

(1986) 07 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No"s. 9842 of 1980 etc.

Janaki Khandasari Sugar Mills

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Citation : (1987) ILR (Kar) 1767 : (1986) 2 KarLJ 199

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, S.G. Shivaram and H. Raghavendra Rao, for the Appellant; K. Shivashankar Bhat, Sr. Stdg. Counsel, M.R. Achar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishna, J.—The petitioners in these Writ Petitions, who are the owners of Khandasari sugar manufacturing units, have challenged the provisions of the Karnataka Khandasari Sugar Manufacturers Licensing Order, 1980 (Annexure-F). They have also sought for a declaration that the Sugarcane (Control) Order, 1966, is ultra vires the power of the Central Government conferred on it under the Essential Commodities Act, 1955 ("the Act" for short).

2. The facts and circumstances including the prayer in these petitions being common, we propose to dispose of these Writ Petitions by a common order.

3. Briefly stated, the facts of the case are as follow :-The petitioners are manufacturers of Khandasari sugar under the open pan process. They purchase sugarcane from the growers, crush them into juice by employing (sic)ower crushers and thereafter boil the juice in bells and crystallise the same in the crystallizes and then use the centrifugal process for separating molasses and manufacture sugar, In these petitions they have questioned the validity of :

(1) The Sugar Cane (Control) Order 1966 promulgated by the Central Government u/s 3 of the Essential Commodities Act, 1955.

(2) The Khandasari Manufacturers Licensing Order ("Licensing Order" for short) issued by the State Government under Clauses 7, 8 and 9 of the Sugarcane Control Order by virtue of the power delegated to it under Clause 11 of that order.

4. Having regard to the arguments advanced by Sri K. Srinivasan, learned Counsel for the petitioners in these petitions, Sri K. Shivashankar Bhat, learned Senior Standing Counsel for the Central Government appearing for respondent No. 1 and Sri M. R. Achar, learned Government Advocate appearing for the State Government, the following points arise for our consideration:

(1) Whether the Sugar-cane (Control) Order, 1966, issued by the Central Government in exercise of the powers conferred under the Essential Commodities Act, 1955, is ultra vires the provisions of Section 3 of the said Act ?

(2) Whether the impugned orders are violative of Articles 301, 302 and 304 of the Constitution of India ?

(3) Whether the Karnataka Khandasari Sugar Manufacturers Licensing Order, 1980, issued by the State Government in exercise of the power delegated by the Central Government is valid ?

5. Sri K. Srinivasan, learned Counsel, attacked the validity of Clause 6 of the Order. It reads;

"6. POWER TO REGULATE DISTRIBUTION AND MOVEMENT OF SUGARCANE--

(1) The Central Government may, by order notified in the Official Gazette--

(a) reserve any area where sugarcane is grown (hereinafter in this clause referred to as "reserved area") for a factory having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of Sugarcane required by it ;

(b) determine the quality of sugarcane which a factory will require for crushing during any year ;

(c) fix, with respect to any specified sugarcane grower or sugarcane growers generally in a reserved area, the quantity or percentage of sugarcane grown by such grower or growers, as the case may be, which each such grower by himself or if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society, shall supply to the factory concerned ;

(d) direct a sugarcane grower or a sugarcane growers' co-operative society supplying sugarcane to a factory and the factory concerned to enter into an agreement to supply to purchase as the case may be, the quantity of sugarcane fixed under paragraph (c).

(e) direct that no gur (jaggery) or khandasari sugar or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the license issued in this behalf ;

(f) prohibit or restrict or otherwise regulate the export of sugarcane from any area (including a reserved area) except under and in accordance with a permit issued in this behalf.

(2) Even sugarcane grower, sugarcane growers co-operative society and factory, to whom or to which an order made under paragraph (c) of Sub-clause (I) applies shall be bound to supply or purchase, as the case may be, that quantity of sugarcane covered by the agreement entered into under the paragraph and any wilful failure on the part of the sugarcane growers" co-operative society or the factory to do so, shall constitute a breach of the provisions of this order.

Provided that where the default committed by any sugarcane growers" co-operative society is due to any failure on the part of any sugarcane grower, being a member of such society, such society shall not be bound to make supplies of sugarcane to the factory to the extent of such default."

He contended that under the power given under the above clause, all the sugarcane growing areas located in the vicinity of the factory of the petitioners could be reserved in favour of one or more sugar factories, which would have the effect of depriving the petitioners of their right to carry on their business guaranteed under Article 19(1)(g) of the Constitution. He submitted that as sugarcane or sugar was not one of the essential commodities specified in Clauses (i) to (x) of Section 2(a) of the Act, and as sugarcane or sugar was also not declared as an essential commodity in exercise of its power under Clause (xi) of Section 2(a) of the Act, the order was ultra vires the power of the Central Government.

6. As against the above submission, Sri K. Shivashankar Bhat, learned Counsel for the Union of India, submitted that Section 2(a) of the Act specifies foodstuffs as an essential commodity and that as sugar was a "foodstuff", the order was intra vires the power of the Central Government u/s 3 of the Act, relevant part of which reads :

"3. POWERS TO CONTROL PRODUCTION, SUPPLY, DISTRIBUTION ETC., OF ESSENTIAL COMMODITIES :

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1) an order made thereunder may provide:

(a) for regulating by licenses, permits or otherwise the production or manufacture of any essential commodity."

Learned Counsel submitted that the power to issue the Order flows from Section 3(1) and 3(2)(a) of the Act.

7. The question raised is not *res integra*. It is covered by several decisions of the Supreme Court commencing from *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, In the case of *Laxmi Khandsari and Others Vs. State of U.P. and Others*, the Supreme Court considered the validity of the very Sugarcane Control Order, 1966. Relevant portion of the Judgment reads :

"51. As regards the first limb of the argument it may be necessary to state that the Control Order itself has been passed under the authority of Section 3 of the Act of 1955 which has been held by this Court to be constitutionally valid and is not in any way discriminatory so as to attract Article 14. The Control Order itself having been passed u/s 3 contains sufficient guidelines, checks and balances to prevent any misuse or abuse of the power conferred on the authorities concerned under Clause 8. Clause 8 runs thus :

"8. Power to issue directions to producers of Khandasari sugar, power-crushers, Khandasari units, crushers and co-operative societies. The Central Government may from time to time by general or special order, issue directions to any producer of Khandasari sugar or owner of the power-crusher, Khandasari unit or crusher or the agent of such producer or owner of a co-operative society regarding the purchase of sugarcane or sugarcane juice, production, maintenance of stocks, storage, price, packing, payment, disposal, delivery and distribution of sugarcane, gurgul, jaggery and rab or Khandsari sugar or the period or hours to be worked."

XX XX XX 53. Moreover, the power cannot be said to be arbitrary or unguided because the impugned Notification derives its sources from Section 3 of the Act of 1955, which clearly lays down sufficient guidelines and the existence of certain conditions for proper distribution of an essential commodity. The said guidelines, therefore, govern the authority passing the impugned Notification.

XX XX XX 81. The impugned notification having been passed u/s 3 of the Act, it fulfils all the conditions contained therein viz, it is expedient for maintaining or increasing the supply of an essential commodity, viz., sugar, which is included in Clause (e) of Section 2 of the Act of 1955 and it regulates the supply and distribution of that essential commodity and the trade and commerce therein.

82. Having regard, therefore, to the facts and circumstances proved in this case, it cannot be said that either the Control order or the impugned notification is against the tenor and spirit of Section 3. On the other hand, it is manifestly clear from the circumstances disclosed above that it is in pursuance of the aim and object for which Section 3 was enshrined in the Act of 1955 that the Control Order and the notification were promulgated. The contention of the Learned Counsel for the petitioners on this score is accordingly overruled."

The above decision is a complete answer to the first question. Applying the

above ratio, we hold that the Sugar cane Control Order is intra vires the power of the Central Government under the Act and therefore valid.

8. On the second question, which was raised through an application seeking permission to raise that additional ground, learned Counsel relied on Article 401 read with Article 404 (b) of the Constitution. Learned Counsel submitted that in view of these two Articles restriction on free flow of trade and commerce throughout the Country could be imposed only by law made by the Legislature and not by orders made under an Act of Legislature and therefore the impugned Sugar-cane Control Order and Licensing Order were invalid. In support of this submission, learned Counsel relied on the Judgment of the Supreme Court in the case of State of Mysore Vs. H. Sanjeeviah, on which the learned Counsel relied reads :

"8. Article 404 which is an exception to Article 301 has no application to this case, because that Article saves certain laws from the operation of Article 401 if the law is passed by the the Legislature of a State. The proviso to Rule 2 are not made by the Legislature of the State : they are made by executive Government in exercise of delegated authority. The rules have the force of law, but when made did not become part of the Act. (See Section 77 of the Mysore Forest Act). Again Article 404(b) exempts from the operation of Article 401 reasonable restrictions on the freedom of trade, commerce and intercourse with or within the State as may be required in the public interest. There is no evidence of an enquiry made by the State before the provisos were framed, and no case is made out that they are reasonable restrictions on the freedom of trade, commerce and intercourse imposed in the public interest. Article 401 in terms prohibits the imposition of any restriction on trade, commerce and intercourse throughout the territory of India, and by the enactment of the two provisos clearly a restriction is imposed upon the freedom of trade. The provisos to the rule enacted by the State Government must therefore be deemed to be invalid as infringing the guarantee under Article 401 on the freedom of trade, commerce and inter-course."

Learned Counsel submitted that on the same analogy, the Parliament or the Legislature could impose restrictions on trade and commerce only by law made by it, and, therefore the impugned orders were bad as they were made only by delegated authority.

9. The above contention also is devoid of any merit. The Supreme Court in the case of Prag Ice & Oil Mills v. Union of India AIR 1978 SC 1298 at 1302 dealt with a similar contention. Relevant part of the Judgment reads :

"8. We need not consider Article 401 of the Constitution as the petitions do not, beyond citing the provision, set out any facts to show how this Article is involved. This Article is meant for protecting inter-State as well as intra-State "freedom of trade, commerce and intercourse". But Article 402 provides :

"Parliament may by law impose such restrictions on the freedom of trade,

commerce and intercourse between one State and another or within any part of the territory of India as may be required in public interest."

9. Although, Article 402 does not speak of "reasonable" restrictions, yet it is evident that restrictions contemplated by it must bear a reasonable nexus with the need to serve "public interest". If the tests of Section 3 of the Act are satisfied by an order, it could not fail to serve public interest. Hence, from this point of view also it is enough if we consider whether the Control Order falls within Sections of the Act. It was evidently for this reason that beyond mentioning Article 401 counsel for the petitioners did not, quite rightly, advance much argument to show how Article 401 is involved here. We will, therefore, not consider it any more here."

The Supreme Court observed that it was not shown as to how Article 401 was involved in the matter of issue of Price Control Order. The Supreme Court also held that the restrictions imposed by Price Control Order were in public interest and therefore permitted by Article 402, These observations apply on all fours to the second question raised by the petitioners, as the Sugar-cane Control Order and the Licensing Order are regulatory in nature and are made u/s 3 of the Act, which imposes reasonable restrictions. We therefore answer the second question also in the negative.

10. On the third question, the learned Counsel for the petitioners urged two grounds. They are :

(1) That the 1980 Licensing Order was issued by the State Government without repealing the Orders of 1966 and 1975 and, therefore, it was invalid as the Government had no power to issue a new order when the matter was covered by an earlier order.

(2) That the 1980 Licensing Order was made without application of mind as to the necessity of earmarking reserved areas to factories which leaves no area for the petitioners to purchase Sugar-cane and therefore the order was invalid.

11. As regards the first point, learned Counsel for the State submitted that the issue of the 1980 Order by necessary implication repeals the earlier orders. It is true that the 1975 Order did not specifically repeal the 1966 Order and that the 1980 Order did not specifically repeal the 1975 Order. But when the latter order is on the same topic and covers all aspects relating to supply of sugar-cane, the clear implication is that the earlier order stood repealed. Therefore, there is no substance in the first point.

12. As regards the second point, the learned Government Advocate submitted that the State Government had issued the 1980 Order after due application of mind as regards the period of the year in which sugar-cane crop is ready for harvesting in the different areas of the State and also having due regard to the requirement of the sugar factories in the locality. He also submitted that the Order was issued in public interest, as there would be considerable shortage in

the yield of sugar in open pan process resorted to by the petitioners who are manufacturers of Khandasari sugar. He submitted that if the Order made in public interest had the effect of not making available Sugar-cane to the petitioners, it cannot be helped and on that ground the Order cannot be held invalid. In support of this submission, the learned Counsel relied on para 42 of the Judgment of the Supreme Court in Laxmi Khandsari and Others Vs. State of U.P. and Others, It reads :

"42. Another important argument advanced by the Attorney General which has impressed us most is one resulting from the use by the mills of the hydraulic process as distinguished from the open pan process employed by khandasari units for the production of sugar. The consequence is the recovery of sugar from sugarcane in the case of Khandasari units run by power crushers is between 4 to 6 per cent whereas in the case of sugar factories it ranges between 9 1/2 to 11 1/2 per cent. Thus, the overall position is that the utilisation of sugarcane by the mills is double that by the crushers and if the crushers are not able to produce more than the existing 4 to 6 per cent, half of the total quantity of sugar-cane supplied to them goes waste which, if utilised by the factories, would have served for production of more sugar.

43. This solid distinction between the two processes of manufactures followed by the mills and the crushers is, in our opinion, a very rational distinction which puts the mills in a different class and which also provides a reasonable nexus between the restrictions imposed on the crushers and the object sought to be achieved."

Thus it may be seen that the higher yield of sugar at sugar mills adopting hydraulic process and low yield in open pan process resorted to by the petitioners, constitute the basis for the impugned order. We are unable to agree that the Order has been issued by the State Government under the power delegated to it under Clause 11 of the Sugar Control Order without application of mind or that it is arbitrary. Just because as a consequence of reserving areas for supply of sugar-cane to sugar factories, the petitioners are unable to carry on their business of manufacturing Khandasari sugar, the Order cannot be held invalid as the Order is intra vires the provisions of the Sugar Control Order and the latter is intra vires the power of the Central Government u/s 3 of the Act. More-over, the Order is in public interest as it is intended to secure the highest yield of sugar through hydraulic process.

13. In the result, we make the following

ORDER

(i) The Writ Petitions fail and are dismissed.

(ii) No costs.