
(1990) 08 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No's. 3779, 3780, of 1976, 8664, 8665, 9336, 9337, 9338, 11633 11634, 13007 and 13008 of 1978, 16453 of 1981,

Davanagere Sugar Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Karnataka Land Revenue Act, 1964 — Section 158
Levy of Sugar Price Equalisation Fund Act, 1976 — Section 11, 2 (b)

Citation : (1990) ILR (Kar) 3653

Hon'ble Judges : Mohan, C.J.; Shivaraj Patil, J

Bench : Division Bench

Advocate : G.V. Shantaraju, Nanjunda Reddy and Grenko, for the Appellant; Ashok Haranahalli, Central Govt. Standing Counsel and S. R. Nayak, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.

All these matters can be dealt with under a common Judgment.

2. The facts which are not in controversy may be stated as under:

Sugar has been declared as an essential commodity under the Essential Commodities Act, 1967. The Union Government has been regulating the production and distribution of sugar. During the year 1974-75 the Union Government was pursuing a policy popularly known as partial control under which part of the sugar produced by the manufacturers of sugar was required to be sold to the Union Government. The price was to be determined by the Union Government in accordance with the principles enumerated in Section 3(3)(c) of the Essential Commodities Act. When the price control orders were challenged by the Writ Petitioner in W.P. No. 3636 of 1975, interim stay was ordered permitting the petitioner-Company to collect a price which was higher than the price

determined under the Levy Sugar Price Fixation Order. The Writ Petition came to be heard along with many other Writ Petitions filed by the other producers of sugar in the State of Karnataka. The learned single Judge allowed the Writ Petitions and quashed the impugned notifications. Against the said order, the Union Government preferred appeals. The Division Bench allowed the appeals preferred by the Union Government. Thereafter, the matter was taken up to the Supreme Court. The matter is stated to be pending in the Supreme Court.

The petitioners were called upon by a notice dated 23rd December 1980 to credit the excess realisation, i.e., the realisation over and above the price fixed by the Union Government under the Price Determination Order. The validity of this order had come to be upheld as stated above by the Division Bench of this Court. Similar demand notices came to be questioned in W.Ps. Nos. 13007 and 13008 of 1978. The petitioner-Company pointed out in reply to these notices that so long as the appeals are pending before the Supreme Court, there will be no liability on the part of the petitioner-Company. But this stand was rejected. Thereafter a notice was issued by the Deputy Commissioner, Food and Civil Supplies Department, Chitradurga District, Chitradurga, on 29-7-1981 calling upon the petitioner-Company to credit the excess realisation to the Levy of Sugar Price Equalisation Fund within seven days of the issue of the notice. The notice also held out a threat that the same will be recovered in accordance with Section 11 of the Levy of Sugar Price Equalisation Fund Act, 1976 (hereinafter referred to as the Act) read with Section 158 of the Karnataka Land Revenue Act, 1964. It is under these circumstances the present Writ Petitions had come to be filed.

3. Mr. G.V. Shantaraju, learned Counsel for the petitioners, does not question the Constitutional validity of the Act because this Act has been included under the Ninth Schedule to the Constitution. However, he makes the following submissions.

The consumer is not the owner of the excess money. It should be considered as a bona vacantia in which event resort must be had to Article 296 of the Constitution. If that be the legal position, the State Legislature can alone ask for refund and the Union Government cannot demand the refund of the excess realisation.

The Union Government was a party to the Writ Petitions and order of stay was passed pending Writ Petitions. In so far as there is no specific direction vacating the stay, the liability cannot arise.

Lastly it is urged that in calling upon the petitioners to pay, it would amount to interference with the Judiciary which is not permissible in law. In support of this, reliance is placed on the decision in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, These are the only points urged before us.

4. The learned Counsel for the Union Government contends that the Act itself came to be passed pursuant to the directions issued by the Supreme Court in The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, While deciding the scope of the Act one must have regard to the

statement of objects and reasons. As a matter of fact in THE DECAN SUGAR & ABKHARI CO. LTD. MADRAS AND ORS. v. UNION OF INDIA, W.P.No.1471 of 1976 etc. DD 11-10-1976 similar contentions raised before the Andhra Pradesh High Court have been overruled. The ratio of that Judgment squarely applies to the facts of these cases. The very question whether it would amount to bona vacantia was also dealt with thereunder relying on the decision in Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others, That again concludes the issue. As to what exactly the meaning of bona vacantia could be gathered by reading the decision in M/s AMARNATH OM PRAKASH v. STATE OF PUNJAB AIR 1985 218 @ 229. Therefore, it cannot be contended that there would be bona vacantia. If claims are made by the consumers, the liability was on the part of the Union Government to refund the same to those consumers who had paid the amount. If that be so, there is no possibility of contending that Article 296 of the Constitution would apply.

So long as the Writ Petitions had to come to be dismissed ultimately, it is not open to the petitioners to retain the amount and thereby unjustly enrich themselves. Therefore, there is a duty on the part of the petitioners to comply with the demand.

5. The Levy of Sugar Price Equalisation Fund Act, 1976 was enacted in the year 1976. The object is to provide for establishment, in the interest of general public, of a fund to ensure that price of levy sugar may be uniform throughout India and for matters connected therewith or incidental thereto. As to what is the background in which the Act came to be passed can be gathered if one looks The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, . In that case, the Supreme Court pointed out as follows:

"The price of levy sugar was pegged down by the State. The appellants mill owners impeached validity of control and obtained stay of operation of the order. Under cover of the Court's stay order which was granted, on bank guarantee for the excess price being furnished to the Court, the appellants sold sugar at free market rates, - a euphemism for black-market racket - unfortunately, with judicial sanction. Crores of rupees were admittedly funneled into the millers' tills. But, eventually, the High Court upheld the control of price and the unhappy obligation to restore the unjust enrichment arose. The High Court directed the Registrar to encash the security and recover the amount to be paid ultimately to the consumers who had paid in excess.

Held, that the money charged in excess should go to the numerous buyers through Court process (Supreme Court issued complex of directions please see para-8 Ed).

The handling of small claims is probably the most deplorable feature of the administration of civil justice and yet small claims are in many respects more significant than large ones, involving large numbers and inter-class disputes. If the confidence of the community in the justice system, specially consumer

protection, is to be created, radical reform of the processual law is needed now and here.

Though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is co-extensive with the necessity.

The vigilant legislature will activate itself on behalf of the little man and law and make quick-moving, easily accessible and free of cost consumer protection measures. Slogans are not law and the Rule of Law in a welfare-oriented constitutional order demands "poverty" law none too soon, with emphasis on the delivery of legal services with distances shortened and road hazards removed. It is not for the Court to spell out more, but it is for the State to awaken to an overlooked, but not infrequent, legal phenomenon."

Therefore having regard to the observations contained therein this Act came to be passed. It also requires to be noted that it was amended by Act 54 of 1984. Further this Act has come to be included in Ninth Schedule of the Constitution at Item 131. Therefore, it is beyond challenge for the purpose of Articles 14, 19 etc. As a matter of fact, in W.P. No. 1471 of 1976 and connected cases the petitioners therein questioned the vires of the Levy of Sugar Price Equalisation Fund Act, 1976 (Act 31 of 1976). One of the principal contentions urged therein is the same as contended before us namely, about bona vacantia. That was repelled by the Court in the following manner:

21. Taking up the first contention urged before us, as stated above, it is based on the following sentence in the Statement of Objects and Reasons which accompanied the Bill which ultimately was enacted as the Levy Sugar Price Equalisation Fund Act, 1976:

"But where such consumers do not come forward to claim the refund within the time specified in the Bill, the monies representing the difference between the controlled prices and the higher prices charged by the producers would, by virtue of the principles of bona vacantia (that is to say, the principle under which property vests in the State where there is no apparent rightful claimant to the property), vest in the Central Government ."

It is contended on behalf of the petitioners that, since the principle is of bona vacantia, the property can only vest in the State in which the excess over the controlled price is to be found at the time of the enactment, i.e., situs of the excess and in this connection, reliance has been placed upon the observations of the Supreme Court in *State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai, Ramaswami, J.*, speaking for the Court has pointed out that distinction must be drawn between (1) questions of assignability, which are governed by the proper law of the debt, and (2) question of attachment or garnishment (involuntary assignment) governed by the lex situs of the debt. If, for example an involuntary assignment occurs after a voluntary assignment has already been made, the lex situs determine whether the rights of the voluntary

assignee have been postponed or defeated. If the voluntary assignment occurs first, the *lex situs* determines what rights, if any the voluntary assignee has acquired. The Supreme Court approved of the decision of the Court in England in *RE QUEENSLAND MERCANTILE AND AGENCY CO.* (1891 1 Ch.536) and the reasoning of North, J., to the effect that "the assimilated choses in action to tangible movables, asserting that an assignment of the latter class of property was governed by the *lex situs*." It is on these principles that the learned Advocate General has urged the first contention before us and the other learned Advocates for the petitioners have adopted this contention of the learned Advocate General. We find that this argument is based on a misconception of what the impugned Act is intended to provide. In *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, , a question similar to the question before us arose, before the Supreme Court. In that case, the Supreme Court has pointed out the distinction between unclaimed property and *Bona vacantia*. This distinction pointed out by the Supreme Court is vital for our decision on the first contention. In paragraph 29 at page 339, Venkatrama Aiyar, J., speaking for the Supreme Court, observed.

"It is necessary to examine the basic principles underlying such a legislation and ascertain whether those are the principles on which the Act is framed. The expression "abandoned property" or to use the more familiar term "*bona vacantia*" comprises properties of two different kinds, those which come in by escheat: and those over which no one has a claim. In Halsbury's Laws of England, Third Edition, Vol.7, Page 536, para 1152, it is stated that:

"The term *bona vacantia* is applied to things in which no one can claim a property and includes the residuary estate of persons dying intestate." There is, however, this distinction between the two classes of property that while the State becomes the owner of the properties of a person who dies intestate as his ultimate heir, it merely takes possession of property which is abandoned. At common law, abandoned personal property could not be the subject of escheat. It could only be appropriated by the Sovereign and *bona vacantia*. Vide Holdsworth's History of English Law, Second Edition, Vol.7, pages 495-496. In *Connecticut Mutual Life Insurance v. Moore* (1947) 333 US 541 at page 546 : 92 Law Ed. 863 a page 869(U) v, the principle behind the law was stated to be that "the State may, more properly, be custodian and beneficiary of abandoned property than any other person." Consistently with the principle stated above, a law relating to abandoned property enacts firstly provision for the State conserving and safeguarding for the benefit of the true owners property in respect of which no claim is made for a specified and reasonable period, and secondly, for these properties vesting in the State absolutely when no claim is made with reference thereto by the true owners within a time limited".

The Supreme Court has pointed out in paragraph 30 at page 339 of the report:

"There has been quite a number of law on abandoned property in the American States and their validity has been the subject numerous decisions in the

Supreme Court of United States. The Supreme Court pointed out in paragraph 32 at page 340:

"..... there is no provision made in the Act for investigating the claims of the employees or for payment of the amounts due to them, If they established their claim. The purpose of a legislation with respect to abandoned property being, in the first instance, to safeguard the property for the benefit, of the true owner and the State taking it over only in the absence of such claims, a law which vests the property absolutely in the State without regard to the claims of the true owners cannot be considered as one relating to abandoned property."

23. It is in the light of these observations of the Supreme Court in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, that, in the instant case, the parliament has to avoid the risk of invalidity of any of the provisions of the Act specifically provided in Section 6 for refund of the excess over the controlled price paid by the consumer and u/s 6 of the impugned Act, where any amount is credited to the Fund, a refund shall be made from the Fund to the buyer of levy sugar from whom any excess realisation was made by the producer or - dealer, provided that no buyer shall be entitled to claim a refund u/s 6(1) if he (a) being a wholesale dealer, had passed on the incidence of such excess over the controlled or fair price of levy sugar to the retail dealer by whom the price of such sugar was paid or (b) being a retail dealer, had passed on the incidence of such excess over the controlled or fair price of levy sugar to the consumer by whom the price of such sugar was paid.

24. Thus it is clear that in this particular enactment, Parliament has taken over in the first instance abandoned property i.e., property over which no claim was made by the actual consumers who had ultimately paid the excess realisations to the producers. Therefore, the claim of the actual consumer who paid the excess realisation would be against the producer, who, in the first instance, had collected the excess realisation. It is in the light of this fact that the impugned Act provides for payment of the actual consumer and machinery has been set up under Sub-section (3) of Section 6 for payment out of the fund to the actual consumers. Under Sub-section (2) of the said Section, the period of six months is provided during which the application for refund has to be made by the consumer and has to be accompanied by such documentary or other evidence as the applicant may furnish to establish that the excess realisation in relation to which such refund is claimed, was made from him. u/s 8, provision is made to the effect that any money paid into the Fund, which remains unclaimed after the expiry of the period of six months from the date on which it is credited to the Fund, shall vest in the Central Government and such amount shall be utilised by the Government in such manner as may be prescribed having regard to the interests of the consumers of levy sugar as a class and the need to ensure that the retail price of levy sugar throughout India is uniform. The proviso to Sub-section (1) of Section 8 provides that, notwithstanding the vesting of such money in the Central Government, a claim for the refund of money standing to

the credit of the Fund may be made in the manner specified in Sub-section (2) of Section 6 at any time by a buyer who is lawfully entitled to make such claim and every such claim, if admitted, shall be dealt with as if the money relatable to such claim had not vested in the Central Government. Thus, thus consumer, who paid the excess realisation can get back his money even after the period of six months i.e., after the vesting of the fund in the Central Government and thus, the interests of the owner of the original property have been properly taken care of. Since the legislation deals with abandoned property as distinguished from the property not belonging to any individual, the principle of situs of Bona vacantia does not arise in the instant case."

With respect, we adopt the ratio of this Judgment. Therefore, there is no scope for the Union Government resorting to Article 296 of the Constitution. Equally Article 283(2) will not apply. Therefore, we reject the contention that the State alone can ask for refund of this amount.

6. Lastly on the question whether it amounts to interference with the judiciary, in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, which was relied upon by the petitioners the position was entirely different. For that purpose we quote paragraph 25 of the Judgment in that case:

"25. It is significant to note that there was no reference to the Judgment of the Calcutta High Court in the Statement of Objects and Reasons, nor any non obstante clause referring to a Judgment of a Court in Section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court had already issued a Writ of Mandamus commanding the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March 1976. It appears that unfortunately the Judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that Judgment. Section 3 of the impugned Act provided that the provisions of the Settlement in so far as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from 1st April, 1975. But the Writ of Mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st March 1976 was concerned, it became crystalised in the Judgment and thereafter they became entitled to enforce the Writ of Mandamus granted by the Judgment and not any right to annual cash bonus under the Settlement. This right under the Judgment was not sought to be taken away by the impugned Act. The Judgment continued to subsist the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 in obedience to the Writ of Mandamus. The error committed by the Life Insurance Corporation was that it withdrew the Letters Patent Appeal and

allowed the Judgment of the learned single Judge to become final. By the time the Letters Patent Appeal came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contended in the Letters Patent Appeal that, since the Settlement, in so far as it provided for payment of annual cash bonus, was annihilated by the impugned Act with effect from 1st April, 1975, Class III and Class IV employees were not entitled to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 and hence no Writ of Mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. If such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act, that the Judgment of the learned single Judge would have been upturned and the Writ Petition dismissed. But on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the Letters Patent Appeal and the result was that the Judgment of the learned single Judge granting Writ of Mandamus become final and binding on the parties. It is difficult to see how in these circumstances the Life Insurance Corporation could claim to be absolved from the obligation imposed by the Judgment to carry out the Writ of Mandamus by relying on the impugned Act."

But here the position is entirely different, because where there is a statutory obligation to pay the excess realisation which is to avoid unjust enrichment on the part of the persons like the petitioners, certainly it cannot be contended that would amount to interference in the Judiciary. As to what is excess realisation can be gathered by reading clause (b) of Section 2 of the Act which reads as follows:

"2(b) Excess realisation in relation to each grade of levy sugar:-

i) means the price realised by any producer. On the sale of levy sugar of such grade, in excess of -

a) the controlled/price, or

b) where any fair price has been fixed by a Court for levy sugar of such grade, such fair price, and

ii) includes any realisation representing the difference between the controlled price and the price allowed by the Court by an interim order, if such interim order is set aside, whether by the Court which made the order or in appeal or revision."

The law after the amendment is also the same. Therefore, the contention that the stay had not been specifically vacated and consequently there will be no liability cannot be sustained because the effect of the Writ Petitions being dismissed would mean the benefit of interim order will have to be disgorged. Hence this argument is also rejected.

7. In the result, we hold that these Writ Petitions carry no merit and are hereby dismissed. No costs.