl. 16 (1) (c).

Before the High Court, in a writ petition the argument was based on the plea that the petitioner's product was medicinal and, therefore, was exempt under cl. 16 (1) (c) of the Fruit Products Order, 1955. The High Court held against the contention. The point that the product was not an essential commodity within the meaning of the Essential Commodities Act, 1955 was not raised. It was assumed that the product was an essential commodity:

Held that the point that it was not an essential commodity within the meaning of the Essential Commodities Act could not be raised for the first time in an appeal before the Supreme Court, against the order of the High Court.

(Para 14)

(b) Essential Commodities Act (1955), S. 3 — Fruit Products Order (1955), Cl. 2 (d) (v) — Interpretation — Clause cannot read *eiusdem generis* with previous categories — "Sharbat Rooh Afza" held fell within cl. 2 (d) (v) and was a fruit product and its production could be controlled under the Order.

Clause 2 (d) (v) of the Fruit Products Order, 1955 promulgated by the Central Government under S. 3 of the Essential Commodities Act, 1955, takes in the definition of "fruit product", squashes, crushes, cordials, barley water, barrell-ed juice and ready-to-serve beverages containing fruit juices and fruit pulp. This clause cannot be read as ejusdem generis with previous categories of beverages, because an examination of the said beverages will disclose the fact that there is no genus by reference to which the rule of ejusdem generis can be properly invoked. Besides, the context of the clause clearly suggests that it is intended to take in all beverages other than those earlier specified provided they contain fruit juices or fruit pulp.

(Held that the "Sharbat Rooh Afza" fell within cl. 2 (d) (v) of the Order and as such its production could be controlled by its relevant provisions). (Para 15)

(c) Essential Commodities Act (1955), S. 3 — Fruit Products Order, 1955 — No averment in Order that Central Government had formed necessary opinion — No presumption that such opinion was not formed — Fact, if challenged can be proved by the Government.

Before promulgating an Order under S. 3, the Central Government must have formed an opinion that it was necessary or expedient to issue the Order for maintaining or increasing supplies of the commodity in question.

The condition prescribed by the first part of S. 3 (1) of the Act is a condition precedent and it is only when and after the said condition is satisfied that the power to issue a regulatory order can be exercised by the Central Government. In the absence of any specific averment made by the Fruit Products Order, 1955 that the Central Government had formed the necessary opinion, no presumption can be drawn that such opinion had been formed at the relevant time, but it would be open to the Government to prove that such an opinion had been formed at the relevant time, and it cannot be suggested that the failure to mention that fact expressly in the Order itself would preclude them from proving the said fact independently. Criminal Appeal No. 141 of 1959, dated 30-11-1960 (SC), Rel. on.

(Paras 10, 16)

Where in a writ petition this fact was not challenged and the Government had no opportunity to prove that the necessary opinion was formed, it cannot be urged for the first time in the appeal against the order of the High Court upon the writ petition.

(Para 16)

(d) Essential Commodities Act (1955), S. 3 — Fruit Products Order (1955) — Pith and substance of Order — Fact that it tackles problem of adulteration, but is not one under Prevention of Food Adulteration Act does not make it invalid — Object of Act plainly falls under S. 3.

It is true that the Prevention of Food Adulteration Act does deal with the problem of preventing adulteration of food, but the assumption that the regulatory order of the kind of Fruit Products Order, 1955 which imposes regulations of a qualitative character in the production of essential goods, could have been issued under this Act, cannot be accepted. But quite apart from this consideration, if S. 3 (1) of the Essential Commodities Act authorises the Central Government to regulate the qualitative and quantitative production of essential commodities, it is idle to contend that the regulations imposed by the Fruit Order in respect of fruit products are outside the purview of S. 3 (1). The pith and substance of the relevant provisions of the Fruit Order clearly is to regulate the qualitative production of the fruit products covered by it. Part II of the Second Schedule to the Fruit Order shows that by virtue of its powers under S. 3 (1) of the Act, the Central Government thought it necessary to require that a particular quality of fruit syrup should be put on the market as fruit syrup and no other. This object plainly falls within the purview of S. 3 (1), and so, the contention that the Fruit Order is invalid inasmuch as it purports to tackle the problem of adulteration of fruit product cannot be accepted. (Para 17)

(e) Essential Commodities Act (1955), S. 3 — Fruit Products Order (1955), Cls. 2 (k) and 11 — There is no inconsistency between cls. 2(k) and 11.

There is no inconsistency between cl. 11 and the definition of synthetic beverage as prescribed by cl. 2 (k). The definition of synthetic beverage indicates that it is a beverage which contains no fruit juice and cl. 11 which contains a positive provision that beverages containing less than 25 per cent fruit juice should be shown as a synthetic product. The definition of synthetic beverage cannot be said to conflict with the requirement that the products falling under cl. 11 (2) should be sold as 'synthetic' products. Besides cl. 11 contains a positive provision and the validity of the mandatory requirements of cl. 11 cannot be said to be impaired by any alleged inconsistency between the said provision and the definition of synthetic beverage prescribed by cl. 2 (k). (Para 18)

(f) Essential Commodities Act (1955), Section 3 (1) — Fruit Products Order (1955), Cl. 13 (f) — Fruit Products Order, 1955 issued under Act and the Act are constitutionally valid, the restrictions imposed by them being reasonable and in interest of public—Order under Fruit Products Order requiring appellant to comply with reasonable restrictions imposed by Order — Compliance with Fruit Products Order incidentally tending to affect appellant's trade mark right, cannot render the order invalid. (Para 19)

Cases Referred: Courtwise Chronological Paras

(61) Criminal Appeal No. 141 of 1959, dated 30-11-1960 (SC), M/s. Amrit Banaspati Co. Ltd. v. State of Uttar Pradesh 7, 10

Mr. G. S. Pathak, Senior Advocate, (M/s. Hardayal Hardy, B. Dutta and M. S. K. Sastri, Advocates and Mr. J. B. Dadachanji, Advocate of M/s. J. B. Dadachanji and Co. with him), for Appellants; Mr. D. K. Daphtary, Attorney General for India (Mr. R. H. Dhebar, Advocate, with him), for Respondents.

The following Judgment of the Court was delivered by:

GAJENDRAGADKAR, C. J.— The two appellants, the Hamdard Dawakhana (Wakf), Delhi, and its Mutawalli Haji Hakim Hameed, represent the Hamdard Dawakhana institution which was initially established in or about 1906 as a Dawakhana and was subsequently declared and founded as a Wakf. Since its inception, the institution has been running dispensaries and clinics for the treatment of patients and has been manufacturing and supplying medicines and medicinal products according to Ayurvedic and Unani Systems of Medicines. Appellant No. 1 also manufactures medicated syrups which contain some fruit juices for medicinal use and they are prepared according to a certain formula devised by it. "Sharbat Rooh Afza" which is a medicated syrup manufactured by appellant No. 1 is made of the following ingredients:—

"Kasni seeds, Khus Pumpkin Juice, Water melon Juice, Chharila, Ripe grapes, Spinach, Nilofar, Sandal, Gul Gaozaban, Coriandar, Carrot, Mint, Kulfa, Keora, Rose, Citrus flower, Orange Juice, Pine-apple Juice, Water, Sugar." The formula determining the ratio and proportion in which each one of the ingredients has to be used, has been evolved by appellant No. 1 as a result of various experiments spread over a long period. The manufacture of this Sharbat began in 1920. It is intended to be used for common ailments during hot season, particularly for ailments like loss of appetite, sun stroke, nausea, sleeplessness, etc. This Sharbat Rooh Afza is not a foodstuff, and cannot be regarded as an essential commodity under s. 2 of the Essential Commodities Act, 1955 (No. 10 of 1955) (hereinafter called 'the Act'). In substance, this is the case as set out by the appellants in their petition.

(2) Purporting to act under S. 3 of the Act, the Central Government made an Order called the Fruit Products Order, 1955 (hereinafter called 'the Fruit Order') under Notification No. S.R.O. 1052 dated May 3, 1955. Under clause 3 of the Order, respondent No. 4, the Central Fruit Products Advisory Committee, has been constituted. It appears that on the 22nd

September, 1956, the Central Government purporting to act under S. 3 of the Act, made certain amendments in the Fruit Order. The result of one of the amendments thus made was to direct that the minimum percentage of fruit juice in the final product of a fruit syrup as indicated in Part II of the Second Schedule to the Fruit Order should be raised from 10% to 25%. The change so made was notified to the appellants by respondent No. 2, the Marketing Development Officer, Fruit Products, Central Zone, Delhi, on January 29, 1957. As a result of this intimation, certain correspondence followed between the appellants and respondent No. 2. The appellants had urged in the course of this correspondence that Sharbat Rooh Afza did not fall within the scope of the Act and the Fruit Order.

(3) On March 25, 1957, respondent No. 3, the Agricultural Marketing Adviser to the Government of India, New Delhi, invited a representative of the appellants for discussions, and as a result of the said discussions, Mr. Sood, the Marketing Development Officer, Delhi, inspected the factory of the appellants and watched the process of manufacture of Sharbat Rooh Afza on April 29, 1957. Thereafter, on May 10, 1957, the appellants received a communication from Mr. Sood ordering the appellants to stop further manufacture and sale of Sharbat Rooh Afza forthwith on the ground that it did not contain the minimum percentage of fruit juice prescribed by the relevant clause of the Fruit Order. This communication mentioned the fact that the appellants had been specifically asked to prepare fruit syrups strictly in accordance with the specifications prescribed, but in utter disregard of the said instructions, the appellants had wilfully continued to contravene the provisions of the Fruit Order. That is why by virtue of the powers conferred on him by clause 13 (f) of the Fruit Order, the present order was served on the appellants. It is this order which was challenged by the appellants by their writ petition filed before the Punjab High Court on the 18th May, 1957 (No. 258-D of 1957).

(4) By their writ petition the appellants prayed that the impugned order as well as the several orders passed preceding it, should be quashed and a writ of mandamus should be issued against the respondents restraining them from seeking to enforce the material provisions of the Fruit Order in respect of the appellants' product 'Sharbat Rooh Afza.' The appellants urged that the said Sharbat is not a foodstuff, but a medicinal product and as such, its production cannot be regulated under the provisions of S. 3 of the Act. According to them, the said Sharbat was not an essential commodity, nor was it a 'fruit product' as defined by clause 2(d) of the Fruit

Order. They also urged that the impugned order was invalid, because it contravened the fundamental rights of the appellants under Art. 19(1) (f) and (g) of the Constitution; the Sharbat in question was in fact a medicinal product and as such, the impugned order was inconsistent with clause 16(i) (c) of the Fruit Order. It is on these grounds that the appellants sought relief by way of an appropriate writ or order quashing the impugned order issued against them on May 10, 1957. To this petition, the appellants impleaded the Union of India as respondent No. 1.

(5) This petition was resisted by the respondents on several grounds. It was alleged that the Sharbat in question fell within the scope of the Act and the Fruit Order. The respondents referred to the fact that the Hamdard Dawakhana had duly applied and was granted a licence in 1955 as a manufacturer engaged in the business of manufacturing fruit products for sale. The Dawakhana is holding this licence since 1955. The bottles in which the Sharbat in question is sold by the appellants do not bear labels containing the words "for medicinal use only". It appears that the Dawakhana obtained a licence for the year 1952 under the Fruit Products Order 1948 for the manufacture of the Sharbat in question. On analysis, it was found that the said Sharbat did not contain fruit juice, though it was sold as fruit juice. The label on the bottle of the Sharbat depicts pictures of fruits. Under the said Order of 1948 the synthetic syrups containing no fruit juice were required to be clearly marked as 'synthetic' and to abstain from using labels with pictures of fruits. In 1954 when it was found that the Dawakhana did not get the licence renewed, the appellants were asked either to get licence renewed or to get exemption by complying with the necessary conditions. When the appellants did not comply with these directions, some of the bottles of the Sharbat were detained in the market. That led to a writ petition filed by the appellants in 1954 (No. 11-D/1954) in the Punjab High Court. When the petition, however, came for final hearing, it was not pressed, and so, was dismissed on June 5, 1954. The Dawakhana then filed a suit for injunction, but the said suit became infructuous with the expiry of the Fruit Products Order, 1948 on January 25, 1955. The present Fruit Order came into force on May 3, 1955; and the Dawakhana filed another suit for injunction, but pending the suit the appellants applied for and obtained a licence under the Fruit Order and in consequence, the suit was withdrawn on October 18, 1955. Even after obtaining the licence, the requirements of the relevant provisions of the Fruit Order as to the minimum percentage of fruit juice were not complied with by the

appellants; and that led to the impugned order. That is the background of the present writ petition.

(6) In the present writ petition, the respondents urged that the Sharbat in question is not sold for medicinal purposes; it is manufactured by the appellants as a fruit product and sold as such. No exemption was claimed by the appellants under clause 16 of the Fruit Order. The Sharbat in question is foodstuff within the meaning of S. 2 of the Act and it falls within the purview of the Fruit Order. The impugned order is not unconstitutional, because the restriction imposed by it is consistent with the relevant provisions of the Act and the Fruit Order, and the said provisions are perfectly valid, because they imposed a reasonable restriction in the interests of general public.

(7) This writ petition came on for final disposal before the Punjab High Court on January 13, 1964. The High Court has rejected the pleas raised by the appellants and dismissed their writ petition. The High Court has held that there was no substance in the appellants' grievance that the Fruit Order was invalid. In support of this conclusion, the High Court has relied upon a decision of this Court in *M/s Amrit Banaspati Co. Ltd. v. State of Uttar Pradesh*, Criminal Appeal No. 141 of 1959 D/- 30-11-1960 (SC). The High Court negated the appellants' argument that the Sharbat in question was either prepared or sold as a medicinal product. In this connection the High Court has commented on the fact that the label borne by the bottles containing the Sharbat did not show that it was for medicinal use only as required by cl. 16(i)(c) of the Fruit Order. According to the High Court, clause 11 of the Fruit Order covered the case of the Sharbat prepared by the appellants, and so, the impugned order was justified. The High Court also found that there was no substance in the grievance made by the appellants that as a result of this impugned order their registered trademark label had been affected.

(8) The High Court then examined the question as to whether the provisions of the Fruit Order could be said to be invalid, and it held that the said provisions were perfectly valid inasmuch as the restrictions imposed by them were reasonable and in the interests of the general public. It is on these grounds that the High Court dismissed the appellants' petition.

(9) Thereafter, the appellants applied for and obtained a certificate from the High Court to come to this Court in appeal. This certificate was granted on July 22, 1964. After the appeal was admitted in due course, the appellants moved this Court on October 26, 1964 for stay; in fact, during all the seven years that the writ petition was pending before the High Court, the appellants had obtained stay and they wan-

ted the stay to continue pending the final disposal of this appeal. When we found that the writ petition had taken an unusually long time in the Punjab High Court, we directed that the stay should continue in favour of the appellants, but that the appeal should be heard on November 9, 1964. That is how the hearing of this appeal has been specially expedited.

(10) Before we deal with the points which have been raised before us by Mr. Pathak, we would refer very briefly to the scheme and the relevant provisions of the Act and the Fruit Order. The Act was passed in 1955 for the purpose of controlling the production, supply and distribution of, and trade and commerce in, certain commodities in the interests of the general public. The commodities which were intended to be brought within the purview of the Act were essential commodities as defined by S. 2(a) of the Act. Amongst them are included foodstuffs, including edible oil seeds and oils covered by S. 2(a) (v), and any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purpose of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the Constitution; this is included in the definition by S. 2(a) (xi). Section 3(1) provides that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) by clauses (a) to (h) provides for different categories of orders which may be passed by the Central Government without prejudice to the generality of the powers conferred on it by sub-section (1). It would thus be clear that the Act confers power on the Central Government to regulate the production, supply and distribution of essential commodities. This power is conferred in a very general and wide sense by S. 3(1). There can be little doubt that the power to regulate the production of an essential commodity will include the power to regulate the production of essential commodities which may operate either qualitatively or quantitatively. In other words, in regard to essential commodities, the Central Government is given the power to direct how certain essential commodities should be produced and in what quantity. This power, of course, can be exercised only if the condition precedent prescribed by S. 3(1) is satisfied, and that is that the Central Government should be of opinion that it is necessary or expedient to regulate the production of any

essential commodity for one of the purposes mentioned by it. This position cannot be, and is not, disputed before us. In fact, in *M/s. Amal Banaspati Co. Ltd., Criminal Appeal No. 141 of 1959 D/-30-11-1960 (SC)* (*supra*) this Court whilst dealing with the provision of the Vegetable C. Products Control Order, 1947, issued under S. 3(1) of the Act, has definitely ruled that qualitative regulation in respect of the production of an essential commodity is permissible under S. 3(1) of the Act.

(11) That takes us to the Fruit Product Order which was issued by the Central Government on May 3, 1955, in exercise of the power conferred on it by S. 3 of the Act. Clause 2(d) of the Fruit Order defines 'fruit product'. Clause 2(d) (i) takes in synthetic beverages, syrups and sharbats; cl. 2(d) (v) takes in squashes, crushed cordials, barley water, barreled juice and ready-to-serve beverages or any other beverages containing fruit juices or fruit pulp. Clause 2(d)(ix) takes in any other unspecified items relating to fruits or vegetables. Cl. 2(j) defines "Sharbat" as meaning any non-alcoholic sweetened beverage or syrup containing non-fruit juice or flavoured with non-fruit flavours, such as Rose, Khus, Kevra, etc; and cl. 2(k) defines "synthetic beverage" as meaning any non-alcoholic beverage or syrups, other than aerated waters, containing no fruit juice but having an artificial flavour or colour resembling as fruit. Clause 7 of the Fruit Order prescribes that every manufacturer shall manufacture fruit products in conformity with the sanitary requirements and the appropriate standard of quality and composition specified in the Second Schedule to this Order; it adds that every other fruit and vegetable products not so specified shall be manufactured in accordance with the standard of quality and composition laid down in this behalf by the Licensing Officer.

(12) That takes us to clause 11; it is necessary to read this clause fully:—

- (1) Any beverage which does not contain at least 25 per centum of fruit juice in its composition shall not be described as a fruit syrup, fruit juice, squash or cordial or crush and shall be described as a synthetic syrup.
- (2) Every synthetic syrup shall be clearly and conspicuously marked on the label as a 'SYNTHETIC' product, and no container containing such product shall have a label, whether attached thereto or printed on the wrapper of such container or, otherwise, which may lead the consumer into believing that it is a fruit product. Neither the word 'FRUIT' shall be used in describing such a product, nor shall it be sold under the cover of a label, which carries the picture of a

fruit. Aerated water containing no fruit juice or pulp shall not have a label which leads the consumer into believing that it is a fruit product.

Part II of the Second Schedule to the Fruit Order describes the specifications for fruit juice and other beverages. In regard to fruit syrup, it provides, inter alia, that the minimum percentage of fruit juice in the final product must be 10 per cent. The respondents' contention is that the Sharbat in question produced by the appellants does not comply with this specification, it contravenes the mandatory provision of cl. 11(1). Part IV of the Second Schedule prescribes the specifications for synthetic syrups and sharbats. Under this Part, there is no requirement as to any minimum of fruit juice in the said syrups and sharbats.

(13) Clause 16 of the Fruit Order provides for cases to which this Order does not apply. Clause 16(i) (c) provides that nothing in this Order shall be deemed to apply to any syrups which are sold in bottles bearing a label containing the words "For medicinal use only" which does not exhibit any picture of fruits. It is common ground that the appellants do not sell the sharbat in question in bottles bearing a label containing the words "For medicinal use only" and so, cl. 16(i) (c) does not apply and the appellants can claim no exemption on that account.

(14) Mr. Pathak no doubt attempted to argue that the Sharbat in question is not an essential commodity and as such, it does not fall within the purview of the Act or within the purview of the Fruit Order. It appears that this plea was not urged by the appellants before the Punjab High Court. It was argued by them before the High Court that the Sharbat in question was a medicinal product; and that point had been considered and rejected by the High Court; and so, it has assumed that the Sharbat in question is an essential commodity within the meaning of S. 2 of the Act; that question cannot now be allowed to be argued for the first time before this Court.

(15) Mr. Pathak wanted to suggest that the Sharbat in question is not a fruit product and as such, is outside the purview of the Fruit Order. We are not impressed by this argument. We have already referred to cl. 2(d) (v) of the Fruit Order which refers to several beverages, and the residuary part of this clause takes in any other beverages containing fruit juices or fruit pulp. The suggestion that this clause should be read ejusdem generis with the previous categories of beverages cannot obviously be accepted, because an examination of the said beverages will disclose the fact that there is no genus by reference to which the rule of ejusdem generis

can be properly invoked. Besides, the context of the clause clearly suggests that it is intended to take in all beverages other than those earlier specified, provided they contain fruit juices or fruit pulp. Therefore, we feel no difficulty in holding that the Sharbat in question falls within the purview of cl. 2(d) (v) of the Fruit Order and as such, its production can be controlled by its relevant provisions.

(16) Then it is urged by Mr. Pathak that the Fruit Order itself is invalid, because it does not purport to say that before it was issued, the Central Government had formed the opinion that it was necessary or expedient to issue the Order for maintaining or increasing supplies of the commodity in question. Mr. Pathak contends, and rightly, that the condition prescribed by the 1st part of S. 3(1) of the Act is a condition precedent and it is only when and after the said condition is satisfied that the power to issue a regulatory order can be exercised by the Central Government. This contention again cannot be allowed to be raised for the first time in appeal, because if it had been raised before the High Court, the respondents would have had a chance to meet it. It is true, as Mr. Pathak contends, that in the absence of any specific averment made by the Fruit Order that the Central Government had formed the necessary opinion, no presumption can be drawn that such opinion had been formed at the relevant time; but if it would have been open to the respondents to prove that such an opinion had been formed at the relevant time; and it cannot be suggested that the failure to mention that fact expressly in the Fruit Order itself would preclude the respondents from proving the said fact independently. That is why we think Mr. Pathak cannot be permitted to urge this contention at this stage.

(17) Mr. Pathak, has, however, strenuously argued before us that the Fruit Order is invalid, because its relevant provisions indicate that it is an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954). In support of this argument, Mr. Pathak has relied on the fact that Act 37 of 1954 is relatable to the legislative power conferred by Entry 18 in List III of the Seventh Schedule to the Constitution which refers to adulteration of foodstuffs and other goods; and so, the material provisions of the Fruit Order which really prevent the adulteration of fruit products could be legitimately enacted under this Act. On the other hand, the Essential Commodities Act, 1955 is relatable to Entry 33 in List III and the Fruit Order issued under it would, therefore, be inappropriate having regard to the object which this Order is intended to achieve. He argues that the two powers are distinct and separate, and the Fruit Order with which we are concerned, cannot be said

properly to have been issued under the Act. It is true that the Prevention of Food Adulteration Act does deal with the problem of preventing adulteration of food; but it is not easy to accept Mr. Pathak's assumption that the regulatory Order of the kind with which we are concerned which imposes regulations of a qualitative character in the production of essential goods, could have been issued under this Act. But quite apart from this consideration, if S. 3(1) of the Act authorises the Central Government to regulate the qualitative and quantitative production of essential commodities, it is idle to contend that the regulations imposed by the Fruit Order in respect of fruit products are outside the purview of S. 3(1). The pith and substance of the relevant provisions of the Fruit Order clearly is to regulate the qualitative production of the Fruit products covered by it. This object is illustrated by the specification with which we are concerned. Part II of the Schedule to the Fruit Order which has imposed the obligation on the manufacturers of fruit syrups to include at least 25 per cent of fruit juice in the final product of the fruit syrup produced by them, shows that by virtue of its powers under S. 3(1) of the Act, the Central Government thought it necessary to require that a particular quality of fruit syrup should be put on the market as fruit syrup and no other. This object plainly falls within the purview of S. 3(1), and so, the contention that the Fruit Order is invalid inasmuch as it purports to tackle the problem of adulteration of fruit product, cannot be accepted.

(18) Then Mr. Pathak suggested that there was some inconsistency between the definition of 'synthetic beverage' prescribed by cl. 2(k) and the provisions of cl. 11(2) of the Fruit Order. We have already read cl. 11. The effect of cl. 11(1) is that if any beverage does not contain at least 25 per cent of fruit juice, it shall not be described, inter alia, as 'fruit syrup', but shall be described as a 'synthetic syrup', and sub-cl. (2) of cl. 11 therefore provides that if any syrup which has to be described as a 'synthetic syrup' by virtue of the provisions of sub-cl. (1) is put on the market, it would be necessary to describe it as a 'Synthetic' product clearly and conspicuously. It is with the object of bringing it to the notice of the customers at large that the synthetic product does not contain the minimum fruit juice prescribed by the Fruit Order that sub-cl. (2) imposes an obligation that whoever puts the synthetic product in the market shall mark it with a label "Synthetic" and no attempt would be made to describe the product as though it was a fruit product. That is why a specific provision is made by sub-cl. (2) that neither the word "Fruit" shall be used in describing such a product, nor will it bear a label

which carries the picture of any fruit. From this provision aerated waters are exempted because it was thought that no customer would ever mistake aerated water for fruit juice. Now if we bear in mind this scheme of clause 11, it is difficult to see where the inconsistency lies between cl. 11 and the definition of a 'synthetic beverage' as prescribed by cl. 2(k). The definition of synthetic beverage indicates that it is beverage which contains no fruit juice, and clause 11 which contains a positive provision that beverages containing less than 25 per cent fruit juice should be shown as a 'synthetic product'. The definition of 'synthetic beverage' cannot be said to conflict with the requirement that the products falling under cl. 11(2) should be sold as 'synthetic' products. Besides, clause 11 contains a positive provision and the validity of the mandatory requirements of cl. 11 cannot be said to be impaired by any alleged inconsistency between the said provision and the definition of 'synthetic beverage' prescribed by cl. (k) of the Fruit Order.

(19) The last contention which Mr. Pathak urged before us is that the impugned order is invalid, because it affects the appellants' trademark right. It is not easy to appreciate the argument. We have already held that the Act and the Fruit Order issued by the Central Government by virtue of its powers conferred by S. 3(1) of the Act are valid. If that be so, the impugned order which is fully justified by the provision of the Act and the Fruit Order cannot be challenged as being invalid. The conclusion that the Act and the Fruit Order issued under it are constitutionally valid proceeds on the basis that the restrictions imposed by them are reasonable and in the interests of general public. What the impugned order purports to do is to require the appellants to comply with the reasonable restrictions imposed by the Fruit Order. The fact that incidentally compliance with the Fruit Order may tend to affect their trade-mark right cannot, in our opinion, render the impugned order invalid. In this connection, it is necessary to bear in mind that appellant No. 1 would not be justified in contending that the registered trademark which is usually intended to distinguish one manufactured article from another can be used by it even though it is likely to mislead the customers, or its use would mean a breach of some other law. Besides, it is significant that the impugned order does not really compel the appellants to change their trade-mark. If the appellants desire that the Sharbat in question should be put on the market without complying with the requirements of clause 11(1), all that they have to do is to comply with cl. 11(2) of the Fruit Order. In the process of complying with cl. 11(2), if their trade-mark right is likely to be affected, that would not

tional validity — Violates Art. 276 of the Constitution — Constitution of India, Art. 276.

Section 2 of the Kerala Profession Tax (Validation and Reassessment) Act, 1958 (Act No. XIV of 1958) is invalid on the ground that it violates the provisions of Art. 276 of the Constitution. By S. 2 the legislature purported to validate the levy and collection of the tax under the amended proviso by validating the amendment of the proviso. The proviso as it originally stood had linked up the determination of the profits liable to tax under the rules with the Travancore Income-tax Act. The amendment of sub-rule (1) of R. 18 has the effect of linking it up with the Indian Income-tax Act. By the amendment of the proviso the words "The whole of Indian Union" are now to be read therein for the words "the whole State". Since the amendment introduces a different statute with reference to which assessable profits are to be ascertained it is possible that the amended proviso may enhance the tax liability not only of assessee falling within the first slab but also of assessee falling in the lower slabs. By applying the amended proviso the quantum of liability to pay tax on the same turnover with respect to the same period would, in certain cases, be higher than what it would have been by applying the unamended proviso. The burden of tax is thus liable to be increased in certain circumstances. The amendment of 1956 was to operate as from April 1950, that is, from a point of time earlier than the repeal of the Travancore Income-tax Act. But then the proviso is given operation subsequent to the commencement of the Constitution, and the provisions of Art. 276 would stand in the way of the legislature which validated it. The validating Act purported to validate a profession tax to an extent above Rs. 250/- subsequent to the commencement of the Constitution. AIR 1961 SC 1486, Dist.

(Paras 3, 9, 11, 13, 14)

(b) Municipalities — Travancore District Municipalities Act (23 of 1116 (M.E.)), S. 325 and Sch. II, Taxation and Finance Rules, Rule 18(2) proviso — Effect of proviso — It affected basis or incidence of tax and not merely provided a machinery for assessing tax.

The enactment of the proviso to the R. 18(2) in 1947 had the effect of introducing a new basis for assessment of the taxable income. The State thereby expected that the municipality would earn more income than under a computation made under sub-rule (2) of R. 18 read with cl. (b) of sub-rule (1) of R. 18. Another thing which the proviso of 1947 did was to take out of the category of assessee dealt with by sub-rule (2) of R. 18 such companies or persons as were assessable to income-tax. Sub-rule (2) as it stood, treated companies and persons transact-

nder the impugned order invalid, because the restriction which is sought to be enforced against them is found to be reasonable and in the interests of the general public. Besides, we would like to add that if the appellants wanted to urge this point seriously, they should have placed before the Court more material in respect of their alleged trade-mark right. The appellants had alleged in their writ petition that they are putting the Sharbat on the market as a medicinal product. In that case, they may claim exemption by complying with cl. 16(i) (c) of the Fruit Order. We, are, therefore, satisfied that the Punjab High Court was right in holding that the case had been made out by the appellants and quashing the impugned order.

(20) Before we part with this appeal, we would like to refer to one unfortunate aspect of the present proceedings. We have already indicated that the present writ petition was filed by the appellants in the Punjab High Court on May 18, 1957, and it was finally decided on January 13, 1964. It is very much to be regretted that the final disposal of this writ petition should have taken such an unusually long period. The appellants have been agitating this matter since 1957 and as a result of the long duration of the present writ petition in the High Court, they have had the benefit of the stay order. All this time, though ultimately it was found that there was no substance in the petition. It is hardly necessary to add that writ petitions in which orders of stay and injunction are passed, should be decided as expeditiously as possible. That is why when it came to the notice of this Court that this writ petition has taken an unusually long period in the High Court, we directed that it should be set down for hearing within a fortnight after it was brought to us on a notice of motion for stay.

(21) The result is, the appeal fails and is dismissed with costs.

E.I./R.G.D.

Appeal dismissed.

AIR 1965 Supreme Court 1174 (V 52 C 184)

(From Kerala: AIR 1962 Ker 185)

5th October 1964.

P. B. GAJENDRAGADKAR, C. J.,
K. N. WANCHOO, M. HIDAYATULLAH,
RAGHUBAR DAYAL, AND J. R.
MUDHOLKAR, JJ.

The Commissioner, Quilon Municipality and another, Appellants v. M/s. Harrisons and Crossfield Ltd., Quilon, Respondents.

Civil Appeals Nos. 415 to 419 of 1964.

(a) Kerala Profession Tax (Validation and Reassessment) Act (14 of 1958), S. 2 — Constitu-