IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)

Present:
The Hon'ble Justice Smita Das De

WPA 6533 of 2025

Sudip Sarkar
-Vs-
State of West Bengal & Ors.

With
WPA 29160 of 2025

Mahesh Toshniwal
-vs-
State of West Bengal & Ors.

With
WPA 29162 of 2025

Kartick Chandra Saha
-vs-
State of West Bengal & Ors.

For the Petitioner	**:**	Mr. Debobrata Saha Roy, Sr. Adv
	:	Mr. Pingal Bhattacharyya
	:	Mr. Subhankar Das
	:	Mr. Neil Basu
	:	Mr. Sankha Biswas
For the State	**:**	Mr. Kishore Dutta, Ld. AG
	:	Mr. Sirsanya Bandyopadhyay, Ld. Sr. Standing Counsel
	:	Mr. Ritesh Kr. Ganguly
Reserved on	**:**	**23/03/2026**
Judgment on	**:**	**10/04/2026**

Smita Das De, J.:-

1. The three writ petitions are heard together and disposed of accordingly by a common order, as the issue pertains to the petitioner's debarment from participating in the selection process for Fair Price Shop Dealership due to the age limit. For the sake of convenience and in order to effectively address the issue involved herein, the facts relevant for adjudication are being culled out and taken from WPA No. 6533 of 2025.

2. The petitioner in the instant case challenges inter alia, Clause 9(ii) of the Vacancy Notification dated December 17, 2024 and Clause 11(v) of the Control Order, 2024 , whereby a restriction has been imposed on the individuals who have crossed the age of 45 years cannot submit any application for grant of Fair Price Shop licence.

3. Apropo the facts of the case is that the petitioner participated in the selection process of the Fair Price Shop dealer (hereinafter referred to as the "F.P Shop Dealer") on the terms and conditions of the Vacancy Notice dated December 17, 2024. At the time of participation it has been found by the petitioner that a new condition/criteria has been incorporated, following new Control Order, 2024 which states that the age of the applicants must not be more than 45 years on the date of application.

4. The Sub-Divisional Controller (F&S), Gangarampur notified vacancy of F.P Shop at Central Location: Ward No. 0013,0016,005(Central Location: Bhodangpara F.P School), Service Area : Ward No.0005,0013,0016,P.O: Gangarampur, Ward No. 0005,0013,0016, P.S : Gangarampur , Municipality :Gangarampur under Gangarampur

Sub-Division in the District of Dakshin Dinajpur on December 17, 2024 vide Memo No.748/MR/SCFS/GMP under West Bengal Targeted Public Distribution System (Maintenance & Control) Order, 2024 .The vacancy has been published in the Bengali Newspaper having wide circulation.

5. The petitioner is an educated unemployed person, resident of Gangarampur Sub Division having all eligibility criteria for appointment as a F. P Shop Dealer including suitable shop-cum-godown in a single compartment for setting up Fair Price Shop in the central point of the advertised location where Sub-Divisional Controller(F&S), Gangarampur declared vacancy for Fair Price Shop vide vacancy notice dated December 17, 2024.As prescribed in the advertisement dated December 17, 2024, the petitioner disclosed a bank balance exceeding the required amount but the age exceeds the limit mentioned in the vacancy notice in question.

6. After consulting with the vacancy notice dated December 17, 2024 and the West Bengal Targeted Public Distribution System (Maintenance & Control) Order,2024 (hereinafter referred to as "Control Order,2024") the petitioner challenged the vires of the provision of the Control Order,2024 which debarred the petitioner to participate in the selection process, despite having all other eligibility criteria.

7. The petitioner has filed a writ petition being W.P.A No 6533 of 2025 which has been taken up for hearing along with five other writ petitions by the Coordinate Bench of this Court on April 07, 2025.

Upon hearing the parties, the Coordinate Bench has been pleased to pass an interim order directing inter alia, the state respondents to proceed with the vacancy notifications, however ,insofar as the grant of license to the applicant is concerned, the same shall not be issued till final decision of the instant matter.

8. The State respondents preferred an appeal being M.A.T No. 745 of 2025 before the Hon'ble Division Bench of this Hon'ble Court challenging the order of the Single Bench dated April 7,2025 wherein the Division Bench of this Court has been pleased to modify the interim order without affirming the observations of the Ld. Single Judge, and directed the state respondents to proceed and issue license in favour of the F.P Shop Dealers, however, there shall be a rider to each licence issued indicating that the same shall be abide by the result of the proceedings pending before the Ld. Single Judge.

9. Sub-clause (ii) of Clause 9 under heading "Eligibility Criteria" of the vacancy notice dated December 17, 2024 is the re-production of Clause 11(v) of the Control Order,2024 which states that an individual applicant has to be below 45(forty-five) years of age on the date of submission of the application.

10. In the vacancy notification dated December 17, 2024 in sub-clause (xi) of Clause 11, it has been stated that proof of date of birth of the individual applicant/all partners has to be uploaded in the official portal along with the application.

11. Being aggrieved by the Clause 9(ii) of the vacancy notification dated December 17, 2024 bearing Memo No. 748/MR/SCFS/GMP issued by

the Sub-Divisional Controller (F&S) , Gangarampur , District Dakshin Dinajpur and also Clause 11(v) of the West Bengal Targeted Public Distribution System (Maintenance & Control) Order,2024 , which is the subject matter of challenge in the instant writ petition filed by the petitioner.

Contention of the Petitioner-

12. Learned Counsel on behalf of the petitioner states that the incorporation of Clause 11(v) in the State Control Order,2024, restricting the eligible applicants more than 45 years age to participate in the selection process for appointment of F.P Shop Dealer is unfair and discriminatory, which takes away the fundamental rights of the petitioner in the following manner:

a) Right to participate or right to contest selection process is a fundamental right, imposition of unreasonable restriction without any logic and object takes away the fundamental rights of the petitioner protected under Article 14 of the Constitution of India i.e to say equality before the law.

b) Right to participate in the selection process to do lawful business is a fundamental right protected under Article 19(I)(g) of the Constitution Of India.

c) Right to earn livelihood in lawful manner is a fundamental right of a citizen, protected under Article 21 of the Constitution of India.

13. It has been stated by the petitioner that although the entry in the dealership business by an individual has been restricted to the age of

45 but no upper age limit has been prescribed for continuation of the business. In the case of compassionate appointment there is no restriction of age bar at the entry point.

14. Reliance has been placed by the petitioner on Chapter VI, Clause 39(3) of the State Control Order, 2024, that deals with the provision for compassionate appointment, and reliance has been placed on that if a dealer dies at the age of 90 years, his widow at the age of 87/88 years may apply for dealership on compassionate appointment and on getting the license, she may even continue the dealership business at the age of 100 years.

15. Reliance has also been placed by the petitioner on Chapter V, Clause 30(c) of the Control Order, 2024, and it is submitted that in case of appointment of M.R Distributor, 50 years age limit has been fixed in the entry point, although job of a Distributor is more responsible, since a Distributor is dealing with normally 50 F.P Shop Dealers.

16. Learned Counsel for the petitioner submits that in the State Control Order, 2003, State Control Order, 2013, NFSA, 2013 and TPDS Central Control Order, 2015 there is no provision for restriction in the entry point to get license of F.P Shop Dealer.

17. It has been contended by the petitioner that if an applicant has applied for grant of F.P Shop license at the age of 44 years 11months 29 days and if the applicant is selected as an F.P Shop Dealer, in that event, the applicant is entitled to continue his Dealership business till his last breath, since there is no retirement / upper age limit to continue the Dealership business.

18. The petitioner submitted that it is settled principle of law that right to do business is the fundamental right of a citizen of India and in the instant case the petitioner did not pray for grant of Fair Price Shop Licence, but to allow the selection process, to proceed in a fair manner. It is the duty of the state to choose the suitable candidate without debarring any eligible candidate by incorporating age limit in the entry point.

19. It is also stated by the petitioner that Public Distribution System, more so, Targeted Public Distribution System only meant for convenience of the consumers, removing the inconveniences and for their betterment.

20. The petitioner has relied upon the following judgments –

(a) When Court can interfere in the policy decision of the State-**Brij Mohan Lal vs Union Of India & Ors** reported in **(2012) 6 SCC 502,**

> *"100. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as"*
> *(i) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.*
> *(ii) The change in policy must be made fairly and should not give the impression that I was so done arbitrarily on any ulterior intention.*
> *(iii) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc*
> *(iv)If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.*
> *(v) It is de hors the provisions of Act or legislation.*
> *(vi) If the delegate has acted beyond its power of deligation.*

(b) If there is no upper age limit, there should not be any age limit in the entry point- **Indian Council of Legal Aid and Advice and Others vs Bar Council of India** reported in **(1995) 1 SCC 732 .**

> *"13.The next question is, is the rule reasonable or arbitrary and unreasonable?*
> *The rational for the rule, as stated earlier, is to maintain the dignity and purity of the profession by keeping out those who retire from various Government, quasi- Government and other institutions since they on being enrolled as advocated used their past contacts to canvass for cases and thereby bring the profession into disrept and also pollute the minds of young fresh entrants to the profession. Thus the object of the rule is clearly to shut the doors of the profession for those who seek entry into the profession after completing the age of 45 years. In the first place there is no reliable statistical or other material placed on record in support of the inference that ex -Government or quasi-Government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrollment. Thirdly, those whose were enrolled as advocated while they were young and had later taken up some job in any Government or quasi-Government or similar institutions and has kept the sanad in abeyance are not debarred from reviving their sanads even if they have completed 45 years of age. There may be a large number of persons who initially entered the profession but latter took up jobs or entered any other gainful occupation who revert to practice at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practicing. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrollment while allowing another group to revive and continue practice e even after crossing the age of 45 years. The rule, in our view, therefore, is clearly discriminatory .Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principal of equality enshrined in Article 14 of the Constitution.*
> *14. in the view that we take on the aforesaid points we do not consider it necessary to examine the larger question whether or not the impugned rule violates Article 19(1)(g) of the Constitution. We, therefore, do not express any view on the said question.*
> *15. In the result, these petitions succeed. The new Rule 9 inserted in Chapter III extracted in the opening paragraph of this judgment is struck down as ultra vires the Act and opposed to*

Article 14 of the Constitution. The Bar Council of India and the State Bar Council are directed not to implement the said rule. No order as to costs."(emphasis supplied)

Contention of the State Respondent-

21. Learned Counsel on behalf of the state respondent submits that the petitioner is an ineligible intending candidate having no right to participate in the selection process as the petitioner has crossed the age limit of 45 years. It has been further submitted that Clause 11(v) has been incorporated by the State in the State Control Order, 2024 and it is a policy decision of the State and that policy decision cannot be challenged and therefore, there is no scope to interfere in the policy decision.

22. Learned counsel on behalf of the state respondent submits that the incorporation of 45 years age limit in the entry point for making application does not infringe any fundamental right of the petitioner.

23. It is stated by the respondents that the petitioners approached this Hon'ble Court after the lapse of the last date of making an application against the FPS Dealership Vacancy notice dated December 17, 2024 and therefore, the petitioner has no locus to challenge the eligibility criteria of the said vacancy.

24. Learned counsel on behalf of the state respondent submits that the power to fix a cut- off date or age limit is incidental to the regulatory control exercised by an authority over the selection process. While a certain degree of arbitrariness may appear in any prescribed cut-off or age limit, since a candidate on the wrong side of the line may stand

excluded as a consequence there is no reason to hold that the cut- off that is prescribed is arbitrary.

25. It is also stated by the respondent that executive authorities may have various considerations for fixing a particular age ceiling. These considerations can be financial, administrative, operational or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to determine the eligibility criteria.

26. It has been contended that the prescription of the upper age limit is akin to the fixation of a cut–off date in a selection process, both of which are well recognized, falling within the realm of policy-making and administrative discretion. It is further submitted that judicial review in such matters is confined to examining whether the policy is unconstitutional or contrary to any statutory provision, beyond the scope of delegation or so manifestly arbitrary and irrational that it shocks the conscience the Court. The judgments relied on by the respondent on this proposition is **Government of Andhra Pradesh vs N. Subbarayudu** reported in **(2008) 14 SCC 702, Hirandra Kumar vs High Court Juridicature at Allahabad** reported in **(2020) 17 SCC 401** and **Eastern Regional Electrical Contractor's Association(India) Ltd. vs Union of India, MAT 1116 of 2022.**

27. Learned Counsel on behalf of the state respondent submits that it is trite law that matters relating to the fixation of eligibility criteria, including age limits or cut-off dates, fall within the exclusive domain of the executive and is essentially policy decision. The Writ Court, in

exercise of the jurisdiction under Article 226 of the Constitution of India, does not sit in appeal over administrative or policy choices of the Government. The judgment relied on by the state respondent relating to this is **Directorate of Film Festivals vs Gaurav Ashwin Jain** reported in **(2007) 4 SCC 737**.

28. It is stated by the respondent that the petitioner allegedly being an intending applicant against the impugned vacancy cannot compare himself with any existing FPS Dealers of State who continue their dealership beyond the age of 75–80 years, or any other applicant above 45 years of age seeking appointment as an FPS Dealer on compassionate ground after the demise of his family members, who has an existing dealer in the State of West Bengal in as much as an intending applicant against a new FPS vacancy , an existing FPS Dealer , and an applicant seeking appointment as FPS Dealer on compassionate ground forms three distinct classes. The three classes are unequal and therefore they cannot be treated equally, granting equal treatment to unequal classes of persons would amount to a violation of Article 14 of the Constitution of India.

29. Learned Counsel on behalf of the state respondent submits that a compassionate appointment constitutes a distinct class of appointment in which the Government shows empathy and compassion by granting an FPS license to a dependent family member of a deceased dealer who had discharged his duties till his death. The purpose of such an appointment is to alleviate the immediate

hardship which befalls upon the dependant family members of the deceased dealers after the demise of the dealer.

30. It has been also stated by the respondents that the Central Control Order, 2015 does not prohibit the State Government from prescribing eligibility criteria for the issuance of a Fair Price Shop Licence. Furthermore, there is no provision regarding age limit in the entry point either in the Essential Commodities Act, 1955 or in the National Food Security Act, 2013 and Central TPDS Control Order, 2025.The Central Control Order delegates the entire power for framing a Control Order in this regard upon the State Government and therefore it cannot be said that the eligibility criteria prescribed by the State Government are in contravention of any of the provisions of the Control Order, 2015 or that the State Government has exceeded delegation by prescribing the criteria for licensing.

31. Learned Counsel on behalf of the state respondent submits that the Control Order consists of a provision, which allows a FPS Licensee to nominate a dependent "family member" in case of his medical incapacitation for which the State Government provides the upper age limit to ensure that new FPS Dealers are engaged at a young age and are able to serve the FPS beneficiaries for a longer period.

32. It is further stated that there is no fundamental right available to any of the applicants to do business with the Government. As a citizen of India individual has full right to do a business of his choice till the age he wants or is capable but when a party engages another person it is up to him to engage a person fixing certain criteria or eligibility,

experience age or fitness. The Government of West Bengal has thought it fit to prescribe an upper age limit of 45 years in order to ensure that the unemployed youth of the State of West Bengal can be selected as FPS Dealers. The policy cannot be questioned by persons above the age of 45 years merely because the policy causes hardships to such persons, since the policy is not devoid of rationale.

33. Learned Counsel on behalf of the state respondent submits that the citizens are free to do the business of food grains on their own, but no citizen has any right, much less a fundamental right, to compel the state to enter into business with him. Thus the impugned clause does not take away the petitioner's livelihood or prevent the petitioner from doing any lawful business. Clause 11(v) of the Control Order, 2024 can't be said to be violative of the right guaranteed under Article 19(1)(g) of the Constitution of India, in as much as the right guaranteed under Article 19(1)(g) is not an absolute right. Prescribing the maximum age of 45 years for making an application for FPS License cannot be said to be illegal or violative of Article 19(1)(g) of the Constitution of India, since the state is free to prescribe the eligibility criteria for intending applicants to apply against the new Fair Price Shop vacancies.

34. Learned Counsel on behalf of the state respondent submits that the ownership of the goods or ration articles vests in the state and no Dealer or Distributor has any right upon the goods. Therefore, fixation of age limit akin to prescribing cut-off marks is not open to judicial review. The judgments relied upon by the state respondent is –

Sarkari Sasta Anaj Vikreta Sangh , Tahsil Bemetra vs State of Madhya Pradesh reported in **(1981) 4 SCC 471**,**Madhya Pradesh Ration Vikreta Sangh vs State of Madhya Pradesh** reported in **(1981) 4 SCC 535 and Ashoka Smokeless Coal India (P) Ltd vs Union Of India** reported in **(2007) 2 SCC 640**.

35. It is also stated that the petitioner has not made any representation before the answering respondents, disclosing his intention to participate against the vacancy within the stipulated time period. The petitioner has not disclosed sufficient documents to convince before this Hon'ble Court that is otherwise eligible to participate against the impugned vacancy and, there is an inherent lack of bonafide on the part of the petitioner herein, and it is apparent that the petitioner has filed this writ petition at the instance of some other person who wants to stall the selection process against the impugned vacancy and preserve the status quo in the Public Distribution System of the area.

36. Learned Counsel on behalf of the state respondent submits that there is very limited scope to challenge the sub-ordinate legislation and it can be challenged when there is gross violation of fundamental rights, gross violation of Constitutional rights, contrary to the provisions of the Constitution and contrary to the Principal Legislation.

37. Age-based eligibility criteria have also been prescribed by the other states in India, such as the State of Rajasthan, the State of Telangana, the Union of Territories of Jammu and Kashmir etc. Thus, it cannot be said that the prescription of an age-based eligibility criterion for the

issuance of FPS License is unique to the State of West Bengal and is unheard in the Public Distribution System.

38. It is stated that the comparison drawn by the petitioner between an individual and Sanghas, Maha Sanghas, Self Help Groups or Co-operative Societies is misconceived, as these groups and societies do not have any individual entity which is dependent on its members. The members may come and go, but a Sangha, Maha Sangha, Self-Help Group, or Co-operative Society has perpetual existence till their dissolution in accordance with law and therefore, the individual applicant and partners cannot be treated on the same footing as that of the Sanghas, Maha Sangha, Self-Help Group, or Co-operative Society. It is practically impossible to put age bar over Sanghas, Maha Sangha, Self-Help Group, or Co-operative Society as these groups are managed and run by several persons and the membership of these groups does not affect the FPS License held by these groups. Thus, the petitioner cannot seek equality between two unequal classes since the same would amount to a violation of Article 14 of the Constitution of India.

39. It has been also stated that the petitioner has no right as an individual to carry as F.P Shop Dealer. Learned counsel for the state respondent has distinguished **(1995) 1 SCC 732**, **Indian Council of Legal Aid and Advice and Others vs Bar Council of India** and stated that running of F.P Shop business is not a right. Since there is no right, the question of any infraction of right does not arise. In this context the State respondent also distinguishes **(2012) 6 SCC 502,**

Brij Mohan Lal vs Union Of India & Ors and states that no case has been made out in the writ petition from where it can be shown that fundamental as well as Constitutional right has been infringed and there is unreasonableness, arbitrariness, and therefore, this judgment is not applicable for the instant case.

40. The judgments relied upon by the State respondent are follows-

(a) In **Sarkari Sasta Anaj Vikreta Sangha vs State of M.P** reported in **(1981)4 SCC 471** it has been held that **-**

> *"Shri Gopala Subrahmanyam, who presented the case for the State of Madhya Pradesh with ability and clarity drew our attention to the history of the scheme of distribution of foodstuffs in the State of Madhya Pradesh and pointed out, with reference to the counter-affidavit filed on behalf of the State of Madhya Pradesh, how the well intentioned efforts of the Government to distribute foodstuffs in a fair and equitable manner were foiled and frustrated by the "appointed retailers". It appears from the counter-affidavit that many serious irregularities were being committed with impunity and without hindrance, under the 1960 Scheme and because of the provision for appeals and revisions, erring traders could not be brought to book in time. In the past few months, there was a tremendous increase in flagrant violations of the 1960 Control Order. Shops were opened well after the appointed time and closed well before the appointed time. Consumers found it difficult to obtain their rations easily. Traders would hoard foodstuffs and refuse to sell them to the customers. They would not maintain sufficient stocks and they would not lift stocks from Government godowns in time. The situation was getting so much out of control that in July 1980 the Chief Minister called a conference of responsible officials including the Director of Civil and Food Supplies and the Collectors of the Districts. There was considerable discussion, in the course of which the Collectors of the Districts drew the attention of the Chief Minister to the plight of the poor consumers and the abuse to which the existing system had lent itself at the hands of the retailers. Thereafter a conscious and responsible decision was taken to scrap the existing system of distribution of foodstuffs through "appointed retailers" and to introduce a system of distribution of foodstuffs by authorised agents who were preferably to be cooperative societies. The impugned wireless message was therefore, issued by the Government to the Collectors incorporating the decision of the Government. It was rightly conceded by Shri Gopala Subrahmanyam that the wireless message should have properly come after the amendment of the Control Order but in the circumstances of the*

case no harm was done as no action was taken pursuant to the wireless message until after the Control Order was amended. This circumstance, we may mention here, meets one of the submissions of the learned counsel for the petitioners that the wireless message should have been issued after the amendment of the Control Order."

(b) In **Madhya Pradesh Ration Vikreta Sangh Society & Ors. vs State of Madhya Pradesh & Anr.** reported in **(1981) 4 SCC 535** it has been held that-

"The validity of the impugned scheme has been upheld by this Court in Sarkari Sasta Anaj Vikreta Sangh, Tahsil Bemetra v. State of M.P. [(1981) 4 SCC 471] The main challenge was that the Scheme created a monopoly in trade in favour of cooperative societies and was thus violative of Articles 14 and 19(1)(g) of the Constitution. This Court, agreeing with the High Court rejected the contention in view of Mannalal Jain v. State of Assam [: AIR 1962 SC 386 : (1962) 3 SCR 936 : (1962) 2 SCJ 93] . In that case, the question was whether clause 5(e) of the Assam Foodgrains (Licensing and Control) Order, 1961, which provided for giving preference to cooperative societies created a monopoly in trade in favour of cooperative societies. On a construction of clause 5(e) which merely embodied a rule of preference in favour of cooperative societies, this Court in Mannalal Jain case [: AIR 1962 SC 386 : (1962) 3 SCR 936 : (1962) 2 SCJ 93] held that clause 5(e) did not have the effect of creating a monopoly in favour of cooperative societies. In upholding the validity of clause 5(e), the Court observed: (at SCR p. 949)

"We are of the view that by reason of the position which cooperative societies may occupy in the village economy of a particular area, it cannot be laid down as a general proposition that sub-clause (e) of clause 5 of the Control Order, 1961, is unrelated to the objects mentioned in Section 3 of the Essential Commodities Act, 1955. There may be places or areas where cooperative societies are in a better position for maintaining or increasing supplies of rice and paddy and even for securing their equitable distribution and availability at fair prices."

The Court, therefore, repelled the contention that clause 5(e) had no relation whatever to the objects mentioned in Section 3 of the Act and went on to say: (at SCR p. 951)

"Sub-clause (e) of clause 5, we have already stated, enables the licensing authority to give preference to a cooperative society in certain circumstances; but it does not create a monopoly in favour of cooperative societies. The preference given has a reasonable relation to the objects of the legislation set out in Section 3 of the Act."

In the Sarkari Sasta Anaj Vikreta Sangh case [(1981) 4 SCC 471] the impugned scheme was also challenged on various other grounds but the Court negatived all the contentions raised and we need not refer to them as they are not really relevant for our purposes. Suffice it to say, the Court pointed out that the Scheme had been framed by the State Government in exercise of its executive function under Article 162 of the Constitution; that under the Scheme the fair price shops were to be run by consumers' cooperative societies; that the Scheme was framed by the State Government in public interest with a view to securing equitable distribution of foodgrains at fair prices to the consumers, that the rule of preference to cooperative societies does not create a monopoly in trade and is, therefore, not violative of the petitioners' fundamental rights under Articles 14 and 19(1)(g) of the Constitution; and that no one had a fundamental right to be appointed a Government agent for running a fair price shop which was a matter of grant of privilege. The validity of the impugned scheme has, therefore, been upheld in all its aspects."

(c) In **Ashoka Smokeless Coal India Pvt Ltd vs Union Of India** reported in **(2007) 2 SCC 640** it has been held that -

"The learned Additional Solicitor General placed strong reliance on a decision of this Court in State of Orissa v. Harinarayan Jaiswal [(1972) 2 SCC 36] wherein this Court held: (SCC pp. 44-45, para 13)

"13. Even apart from the power conferred on the Government under Sections 22 and 29, we fail to see how the power retained by the Government under clause (6) of its order, dated 6-1-1971, can be considered as unconstitutional. As held by this Court in Cooverjee B. Bharucha case [Cooverjee B. Bharucha v. Excise Commr., AIR 1954 SC 220] , one of the important purposes of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue. Excise revenue forms an important part of every State's revenue. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction-sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privileges set out in Section 22 was not denied. It was also not disputed that those privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he

thinks that the price offered is inadequate. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids—see Union of India v. Bhim Sen Walaiti Ram [(1969) 3 SCC 146] . By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government—nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights. The High Court was wholly wrong in thinking that purpose of Sections 22 and 29 of the Act was not to raise revenue. Raising revenue as held by this Court in Cooverjee B. Bharucha case [Cooverjee B. Bharucha v. Excise Commr., AIR 1954 SC 220] was one of the important purposes of such provisions. The fact that the price fetched by the sale of country liquor is an excise revenue does not change the nature of the right. The sale in question is but a mode of raising revenue. Assuming that the question of arbitrary or unguided power can arise in a case of this nature, it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State i.e. the Government which is expected to safeguard the finances of the State. Such a power cannot be considered as an arbitrary power. If that power is exercised for any collateral purposes, the exercise of the power will be struck down. It may also be remembered that herein we are not dealing with a delegated power but with a power conferred by the legislature.

The High Court erroneously thought that the Government was bound to satisfy the Court that there was collusion between the bidders. The High Court was not sitting on appeal against the order made by the Government. The inference of the Government that there was a collusion among the bidders may be right or wrong. But that was not open to judicial review so long as it is not proved that it was a make-believe one. The real opinion formed by the Government was that the price fetched was not adequate. That conclusion is taken on the basis of Government expectations. The conclusion reached by the Government does not affect any one's rights. Hence, in our opinion, the High Court misapplied the ratio of the decision of this Court in Barium Chemicals Ltd. v. Company Law Board [AIR 1967 SC 295] and Rohtas Industries v. S.D. Agarwal [(1969) 1 SCC 325] ."

Citizens may not have any fundamental right to carry on trade or business in a commodity belonging to the Government. But therein, the Court was concerned with liquor which was considered to be res extra commercium."

(d) In **Hirandra Kumar vs High Court of Judicature at Allahabad and Anr.** reported in **(2020) 17 SCC 401** it has been held that **-**

"21. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age-limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age-limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.

25. In Shivbachan Rai [Union of India v. Shivbachan Rai, (2001) 9 SCC 356 : 2002 SCC (L&S) 197] , the Union Public Service Commission advertised for direct recruitment to the post of Assistant Director in the Central Poultry Breeding Farms and prescribed an age-limit of 35 years as on 31-5-1990 with a relaxation of five years for government servants. The earlier notification did not provide a limitation on the age relaxation. The five-year stipulation was challenged as being arbitrary and ultra vires. A two-Judge Bench upheld the notification and held thus : (SCC p. 358, para 6)

"6. … Prescribing of any age-limit for a given post, as also deciding the extent to which any relaxation can be given if an age-limit is prescribed, are essentially matters of policy. It is, therefore, open to the Government while framing rules under the proviso to Article 309 of the Constitution to prescribe such age-limits or to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot be termed as arbitrary or unreasonable. The only basis on which the respondent moved the Central Administrative Tribunal was the earlier Rules of 1976 under which, though an age-limit was prescribed, a limit had not been placed on the extent of relaxation which could be granted. If at all any charge of arbitrariness can be levied in such cases, not prescribing any basis for granting relaxation when no limit is placed on the extent of relaxation, might lead to arbitrariness in the exercise of power of relaxation."

26. In Ramesh Chandra Agrawal [Council of Scientific & Industrial Research v. Ramesh Chandra Agrawal, (2009) 3 SCC 35 : (2009) 1 SCC (L&S) 547] , the Council of Scientific and Industrial Research framed a scheme for the absorption of researchers working in their laboratories and institutes following the directions of this Court. It was prescribed that eligible applicants must have 15 years of continuous research on 2-5-1997. The Director was conferred powers to relax the requirement. Contending that the tenure of researchers is ordinarily 13 years, the prescription of 15 years was challenged as being ultra vires and arbitrary. This contention was accepted by the High Court. On appeal, a two-Judge Bench of this Court examined the scheme and applicable avenues to researchers.

Noting that there was no ceiling of 13 years on researchers, this Court upheld the prescription of 15 years and the cut-off date. The Court held thus : (SCC p. 52, paras 29-30)

"*29. "State" is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2-5-1997 was the date fixed as the cut-off date in terms of the Scheme. The reason assigned therefor was that this was the date when this Court directed the appellants to consider framing of a regularisation scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr Patwalia, by choosing 2-5-1997 as the cut-off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary.*

30. The High Court, however, proceeded on the basis that the cut-off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut-off date."

27. These judgments provide a clear answer to the challenge. The petitioners and the appellant desire that this Court should rollback the date with reference to which attainment of the upper age-limit of 48 years should be considered. Such an exercise is impermissible. In order to indicate the fallacy in the submission, it is significant to note that Rule 12 prescribes a minimum age of 35 years and an upper age-limit of 45 years (48 years for reserved candidates belonging to the Scheduled Castes and Tribes). Under the Rule, the age-limit is prescribed with reference to the first day of January of the year following the year in which the notice inviting applications is published. If the relevant date were to be rolled back, as desired by the petitioners, to an anterior point in time, it is true that some candidates who have crossed the upper age-limit under Rule 12 may become eligible. But, interestingly that would affect candidates who on the anterior date may not have attained the minimum age of 35 years but would attain that age under the present Rule. We are adverting to this aspect only to emphasis that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for

the rule-making authority to discharge that function while framing the Rules.

28. We do not find any merit in the grievance of discrimination. For the purpose of determining whether a member of the Bar has fulfilled the requirement of seven years' practice, the cut-off date is the last date for the submission of the applications. For the fulfilment of the age criterion, the cut-off date which is prescribed is the first day of January following the year in which a notice inviting applications is being published. Both the above cut-off dates are with reference to distinct requirements. The seven year practice requirement is referable to the provisions of Article 233(2) of the Constitution. The prescription of an age-limit of 45 years, or as the case may be, of 48 years for reserved category candidates, is in pursuance of the discretion vested in the appointing authority to prescribe an age criterion for recruitment to the HJS.

29. For the same reason, no case of discrimination or arbitrariness can be made out on the basis of a facial comparison of the Higher Judicial Service Rules, with the Rules governing Nyayik Sewa. Both sets of rules cater to different cadres. A case of discrimination cannot be made out on the basis of a comparison of two sets of rules which govern different cadres."

(e) In **Directorate of Film Festival and Ors. vs Gaurav Ashwin Jain &Ors.** reported in **(2007) 4 SCC 737** it has been held that -

"16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide Asif Hameed v. State of J&K [1989 Supp (2) SCC 364] , Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] , Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304] , BALCO Employees' Union v. Union of India [(2002) 2 SCC 333] , State of Orissa v. Gopinath Dash [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162])"

(f) In **Government of Andhra Pradesh and Ors. vs N.Subbarayudu & Ors.** reported in **(2008) 14 SCC 702** it has been held that –

> *"7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection."*

(g) In **Eastern Regional Electrical Contractor's Association (India) Ltd. and Ors. vs Union Of India and Ors.**, **M.A.T No. 1116 of 2022** (Order dated 7.10.2024) it has been held that-

> *"62. No doubt, there is no master servant relationship between an electrical supervisor and the State Government. Absence of such relationship also does not prevent the State Government to make appropriate legislation to regulate the affairs of an electrical supervisor. It is more so when, provisions of the Act of 2003 through the Central Electricity Authority have required the State Government to certify and license an electrical supervisor.*
> *70. Restricting the term "qualification" as has been used in Article 19 (6) of the Constitution of India in the facts and circumstances of the present case, as contended on behalf of the appellants is not warranted. Prescription of age has to be considered as a valid qualification within the meaning of Article 19 (6) in the factual matrix of this case. A restrictive interpretation would have ramifications with regard to public safety. That would be prejudicial to the contours of the Act of 2003.*
> *76. In view of the discussions above, we are not in a position to arrive at a finding that, State Government does not have the requisite competence to prescribe an age bar for the renewal of the license of an electrical supervisor as done by the impugned Rules or that the age bar prescribed under the two impugned Rules violate Article 19 (1) (g) of the Constitution of India."*

Analysis –

41. The moot questions involved herein pertains to the alleged violation of the fundamental right by the promulgation of Clause 9(ii) of the Vacancy Notification dated December 17, 2024 bearing Memo No. 748/MR/SCFS/GMP issued by the Sub-Divisional Controller (F&S), Gangarampur, District Dakshin Dinajpur and Sub-clause (V) of Clause 11 of the State Control Order, 2024.Secondly, whether the States power to regulate a trade under Article 19(6) of the Constitution

has crossed the line into "Manifest Arbitrariness" can be a ground for striking down Subordinate Legislation under Article 14.

42. The petitioner is an eligible intending candidate for appointment as an F.P Shop Dealer, however, the restriction imposed by the State Government by incorporating an age bar in the eligibility criteria precludes the petitioner from submitting an application pursuant to the said notification.

43. The age limit is arbitrary, discriminatory and creates an artificial classification intelligible differentia. The Executive Authority has exceeded its power by imposing an age restriction not contemplated in the Parent Act, thereby imposing an unreasonable restriction on the petitioner's right to practice his profession or trade. The sudden change in age criteria adversely affects those who had a reasonable expectation, and the age limit creates two classes of citizen (those under 45 and those above 45) without any reasonable classification. There is no evidence that a person over and above 45 years of age is less capable of running a shop than a person within the permissible age limit, rendering the age cut off "arbitrary".

44. The State cannot restrict entry into a trade on the basis of age unless age directly affects the performance of the trade. Since a person above 60 years can take over a shop upon a parent's death, the imposition of a 45 years age limit for new applicant is discriminatory. The Essential Commodities Act, 1955 does not empower the state to create personal qualification restrictions that override fundamental right.

45. A policy that is capricious or lacks rational justification is liable to be struck down. The state practice of allowing older individuals to obtain licences through compassionate appointment while debarring them from general vacancies weakens the rationale of physical fitness or technical proficiency. Imposing an upper age limit of 45 years under Clause 11(v) of the 2024 order, without a similar limit in other allotment categories, creates an uneven 'playing field'. The State's authority to regulate a trade under Article 19(6) has crossed into "Manifest Arbitrariness" which is a ground for invalidating subordinate legislation under Article 14.

46. The primary principle, as per the Supreme Court's interpretation of Article 14, is that a law is manifestly arbitrary if it is unfair, unreasonable or imposed without adequate guiding principles. The State has failed to furnish empirical data showing that a person aged 46 to 60 years are significantly less efficient in operating a retail shop. In absence of a rational basis, the age limit of 45 years is deemed to be an impermissible whim under the Constitution.

47. The reasoning for striking down or reading down Clause 11(v) of the 2024 Order the Court focuses on the transition from administrative discretion to Constitutional Arbitrariness. The "Manifest Arbitrariness" is mandatory as enunciated in the case of **Shayara Bano vs Union of India** reported in **(2017) 9 SCC 1** which is reproduced below**-**

> *"Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed*

out by us above would apply to negate legislation as well under Article 14."

48. Comparing with the 2024 Order with the 2013 Order it is seen that the 2013 order did not have such a restrictive age gap for general applicants, such a change in circumstances justifies a drastic shift in the 2024 order. The 2024 Order emphasizes biometric authentication and digital weighing requirement of the state, a younger age group is a "necessary class" to ensure the success of the tech driven PDS reform.

49. Creating a class within a class constitute hostile discrimination. By applying the test of proportionality, it is to be examined whether the means adopted by the State are proportionate to the ends sought to be achieved.

50. Digital literacy is a skill and not a biological trait type to age. A 50 year old may be more tech savvy than a 25 year old. If the State wants tech savvy dealers, it should mandate the computer proficiency certificate as an eligible criteria rather than banning an entire age group. The longevity of service is a weak state interest compared with the citizen's right to compete for a licence. Even if a dealer starts at 46 he can serve for 14 years before reaching the typical retirement age of 60 which is sufficient longevity. The Act does not grant the State the power to impose moral or arbitrary personal qualification that are unrelated to the actual distribution of food grains.

51. By imposing an age gap that restricts the pool of eligible distributors without a functional reason, the state has exceeded the rule making power granted to it by the Parliament. Clause 11(v) violates the basic

structure of Article 14 and compels the state to accept applications from all eligible individuals, irrespective of the 45 year age ceiling.

52. In adjudicating the instant issue, the case in **Brij Mohan Lal(Supra)** observed that the policy for age limit has been introduced in the present case. The fundamental purpose of the State is to appoint a fair price shop dealer to distribute the ration articles to PDS beneficiaries. The state's policy permits the PDS beneficiaries to appear before the fair price shop and to collect food grain from dealer or the dealers may distribute ration articles at beneficiaries door step under the scheme of Duare Ration. The requisite objective can be fulfilled by a person of more than 45 years, as distributing ration articles is not so hazardous or onerous, that a person over 45 cannot perform it. Moreover, numerous ration dealers in the state aged more than 50 years, are conducting FPS business in an unblemished manner. The State cannot enact a policy, that deprives an individual of the right to participate in a business of his choice. Accordingly, upon assessing the right to participate in business, Sub-clause (V) of Clause 11 of the Control Order, 2024, and the restriction imposed under Clause 9 of the Vacancy Notification are prima facie, unreasonableness in introducing such an age restriction.

Furthermore, the learned counsel for the state respondent has relied on the decision of Hon'ble Division Bench of this Court in **MAT 1116 of 2023** which clarified the position that the State Government may fix the age limit regarding entry point in the business or trade or profession.

53. Admittedly, there are previous Control Orders, in the State of West Bengal, they are WBPDS (M & C), 2003 and WBTPDS Control Order, 2013. The instant Control Order has published a notification to the State as follows:

> *"The Government of India, Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), in exercise of power conferred by section 3 of the Essential Commodities Act, 1955(Central Act 10 of 1955), issued Targeted Public Distribution System (Control) Order, 2015, vide order no. GSR 213(E) dated 20th March, 2015.*
> *In pursuance of Clauses 4, 9, 10, 11, 12, 13, 14 and 15 of the Targeted Public Distribution System(Control Order, 2015), the State Government is empowered to issue order under section 3 of the Essential Commodities Act, 1955, for regulating the ration cards, licensing and regulation of Fair Price Shops, operation of Fair Price Shops, monitoring, ensuring transparency and accountability, penalty, powers of inspection, search and seizure and appeal, and the other incidental issues"*

54. In **Rachana & Ors vs The Union Of India** reported in **(2021) 5 SCC 638** it has been held by the Hon'ble Supreme that -

> *"43. It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons and has been considered by this Court in Union of India Vs. M. Selvakumar."*

55. The state respondent submits that the ownership of ration articles or goods vests exclusively in the state and no dealer or distributor posses any proprietary rights over such goods. Moreover the imposition of an age limit analogous to the prescription of 'cut off' is not amenable to judicial review. Nevertheless, even assuming that ownership of the goods remains with the state, the distribution thereof through dealers constitutes a privilege regulated and controlled by the state. Consequently, any condition imposed on such distribution , including an age restriction, must satisfy the Constitutional requirements that it

be reasonable, non- arbitrary based on rational , non- discriminatory principle, as established in the judgment of **Ramana Dayaram Shetty vs The International Airport Authority** reported in **1979 (3) SCC 489** where the Hon'ble Supreme Court has held that-

> *"Therefore where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess. The Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant.*
>
> *It is well established that Art 14 requires that action must not arbitrary and must be based on some rational and relevant principle which is non- discriminatory. It must not be guided by extraneous or irrelevant considerations. The state cannot act arbitrarily in enter into relationship, contractual or otherwise with a third party. Its action must conform to some standard or norm which is rational and non- discriminatory."*

The Apex court has also held in the case of **Tata Cellular vs Union of India**, reported in **(1994) 6 SCC 651** that-

> *"The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides"*

56. In the case of **Reliance Energy Limited & Another vs Maharashtra State Road Development** reported in **(2007) 8 SCC 1** it has been held by the Court that-

> *"Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of "non-discrimination". However, it is not a free- standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to "right to life". In includes "opportunity". In our view, as held in the latest judgment of the Constitution Bench of nine-Judges in the case of I.R. Coelho vs. State of Tamil Nadu (2007) 2 SCC 1, Article 21/14 is the heart of the chapter on fundamental rights. It*

> *covers various aspects of life. "Level playing field" is an important concept while construing Article 19(1)(g) of the Constitution."*

57. The Hon'ble Supreme Court in **Jasbhai Motibhai Desai v. Roshan Kumar** reported in **(1976) 1 SCC 671** held that a person has locus standi if he suffers a legal grievance or is deprived of something to which he is legally entitled. In the instant case, the petitioner, who is otherwise fully qualified, suffers a clear disqualification solely due to the impugned age restriction and therefore has locus standi to challenge the vacancy of the F.P Shop Dealership.

58. It is also well established that when a statutory or executive action allegedly infringes Fundamental Rights, the rule of locus standi is applied liberally. The petitioner is not challenging the selection of another candidate but the validity of the eligibility condition itself, which directly affects his right to be considered. Moreover, the contention that the petitioner is ineligible and therefore cannot challenge the condition is untenable.

59. The contention of the State that subordinate legislation can be challenged only on limited grounds such as violation of fundamental rights is erroneous and contrary to settled law. Policy decision is generally within the domain of the executive, they are subject to judicial review if they offend the basis requirements of Article 14 of the Constitution of India. The Hon'ble Supreme Court in **Indian Express Newspapers vs Union of India** reported in **(1985)1 SCC 641** has held that subordinate legislation is subject to judicial review not only on

the ground of violation of fundamental rights but also on the grounds of unreasonableness, arbitrariness, and if it ultra vires the parent act. Further, in **State of Tamil Nadu vs P Krishnamurthy**, reported **(2006) 4 SCC 517** the Court laid down that subordinate legislation can be struck down if it is manifestly arbitrary, violative of constitutional provisions, or beyond the scope of delegated authority. Thus, the scope of challenge is wide and not restricted as contended by the respondents. In the present case, the impugned clause is manifestly arbitrary and lacks rational nexus with the object sought to be achieved, thereby violating Article 14 of the Constitution of India. The doctrine of Arbitrariness, makes it clear that any provision which is capricious or irrational is liable to be struck down. Moreover, the impugned restriction unreasonably curtails the petitioner's right to practice a profession guaranteed under Article 19(1)(g) of the Constitution of India and is not saved by the test of reasonableness under Article 19(6). The arbitrary exclusion also adversely affects the petitioner's right to livelihood, which forms an integral part of Article 21 of the Constitution of India. Therefore, the impugned subordinate legislation, being arbitrary, unreasonable, and violative of fundamental rights, is ultra vires the Constitution and is liable to be struck down.

60. Although the classification based on age constitutes an intelligible differentia, the impugned age limit of 45 years lacks rational nexus with the object sought to be achieved. In absence of any reasonable justification, the classification becomes arbitrary and violative of

Article 14, thereby rendering the impugned provision ultra vires. The impugned classification must satisfy the twin test laid down in **State of West Bengal vs Anwar Ali Sarkar** reported in **AIR 1952 SC 75** and elaborated in **Ram Krishna Dalmia vs Justice Tendolkar** reported in **AIR 1958 SC 538**, namely intelligible differentia and rational nexus. While the age-based classification may satisfy the former, it fails the latter as no reasonable nexus with the object sought to be achieved is demonstrated. Further, as held in **E.P. Royappa and Ramana Dayaram Shetty** reported in **(1974) 4 SCC 3**, arbitrariness is antithetical to equality. The impugned rule, being capricious and without determining the principle, falls foul of the doctrine of 'Manifest Arbitrariness' as affirmed in **Shayara Bano vs Union of India** reported in **(2017) 9 SCC 1**. Accordingly the provision is ultra vires and violates Article 14 of the Constitution of India.

61. After hearing the rival contentions of the parties in respect of the three Writ Petitions, I am of the considered view that the provision enshrined in Sub-clause (V) of Clause 11 of Control Order, 2024, and Clause 9(ii) of the vacancy Notification dated December 17, 2024, prima facie violative under Article 19(1)(g) guaranteed under the Constitution of India.

62. In conspectus of the above, as adumbrated herein, the respondents have failed to justify the constitutional validity of Sub-clause (V) of Clause 11 of the Control Order, 2024, which stands in clear violation of the Fundamental Rights of the petitioner and is ultra vires Articles

14, 19(1)(g), and 21 of the Constitution of India, and is liable to be struck down.

63. With the above observation and directions this Court is inclined to hold that Sub-clause (V) of Clause 11 of the Control Order, 2024 is ultra vires and is consequentially struck down. Clause 9(ii) of the Vacancy Notification dated December 17, 2024 is hereby quashed and set aside. The State Respondent is directed to permit the petitioners to participate in the selection process of the F.P Shop Dealership.

64. In view of the above **Writ Petition No. 6533 of 2025**, **Writ Petition No 29160 of 2025** and **Writ Petition No. 29162 of 2025** are allowed and disposed of. No order as to costs.

65. Urgent Photostat certified copy of this order if applied for be supplied to the parties on priority basis upon compliance of all requisite formalities.

(**Smita Das De, J.**)