

**THE ASSAM FOODSTUFFS  
(PROHIBITION OF WITHHOLDING FROM SALE)  
CONTROL ORDER, 1969**

**No. SDB 434/69/2.** In exercise of the powers conferred by sub Cls. (e), (h), and (j) of sub-S. (2) of S.3 of the Essential Commodities Act, 1955 (Central Act No. 10 of 1955) read with the Notification of the Government of India in the Ministry of Food and Agriculture (Department of Food), No GSR-1961, dated 24-7-1967, and GSR 1508, dated 30-9-1967, the Governor of Assam hereby makes the following Order, namely:

**1. Short title, extent and commencement.**

- (a) This order may be called the “Assam Foodstuffs (Prohibition of Withholding from sale) Control Order, 1969”.
- (b) It shall extend to the whole of the State of Assam.
- (c) It shall come into force at once.

**2. Definitions.**

In this Order, unless there is anything repugnant in the subject or context-

- (a) “Foodstuffs” means pulses, mustard oil, other edible oils, salt, rice sugar and any other class of commodities which the Government may, by notified order, declare to be “Foodstuffs” for the purposes of this Order.
- (b) “Deputy Commissioner” includes the Additional Deputy Commissioner and the Sub-Divisional Officer within their respective jurisdictions.
- (c) “Person” means a person dealing in foodstuffs.

**3. Prohibition of withholding from sale.**

For the maintenance of supplies and service of foodstuffs to the life of the community a person shall withhold from sale foodstuffs ordinarily kept for sale.

**4. Power to call for information, search and seizure etc.**

The Deputy Commissioner may –

- (a) issue direction to person to maintain and produce for inspection such books, accounts and records relating to his business of foodstuffs;
- (b) issue direction to any person to furnish information regarding purchase, sale and stock in hand of the foodstuffs;

(c) enter, search, seize or authorise in writing any person to enter and search any premises, vehicle or place where there is reason to believe that the stock on foodstuffs had been stored in contravention of this Order and to seize such stock, any books of accounts and documents which, in his opinion would be useful for, or relevant to, any proceeding under this Act.

**5. Sanction for prosecution.**

No prosecution in respect of an alleged contravention of the provisions of this Order shall be instituted without the previous written sanction of the Deputy Commissioner.

**COMMENTS**

There is no dispute that any violation of the Control Order has to be considered in this light of its deleterious effect on the community if such violations are condoned. It cannot also be disputed that a fair price shop provides employment and the last income derived by the petitioner there from constitutes at least a segment of his livelihood and hence its deprivation should be based on a commensurate enquiry.

It is well settled that where a power is required to be exercised by certain authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden, and that it is all the

more necessary to observe this rule where power is of drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice as was ruled in *Hukum Chand Shuyam Lal v. Union of India* [AIR 1976 SC 789], [*Suresh Deka v. State of Assam*, (1983) 1 GLR 377]

Unless the goods were delivered and stocked in the godowns under the control and custody of the owner, it could not be said that the owner had any control over the goods and kept the goods withholding from sale which were meant for sale. Therefore it must be held that the consignment of the mustard oil till the date of seizure was not actually in the custody of the owner and/or consignee, but was in the custody of the Railway authority as the same was not delivered to the consignee of the relevant R/R. It was observed on *Om Prakash Dugar v. State of Assam* [(1984) 1 GLR 74], that mere ownership by an endorsement would not help the consignee to have control of the commodities unless the consignee physically possesses the same. The physical possession of the consignment was with Railway authority as the consignment was not delivered on the date of seizure. The consignment was seized from the possession of the Railway authorities. Therefore, it cannot be said that consignee with held for sale, the commodities which were “kept for sale” as contemplated under Cl. 3 of the Order.

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