

(2017) 12 AHC CK 0056
In the Allahabad High Court
Case No : 22331 of 2016

Co-Operative Cane Development Society Ltd. & Anr. Vs State Of U.P.
And 2 Ors.

Date of Decision : 21-12-2017

Acts Referred:

Constitution of India, Article 14, Article 19(1)(g) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Protection of certain rights regarding freedom of speech, etc
Uttar Pradesh General Clauses Act, 1904, Section 21, Section 21 -
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953, Section 21, Section 7, Section 18 (3), Section 17 (2), Section 28 (2 (o)), Section 2 (i) -
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954, Rule 49, Rule 58

Citation : (2017) 12 AHC CK 0056

Hon'ble Judges : Arun Tandon, Ritu Raj Awasthi

Bench : Division Bench

Advocate : Ajay Kumar Sharma, Tarun Agrawal, Shashank Chaudhary, H.R. Mishra

Final Decision : Allowed

Judgement

1. Heard Mr. H.R. Mishra, learned Senior Advocate assisted by Mr. Ajay Kumar Sharma, on behalf of the petitioner, Mr. Manish Goyal, learned Additional Advocate General on behalf of the State and Mr. Ravi Kant, learned Senior Advocate assisted by Mr. Tarun Agarwal, learned counsel on behalf of newly impleaded U.P. Sugar Mills Association which represents the private Sugar Mills in U.P.

2. In this bunch of writ petitions, the principal prayer made is for quashing of the Notification dated 12.6.2015 declaring it ultra vires and unconstitutional. The Notification dated 12.6.2015 is for amendment in Rule 49 of the UP Sugarcane (Regulation of Supply and Purchase) Rules 1954 (hereinafter referred to as the "Rules").

3. Writ Petition No. 22331 of 2016 and Writ Petition No. 22329 of 2016 have been filed by the cane growers cooperative societies which are registered under U.P. Cooperative Societies Act, 1912 whereas Writ Petition No. 48530 of 2016 has been filed by one Shashank Chaudhary and Another being Chairman of Cooperative Cane Development Society Ltd., Mohiddinpur, District Meerut.

4. The petitioners have also challenged the Government Order dated 5.2.2016 whereby cane co-operative society's commission has been fixed at the rate of Rs. 3/- per quintal for the crushing season 2015-16.

5. The paramount issues which has cropped up for consideration in this bunch of writ petitions is as to whether the State Government in exercise of powers under Section 18 of the UP sugarcane (Regulation of Supply and Purchase) Act 1953 (hereinafter referred to as the "Act") read with Rule 49 of the Rules can make a notification declaring the rate of commission payable on purchase of sugarcane having retrospective effect or not.

6. According to the petitioner under the notification dated 12.6.2015, the State Government by amending Rule 49 of the Rules has provided that the occupier of a sugar factory shall pay commission on purchase of sugarcane at the rate of 3% of Fair & Remunerative Price (FRP) fixed by the Central Government but under the proviso to the said Rule, rates for crushing seasons 2012-2013 and 2014-2015 have been fixed retrospectively at Rs. 2/- per quintal. This according to the petitioner would be bad.

7. Shri Manish Goyal, learned Additional Advocate General on behalf of State, however, submitted that under Section 18 read with Rule 49, a discretion has been conferred upon the State Government to prescribe the rates of commission and there is no limitation on the right of the State Government to prescribe such rate of commission for previous crushing season also. According to him to that extent the Act itself contemplates exercise of power from a retrospective date. He would further submit that in the year 2012-2013 and 2014- 2015 probably no rates were notified as required under Section-18 read with Rule-49 and, therefore, it cannot be said that any amendment has been introduced, which has the effect of re-writing the rates, which were then prevailing in the year 2012-2013 and 2014-2015. He also submitted that so far as the crushing season 2014-2015 is concerned, the amendment dated 12th June, 2015 has been introduced during the midst of the season and therefore, is not retrospective in nature.

8. In order to appreciate the controversy involved, it would be relevant to first consider the relevant provisions of the Act and the Rules.

9. Section 2 (i) 17, 18 of the Act which are relevant on reproduction read as under: "Section 2 (i) "Crushing season" means the period beginning on the 1st October in any year an ending on the 15th July next following.

Section 17. Payment of cane price.-

(1) The occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed, (2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith,

(3) Where the person liable under subsection (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7-1/2 per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix:

Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure "7-1/2" the "figure 12" shall be deemed substituted.

(4) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue.

(5) (a) Without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters into an agreement with a bank under which the bank agrees to give advance to him on the security of sugar, produced or to be produced in the factory, the said owner or other person shall provide in such agreement that a percentage determined by such authority and in such manner as may be prescribed of the total amount of advance shall be set apart and be available only for re-payment to canegrowers or their cooperative societies on account of the price of sugarcane purchased or to be purchased for the factory during the current crushing season from those cane-growers or from or through those societies, and interest thereon and, such societies, commission in respect thereof. (b) Every such owner or other person as aforesaid shall send a copy of every such agreement to the Collector within a week from the date on which it is entered into. Section 18. Commission or purchase of cane.-

(1) There shall be paid by the occupier of a factory or a Gur, Rab or Khandsari Sugar Manufacturing Unit a commission for every one maund of cane purchased by the factory or a Gur, Rab or Khandsari Sugar Manufacturing Unit-

(a) "where the purchase is made through a Cane-growers" Cooperative Society, the commission shall be payable to the Canegrowers" Cooperative Society and the Council in such proportion as the State Government may declare, so, however, that the share payable to the Council shall not exceed 50 per cent; and

(b) where the purchase is made directly from the cane-grower, the commission shall be payable to the Council:

Provided that different rates of commission may be prescribed for a factory and for a Gur, Rab or Khandsari, Sugar Manufacturing Unit:

Provided further that the State Government may by notification in the official Gazette remit in whole or in part such commission in respect of a factory or a Gur, Rab or Khandsari, Sugar Manufacturing Unit for limited purpose specified in the notification.

(2) The commission payable under clause (a) and (b) of sub-section (1) shall be at such rates as may be prescribed :

provided, however, that the rate fixed under clause (b) shall not exceed the rate at which the commission may be payable to the Council under clause (a).

(3) The provisions relating to payment, interest and recovery including recovery as arrears of land revenue, applicable to price of cane shall mutatis mutandis apply to payment and recovery of commission under sub-section (1).

10. Section 18 empowers the State Government to fix the rate of commission. For the purpose of applying Section 18 (2) of the Act it will be necessary to make reference to Section 28 of the Act which authorizes the State Government to make rules for effecting the intention of the legislature under Section 18 (2) of the Act. Section 28 as it originally existed is reproduced below: "28. Power to make rules.- (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of foregoing power, such rules may provide for - (a) the establishment and constitution of the Board and Council;

(b) the dissolution and reconstitution of the Board and Councils and other matters incidental thereto;

(c) the procedure to be followed in removal of members of the Council; (d) the provisions for the conduct of business by the Board and Council;

(e) the manner of summoning of the annual meeting of the Council under Section 6, the business to be transacted at such meetings and the procedure for the transaction of such business;

(f) the manner and form in which the fund placed at the disposal of the Council under Section 8 shall be maintained and the application and payment from such fund;

(g) the directions to be issued by the State Government to the Board and Councils for carrying out the purposes of this Act;

(h) the duties, powers and functions of the Sugar Commissioner and the Cane Commissioner;

(i) the matters relating to the appointment and other conditions of service of inspectors to be appointed under Section 11 and their duties, powers and

functions;

(j) the time within which applications and appeals may be presented under this Act, in cases for which no specific provision in that behalf has been made herein;

(k) the fees to be paid in respect of applications and appeals under this Act; (l) the appointment and licensing of purchasing agents and other persons to be employed by the purchasing agents and the sugar factories for the purchase of cane, their functions and duties and the securities to be deposited by them and the conditions under which the securities may be forfeited;

(m) the form of the agreement to be entered into by or under the provisions of this Act and the penalty to be paid for breach of conditions of agreement;

(n) the constitution, operation, management, supervision and audit of Cane-growers' Co-operative Societies and Councils and the U.P. Cane Unions Federations and conditions relating to recognition of such societies or their federation for purposes of this Act and Rules and control of their staff and finances;

(o) The rate at which and the manner in which Commission shall be paid to the Canegrowers Cooperative Society on supply of cane by them;

(p) the correct weightment of cane, the provision of facilities for weightment and for checking weightment and of timings of weightments;

(q) the provision of approach roads, parking space for carts bringing cane to factories, sheds for bullocks and cartdrivers, water troughs for bullocks and other connected matters;

(r) the reference to the Cane Commissioner of the disputes-

(i) regarding the business of the Cane-growers' Co-operative Society between members or between members and society or between two registered societies or between the society and the factory or between a cane-grower and the factory;

(ii) between the Council and Cane-growers' Co-operative Societies or between the Council and the factory or between the Council and the cane-grower regarding the payment of contribution to the Council by the Societies or the factories and any other dispute relating to the business of the Council; for decision to the Cane Commissioner or if he so directs to arbitration, the mode of appointing arbitrators, the procedure to be followed before the Cane Commissioner or the arbitrator and the enforcement of the decision of the Cane Commissioner or the awards of the arbitrator or arbitrators;

(s) the form of the statements, returns, register and other forms required to be maintained by or under this Act and the filing of such returns, statements and forms;

(t) the form and the manner in which applications shall be made for various purposes by or under this Act;

(u) the duties of any officer or authority having jurisdiction under this Act and the procedure to be followed by such officer or authority; and

(3) The rules made under this section shall come into force from a date to be appointed by the State Government.

(4) All such rules shall be laid before the State Legislature when it meets immediately after their enforcement and shall be subject to such omissions, alterations and additions as the Legislature may make."

11. The aforesaid section came to be amended by U.P. Act No. 7 of 1974 and vide Section 7 it was provided that in Section 28 of the principal Act clause (1) of sub-Section (2) shall be omitted.

12. It, however, cannot be construed as taking away the rule making power of the State Government particularly in the manner and procedure prescribed for in Section 28 of the parent Act itself.

13. Learned counsel for petitioner and the learned Additional Government Advocate also do not dispute the power of the State Government to make rules under Section 28 of the Act, as such, we presume that the State Government under Section 28 of the Act had ample power to make rule for the proper enforcement of the provisions of the Act.

14. In exercise of powers under Section 28 of the Act, the State Government has framed UP Sugarcane (Regulation of Supply and Purchase) Rules 1954. Under Chapter X Rule 49 of the Rules the commission to be paid on the sugarcane purchase has been provided. The relevant Rule 49, 49-A, 50 and 51 are reproduced below: "49. The Occupier of a factory shall pay commission on cane purchase at the rate of three percent of minimum statutory cane price fixed by the Government of India, out of which seventy five percent shall be payable to the cane grower's co-operative society and twenty five percent to the council: Provided that the commission payable on cane purchased during crushing season 2004-05 and amount at the rate of 75 paise per quintal shall be paid to the cane growers directly.

49-A. Every occupier of a Gur, Rab or Khandsari Sugar Manufacturing Unit, liable to pay Purchase Tax under Section 3 of .. (U.P. Act No. IX of 1961), shall pay to the Council for every quintal of cane purchased by the Unit, commission at the rate of seventeen paise per quintal for the crushing season 1990-91 (w.e.f. 1-6-1991 till 1994-95 and for the crushing season 1995-96 and onward at the rate of half per cent of the minimum statutory cane price. The entire amount of the commission will be utilised for the construction of roads and other development work.

50. In determining the proportion in which payments out of the commission shall be made to the Council and the Cane-growers' Co-operative Society of an area the State Government may take into consideration the financial resources and the working requirements of the Council and Canegrowers' Co-Operative Society.

51. Necessary adjustment in the payment of the commission to a Council or a Canegrowers" Co-Operative Society in respect of a crushing season, shall be made before the end of that season."

15. The impugned amendment vide Notification dated 12.6.2015 issued in exercise of powers under Section 28 of the Act read with Section 21 of the U.P. General Clauses Act, 1904 (relevant for our purpose) reads as under: "In exercise of the powers under Section 28 of the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 (U.P. Act No. XXIV of 1953, read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954.

49. The Occupier of a factory shall pay commission on cane purchase at the rate of three percent of minimum statutory cane price, presently known as Fair and Remunerative Price (FRP) fixed by the Government of India, out of which seventy five percent shall be payable to the cane grower's co-operative society and twenty five percent to the council:

Provided that the commission payable on cane purchased during crushing season 2012-13 and 2014-15 shall be paid at the rate of two rupees per quintal instead of three percent of Fair and Remunerative Price (FRP)."

16. Learned counsel for the petitioner submits that under the scheme as provided under the Act and the Rules every cane growers" cooperative society shall prepare a budget annually and submit it for sanction to the Cane Commissioner not later than thirty days before the commencement of the budget year (reference Rule 58 of the Rules). The budget year means 1st April to 31st March. The guidelines for preparation of the budget was provided vide notification dated 12.7.2002 and every cane cooperative society is required to prepare the budget annually and submit it to the Cane Commissioner in accordance with Rule 58 of the Rules. The annual budget for the year 2012-13 and 2014-15 was prepared and sanctioned by the Cane Commissioner while taking into consideration the average assessed income from the commission on supply of sugarcane to sugar factories. However, by way of impugned notification the State Government has amended Rule 49 of the Rules whereby it has reduced the commission for sugarcane purchase for the crushing year 2012-13 and 2014-15, in place of 3% it would be Rs. 2/- per quintal. The said notification has been applied retrospectively.

17. The State Government has no power or authority to alter the rate at which the commission is to be paid for a crushing season which is already over and thereby put the cane cooperative societies in a disadvantage. The said amendment in the Rules is a piece of subordinate legislation and it cannot be made retrospectively.

18. It is submitted that considering the hardship faced by the sugar factories on

account of lower market price of sugar and difficulties in payment of sugarcane price the State Government had granted certain relaxations and exemptions for the crushing season 2013-14, however, by the impugned notification the State Government has reduced the commission for the sugarcane purchase for the previous years i.e., 2012-13 as also for the season 2014-15 retrospectively in order to illegally help the sugar mills, who had committed default in payment of price of sugar cane as well as commission under Section 18. The State Government has no such power or authority to fix the rate of commission retrospectively and thereby put the cane cooperative societies in loss and real hardship to sustain themselves.

19. The State Government vide impugned Government Order dated 5.2.2016 has fixed the commission for supply of cane price to cane cooperative societies for the crushing season 2015-16 at the rate of Rs. 3/- per quintal.

20. The submission is that the State Government under the impugned Government Order dated 5.2.2016 and impugned notification dated 12.6.2015 has undertaken the entire exercise to help the private sugarcane factories without realizing the difficulties faced by the sugarcane cooperative societies. The commission given by the sugar factories to the cane cooperative societies is the main source of income of the societies and in case it is adversely affected or drastically reduced, the societies cannot pay salary and post retiral benefits to its employees or to sustain itself.

21. The commission for purchase of sugarcane for the crushing season 2012-13 relates to the sugarcane supplies from November, 2012 to April 2013 and for the crushing season 2014-15, the sugarcane was supplied from November, 2014 to April, 2015, as such, the impugned amendment had got direct bearing on the annual budget of the year 2012-13 and 2014-15 submitted and approved for the societies. The petitioners' societies had spent amount as per sanction budget for the year 2012-13 and 2014-15 much prior to the issuance of the impugned notification dated 12.6.2015 and thereby they have been adversely affected by the reduction of commission for the cane purchase.

22. Mr. H.R. Mishra, learned Senior Advocate appearing on behalf of petitioner emphasized that the impugned dated 12.6.2015 is wholly arbitrary, illegal and unconstitutional.

23. It is hit by Article 19 (1) (g) and 14 of the Constitution of India. By the impugned notification, an effort has been made by the respondents to lower the petitioners' existing rights and as per the settled law retrospective effect is not to be given effect to so as to lower the existing rights or its obligations. Learned counsel for petitioner emphasize that there is no rationale or nexus with the object sought to be achieved by the impugned notification, as such, it is wholly unconstitutional.

24. It is also submitted by learned counsel for petitioner that the impugned notification has been issued clearly under the delegated power of the State

Government to frame rules under Section 28 of the Act and in exercise of such delegated powers the State Government cannot fix the rate of commission on the purchase of sugarcane retrospectively unless and until the Act itself stipulate such a power. 25. In support of his submission learned counsel for petitioner has heavily relied upon the judgment in the case of Director General of Foreign Trade and Another vs. Kanak Exports and Another; (2016) 2 SCC 226.

Mr. Manish Goyal, learned Additional Advocate General defending the impugned notification dated 12.6.2015 submitted that the perusal of the impugned amendment vide Notification dated 12.6.2015 will disclose that the aforesaid amendment has been made in the Rules with effect from 12.6.2015 in exercise of powers under Section 28 of the Act read with Section 21 of the U.P. General Clauses Act, 1904. Section 18 (2) of the Act empowers the rate of commission to be fixed by the State Government. There is no bar upon the State Government to prescribe the rates retrospectively. For the purpose of Section 18 (2) of the Act, reference be had to Section 28 of the Act which authorizes the State Government to frame rules for carrying into effect the provisions of the Act, which will include Section 18 (2) also.

26. It is submitted that Section 28 (2) (o) provides that the rate at which and the manner in which the commission is to be paid to the cane grower cooperative societies on supply of cane by them.

According to Sri Manish Goel, learned Additional Advocate General, Section 28 (3) read with Section 28 (4) of the Act stipulates that rule can have retrospective application. Rules come into force from the date to be notified by the State Government and are subject to omissions, alterations and additions as legislature may make.

27. Section 28 by necessary implication permits the rules to be framed by the State Government, as subordinate piece of legislation with retrospective operation. As such, vide notification dated 12.6.2015, the rate of the commission could be fixed by the State Government for the crushing season 2012-13 as well as for the current crushing season 2014-15. In this regard, Mr. Manish Goyal has clarified that the crushing season has been defined under Section 2 (i) of the Act and it means the period beginning on the 1st October in any year and ending on the 15th July next following year.

28. It is submitted that the State Government taking into consideration the poor payment capacity of the sugar mills and overall scenario where the price of the sugarcane had been increased and the market price of manufactured sugar had not increased accordingly, has taken appropriate steps which may help the sugar factories to tide over the financial difficulties and to be able to pay the sugarcane dues as well as commission to the sugar cane societies. In support of his submission, Mr. Manish Goyal, learned Additional Advocate General has relied on the following judgments:

1. State of Madhya Pradesh and others vs. Tikamdas; (1975) 2 SCC 100 (Para 5,

8).

2. Mahabir Vegetables Oils (P) Ltd. & another vs. State of Haryana and others; (2006) 3 SCC 620 (para 41, 42, 43).

29. On the question of retrospective effect of the parent Act he has relied on the following judgments: 1. Kheyarbari Tea Co. Ltd. and another vs. State of Assam and others; AIR 1964 SC 925 (para 29, 30). 2. M/s Krishnamurthi and Co. vs. State of Madras and another; AIR 1972 SC 2455 (para 8).

Mr. Manish Goyal has tried to submit that the judgment of the Apex Court in the case of Director General of Foreign Trade and another vs. Kanak Exports and another (*supra*) is not applicable in the facts of the case and is clearly distinguishable.

30. It is also submitted by learned counsel for the respondent that so far as the crushing season 2014-15 is concerned, the impugned notification has been issued during the currency of the crushing season and, as such, cannot be termed to be retrospective. Thus, for the crushing season 2014-15 the plea of the petitioner is totally misconceived as the commission that was payable for the crushing season 2014-15 stood amended in the crushing season itself.

31. So far as the crushing season 2015-16 is concerned, it is submitted that by the impugned Government Order dated 5.2.2016 the State Government has fixed the rate of commission as Rs. 3/- per quintal. The petitioner has not challenged the 24th amendment carried in the rules, hence the relief against the Government Order dated 5.2.2016 cannot be granted. The State Government by exercising legislative power through subordinate legislation has carried out 24th amendment by issuing the notification during the crushing season 2015-16 on 1.3.2016.

32. Mr. Ravi Kant, learned Senior Advocate assisted by Mr. Tarun Agarwal, learned counsel appearing on behalf of U.P. Sugar Mills Association has broadly made submissions on the same lines as Mr. Manish Goyal, learned Additional Advocate General. It is submitted that in the case of *Tikamdas* (*supra*), the Apex Court has clearly observed that there is no doubt that unlike legislation made by a sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rule making power in the concerned statute expressly or by necessary implication confers power in this behalf. It has been held that the legislature has empowered its delegate, the State government, not merely to make the rules but to give effect to them from such date as may be specified by the delegate. This provision regarding the subordinate legislation does contemplate not merely the power to make rules but to bring them into force from any previous date. Therefore, ante-dating the effect of the amendment is not obnoxious to the scheme nor ultra vires. We have considered the submissions made by learned counsel for the respective parties.

33. We may at the very outset record that that the legal position with regard to

the delegated or the subordinate legislation being prospective has been settled repeatedly by the Apex Court. Reference may be had to the recent judgment of the Apex Court in the case of Director General of Foreign Trade & Another versus Kanak Exports & Another reported in (2016) 2 SCC 226. Relevant paragraph whereof reads as under: "We may, in the first instance, make this legal position clear that a delegated or subordinate legislation can only be prospective and not retrospective, unless rule-making authority has been vested with power under a statute to make rules with retrospective effect. In the present case, Section 5 of the Act does not give any such power specifically to the Central Government to make rules retrospective. No doubt, this Section confer powers upon the Central Government to "amend" the policy which has been framed under the aforesaid provisions. However, that by itself would not mean that such a provision empowers the Government to do so retrospective. ..."

34. Reference may also be had to the judgment of the Apex Court in the case of State of Rajasthan & Others versus Basant Agrotech (India) Limited reported in (2013) 15 SCC 1. Relevant paragraph nos. 21 to 24 are being reproduced herein below: 21. There is no dispute over the fact that a legislature can make a law retrospectively or prospectively subject to justifiability and acceptability within the constitutional parameters. A subordinate legislation can be given retrospective effect if a power in this behalf is contained in the principal Act. In this regard we may refer with profit to the decision in Mahabir Vegetable Oils (P) Ltd. and another v. State of Haryana and Others[, wherein it has been held that: (SCC p.633, paras 42-42) "41.We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne[)."

22. In MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and Others[15], the question arose whether under Section 10 (3) of the Kerala General Sales Tax Act, 1963 power was conferred on the Government to issue a notification retrospectively. This Court approved the view expressed by the Kerala High Court in M. M. Nagalingam Nadar Sons v. State of Kerala[16], wherein it has been stated that in issuing notifications under Section 10, the Government exercises only delegated powers while legislature has plenary powers to legislate prospectively and retrospectively, a delegated authority like the Government acting under the powers conferred on it by the enactment concerned, can exercise only those powers which are specifically conferred. In the absence of such conferment of power the Government, the delegated

authority, has no power to issue a notification with retrospective effect.

23. In Vice-Chancellor, M.D. University, Rohtak v. Jahan Singh, it has been clearly laid down that (SCC p. 83, para 19) in the absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect."

35. Therefore, it is true that the subordinate authority/delegate has no competence to make rules with retrospective effect, unless of course such power is specifically provided for under the Parent Act or arises by necessary and distinct implications. For the purpose the entire provisions of the Parent Act have to be looked into. 36. We may at the very outset record that Section 18 of the Act, 1953, which confers a power to determinate the rate of commission to be paid to sugar co-operative societies does not confer any power to fix the rate retrospectively. The power to frame the rules under Section 28 of the Act, 1953 with specific reference to Section 28 (2) (o) referred to above also does not confer any specific power to frame the rules having retrospective operation.

This takes the Court to examine as to whether from reading of the statutory provisions of the Parent Act as a whole, any such power of making the rule under Section 28 (2) (o) with retrospective operation could be deciphered in favour of the State Government or not.

37. The petitioners contend that no such power exists and the power to amend the rules from time to time as used in Section 21 of the General Clauses Act itself cannot be read to confer the power to frame the rules retrospectively. We find force in the contention so raised by the learned counsel for the petitioners.

38. For the purpose it would be relevant to refer to paragraph-53 of the judgment of the Apex Court in the case of State of Rajasthan (Supra). Relevant of paragraph-53 read as under: "53. Thus, the conspectus of authorities and the meaning bestowed in the common parlance admit no room of doubt that the words "from time to time" have a futuristic tenor and they do not have the etymological potentiality to operate from a previous date. The use of the said words in the Section 16 of the Act cannot be said to have conferred the jurisdiction on the State Government or delegate to issue a notification in respect of the rate with retrospective effect. Such an interpretation does not flow from the statute which is the source of power. Therefore, the notification as far as it covers the period prior to the date of publication of the notification in the official Gazette is really a transgression of the statutory postulate. Thus analysed, we find that the view expressed by the High court on this score is absolutely flawless and we concur with the same."

Section 28 (3) of the Act, 1953 has been referred to specifically by Sri Manish Goyal, learned Advocate General in support of his case, which reads as under:

"28.

3.The rules made under this Section shall come into force from a date to be

appointed by the State Government."

39. Sri Manish Goel, learned Additional Advocate General on behalf of the State referred to the judgment in the case *The State of Madhya Pradesh & Others versus Tikamdas* reported in (1975) 2 SCC 100. The Apex Court while dealing with the power of the delegatee State Government to make the rules and to give effect to them from such date as may be specified by the delegatee, has interpreted the same to confer a power to make the rules with retrospective effect. Relevant part of the rule under consideration in the judgment as well as law as explained with reference thereto reads as under: "...all rules made and notifications issued under this Act shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as may be specified in that behalf. Clearly the Legislature has empowered its delegate, the State Government, not merely to make the rules but to give effect to them from such date as may be specified by the delegate. This provision regarding subordinate legislation does contemplate not merely the power to make rules but to bring them into force from any previous date. Therefore antedating the effect of the amendment of Rule IV is not obnoxious to the scheme nor ultra vires Section 62."

40. The language of Section of 28 (2) (o) of the Act, 1953 is clearly distinct and does not admit of same interpretation as has been done by the Apex Court for the rule as applicable in the case of *State of Madhay Pradesh* (Supra).

41. Our reason for coming to the said conclusion are as under: (a) Section 28 (3) of Act, 1953 does not in clear terms to confer any power upon the delegatee State Government to frame rules with retrospective operations.

(b) Section 17 (2) of Act, 1953 makes it obligatory upon the purchaser of the sugarcane to make the payment of sugar cane price immediately at the time of supply of the sugar-cane. It is, therefore, necessary that on the date the sugar-cane is purchased, there has to be a price fixed for the sugar cane under Section 17 (1). Such prescription has to be by framing rules under Section 28 (2) (o) of the Act, 1953.

42. The use of the word "immediately" in Section 17 (2) of the Act, 1953 (quoted above) means that payment of the cost of the sugar-cane supplied to the factory has to simultaneous. The rates for which have to be fixed as per Section 17 (1) read with Section 28(2) (o) of the Act, 1953. In case of nonpayment of cost a liability of penal interest gets attracted under Section 17 (3) of the Act, 1953.

43. Commission to the sugar-cane so purchased to the Cane Co-operative Societies is provided for under Section 18 of the Act, 1953.

44. The mode and manner of payment of cost of sugar-cane has been made applicable in the matter of payment of commission under Section 18 (1) of the Act, 1953 to the cane co-operative societies vide Section 18 (3) of the Act, 1953.

45. Therefore, it can be safely recorded that the payment of the price of the

sugar-cane supplied under Section 17 of the Act, 1953 along with the commission under Section 18 of the Act, 1953 has to be immediate at the time of supply of the sugar-cane to the factory, failing which panel interest gets attracted after expiry of the prescribed period.

To make the provision of Sections 17 and 18 of the Act, 1953 workable there has to be a price fixed for the sugarcane under Section 17 (1) of the Act, 1953 on the date of supply and similarly there has to be a rate fixed for the commission in respect of the sugar-cane so supplied.

46. Any prescription of the price of sugar-cane or the commission payable at any later point of time would result in the dilution of the provisions of Section 17 (2) read with Section 18 (3) of the Act, 1953.

47. The delgatee State Government cannot be permitted to create such a situation by making rules in exercise of powers under Section 18 (2) (o) of the Act, 1953 with retrospective effect. (c) We are also of the considered opinion that if the power is conceded to the State Government to alter the rates of the commission at any subsequent stage by making rules under Section 18 (2) (o) of the Act, 1953 with retrospective operation, all these sugar factories, which have purchased the sugar-cane and have made the payment of the cane price along with the commission at the existing rate on the date of supply would be in a disadvantageous/advantageous position vis-a-vis the sugar factories, which had avoided the compliance of the statutory provisions of Section 17 (2) and Section 18 (3) of the Act, 1953 by withholding the payment of the price of the sugar-cane and the commission. It may result in creating two classes of sugar-factories, one which complied with the statutory provisions of Section 17 (2) and Section 18 (3) of the Act, 1953 and paid the price of sugar-cane and the commission as applicable on the date of supply and the other who did not comply with the statutory provisions of Section 17 (2) and Section 18 (3) of the Act, 1953 and would make payment subsequent to the enforcement of the rules with retrospective operation. This would create an anomaly. In given set of facts take the one in hand the violater of law, sugar factory would be the beneficiary as it would now be required to pay the commission at lesser rate than the sugar mill which had paid the commission on the rate applicable on the date, supply was made in compliance with the statutory provisions.

48. Further we fail to understand as to how the provision for interest under Section 17 (3) of the Act, 1953 can be enforced if there is no rate prescribed on the date the sugar-cane is supplied or there is no rate of commission fixed on that date.

49. We have no hesitation to record that the parent act does not confer any power upon the State Government to make rules under Section 28 (2) (o) of the Act, 1953 with retrospective operation.

50. For all the aforesaid reasons, we hold that the notifications dated 12th June, 2015 and dated 5th February, 2016 cannot have retrospective operations. The

notifications are held to be applicable from the date of the notifications only i.e. dated 12th June, 2015 and dated 5th February, 2016 respectively. It is ordered accordingly.

51. All these writ petitions are allowed.