
(1976) 11 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 958 of 1969

Gobind Sugar Mills Ltd.

APPELLANT

Vs

The Sugarcane (Additional) Price Fixation Authority and
Others

RESPONDENT

Date of Decision : 18-11-1976

Acts Referred:

Citation : (1977) ILR Delhi 259

Hon'ble Judges : V.S. Deshpande, J;B.C. Misra, J

Bench : Division Bench

**Advocate : A.K. Sen, N.R. Khaitan, Leela Seth, B. Mohan, Harish Chandra and
Vijaya Rao, for the Appellant;**

Judgement

V.S. Deshpande, J.

(1) This and the connected writ petitions challenge the validity of orders passed by the Sugarcane (Additional) Price Fixation Authority and the orders passed by the Central Government upholding these orders. Both the sets of orders have been passed in 1969 under clause 5 and the Schedule of the Sugarcane (Control) Order, 1966. Though the writ petitions mentioned several grounds of attack, probably in view of the previous decision of a Division Bench of this Court in Upper Ganges Sugar Mills Ltd. Vs. The Sugarcane (Additional) Price Fixation Authority etc., , Shri Ashok Sen, learned counsel for the petitioners confined his argument only to the ground that the said Authorities had acted contrary to law in disallowing to the petitioners the actual expenditure incurred by them on rehabilitation of plant and machinery in the sugar factories owned by the petitioners. The history of the legislation leading to the promulgation of the Sugarcane (Control) Order, 1966 and its object have been stated in paras 2 and 3 of the said decision. Briefly, the object of the formula given in the Schedule to the Sugarcane (Control) Order. 1966 is to establish a definite relationship between the minimum and the additional price payable to the cane growers and the maximum price obtained by the sugar producers by the sale of sugar made

out of the cane purchased by the producers from these growers for four years, viz., 1958-59 to 1961-62. That is to say, the cane growers have been enabled to share in the sugar price obtained by the producers according to the proportion set out by the formula which is as follows :- "X" is the percentage cost of sugarcane to the total cost of sugar (excluding taxes). "P" is the sum of the average ex-factory price of sugar, molasses, press-mud and bagasse realised by the producer plus refund or exemption of excise duty or cane cess given by the Government to the producer. "T" is the amount spent by the producer on taxes. "S" is the amount of commission paid by the producer on the sale of sugar. "M" is the weight in maunds or quintals of sugarcane required to produce a maund or quintal of sugar. "Y" is the total sum of (i) the minimum price of sugarcane already paid by the producer, (ii) extra price payable by the producer for sugarcane in addition to the minimum price, and (iii) premium, if any, paid for any approved variety of sugarcane on the basis of quality minus any rebate in price as may have been allowed. The dispute centres round "R." the definition of which as given in the formula is, Therefore, reproduced below :

R" is such allowance per maund or quintal of sugar for the factory as may be deemed reasonable by the Central Government having regard to the amount actually spent by the factory on rehabilitation during the year and the amount transferred as reserve to a special rehabilitation account during the year.

(2) Two questions arise on the argument of the petitioners regarding the claims to rehabilitation made by them and disallowed by the Authority and the Central Government, namely :- (1) Whether the meaning given to "rehabilitation" in the impugned orders is contrary to law; and (2) Whether the discretion exercised by the Authority and upheld by the Central Government in determining what quantum of rehabilitation expenses would be "reasonable" was vitiated by taking into account irrelevant considerations. **Meaning Of Rehabilitation (AFTER Excluding DEPRECIATION):**

(3) The concept of depreciation is well known in law relating to companies and Income Tax as presently reflected in sections 205, 349(4)(k) and 350 of the Companies Act and section 32 of the Income Tax Act. As pointed out by the Supreme Court in *The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another*, , due to the all round trend of an increase in the prices of the capital equipment of industry the amount allowed by way of depreciation which was a percentage of the original purchase price of the relevant item of equipment became inadequate for the eventual replacement of the said item. The price of the item to be purchased to replace the old discarded item would be much more than the price which had been paid for the discarded item a number of years ago. This is why the formula evolved by the Labour Appellate Tribunal for determination of the available surplus from which bonus was payable to workmen included the expenses of rehabilitation in addition to the admissible depreciation. This has been continued by sections 5 and 6 of the Bonus Act, 1962. The sugar producers relied upon the Supreme Court decision in

the Associated Cement Companies" case and the analogy of the bonus formula and urged before the Tariff Commission to allow deduction of rehabilitation expenses incurred by the sugar producers from the sugar price realised by them before working out the additional price payable to the cane growers. The Tariff Commission in their report of 8th June 1961, paragraph 11.8 agreed to this request in the following words :

This element for rehabilitation is allowed specifically to help the mills to cover the extra cost of replacement of old plant and machinery and in order to ensure that it is not "applied otherwise, we further recommend that all funds accruing under this head may be separately appropriated in the accounts to this purpose.

This part of the recommendation was accepted by the Central Government and embodied in the definition of "R" in the formula, referred to above

(4) As observed in the Associated Cement Companies" case (paras 53 and 54) considerable difficulty is felt at times in determining what exactly is rehabilitation or replacement which some times includes modernisation and to distinguish them from expansion. The demarcation line between the two was drawn in the Upper Ganges Sugar Mills" case by applying the words "replacement or rehabilitation" not only to the physical items of equipment but also to their working capacity. Rehabilitation was held to Include not only the physical replacement of items of plant and machinery but also the bridging of the gap between the installed capacity and the actual production of the said items. The replacement or rehabilitation would, Therefore, be either of a physical asset or of its capacity.

(5) It was further observed by the Supreme Court at para (60) that the main difficulty in deciding questions about rehabilitation arises from the fact that satisfactory evidence is not always placed before the tribunals. The Supreme Court in regard to bonus placed the burden of proof on the employer in these words :

The tribunal should require the employer to give clear and satisfactory evidence about all the relevant facts on which it can make the requisite estimate. The questions which the tribunal has to consider under this item are essentially questions of fact and its final decision on them is bound to be hypothetical, since it would be based on a fair evaluation of several circumstances which are by no means certain and which cannot be predicated with any amount of precision or even definiteness. That is why it is of the utmost importance that all relevant and material evidence should be adduced by the employer and it should be properly tested by cross-examination.

(6) In our view the information as to what was the installed capacity of an item of plant and machinery and what was the actual output it gave at the time the expenditure to bridge the gap between the production and the installed capacity is incurred or what was the original price of the item and the price paid for the purchase of the new item to replace it is in the special knowledge of the sugar producer. The burden of proof is, Therefore, on him on the principle underlying

section 106 of the Evidence Act to prove precisely the expenditure which could be attributed to rehabilitation in either of the two senses. We respectfully follow the observations of the Supreme Court in para 59 of the Associated Cement Companies" case that "if the employer fails to lead satisfactory evidence on these points, tribunals have on occasions totally rejected his claim for rehabilitation. (Vide : Ganesh Flour Mills Co., Kanpur v. Ganesh Flour Mills Staff Union, Kanpur, 1952 Lab. A.C. 172; Bombay Gas Co. v. Their Workmen, 1955 2Lab L.J.151; Dharngadhra Chemical Works v. Its Workmen, 1956 ILab.L.J.475.

(7) The orders of the Sugarcane (Additional) Price Fixation Authority are based on the statements of the relevant figures given by the sugar producers to prove the expenditure incurred by them on rehabilitation. A scrutiny of these statements which are attached to the communications of orders sent by the said Authority to the sugar producers show that the said producers did not anywhere indicate either the original price of the item and the price paid for the new item physically replacing the old one or the gap between the actual output of production given by an existing item and how much such output falls short of the installed capacity. The Authority had, Therefore, to decide what expenditure could be said to be incurred on the rehabilitation as best as it could on this kind of garbled information. For instance, addition of new buildings or of a tube-well or of items of machinery and plant which the producers themselves some times called expenditure on additions were disallowed by the Authority. Whatever could be considered as by way of replacement of an item physically or of its lost capacity cannot be shown from the record not to have been allowed by the Authority.

(8) Shri A. K. Sen, learned counsel for the petitioners, contended that both the Authority and the Central Government confined the meaning of "rehabilitation" to physical replacement only and that they were not aware that the expenditure to bridge the gap between the actual production given by an asset and its installed capacity could also be regarded as rehabilitation, because the said distinction between the actual and the installed capacities was made for the first time by the decision of the Division Bench in Upper Ganges Sugar Mills" case. While the meaning of rehabilitation was described in terms of the installed and the actual capacities and the bridging of the gap between the two probably for the first time in the Upper Ganges Sugar Mills" case, we are unable to accept the argument that the several decisions on the meaning of rehabilitation while dealing with the bonus formula and the Tariff Commission in its report of 1961 referred to above were not aware of the true scope of rehabilitation as including the replacement of an item as also of its capacity. At any rate, the burden of proof was on the petitioners to show that the information regarding the installed and the actual capacities about an item of equipment was placed before the Authority and that the expenses incurred on bridging the gap between the two were not allowed as rehabilitation by the said Authority. We pointedly drew the attention of the petitioners and their learned counsel to this aspect when the argument was being addressed to us. The petitioners at the end of the argument and when the case

was closed for judgment on 3-11-1976 filed affidavits seating the figures of the total installed capacities of the sugar factories as a whole and claiming that the expenditure claimed by them for rehabilitation was actually on rehabilitation, viz, to bridge the gap between the actual capacity and the installed capacity. Firstly, any such information had to be filed before the Authority. Secondly, even if these affidavits are considered on their merits, in our view, it is not helpful to know the total installed capacity of the factory in arriving at the nature of each item of expenditure claimed as rehabilitation. For instance, in a claim consisting of say ten items of expenditure of which five are by way of expansion of production even beyond the installed capacities of the particular items, the total result of the expenditure on all the ten items may show that the increase in the actual capacity of the factory as a whole due to this expenditure was not beyond the installed capacity of the factory. In the Upper Ganges Sugar Mills" case in paragraphs 15 to 19, the installed and the actual capacities of individual items were considered to determine the nature of expenditure claimed as rehabilitation. In contrast, the affidavits in these cases before us do not give the installed and the actual capacities of any individual item at all. We are of the view, Therefore, that the sugar producers did not discharge the burden of proof resting on them either before the Authority or before this Court.

(9) Since according to para (60) of the Supreme Court decision in the Associated Cement Companies" case. the determination of what expenditure was incurred on rehabilitation was a question of fact, the scope of judicial review of such determination is extremely limited. It cannot be said that the decision of the Authority was based on no evidence or that it was such as no reasonable person could arrive at. In *Pennsylvania Co. v. United States*, 236 U.S.351 , the U.S Supreme Court observed as to the scope of judicial review of a quasi-judicial decision of an administrative commission as follows :

What is such undue or unreasonable preference or advantage is a question not of law, but of fact. If the order made by the Commission does not contravene any constitutional limitation and is within the constitutional and statutory authority of that body, and not unsupported by testimony it cannot be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission.

(10) Ordinarily, the application of a statutory standard to facts gives rise to a mixed question of law and fact or even a question of interpretation of statute. A learned commentator (Professor K. C. Davis) Therefore explains the above observation of the Supreme Court as follows:

What it meant was that the term "fact" should be used for questions on which the reviewing court should avoid substitution of judgment.

(11) A further limitation on the judicial review is that the Authority consisted of and was assisted by experts such as Cost Accountants etc. The Supreme Court has repeatedly observed that decisions of technical experts should be rarely

interfered with by the courts in view of the regard which the courts have for their expertise.

(12) What we have to see is whether the approach of the Authority and the Central Government sitting in appeal was in tune with the law. A perusal of the orders of the Authority would show that its approach is entirely in accordance with law. Its orders are easily understood from the description of the items allowed or disallowed as rehabilitation. The orders of the Central Government are fully reasoned orders considering each of the contentions advanced in appeal by the sugar producers. Mr. Sen for the petitioners argues that "p" in the formula is the price of the sugar or its by-products or the refund of cane cess which was actually realised. He says that pressmud or bagasse when not actually sold and cane cess rebate when not really received from the Government should not have been included in the price. This would be giving too literal a meaning to the word "realised". It would mean that by merely abstaining from Realizing price of sugar or its by-products but by otherwise utilising it profitably, the sugar producer could say that he has not realised any price for it. Similarly, the mere fact that the cane cess rebate was not actually received from the Government in the particular year but was received later would be no reason to hold that it should not be included in the price for the year in which the rebate was due. The word "realised" means "realised in law" and not "realised in fact". It was then said that pressmud was not sold but was put on the farm of the sugar factory. In law the company owns both the factory as well as the farm as one legal person. But in actual accounting, the cane received by the company from the farm has been treated as a purchase. If so, by the same token the pressmud given to the farm must be treated as a sale. The farm and the factory for accounting purposes have been treated by the sugar producers as two separate entities. It was then said that dunnage should not have been treated as a part of the sugar sold by the producers. But in actual practice, the bill for the sale of the sugar includes the bill for dunnage which is the flooring on which the sugar bags are placed to prevent the bags from being spoiled by moisture. Since the price of the dunnage was claimed as a part of the price of the sugar, it could not be excluded from "P". In *Gobind Sugar Mills* case, expenditure on the installation of the old and discarded evaporator as a stand-by as also on method flooring and on the construction of an additional tube-well was not allowed inasmuch as there was nothing to show that this expenditure was by way of rehabilitation either of a physical item or of capacity. What was called by the producer in its own statement before the Authority as additions or expansion has been disallowed and rightly so. In the *Oudh Sugar Mills* case regarding the expenditure on economiser in 1961-62, the appellate authority said that its purchase was to augment to existing steam supply. Since this was done by way of addition, it did not involve any replacement and was, Therefore, not by way of rehabilitation. It was contended that this meant that the Authority and the Central Government regarded rehabilitation as being restricted to physical replacement. The way in which various other items have been dealt with by them would, however,

negative any such suggestion. Why the expenditure on the economiser could not be allowed was that it was not shown that it bridged the gap between the installed and the actual capacities of the equipment for the steam supply. In the "Oudh Sugar Mills" case for the year 1961-62, it was contended before the Central Government by the sugar producer that the Authority deducted excessive amounts for depreciation on account of salvage value and expansion. It is to be noted, Therefore, that the sugar producer did not deny totally that depreciation had to be deducted from the total expenditure before determining what expenditure was by way of rehabilitation. Expenses of ordinary repairs also were claimed by the producers but could not be allowed because like depreciation expenses in the repairs are also already deducted from the gross profits before arriving at the net profits. We have gone through the impugned orders and have found that the reasoning given in them is in accordance with law. It would be pointless, Therefore, to discuss each individual item. Our conclusion is that the impugned orders do not contravene, any rule of law and have not determined rehabilitation contrary to law. Meaning Of REASONABLENESS:

(13) After arriving at the figure of allowable expenditure incurred by the petitioners on rehabilitation, the Authority deducted a pre-existing special rehabilitation reserve of Rs. 1,00,000.00 from the allowable expenditure incurred by the Gobind Sugar Mills and a pre-existing special rehabilitation reserve of Rs. 6,50,000.00 from the allowable expenditure incurred by the New Swadeshi Sugar Mills. Shri Sen argues that the discretion of the Authority to determine what amount of rehabilitation would be reasonable should have been governed only by the two factors to which it had to have regard under the definition of "R" in the formula, namely, the money actually spent on rehabilitation during the year and the amount actually deposited in a special rehabilitation reserve during the year. He contrasted the words "during the year" with the existence of the rehabilitation reserve prior to the year in question. He argued that such a reserve accumulated prior to the year in question would be an irrelevant consideration. Since it had been taken into account, the discretion of the Authority was vitiated. We find no substance in this contention. Firstly, the words "during the year" only mean that it is only if the sugar producer has either actually spent on rehabilitation or deposited the money in a rehabilitation reserve that he could make any claim for deduction of rehabilitation from the sugar price. The emphasis, Therefore, is that without complying with these two conditions, no claim could be made at all by the sugar producers to the deduction of any rehabilitation expenditure. This was how the phrase "having regard to" was construed by the Privy Council in relation to the two factors to which regard had to be paid in *Commissioner of Income Tax v. Williamson Diamonds, Ltd.* 1958 A.C.41 at the end of the first para. In *Commissioner of Income Tax, West Bengal Vs. Gangadhar Banerjee and Co. (Private) Ltd.*, , the Supreme Court also held that relevant considerations other than those mentioned in the statute, such as utilisation of other funds in hand, could also be taken into account. In para (59) of the report of the *Associated Cement Companies*" case, the Supreme Court observed as follows:

Before actually awarding an appropriate amount in respect of rehabilitation for the bonus year certain deductions have to be made. The first deduction is made on account of the breakdown value of the plant and machinery which is usually calculated at the rate of 5 per cent of the cost" price of the block in question. Then the depreciation and general liquid reserves available to the employer are deducted. The reserves which have already been reasonably earmarked for specific purposes of the industry are, however, not taken into account in this connection. Last of all the rehabilitation amount which may have been allowed to the employer in previous years would also have to be deducted if it appears that the amount was available at the time when it was awarded in the past and that it had not been used for rehabilitation purposes in the meanwhile. These are the broad features of the steps which have to be taken in deciding the employer's claim for rehabilitation under the working of the formula.

(14) The parity between the method of arriving at bonus and the method of arriving at the additional price payable to the cane growers was adopted by the sugar producers themselves before the Tariff Commission. The reasoning regarding bonus in the Associated Cement Companies" case was also followed by the Tariff Commission. In para 11.8 of the Tariff Commission Report quoted above, the Commission recommended as follows :

In order to ensure that it is not applied otherwise, we further recommend that all funds accruing under this head may be separately appropriated in the accounts to this purpose.

The Commission was anxious that a fund which is put in the special rehabilitation reserve must not be applied to any other purpose. The Supreme Court expressly stated that the depreciation, the general liquid reserves and the amount previously allowed for rehabilitation but not yet spent must be deducted from the rehabilitation claimed. A fortiori, Therefore, the special rehabilitation reserves accumulated but not spent during the four years in question had to be taken into account in determining what would be the reasonable amount to be allowed as rehabilitation expenditure in these years.

(15) In the case before us, the jurisdiction to decide what is a reasonable quantum of rehabilitation to be allowed was vested in the Authority. Its opinion is based on the relevant considerations. It is not, Therefore, for us to say what was reasonable or not in the circumstances.

(16) In considering the bonus formula, the Supreme Court has observed in the beginning of para 30 and at the end of para 42 of the Associated Cement Companies" case that the object of the formula was to enable the workmen to share in the available surplus or the net profits of the employer and that the formula should, Therefore, not be so interpreted that its very object is defeated and nothing remains payable to the workmen. In that case, bonus at a certain rate had already been paid and it was only thereafter that nothing more was found to be payable to the workmen. In the present case, by contrast, no

additional price has been paid at all and if the pre-existing special rehabilitation reserves are not deducted from the expenditure allowable on the rehabilitation, nothing may be payable to the cane growers. This would then defeat the very object of the formula. It is an additional reason, Therefore, why the existing special rehabilitation reserves must be taken into account in determining what is reasonable as rehabilitation.

(17) It has been urged by Shri Harish Chandra, learned counsel for the Union of India, that the additional price to the cane growers was payable for the years 1960-61 and 1961-62. This amount has remained with the sugar producers now for about 15 years. If the interest which must be deemed to have accrued to the sugar producers on this amount is taken into account, the said amount in the hands of the producers has become four times of the original. Even if it is assumed that some part of the rehabilitation expenditure claimed by the petitioners has been wrongly disallowed, then no injustice has been done to the producers and no prejudice caused to them in actual fact. On this ground alone, the writ petitions deserve to be dismissed. For, even after paying the cane growers, the sugar producers will keep to themselves much more than what they would have kept had the cane growers been paid in 1960-61 and 1961-62. Shri Harish Chandra further points out that these petitioners are some of the solitary sugar producers who have resisted payment so long. Rest of the sugar producers have already paid up the cane growers. We agree that not merely the law but considerations of justice and fairness should also weigh with the Court in entertaining a writ petition under Article 226 of the Constitution. Where no injustice or prejudice has been caused to the petitioner or where injustice or prejudice would be caused to others without justification if the writ petition is entertained and the relief prayed for is given, this Court would have the discretion to dismiss the writ petition as was done in *Shri Vashista Bhargava v. Income Tax Officer, Salary Circle, 2nd* (1975) 1 Delhi 634, relying upon the observations made by the Supreme Court in *A.M. Allison Vs. B.L. Sen*, in paras 16 and 17, *Smt. Narayani Debi Khaitan v. State of Bihar*, C.A. No. 140 of 1964 decided on 22-9-1964(11) followed in *Durga Prashad Vs. Chief Controller of Imports and Exports, State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, , *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, , *D.N. Banerji Vs. P.R. Mukherjee and Others*, , *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, .

(18) For the above reasons, the writ petitions (Civil Writs 892 to 895 and 958 of 1969) are dismissed with no order as to costs.