

(1980) 03 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Appeal No. 25 of 1980

Kasturi Lal Harkesh Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-03-1980

Acts Referred:

Citation : (1980) ILR Delhi 308

Hon'ble Judges : Harish Chandra, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : A.K. Sen, B.S. Malik, D.D. Singh, K.N. Kataria and D.D. Sharma, for the Appellant;

Judgement

Harish Chandra, J.

(1) The petitioners in these petitions and in several others in which rule nisi has not been issued are recognised/ licensed sugar dealers who have challenged the viras and validity of an order issued on 17th December, 1979 and called the Sugar (Retention and Sale by Recognised Dealers) Order, 1979. The impugned order comes in the series of orders issued with a view to ensure availability of sugar at fair prices and the history of such orders may briefly be recalled.

(2) In The Panipat Co-operative Sugar Mills Vs. The Union of India (UOI), , the Supreme Court noted that so far as sugar is concerned, statutory control over it was first imposed in 1942 under the Sugar and Sugar Products Control Order, 1942. The Sugar Controller there under regulated production, distribution and prices of sugar. From May 1, 1942 no sugar factory was permitted to effect sales except to authorised persons. This position continued until December 8, 1947, when sugar was decontrolled. In 1949, statutory control was once more imposed under which ex-factory price of Rs. 76.35 per quintal for D-24 grade was fixed, as during that year sugar production declined. There was also a substantial diversion of cane to gur and khandsari industry. Control over sugar was relaxed in 1950 in that production over 90 per cent of the total production of each

factory was allowed free sale. This policy was subsequently modified and 95 per cent of the average production of each factory during the two preceding years was fixed as basic quota and half of the production in excess of that quota was allowed free sale, while the other half together with the basic quota was reserved for sale at controlled prices. Since conditions appeared to improve, control was taken off in 1952-1953, except that a small portion of production was reserved for sale at controlled prices. But as prices spiraled, Government in April 1954 requisitioned 25 per cent of the stock for distribution on a tender basis. During 1954-55 to 1956-57 no controlled prices were fixed. By 1958 the prices began to soar and the Government once more decided to impose control.

(3) Sugar continued to be subject of control in the years that followed. But the year 1966-67 turned out to be the worst year in the decade owing to draught. Production of cane fell by 22 per cent and that of sugar by 40 per cent as compared to 1965-66. It was felt that the outlook for 1967-68 would be gloomier still as a further fall in the area under cane plantation would be by about 11 per cent.

(4) To avoid such a prospect some steps had to be taken providing incentives for maximising sugar production and increasing the competitiveness of sugar factories, vis-a-vis gur and khandsari factories in securing cane by offering prices higher than the floor prices. Accordingly, Government announced in August 1967, its policy of partial control under which 60 per cent of the output of sugar would be acquired and the balance of 40 per cent would be left for free sale. To implement this policy, Government secured the passage of sub-section (3C) in Section 3 of the Act through Parliament. Having done that, it fixed the ex-factory prices on December 8, 1967 which as finalised in May 1968, varied from Rupees 145.00 to 169.50 per quintal. These were fixed in the principles laid down by the Tariff Commission and the Sugar Enquiry Commission earlier, viz., on the basis of (a) floor price of cane fixed by Government, (b) cess or tax payable thereon, (c) the manufacturing cost, and (d) a reasonable return on capital employed.

(5) The availability of sugar at fair prices to the consumers continued to be under constant review and in an affidavit filed by the Government of India it is deposed that :

" PRODUCTION of sugarcane and sugar increased considerably during the last decade and reached a very comfortable position by about the middle of 1978. The Central Government which had been following the policy of partial control on sugar since 1967, except for a period from 25-5-71 to 30-6-72, reviewed the position in the light of the easy stocks and supply position of sugar obtaining in the country by the middle of 1978 and decided to remove all controls on production, movement, distribution and sale of sugar with effect from 16th August, 1978. The scheme of public distribution of sugar by requisitioning 65 per cent of the production of sugar as levy sugar at prices fixed by the Central Government for various zones u/s 3(3C) of the Essential Commodities Act, 1955 was also dispensed with. The sugar producers were thus completely free to sell

their stocks of sugar without and restrictions or Government control anywhere in India.

(6) After decontrol, the prices showed a downward trend which remained constant up to about the end of February, 1979. Thereafter, the prices started showing a steady rising trend from March, 1979 onwards. Near about March, 1979, the sugar producers had formed themselves into a cartel by themselves and resorted to a measure of regulating the availability of sugar in the market by fixing specified quantities of sugar to be released by them every month for sale. This reversed the trend of the sugar prices in the market which then started rising steadily. The Government kept a constant watch over the rising prices of this essential commodity in the market with a view to know whether the rise in the prices was due to inadequacy of the quantities of sugar released monthly by the factories or due to uneven flow of stocks in the market in the absence of Government control. Because there was no let up in the steady rise in prices, the Government of India re-introduced on or about 5th June, 1979, the system of monthly releases of sugar from individual factories with a view to regulate the availability of adequate stocks in the market. With a view to see that the stocks released monthly from individual factories would be channeled in a regulated manner, the Government issued an order dated 28th June, 1979, providing, inter alia, that the producers shall sell and dispatch not less than 20 per cent of the monthly quota of sugar released from their factories in each of the following period of a month :

(A) 1st to 7th (b) 8th to 15th (c) 16th to 22nd and (d) 23rd to end of the month.

(7) In spite of the aforesaid measures adopted by Government, the prices of sugar continued to show a steady rising trend and Therefore, it became unavoidable to take some urgent steps to regulate the prices of sugar to ensure that sugar was available to the consumers at a fair and reasonable prices."

(8) It was in this context that Sugar (Price Control) Order, 1979 was issued fixing the maximum ex-factory price of sugar and the maximum retail price of sugar for each zone with effect from 12th September, 1979. The maximum ex-factory price so fixed ranged between Rs. 260.00 and Rs. 2701- per quintal whereas the maximum retail price ranged between Rs. 2901- and Rs. 3001-. By an order dated 30th November, 1979 both these prices were increased by about Rs. 30 to Rs. 35 per quintal. Thus, for Delhi the maximum retail price of Rs. 298 per quintal fixed on 12th September, 1979 was increased to Rs. 318 with effect from 30th November, 1979.

(9) The respondent-Union of India has then stated, through the affidavit filed on its behalf, that the Sugar (Price Control) Order, 1979 did not have the desired effect on the prices and availability of sugar in the market. In view of the acute scarcity of sugar all over the country, the sugar policy was reviewed by the Government of India and a policy of partial control on sugar was adopted.

(10) This new policy of partial control effective from 17th December, 1979 was to

require sugar producers to make 65 per cent of the production of sugar by the sugar producers, called levy sugar, available to the Govt. or its nominees for distribution to the consumers, at a uniform price of Rs, 2.85 per kg. through the public distribution system.

(11) The other side of the coin of this policy was to lift the then existing control of price in respect of the balance 35 per cent of the sugar produced and to enable the producer to sell the 35 per cent at such prices as it may command in the market and thus make extra normal profit. The policy was thus a composite wholesome policy proceeding on the footing that interests of both the consumer as well as the producer need to be safeguarded.

(12) We need hardly emphasise that a policy of dual distribution based on the recognition that an essential commodity has twin characters of essentiality, i.e., the nature of commodity and the quantum which is essential to have, has long come to stay and is one of the recognised methods of a just distribution system. Thus a Welfare State seeks to make available a given minimum or essential quantity of sugar at a reasonable price but if the consumer wishes to have the luxury of having further quantities of sugar, he is left free to acquire it at competitive and higher prices. On the other hand, even if a producer incurs any loss in the sale of levy sugar, he has the opportunity to make the loss good and to end up in profit by the sale of 35 per cent of his stock at market prices. Such a policy cannot be any stretch of imagination be said to contravene Articles 19(1)(f) or 301 of the Constitution of India and this is the settled state of law which cannot bear further elucidation.

(13) In order to carry out the aforesaid policy, the Central Government, Ministry of Agriculture and Irrigation issued G.S.R. 695(E)/Ess. Com./Sugar to G.S.R. 701(E) Ess. Com|Sugar, all on 17th December, 1979.

(14) By Gsr 695, the Sugar (Price Control) Order. 1979 was rescinded with immediate effect. By Gsr 696, the Levy Sugar Supply (Control) Order 1979 was issued conferring power on the Central Government to issue directions to any producer or recognised dealer to supply levy sugar (i.e., sugar requisitioned by the Central Govt.) at a price not exceeding the price determined under sub-section 3(c) of Section 3 of Essential Commodities Act, 1955. G.S.R. 697 specified certain authorities which could issue directions. G.S.R. 698 restricted the advance which a producer can demand for making the supply to Rs. 1500 G.S.R. 699 fixed the price under sub-section 3(c) of Section 3 for the sugar produced in 1978-79 season and G.S.R. 700 fixed the said price for the production of the next annual season, i.e. 1979 80. G.S.R. 701 relates to restrictions on movement of sugar from one state to another.

(15) The Government was naturally keen to bring within the ambit of this policy the stocks of sugar existing on this day, i.e. 17th December, 1979, with the recognised sugar dealers or were in the pipeline, i.e. in transit from the producer to the dealer. It is this order, G.S.R. 702(E)/Ess.Com/Sugar. the last of the series

of the orders issued on 17th December, 1979 which provided for the coverage of the afore- said stock of sugar which is challenged in these petitions. The order is called the Sugar (Retention and Sale by Recognised Dealers) Order, 1979 and inter-alia provides, that : Every recognised dealer shall retain 65 per cent of its stock of sugar, manufactured by the vacuum pan process held by it on 17th December, 1979 or dispatched to it and received by it later, for the purpose of Sale to Government or its nominee. (2) Upon sale of sugar out of such retained stock to the Govt. or its nominee, the recognised dealer shall be paid a price

(A) where the price can, consistently with the controlled price fixed under clause 4, be agreed upon, the agreed price. (b) where no such agreement can be reached, the price calculated with reference to such controlled price. (3) For the aforesaid purpose of calculation of price payable to a sugar dealer, the controlled price of sugar shall be Rs. 280 per quintal .

(16) The grounds of challenge to this Order as set out in the various petitions are numerous and multifarious but the learned counsels for the petitioners have urged the following three grounds before us :

1. The reference to "controlled price" in sub-section (3) of Section 3 is to a price fixed under clause (c) of sub-section 2 of Section 3 and such a 3(2)(c) price has to be a universal price and not a price fixed either for a transactional for a part of the stock of a commodity or for a specified purpose other than a purpose of a price at which an essential commodity may be bought or sold. It is then urged that the price fixed in clause (4) of the impugned order, i.e. Rs. 280 is not a controlled price as above, i.e. under 3 (2) (c) and, Therefore, the price payable to the sugar dealer has to be calculated in terms of clause (c) of sub-section 3 of Section 3 and the Order is ultra-vires of the clause in so far as it does not provide for the payment of price in accordance with clause (c) by providing clauses (a) and (b) and omitting clause (c). For the same reasons the order is in contravention of the aforesaid provisions of the Constitution. 2. Assuming that Rs. 280 is the Controlled Price within the meaning of the phrase as used in sub-section (3) of Section 3 of the Act, the price being lower than the cost price of the dealer, the order is confiscatory and violative of Articles 19(1)(f) and 19(1)(g) of the Constitution of India. It is urged that the price fetched by the remaining 35 per cent of the stock is an irrelevant factor which cannot be taken into consideration in deciding whether the price payable for the 65 per cent of the stock is or is not "confiscatory". 3. The validity of an order has to be Judged at the index of its affectivity in carrying out the purpose for which the Order has been made and in so far as the Order itself permits 35 per cent of the stock to be sold at high or exorbitant prices or at any rate. prices higher than Rs. 285 per quintal, the purpose behind the Order is frustrated and the Order is, Therefore, not valid.

(17) At the outset, it may be noted that "Controlled Price" or "Controlling Price" are not terms of art or concepts defined under the Act and must be understood in their ordinary meaning in the given context. For the purpose of the Act, a

controlled price is a price fixed by the Central Government as different from a price identifiable or prevailing in the market. So long as a price is a price fixed by the Central Government, without more, it can legitimately be called the "Controlled Price" for the purposes of the Act. It does not cease to be so, because it is a price fixed for a part of a quantity or for a part of the country or for a number of sellers or for a particular purpose.

(18) Among other powers, Section 3(1) of the Essential Commodities Act confers plenary power on the Central Government to issue an order for regulating or prohibiting supply and distribution of an essential commodity if it is of the opinion that it is necessary to do so for securing their availability at fair prices.

(19) A plenary power to issue an order fixing price is conferred upon the Central Government by Section 3(1) of the Essential Commodities Act as long as such fixation of price is considered by it necessary for making a commodity available at fair prices. This power is not hedged in or circumscribed and strait-jacketed by any other consideration. It is not required that such price-fixation must be universal and be made applicable to the buying and selling of an essential commodity in its entirety either quantity-wise or area-wise. It appears to us that this power may be exercised varyingly in respect of areas, units, qualities and quantities so long as the exercise of such power is relatable to the object of making a commodity available at fair prices. We are unable to see, in this provision, any other built-in restriction i.e. other than reliability to the given purposes.

(20) The power to issue an order providing for controlling the price at which any essential commodity may be bought or sold set out in clause (c) of sub-section 2 of Section 3 is not a power which can prejudice the generality of the power conferred by sub-section 1. On the other hand, the 3 (2) (c) power must take its colour from the general power and must be understood as inclusive of a power for controlling price at which a given quantity of an essential commodity may be bought or sold. For the same reason, the power must be understood to include the power to fix a control price for the purpose of working out clauses (a) and (b) of sub-section 3 of Section 3.

(21) It appears to us, Therefore, that whereas the Central Government has the power to fix a price to be called as "Controlled Price" at which the entire stock of an essential commodity would be bought or sold throughout the country, it also has the power to fix a price to be equally called "Controlled Price" which is to serve only as the basis of calculating a price payable either under clauses (a) and (b) of sub-section (3) of Section 3 or under clauses (a) and (b) of Section 3A(iii) or u/s 3C-

(22) A reference to Section 3(C) makes it clear that the price arrived at having regard to factors (a) (b) (c) and (d) set out in this Section is not a price at which the Sugar requisitioned from a sugar producer is to be bought or sold but merely a price with reference to which the price payable is required to be fixed.

(23) Thus for sugar requisitioned or required and sold under clause f) of sub-section 2 of Section 3 of the Act the price payable has to be the price calculated u/s 3C if the price is payable to a sugar producer and if the price payable is to a sugar dealer, it will be the price calculated under sub-section (3) of Section 3, unless a notification has been issued u/s 3A. Further, there is no doubt that the price payable under sub-section (3) of Section 3 is not the price fixed by the Central Government and named, called or described as "Controlled Price" but a price calculated consistent with or with reference to such a controlled price but this does not mean that the Central Govt. cannot fix such a controlled price, i.e., a price which is to serve as the basis for proceeding under and applying classes (a) or (b) of sub-section 3 of Section 3.

(24) The fixation of a price by the Central Government having regard to the four factors set out in clauses (a) to (d) in Section 3C and the distinction between such a theoretical price and the price payable was considered by the Supreme Court in Panipat Cooperative Sugar Mills Case (supra) on page 543, in para 23, the court held:

" THE two concepts, viz., the amount payable to the producer and the price to be determined by Government are distinct and much of the confusion in interpreting the sub-section would be dispelled if they were seen distinctly. The words "amount therefore" mean the amount to be paid to the manufacturer in respect of such quantity of his stock as is required to be sold under an order made with reference to sub-section (2)(f). That amount is, Therefore, referable to the stock of sugar specified in such order, that is to say, the levy sugar. The words "such price of sugar", relate to the price which the Central Government has to determine having regard to clauses (a), (b) (c) and (d). The price to be so determined is not relatable or confined to the stock required to be sold, for the words are "such price of sugar" and not "the price for such sugar". This construction is fortified by the penultimate part of the sub-section which authorises the Central Government to determine zonal or unit wise prices or prices for different kinds of sugar. The price to be determined by the Central Government is to be the rate at which the amount payable to the producer of such of his stock as it required to be sold is to be calculated. There is thus a clear distinction between the amount payable to the producer whose stock is either wholly or in part required to be sold under an order made under sub-section (2) (f), and the price of sugar to be determined by the Government having regard to the minimum price of cane fixed by it, the manufacturing cost of sugar, the duty and tax paid or payable thereon and securing a reasonable return on the capital employed in the business of manufacturing sugar."

This distinction was reiterated in Shree Meenakshi Mills Ltd. Vs. Union of India (UOI), , .

(25) Emphasis on this distinction is not out of place because the main attack in the petitions is on requisitioning stocks of sugar at Rs. 280 per quintal. In fact, this misgiving that the price which will be paid for the 65 per cent of the stock

acquired under the impugned order is the price fixed at Rs. 280 is harboured not only by the petitioners but indeed by the Government of Punjab also as Shri P. R. Agarwal, Deputy Secretary Procurement who has filed an affidavit in reply to some of the petitions admits para 12 of the petition in the following words :

" ADMITTED to the extent that the petitioners have been directed to deliver 65 per cent of the stocks held by them on 17th December, 1979 at Rs. 280 per quintal for distribution through various fair price shops. These directions have been issued under clauses 3 and 4 of the Sugar (Retention and Sale by Recognised Dealers) Order, 1979."

(26) This, in our opinion, is not a correct reading of clauses 3 and 4 of the impugned Order. Clause 3 provides for how the price payable for the requisitioned stock will be calculated and clause 4 gives the figure either to serve as the basis of negotiations or to serve as the base with reference to which the price may be fixed. This exercise may end at the price being settled at Rs. 280 itself and presumably must end at a figure close to Rs. 280 but that is beside the point because Rs. 280 as fixed in clause 4 is not the price already decided at which the requisitioned stock will be paid for. It may also be recalled that on this day before issuing the impugned Order, the Central Govt. had already determined the price payable u/s 3C and announced it by Gsr 699 and it is not as if the Controlled Price fixed by it and set out in clause 4 of the impugned order was without any basis, off the cuff or from the hat.

(27) It may be noted that Section 3C expressly permits the price to be determined, i.e. the controlled price, to be different from time to time, to be different for different areas, to be different for different factories and naturally to be different for different kinds of sugar. With the essential similarity between this Section and sub-section (3), as observed by the Supreme Court, we have no hesitation in holding that the price fixed by the Central Govt. to serve as the basis of calculating the price payable under 3(2)(f) need not be a price at which the entire quantity of an essential commodity is to be universally bought or sold. Besides, we read clause 4 of the impugned order as a part and parcel of the entire said Order and once we find as we do that there is ample authority in law, more specifically the authority conferred by sub-section (1) of Section 3, for the issue of the entire order, the legal authority for clause (4) is necessarily inferred apart from being obviously present.

(28) We, Therefore, find no merit in the first contention of the challenge to the impugned order.

(29) The learned counsel for the petitioner has relied upon a judgment of a Division Bench of Allahabad High Court in Sitaram Jwala Prasad and Others Vs. State of Uttar Pradesh and Others, . The Coarse Foodgrains (Levy) Order, 1974, impugned in the petition required every licensed dealer to sell 50 per cent of coarse foodgrains at the scheduled price and the maximum price fixed in the schedule for such coarse foodgrains was Rs. 74 per quintal. It was the admitted

case of the parties that the price payable for the stock requisitioned was to be determined u/s 3B of the Act. The argument urged on behalf of the State that the price fixed as payable for the requisitioned stock must be deemed to be controlled price and Therefore, the price payable under clause (i) of Section 3B, was negated and it was held that :

".....If the Government issues a direction, as in the instant case, that 50 per cent of the foodgrains are to be sold to it, it will have to pay to the seller a price as contemplated either by clause (i) or Clause (ii) of sub-section (3-B). It cannot say that whatever price it chooses to mention in the order as price payable in respect of the stock requisitioned by it would automatically become the controlled price of the grade or variety of the concerned foodgrain, as contemplated by clause (i)."

In our respectful opinion, the learned Judge seem to have laid undue emphasis on the absence of the use of the phrase "Controlled Price" in the impugned order in coming to the conclusion that the price determined as payable cannot for the purposes of clause (i) be the controlled price fixed under the Section because undoubtedly such a price is a price with reference to either the grade or variety of the foodgrains in question.

(30) As we read Section 3B, the Government has a choice either to fix a price, described in the provision as the controlled price and to pay for the requisitioned stock at this price or not to fix such a price and then determined the price payable under clause (ii). Needless to repeat, such a controlled price may be a price already prevailing having been fixed earlier or it may be a price fixed on this occasion and if latter, it may well be announced, for the first time, in the Levy Order itself.

(31) In the order impugned before us, Rs. 280 is fixed expressly as the Controlled Price and clause 3 sets out how the price payable will be calculated. This may be sufficient to distinguish the view taken in the aforesaid judgment as inapplicable to the facts of this case.

(32) The learned counsel then relied upon a judgment of the Punjab and Haryana High Court in M[s. Bhagwan Singh & others v. The State of Punjab 1975 PLR585(4)]. Here again, a Levy Order which required stock of wheat to be sold in exercise of the power u/s 3(2)(f) fixed the sale price at Rs. 105 per quintal and it was contended by the State of Punjab that this price is and should be deemed to be the controlled price for the purposes of Section 3B(i) and, Therefore, is the price payable under clause (i) of Section 3B of the Act. Here again, the price so fixed did not purport to be the "Controlled Price" even though the controlled price then prevalent fixed by the Central Govt. was Rs. 105 per quintal.

(33) The learned Judges referred to the judgment in Shree Meenakshi Mills Ltd. v. Union of India (supra) to hold that the controlled price fixed in exercise of the power to do so in Section 3(1) and 3(2)(f) is different from the price of

requisitioned stock of an essential commodity payable either u/s 3(3) or u/s 3A, 3B or 3C.

(34) There is no doubt that the price payable u/s 3(3), 3A, 3B(ii) and 3C is distinct from the controlled price, however much it may approximate the controlled price, if any. The only exception to this appears to be in 3B(i) where the price payable is the controlled price if any and, Therefore, if a price is fixed and is called the Controlled Price and the price payable is to be calculated u/s 3B, the provisions of 3B(i) will be applicable and of 3B(ii) will not be reached or resorted to.

(35) Like in the Allahabad Case, the facts of the case before us are different from the Punjab Case in so far as what is fixed here is the controlled price and not the sale price or the price payable though we venture to repeat, nothing much should turn on the nomenclature given or employed.

(36) The learned counsel for the petitioner also referred us to a decision of a Single Judge of the Calcutta High Court in Bahadurmahal Sethia and Others Vs. State of West Bengal, , which decision had also been referred to in the Punjab Case.

(37) Here again, the Govt. of West Bengal proceeded to procure Aman Rice by issuing the West Bengal Rice Mills Control Order and this order, by clause 4 fixed and declared the procurement price. Here again, it was held that no control price having been fixed the price payable had to be calculated in accordance with clause (c) of sub-section 3 of Section 3.

(38) The facts of this case again are different from the case at hand because in the present case, the price payable has not been fixed and is yet to be fixed and all that has been done is to fix the control price to serve as the basis for the required exercise under clause (a) or (b) of sub-section 3 of Section 3.

(39) We may add, here and now, what will be considered in some detail hereafter, that the power to fix a controlled price for the purposes of 3(3), 3A, 3B or 3C does not save it from the challenge that if such a price is not a fair price, it will contravene the fundamental rights of the petitioners under Articles 19(1)(f), 19(1)(g) and 31 and its enforcement will be violative of Article 301 of the Constitution of India.

(40) We, Therefore, reiterate our view that a price fixed and described as Controlled Price on the occasion of making an order to sub-serve the purposes set out in Section 3(1) is a price, within the meaning of "Controlled Price" occurring in 3(3) (a) and 3(3) (b) just as much as a Controlled Price fixed before. We, Therefore, hold that the price fixed as Controlled Price in clause (4) of the impugned order is the Controlled Price for the purposes of calculating the price payable under clause (3) of the impugned order and clauses (3) and (4) of the order do not suffer from any lack of legal authority as the same have been made in exercise of the authority conferred by Section 3(1) of the Act.

(41) This brings us to the challenge to the price under clause 4, i.e. Rs. 280 per quintal on the ground that the said price is confiscatory and at any rate, not fair.

(42) This challenge is like knocking at a door which does not exist because what can be challenged as confiscatory or unfair is the price payable and not a price fixed merely to serve as the basis for calculating the price payable. The petitioners have rushed to the court prematurely without giving the Government time and opportunity to fix the price payable.

(43) Assuming that the price yet to be fixed by the Government would be in close proximity to the Controlled Price, i.e. very near Rs. 280 and may even be Rs. 280 itself, we proceed to consider if forcing a sale of 65 per cent of the stock at Rs. 280 or thereabout is an unreasonable restriction violative of the fundamental rights of the petitioners and whether such a price is not a fair price.

(44) In judging reasonableness of such a restriction or fairness of such a price, we have the advantage of the issue having been considered by the Supreme Court in the last nearly three decades. In *State of Madras Vs. V.G. Row*, , the court laid down that in judging the reasonableness of a restriction upon fundamental rights, the surrounding circumstances can be looked into. Patanjali Sastri, C.J., observed :

"IT is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case. it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

Again in *Virendra Vs. The State of Punjab and Another*, S.R. Dass, C.J. reaffirmed this approach.

(45) In the *The Lord Krishna Sugar Mills Ltd. and Another Vs. The Union of India and Another*, , the Supreme Court considered a challenge to the Sugar Export Promotion Act, 1958 which required a pacified quantity of sugar production to be exported. The challenge was based on the ground, among other grounds, that the price fetched and payable for such exported sugar was so low as to be below the cost price and, Therefore, a price which caused loss. The court took into

consideration that increase by 50 paise per maund in the price of sugar sold in India and the anticipation that the loss in the sale of exported sugar would be recouped by this increase in price and held in para 29 at page 1133 :

".....THE loss which was expected to be Rs. 10 per maund was spread over the remaining sugar to be sold in the country and was recouped at 50 np. per maund. We are unable to accept the plea that the petitioners were not able to sell sugar at the controlled price, because the price was fixed too high. Learned counsel for the petitioners contend that by fixing a ceiling there is no guarantee that the commodity will be sold at the ceiling price and not at a lower rate. It is a well-known proposition that when commodities are controlled by fixation of price, the commodities sell only at the controlled price and not less. Economists have complained that the worst fault of price control is that the price does not fall below the controlled rate. There is nothing in the record of the case to show that the Mill? were not able to sell their sugar at the controlled price.

WE are satisfied that the object of the Act does not infringe the fundamental rights of the petitioners. To prevent any loss to the petitioners, countervailing additional prices were allowed on sales of sugar for internal consumption. The petitioners did not stand ultimately. The quota was fixed at 21/2 per cent of their total production, and it is inconceivable that they are unable to sell sugar in the open home market. This suggestion of the petitioners that they are unable to sell sugar at the controlled price has not been substantiated by the production of a single document to show what they held in stock and what they had sold. The balance sheet produced by the S.P.B. Mills shows that they were able to sell more than a lakh of bags in eight months, as against the quantity of 48079 bags for export. There is one more circumstance which may be considered. The foreign export served the national interest by stabilising the sugar market so that the production of sugarcane may be maintained at a reasonable level. It also stabilised national economy by earning foreign exchange. The loss, if any, was comparatively small and was spread over many factories. Apart from the very real possibility of its being recouped by sales in the country, the loss itself was so small as not to amount to an unreasonable restriction."

(46) In *Shree Meenakshi Mills Ltd. Vs. Union of India (UOI)*, , the Supreme Court had occasion to consider a contention that the power to issue orders in respect of essential commodities u/s 3 of the Act having been conferred to ensure their availability at fair prices, such orders cannot validly confer arbitrary powers on the executive to fix prices of essential commodities unrelated to the cost of production and reasonable margin of profit. It was urged that such an order would be void by reason of infringement of fundamental rights guaranteed by Articles 19(1)(f) and (g) and 31 as well as 301 of the Constitution.

(47) The court relied upon its earlier decision in *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, , to emphasise that the test of reasonableness meant the nature of evil that was sought to be remedied, the ratio of the harm caused to the individual citizen by the proposed remedy and

the beneficial effect reasonably expected to result to the general public.

(48) In paragraph 65 at page 380 while affirming the requirement of a price fixed to be a fair price the court observed :

" THE question of fair price to the consumer with reference to the dominant object and purpose of the legislation claiming equitable distribution and availability at fair price is completely lost sight of if profit and the producers "return are kept in forefront."

In paragraph 66 the court held that :

" IN determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable."

While stating that the producer should not be driven out of bids producing business the court added, in paragraph 77 :

".....HE may have to bear loss in the same way as he does when he suffers loss on account of economic forces operating in the business. If an essential commodity is in short supply or there is hoarding, cornering or there is unusual demand, there is abnormal increase in price. If price increases, it becomes injurious to the consumer. There is no justification that the producer should be given the benefit of price increase attributable to hoarding or cornering or artificial short supply. In such a case if an escalation in price is contemplated at intervals, the object of controlled price may be stultified. The controlled price will enable both the consumer and the producer to tide over difficulties. Therefore, any restriction in excess of what would be necessary in the interest of general public or to remedy the evil has to be very carefully considered so that the producer does not perish and the consumer is not crippled."

(49) The provisions of Section 3 of the Essential Commodities Act and its various sub-sections came to be considered by seven Judges of the Supreme Court in *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, . In para 58 on page 1314, it was held :

".....The dominant purpose of these provisions is to ensure the availability of essential commodities to the consumers at a fair price. And though patent injustice to the producer is not to be encouraged, a reasonable return on investment or a reasonable rate of profit is not the sine qua non of the validity of action taken in furtherance of the powers conferred by S. 3(1) and S. 3(2)(c) of the Essential Commodities Act. The interest of the consumer has to be kept in the forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration."

(50) Applying the aforesaid principles to the facts of this case, we find that on

the eve of the date of the issue of the impugned order, the prevailing price was the control price, i.e. Rs. 315 per quintal. Even though the petitioners have not given any information about the price at which they were able to sell 35 per cent of their stock, i.e., that part of the stock which had not been requisitioned. The Government of India, have produced on record the relevant information. From 17th December, 1979 onwards the market price of the sugar in question first shot up to Rs. 502 per quintal and never came below Rs. 443 per quintal. The loss of Rs. 38 per Quintal on 65 per cent of the stock acquired at Rs. 318 and sold at Rs. 280 can be made up if 35 per cent of the stock is sold at a margin of Rs. 71 per quintal, i.e. at Rs. 389 per quintal. From the figures of the prevailing prices given by the Government of India, we have no hesitation in holding that the petitioners did not, by and large, suffer any loss. This would be equally true if the prices taken above need to be marginally varied.

(51) In view of this, we need not go into other economic factors and principles laid down to determine the fairness of a price and relying on the one accepted principle that loss has to be seen on an overall basis, in this case, on the entire sale, we find that the second challenge is also without merit.

(52) The last contention/challenge refers to the efficacy of the impugned order to achieve the stated purpose. Mr. A. P. Mohanty referred to para 68 of the judgment in *Prag Ice & Oil Mills Ltd. v. Union of India* (supra) where the decision in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, was referred to and contended as held there that when a legislative power is defined by reference to purpose legislation not directed to that purpose will be invalid. He submits that the very fact of allowing 35 per cent of the sugar stock to be sold at any price resulting in its sale at prices higher than before, frustrates, as it is bound to, the purpose of making sugar available at low prices. The argument is based on a misconception that the purpose is to make 100 per cent of the stock of sugar available at a low price whereas the purpose is to make 65 per cent of the stock available at low prices, a common feature of a dual policy of price control, much in vogue these days. This stock i.e. 65 per cent of the total stock is made available at a lower price and the purpose is fully achieved. The argument has thus no force.

(53) In conclusion, we hold that the impugned order dated 17th December, 1979, issued by Gsr 702(E)|Ess Com|Sugar does not suffer from any legal vice or infirmity and the petitions challenging the same have no merit and are dismissed with costs.