
(1979) 01 GUJ CK 0020
In the Gujarat High Court

Khedut Sahakari Khand Udyog Mandali Ltd. and Others	APPELLANT
Vs	
Its Workmen and Others	RESPONDENT

Date of Decision : 30-01-1979

Acts Referred:

Citation : (1979) 1 GLR 858

Hon'ble Judges : B.J. Divan, C.J;D.P. Desai, J

Bench : Division Bench

Judgement

B.J. Divan, C.J.—Since the questions arising for decision in all these matters pertain to the main substantial award which is one and the same

for all these matters, we will dispose of all these six matters by this common judgment. In Reference (1C) No. 16 of 1976, in arbitration

proceedings between three of the co-operative sugar factories in Bulsar ii Surat District and there workmen, the President of the Industrial Court,

Gujarat, gave his award on April 27,1977. That award has been challenged by three co-operative societies, namely, Shri Khcdut Sahkari Khand

Udyog Mandali Lid., Bardoli, Sahkari Khand Udyog Mandali Ltd., Gandevi, and Shri Madhi Vibhag Khand Udyog Sahkari Mandali Ltd., Madhi,

in Special Civil Application No. 1036 of 1977. The workmen employed in the sugar factory in all the three sugar factories, namely,

Madhi,"Gandevi and Bardoli, have, through Vapi General Kamdar Mandal, Bilimora, challenged the said award in Special Civil Application No.

1136 of 1977. Some of the workmen and their union on their behalf have filed Special Civil Application No. 1148 of 1977 and some of the

workmen of the Bardoli factory and their representatives have filed Special Civil Application NO. 1148 of 1977 challenging the said award.

Special Civil Application No. 311 of 1978 has been filed by another trade union representing some of the workers of all the three sugar factories,

namely, Madhi, Gandevi and Bardoli Sugar Factories.

2. Over and above these three sugar factories at Bardoli, Madhi and Gandevi, there is a co-operative sugar factory at Una in Junagadh District of

the State of Gujarat and the Saurashtra Majoor Mahajan Sangh representing the workmen of the Una factory, had put forward demands more or

less similar to the demands put forward by the workers of the factories at Bardoli, Madhi and Gandevi. In his award given regarding at Una factory

by the President on July 20, 1977, the President took into consideration some special features pertaining to the Una factory but, by and large, he

has followed his decision in Reference (1C) No. 16 of 1976 in respect of Bardoli, Madhi and Gandevi factories and in terms he has stated in his

award regarding Una factory and the workmen employed there:

Now, as aforesaid, the demands raised in this reference are on the lines of the order passed by the Govt. of Uttar Pradesh, published in Govt.

Gazette Uttar Pradesh, dated 31st October 1914, which I have set out earlier. I had an occasion to deal with this question in Reference (1C) No.

16 of 1976, in the arbitration between Shri Khedut Sahakari Khand Udyog Mandali Ltd., Bardoli; Sahakari Khand Udyog Mandali Ltd ,

Gandevi; District Bulsar; Shri Madhi Vibhag Khand Udyog Sahakari Mandali Ltd., Madhi, Taluka Bardoli: and the workmen employed under

them, and have examined the question in all its details and for the reasons stated made an award on 28th April 1977 (Vide Gujarat Govt. Gazette.

Part 1-L Dt. 12-5-1977, pages 2200-36, Awar-Part II, dated Uth April 1977). I do not, therefore consider it necessary to go into the question

any further. I adopt the reasoning and the observations made by me in the said award given in Reference (1C) No 16 of 1976.

Thus, it is clear that substantially, it is the same award and the same reasoning which govern all these cases, namely, Una sugar factory as well as

the three factories in South Gujarat, namely Madhi, Gandevi and Bardoli Special Civil Application No. 1505 of 1977 has been filed by the Una

Sugar factory. Special Civil Application No. 602 of 1978 is a petition filed by the workmen of the Una Sugar Factory through their union

representatives, Saurashtra Majoor Mahajan Sangh.

3. This is how all these matters are inter-related and since the challenge in all these matters from both sides, employers as well as workmen is to the

award of the President given in Reference (1C) No. 16 of 1976 mentioned above, we are disposing of all these cases by our common judgment.

4. In respect of all these six matters, by our Order dated October 18, 1978, we had announced our final decision in the matter and stated that the

reasons in support of the order would be given later on, that is, after the October Vacation. The last working day in this Court before the October

Vacation was October 20, 1978 and the Courts re-opened after the October Vacation on November 3, 1978.

5. As has been made clear by the learned President of the Industrial Court in both his awards, the demands of the workmen were to get who has

been referred to shortly as the U.P. Government Revised Pay-scales for Sugar Factories in Uttar Pradesh, and the demands in all these cases

before us were that the workers in these different sugar factories at Bardoli, Madhi and Gandevi should get the same pay and dearness allowance

and other benefits as have been held applicable for the Sugar Factories in Uttar Pradesh by the U.P. State Government.

6. The Second Central Wage Board for the sugar industry had given its report in the year 1970 and the benefits given in pursuance of that Wage

Board's Report were due to expire on October 31, 1974. In view of this situation, the Government of U.P. on October 31, 1974, issued what is

known as U.P. Pattern Scales of Wages and Dearness Allowance for workmen employed in as sugar factories working by Vacuum Pan

Manufacturing Process. The recital in that order of the Government of U.P. mentions inter alia that the representatives of Vacuum Pan Sugar

Industry and the workmen unanimously passed resolution to refer questions of dearness allowance, wages-increase and retaining allowance, to the

arbitration of the Labour Minister of the State Government and also decided that the award of the Labour Minister shall be final and binding and

these questions would not be agitated by the parties in any of the forums including any Bi-partUe or Tripartite committee that might be set up by

the Central Government. The Labour Minister then gave the award and as a result of that award, an order was passed subsequently u/s 3 Sub-

clause (b) of the U.P. Industrial Disputes Act, 1947 and that is how, what has come to be known as the U.P. Pattern of Pay, Graduated Dearness

Allowance, Variable Dearness Allowance on a particular basis, came into fore; by this order of 31st October 1974. Effect was to be given to

these pay-scales and dearness allowance with effect from October 1, 1974 and since all sugar factories are seasonal factories employing a large

number of seasonal workmen, it was provided in the U.P. Pattern that the factories concerned should pay the retaining allowance to their unskilled

seasonal workmen for the off-season of the following year at the rate of ten per cent of the basic wage; and dearness allowance payable during the

crushing season of the year 1974-75. Provision is also made in this U.P. Pattern order for payment of gratuity to permanent workmen and to

seasonal workmen. The demands put forward by the workmen before us were to bring their pay-scales, dearness allowance and retaining

allowance to unskilled seasonal employees in line with the U.P. Pattern, but there was no demand for the payment of gratuity so far as these

workers were concerned.

7. Before References arising from the demands of the workmen were made to the Industrial Court under the provisions of the Bombay Industrial

Relations Act which applies to sugar factories in this State, a meeting of various sugar establishments situated in Saurashtra Region and their

workmen was held at Ahmedabad on June 3, 1975. Similar meetings for the sugar establishments for the rest of Gujarat, namely, Surat, Bulsar and

Kaira Districts and their employees were held on June 18, 1975 at Surat. These meetings were called by the Labour Commissioner of the State of

Gujarat and the demands were raised by the unions of the workmen in the establishments for increase in gratuity, dearness allowance and variable

dearness allowance, etc. on the lines of the U.P. Government order. The question was also raised on the floor of the State Assembly.

8. On March 10, 1975, the Ministry of Labour, Government of India, had addressed a letter to all State Governments and the Union Territories on

the subject of wage revision in sugar industry. It had directed to refer to the demands of Sugar workers for revision of wage structure and to the

Minutes of the meeting held on December 6, 1973 at New Delhi to consider the question. In that letter, the Deputy Secretary to the Ministry of

Labour, New Delhi, wrote:

As would be seen from para 4 of the minutes referred to, the question of

machinery to be set up for the wage revision were discussed in the meeting and it was decided to leave the matter to Government. Since then the Government of Uttar Pradesh, have issued statutory orders on 31st October 1974 (copy enclosed) to revise the wages of sugar workers as decided in a tripartite conference by the State Government on the 28th October 1974. According to the information received by this Ministry, the Government of Bihar have also decided to carry out wage revision on lines similar to that in U.P. Information has also been received that wages have either been levised or these are under revision in some other States also. Having taken note of the developments, the Government of India have decided that the question of wage revisions in States other than U.P. may also be decided by the State Government through tripartite or bi-partite negotiations, as may be considered appropriate in the circumstances, keeping in view of the U.P. Pattern.

It appears that the Governments of Bihar, Maharashtra and Tamilnadu have accepted the U.P. Pattern for the sugar factories in their States from October 1, 1974. The States of Karnataka, Andhra Pradesh and Madhya Pradesh have also applied the U.P. Pattern to sugar factories in their respective States with effect from October 1, 1974. Thus, practically in all States where sugar factories producing sugar from sugarcane by vacuum pan process are situated, namely, Uttar Pradesh, Maharashtra, Tamilnadu, Bihar, Karnataka, Andhra Pradesh and Madhya Pradesh, have adopted the U.P. Pattern with effect from October 1, 1974, and it is therefore not surprising that the workers of the different sugar factories in Gujarat also put forward their demands for the adoption of U.P. Pattern in their respective sugar factories. Pressure behind the demands was all the greater because, after the Bangladesh war and the rising spiral of inflation all over the world in 1973-74 following the world petroleum crisis to 1973, the dearness allowance and wage scales which were prevalent under the recommendations of the Second Wage Board for sugar industry, had become out of context for the conditions which were prevalent after October 31, 1974. So far as the award of the learned President of the Industrial Court is concerned, the learned President did not give effect to his decision with effect from October 31, 1974 as demanded by the workmen, but he gave a phased programme commencing from July 1, 1976

spread over a period of three years, as a result of which, the workers of the three sugar factories at Bardoli. Madhi and Gandevi would be brought in line with the U.P. Pattern. In respect of the award in Una also, the same pattern of phasing was adopted and effect was to be given from July 1, 1977 in the case of sugar factory at Una also. It may be pointed out that there is a co-operative sugar factory at Kodinar in Amreli District of Gujarat State and in the case of that sugar factory, by a settlement arrived at between the management and the workmen, the U.P. Pattern has been given effect without any phasing from January 1, 1976. As regards another sugar factory, also in the co-operative sector, situated at Chalthan in Surat District, the demand had been granted as per the award made by the Industrial Court in Reference (1C) No. 3 of 1975, on February 22, 1977, with effect from July 1, 1976.

9. Since we are called upon to exercise our certiorari jurisdiction under Article 226 of the Constitution, it is necessary that we should start with a clear notion of what the High Court can do under Article 226 of the Constitution in exercise of these powers, when the decision of a quasi-Judicial tribunal is challenged before it under those provisions. In *Rohtas Industries Ltd. v. Rohtas Industries Staff Union* A.I.R. 1976 S.C. 425, Krishna Iyer J. speaking for the Supreme Court observed in paragraph 9 at page 429 of the report as under:

The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person-even a private individual - and be available for any (other) purpose, even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1-A) reiterates the targets of the writ power as inclusive of any person by expressive reference to "the residence of such person." But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a but in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond these wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ

power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights.

In paragraph 12, at page 430, Krishna Iyer J. stated: "...such an award can be upset if an apparent error of law stains its face." An error of law

and what is meant by an error of law was thus summarised by citing the following passage from Halsbury's Laws of England:

In order to be a ground for setting aside the award, an error in law on the face of the award must be such that there can be found in the award, or

in a document actually incorporated with it, some legal proposition which is the basis of the award, and which is erroneous.

It was also pointed out that jurisprudence of judicial review in this branch of law is substantially common for English and Anglo-American system

and so Halsbury has considerable persuasive value. "In simple terms the Court has to ask itself whether the arbitrator has not tied himself down to

an obviously unsound legal proposition in reaching his verdict as appears from the fact of the award." The earlier decision of the Supreme Court in

Bungo Steel Furniture's case A.I.R. 1967 S.C. 378 was relied upon. Bhargava J. in that case observed:

it is now a well-settled principle that if an arbitrator in deciding a dispute before him, does not record his reasons and does not indicate the

principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons

or to lay down principles on which he has arrived at his decisions that the Court is competent to examine whether he has proceeded contrary to

law and is entitled to interfere if such error in law is apparent on the face of the award itself

Quoting from the decision of the Privy Council in Champsey Bhara & Co. 50 I A 324, it was pointed out that "An error of law on the face of the

award means, in Their Lordships' view, that you can find in the award...some legal proposition which is the basis of the award and which you can

then say is erroneous." In paragraph 16 at page 431, Krishna Iyer J. observed:

Let us put the proposition more expressively and explicitly. What is important is a question of law arising on the face of the facts found and its

resolution ex facie or sub silentio. The arbitrator may not state the law as such. Even then such mute silence confers no greater or subtler immunity

on the award than plain speech. The need for a speaking order, where considerable numbers are affected in their substantial rights, may well be a facet of natural justice or fair procedure, although, in this case, we do not have to go so far. If, as here, you find an erroneous law as the necessary buckle between the facts found and the conclusions recorded, the award bears its condemnation on its bosom. Not a reference in a narrative but a clear legal maxim between the facts and the finding.-The law sets no premium on juggling with drafting the award or hiding the legal error by blanking out. The inscrutable face of the sphinx has no better title to invulnerability than a speaking face which is a candid index of the mind. We may, by way of aside, express hopefully the view that a minimal judicialisation by standard, laconic or lengthy, of the essential law that guides the decision, is not only reasonable and desirable but has, over the ages, been observed by arbitrators and quasi-judicial tribunals as a norm of processual justice.

In the light of these principles governing the exercise of certiorari jurisdiction under Article 226 of the Constitution, we have to consider the attack

both from the employers' side as well as the workmen's side to the two awards before us. As we have already pointed out, the award in the Una

sugar factory case adopts the reasoning in Birdoli, Madhi and Gandevi sugar factories' case. Mr. V.B. Patel appearing for the management of the

three sugar factories at Bardoli, Madhi and Gandevi, has submitted before us as follows:

1. The relevant principles for fixing wage scale and dearness allowance were not borne in mind inasmuch as (i) industry-cum-region formula was

not given due weight by the Industrial Court, and (ii) capacity of the industry to bear the burden which was going to be imposed by the award was

not taken into consideration.

2. The Industrial Court has made an erroneous approach to all sugar factories concerned not being able to bear the burden instead of adopting the

correct approach, whether they were able to bear the burden. 3. The Industrial Court has overlooked the fact that neutralization of the rise in the

cost of living index which has been granted by the Industrial Court would exceed one hundred per cent of the rise in the cost of living.

On the side of the workmen, the attack against the award has been on the

following grounds:

1. Though the workers in the sugar factories in all other major sugar-producing States, namely, Bihar, Uttar Pradesh, Maharashtra, Tamilnadu,

Karnataka, Andhra Pradesh and Madhya Pradesh, have all adopted the U.P. Pattern in full force with effect from October 1, 1974, the award

grants the benefits in a phased manner with effect from July 1, 1976 and full effect to the U.P. Pattern is being given under the terms of the award

with effect from January 1, 1979 and not earlier.

2. The Tribunal has overlooked that, under the terms of the U.P. Government award for the U.P. Pattern, what has been granted in the pay-scales

are the minimum wages of unskilled workers and the basis of those minimum wages of unskilled workmen, the wages of the rest of the workmen in

Uttar Pradesh Pattern have to be adjusted. If what is granted by the U.P. Government Pattern are minimum wages, no question of paying capacity

of the industry can be considered and the minimum wages given by the U.P. Pattern should have been in force in Gujarat in the case of all these

four sugar factories before us with the same pattern and on the same lines as the U.P. Pattern with the same retrospective effect, namely, October

1, 1974.

3. It was also pointed out that the learned President of the Industrial Court has overlooked the principle of law that in fixing wage-scales and the

same principle has to be followed in Dearness Allowance scales -depreciation and other reserves and provision for taxation and reserves cannot

take precedence over the provision for gratuity and fixing of wages, and the provision for Income Tax and for reserves must take second place as

compared to provision for wage structure and gratuity.

10. We may point out that as regards the question whether, for the purpose of filing of dearness allowance, wage scales and gratuity or similar

benefits of payment to be made to workmen are concerned, gross profits before taxation and depreciation reserves are to be taken into

consideration or whether gross profits after depreciation but before taxation, is to be taken into consideration, there are several decisions of the

Supreme Court available on the point. The first in point of time is the decision of the Supreme Court in *Gramophone Company Ltd. v. Its*

Workmen (1964) 2 LLJ 131. Thereafter, there is the decision, of the Supreme

Court, in *The Indian Link Chain Manufacturers Ltd. v. Their Workmen* (1971) 2 SCC 739 and also the decision in *Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, In Unichem Laboratories Ltd. v. The Workmen* (1972) 3 SCC 551, the Supreme Court considered three earlier decisions in *Gramophone Company's case*, *Indian Link Chain Manufacturers' case* and *Ahmedabad Milhivners' Association's case* and after considering them all, the following principle was adopted by Vaidialingam J., speaking for the Supreme Court, in paragraph 61 at page 569:

From the above decision it is clear that profits are to be computed prior to the deduction of depreciation and other reserves. The said decision (i.e. *Gramophone company's case*) directly holds that provision for depreciation and other reserves cannot be deducted in computing profits to be ascertained for framing a gratuity scheme. This decision again reiterates the legal position that gratuity and wages in industrial adjudication & placed on the same footing and have priority over Income Tax and other reserves. In fact, as pointed out by us earlier, provision made for depreciation and which has been deducted by the Company for arriving at profits was added back by this Court." (in *Gramophone Company's case*).

Again quoting from the *Ahmedabad Millowners' Associations' case*, it was pointed out:

...it is the figure of gross profits which is more important, because it is not disputed that wages payable to the employees are a first charge, and all other liabilities take their place after the wages.

In *Shivraj Fine Arts Litho Works and Others Vs. The State Industrial Court, Nagpur and Others*,

This leaves us with the question as to how the financial capacity of the concerns is to be determined. After fixing the financial capacity, the fair wage which would include fitment, wage scales, dearness allowance payable has to be determined. The question as to the period during which retrospective effect has to be given for payment of fair wages has to be considered.

In paragraph 24, it was again observed :

In order to determine the fair wage including the scale of pay, the price rise, the dearness allowance etc., the financial capacity of the concern has

to be determined. A close scrutiny of the concern's working has to be made. The profit and loss account, the prospects of the company improving itself in future and all other relevant matters will have to be taken into account. The expenses properly incurred for working the industry such as buying of the raw materials, expenses incurred in running the factory, office and other transport expenses, the expenses incurred in marketing and other such allowable expenditure has to be deducted. We are unable to accept the contention of the learned counsel for the respondents that the gross profits alone has to be taken into account. Equally we are unable to accept the pleas on behalf of the appellants that net profit alone should be the basis of determining the financial capacity.

In this judgment in paragraph 24, the earlier decisions in Gramophone Company's case, Indian Link Chain Manufacturers "case and Unichem

Laboratories" case were referred to and it may be pointed out that, after considering the passages which we have extracted above from the

decision in Unichem Laboratories" case, there has not been the slightest indication that the Supreme Court in the subsequent decision in S.F.A.L

Works "case was inclined to take a different view from that taken in Gramophone Company's case, Indian Link Chain Manufacturers" case and

Unichem Laboratories" case. Under these circumstances, it is obvious that gross profits before allowance is made for depreciation have to be

looked at for the purpose of considering the paying capacity of the industry. In spite of this well-settled legal principle, we find that the Industrial

Court has in the instant case not closely scrutinised the balance-sheets of the three sugar factories before the Industrial Court for the purpose of

finding out what was the depreciation allowance given in each of these factories year in and year out before arriving at its net profits. The basic

requirement that to appreciate the capacity of the industry to pay, the amount of depreciation has to be added back to the net profits shown in the

balance-sheet, has not been followed in the instant case. The result is that this well-settled and well-stated principle of law regarding consideration

of the financial burden on the company is totally overlooked and has not been considered at all. Under these circumstances, since the burden on

the industry is the basis of the recommendation made for phasing and for departing from the U.P. Pattern dated July 1, 1979, there is an error

apparent on the face of the record. We will, therefore, have to examine for ourselves the position of the depreciation allowance, development

rebate and taxation being added back to the net profits. A statement regarding the three sugar factories at Gandevi, Bardoli and Madhi showing

gross profits before depreciation, development rebate and taxation, is now before us and that statement shows that, for the five years 1972-73 to

1976-77, the position was as shown in the statements below:

Statement of Net Adjusted Profit or (-) Loss

Sahkari Khand Udyog 1972-73 1973-74 1974-75 1975-76 1976-77

Mandal Ltd. Gandevi 10,14,221 (-) 2,56,573 16,276 77,616 (-) 2,37,243

Khedut Sahkari Khand

Udyog Mandali, Bardoli 012,21,5,9 34,21,504 34.85,797 155,56,110 39,76,703

Madhi Vibhag Khand

Udyog Sahkari

Mandali, Madhi 5,54,656 1,28,642 4,09,411 (-)70,19,079 3,65,237

Statement of Gross Profit before Depreciation, Development

Rebate and Taxation.

1972-73 1973-74 1974-75 1975-76 1976-77

Sahkari Khand Udyog

Mandal Ltd. Gandevi. 25,19,808 35,34,135 14,65,511 11,62,866 17,12,405

Khedut Sahkari Khand

Udyog Mandal, Bardoli 38,26,611 1,00,02,370 35,49,818 87,34,910 82,83,797

Madhi Vibhag Khand

Udyog Mandali, Madhi. 40,31,494 29,27,433 21,09,411 44,20,497 54,91,238

It is thus clear that so far as Gandevi factory is concerned, in each year under consideration, there is a gross profit whereas in Bardoli and in

Madhi, there is, barring the year 1975-76 large profit available in the gross profit before depreciation, development rebate and taxation. Thus, the

position of the three factories in South Gujarat, namely, Gandevi, Bardoli and Madhi, is not at all gloomy so far as their financial prospects are

concerned, looking to the gross profits before deduction for taxation, depreciation and development reserves rebate. The same is the position also

with regard to Una and in each year, there has been considerable expansion and in Una also, (though considerable amounts of carry-forward

losses are shown in the balance-sheet, once the development rebate, depreciation and reserves for that purpose are added back to the net profits

and gross profits before taxation reserves and development rebate are ascertained, the position is the same and the picture is not gloomy at all. For

example, in the year 1972-73 for the Una factory, there was a depreciation of Rs. 14,88,793/- and yet there was net profit of Rs. 13,07,265/-. In

the year 1973-74, the provision for depreciation was Rs. 11,48,319/- and a net loss of Rs. 43,17,710/- was shown in the accounts. For the year

1974-75, the position was that the depreciation of Rs. 12,45,398/- was provided and development rebate reserve of Rs. 16,625/- was provided

and it was shown that the loss in the profit and loss account was Rs. 18,76,469/-. As regards the year 1975-76, the working showed, under the

profit and loss account, a loss of Rs. 33,52,424/- whereas there was a provision of depreciation to the extent of Rs. 11,63,831/- and an amount of

Rs. 25,611/- was provided for by way of development rebate reserve. For the year 1976-77, the position of the Una factory was that it showed a

net loss of " Rs. .54,44,904/- in the profit and loss account but, on the other hand, as regards depreciation, Rs. 10,64,451/- were provided by

way of depreciation for the year.

11. We find that all these four sugar factories in Gujarat who are before us provide for the rates to be paid for the purchase of sugarcane ex-field,

that is, the factory pays for the cutting of sugarcane from the field of the agriculturist and for carrying it to the factory premises from the field of the

agriculturist. Even the loading charges for loading the cut sugarcane at the field of the agriculturist from the field on to the trucks, and unloading

charges, are paid by the factory. On the other hand, as has been pointed out by Mr. N.J. Mehta appearing for some of the workmen before us,

the basis on which the levy prices are fixed under the Sugar Levy Price Scheme operated by the Government of India, with which we will deal later

on, the price of sugarcane has to be calculated ex-factory and not ex-field, that is, the price has to be calculated under the Levy Sugar Scheme as if

the sugarcane was delivered at the gate of the factory. Moreover, as has been rightly pointed out, in Gujarat the factories are paying special

amounts by way of encouragement to agriculturists for growing sugarcane and under that head, fairly large amounts are parted with by these sugar factories. The most telling feature, in our opinion, in connection with these sugar factories is as shown by the balance-sheets before us, year after year, each of these four sugar factories has been expanding its plant by installation of more and more machinery and enlarging its capacity. We fail to understand how this expansion of the sugar industry could have taken place if the outlook for the industry were not bright and if the prospects were gloomy, as has been sought to be made out on behalf of the respective factory, these bright prospects for the sugar industry in Gujarat and for these sugar factories must be borne in mind while considering the capacity of the industry to pay. As a matter of fact, we find from the Annual Reports to the members of each of these co-operative societies that glowing pictures for the prospects of the industry are painted in each year's annual reports. Taking into consideration all these factors, it is obvious that there is capacity in the industry to pay and that there was no justification for the Industrial Tribunal to phase the relief which it was granting on the footing that the industry in Gujarat could not bear the burden.

12. There is another aspect of the award. There also, it seems that the Tribunal has not gone sufficiently deep into the question regarding the exact

legal position, and that is on the question of levy sugar prices. The whole question of levy sugar prices and context in which those levy sugar prices

were being prescribed by the Government of India from time to time was gone into by a Division Bench of the Andhra Pradesh High Court in Writ

Petitions Nos. 450 of 1976 and Batch decided by the Division Bench of which one of us (Divan, Chief Justice; was a member, on December 10,

1976. The whole aspect of levy sugar prices had been gone into and it was pointed out that Parliament enacted the Essential Commodities Act,

1955 to provide, in the interest of general public, for the control of production, supply and distribution and trade and commerce in commodities

which are considered as essential commodities. Foodstuff is included in the definition of "essential commodity" and sugar would be an essential

commodity for this purpose. The support of the Act had been taken by the Government of India for regulating production and distribution of sugar

and the history as follows : They are regulated in the interest of availability of sugar at a fair price to the consumer, a fair return to its manufacturer

and a reasonable incentive to the cane grower who provides the basic raw material for the industry. Keeping the said objectives in view, the

Government was periodically reviewing its sugar policy and taking steps eousidtrd necessary for implementation of the policies. From April, 1963

to November, 1967 complete control was imposed on sugar. In 1966-67 the area under sugarcane came down by 16.2 per cent as compared to

that in 1965-66. The estimates for 1967-68 showed a further decline of 15.4 per cent and production of sugar also came down from 35.4 lakh

tonnes in 1965-66 to 21.5 lakh tonnes in 1966-67. In order to arrest this tendency of decline in the area under sugarcane and to maximise the

production of sugar in the public interest, the Government considered various alternatives of complete control, complete decontrol and partial

decontrol, and decided on a policy of partial decontrol from 1967-68 season under which some quantity of sugar should be made available to

domestic consumer at controlled price, leaving a portion of the production for sale by the factories in the open market. Under this policy, the sugar

factories were enabled to pay a price for sugarcane to the sugarcane growers higher than the minimum statutory price fixed by the Government and

thus compete with Gur and Khandsari manufacturers. It also enabled them to compensate themselves for the higher cane price paid to the grower

by the sale of a portion of sugar produced in the open market at prices higher than the price of levy sugar fixed by the Government. This policy of

partial decontrol of sugar resulted in the increase in the area under sugarcane and also the production of sugar during the years 1968-69 and 1969-

70 and 1970-71. The sugar industry was also benefited through prolongation of its crushing season and production of larger quantities of sugar.

The Government requested the Tariff Commission in 1968 to re-examine the matter relating to cost structure and zoning of sugar industry, and the

Tariff Commission, after getting the necessary data and information from all the factories with regard to the working results and after carrying out a

detailed cost investigation of selected representative factories in each region, recommended fixation of price on the basis of 15 zones and a uniform

return of 10-50 per quintal in the price of sugar. These recommendations were accepted by the Government and the prices for sugar produced in

1969-70 and 1970-71 were accordingly fixed under the Sugar (Price Determination) Order, 1970 and 1971. The recommendations of the Tariff

Commission as accepted by the Government were valid for a period of three years ending with 1971-72 season. However, the escalation that

had taken place in regard to various items of cost after 1969, when the Tariff Commission submitted its report, were also provided for in the

fixation of the ex-factory prices for levy sugar as notified in the control orders. In March 1972, the Government again requested the Tariff

Commission to undertake a fresh inquiry into the cost structure of sugar industry in order to enable the Government to fix sugar prices etc. for

1972-73 season onwards. As a result of substantial increase in the production of sugar in 1969-70, the situation materially changed. The prices of

sugar in the open market went down from 1969-70 sugar season, and the prices realised by the factories were more or less at the level of the levy

prices. In view of the above position, the Government reviewed the policy of partial decontrol and removed the same, but retained some control

over the release of sugar from factories.

13. Within a few weeks after removal of control the sugar prices showed steady rising trends. In the context of such rise in prices of sugar and in

view of the emergency arising out of the conflict with Pakistan at that time, an informal arrangement was made with the industry, and a scheme was

brought into effect from January 1, 1972 under which the industry agreed to voluntarily make available 63 per cent of the monthly release of sugar

at a fixed price of Rs. 150/- per quintal ex-factory inclusive of excise duty for D-30 grade for distribution to domestic consumers through fair

price shops. Similarly, a further 3.5 per cent of the monthly release was made available by the factories for meeting export commitments. The rest

of the monthly releases would be available for sale in the open market. But the Indian Sugar Mills Association informed the Government on June

13, 1972 that some of the* factories were unwilling to continue the voluntary arrangement beyond May 30, 1972.

14. Thereupon the Government issued the Levy Sugar Supply (Control) Order, 1972, the Sugar (Price Determination) Order, 1972 and other

ancillary orders in exercise of the power under the Act in order to ensure availability of sugar to domestic consumers at a fair price. For the 1972-73

season, the Government decided to requisition 70 per cent of the monthly releases of sugar from factories instead of 63.5 per cent in 1972-73

season. Accordingly, the Sugar (Price Determination for 1973-72 Production) Order, 1972, was issued notifying the prices for sugar of 1972-73

production on the basis of the 1969 report of the Tariff Commission having due regard to certain additional elements in the cost of production over

and above the escalations recommended by the Tariff Commission. The uniform return was also increased to 12.05 per cent per quintal which had

hitherto been 10-50 per quintal during the seasons 1969-70 and 1971-72. The over-all effect of the price fixation resulted in an increase of about

Rs. 20/- per quintal over the price for levy sugar fixed in the previous season 1971-72. Thereafter the Tariff Commission submitted its final report

and after the submission of the Tariff Commission's report, there was also the Bhargava Committee Report and it has been pointed out in the

decision of the Andhra Pradesh High Court that the prices of levy sugar were being fixed zone-wise for price to be paid for levy sugar as price

which the Government would pay to sugar factories for levy sugar. It has been pointed out in that judgment that these prices were being fixed from

time to time each year, taking into account the factor that, on an average, sugar factories in each season should get about 12 per cent return taking

into consideration the realisations from the open market sales and the realisations from sale of levy sugar. It may be pointed out that State of

Gujarat was constituted a separate zone for the purpose of levy sugar. Thus, sugar industry in Gujarat as a whole on an average got 12 per cent on

the cost of price. An elaborate scheme providing for every possible factor which went into the cost of production of sugar was provided for while

computing the levy sugar price. It was pointed out in the judgment of the Andhra Pradesh High Court that every year the prices of levy sugar were

being fixed twice or thrice so as to see to it that ultimately over the whole period of one crushing season commencing from August/September each

year to July/August of the following year, return would be 12 per cent per annum. Under these circumstances, it cannot be said that the sugar

factories in Gujarat had anything to lose because of the administration of sugar levy and the price being paid by Government for levy sugar. It is

true that in arriving at these prices of levy sugar, Government of India did not take into consideration the actual prices paid for sugarcane but

prices for sugarcane fixed by the Government of India for the various zones. But if any co-operative sugar factory in Gujarat chose to pay a higher

price than that ruled by the Government, it had itself to blame if its over-all working showed a paper loss though on lifting the veil of corporate

organisation, it can be seen that ultimately the members of the co-operative society benefited by a higher price of sugarcane and ancillary prices and

rates paid to them rather than benefitting in the form of dividends on the capital invested by them in the cooperative sugar factory. Hence, it was

incumbent on the learned President of the Industrial Court to take into consideration the factor that the price for levy sugar was so fixed by the

Government that, on an over-all working, taking into consideration open market sales and the sales of levy sugar, there was no loss on an average

to any sugar factory in the State of Gujarat. As the Bhargava Committee pointed out in its report, the whole idea of taking all the factories in on the

State an average was to see to it that an inefficient unit did not thrive at the cost of the society as a whole.

15. We have pointed out above that the sugar factories in Gujarat and particularly the four sugar factories which are before us had a bright future

and prospects of a bright future were reflected in the expansion programme and the constant increases in the block of capital which these factories

were going in for. Therefore, owing to the price fixation formula for fixation of price of levy sugar, if the workers were paid more, increased cost

because of such payments was bound to be taken into account in the fixation of levy sugar prices as a whole so far as the State of Gujarat was

concerned. Under these circumstances, these co-operative sugar factories before us had nothing to fear so far as their over-all working was

concerned.

16. It may also be pointed out that, with effect from September 1, 1978, the Government of India has totally abolished levy of sugar and fixation of

levy sugar prices and all transactions are in the open market. Under these circumstances, even the factor of the co-operative sugar factories having

to incur losses because of the levy price of sugar has now totally disappeared.

17. There was a grievance made on behalf of the workmen of the different factories on the ground that the Tribunal failed to give retrospective

effect from the same date as in the other States, that is, from 1-10-1974 as was given by the U.P. State Government and also by the States of

Maharashtra, Tamilnadu Bihar, Karnataka and Madhya Pradesh, and their

contention was that even for these sugar factories in Gujarat, retrospective effect should have been given from October 1, 1974. In this connection, in *Hindustan Times Ltd. v. Their Workmen* AIR 1953 S.C.

1332, it was laid down by the Supreme Court that it is a matter of discretion for the Tribunal to decide from the circumstances of each case from

which date its award should come into operation. No general rule can be laid down as to the date from which a Tribunal should bring its award in

force. This principle was followed by the Supreme Court in *Hydro (Engineers) Pvt. Ltd. Vs. The Workmen*, In paragraph 10 at page 188 of the

report, Shelat J. speaking for the Supreme Court, observed:

If the Tribunal has exercised its discretion and no substantial ground is trade out to show that it was unreasonably exercised, the mere fact that it

has retrospectively enforced its award from the date of the demand is hardly a ground for interference with the award.

In *Bengal Chemicals Ltd. and Pharmaceutical Works Ltd. v. Its Workmen* (1969) 1 L.L.J. 751, the question was again considered by the

Supreme Court and at page 760 of the report, Vaidialingam J. speaking for the Supreme Court, after referring to the *Hydro (Engineers) Pvt Ltd.*'s

case (*supra*), observed:

Recently, in *Hydro (Engineers) (Private) Ltd. v. Its Workmen*, this Court declined to interfere with the direction given by the tribunal that its award

should take effect from the date of demand made by the workmen. It has also been pointed out, in the said decision, that it is a matter of discretion

for the tribunal to decide, from the circumstances of each case from which date its award should come into operation, and no general rule can be

laid down as to the date from which a tribunal should bring its award into force. Therefore, it will be seen that when a tribunal gives a direction

regarding the date from which it has to become effective, no question of principle, as such, is involved.

In the instant case, we have already observed above that the phasing which has been provided for in the award is not justified taking into

consideration the relevant factors which the Tribunal should have taken into consideration and therefore we have stated above that there is no

justification whatsoever for the phasing on the facts as disclosed on the record of the case. The President of the Industrial Court has given effect to

the award from 1-7-1976 and has thereafter provided for phasing. The result would be that if phasing is done away with, the U.P. Pattern would

come into operation in all these four sugar factories with effect from July 1, 1976. It is true that, by terms of the settlement arrived at by the

Kodinar Co-operative Sugar Factory and its workmen, the U.P. Pattern came into operation in that factory with effect from January 1, 1976, but

by the terms of the award in Chalthan Sugar Factory, the U.P. Pattern was brought in existence with effect from July 1, 1976. Three of the sugar

factories before us, namely, Bardoli, Madhi and Gandevi, are in the same area of the State of Gujarat as the Chalthan Co-operative Sugar

Factory. That is an additional ground for not interfering with the retrospective effect given by the President of the Industrial Court to the award that

he gave. Under these circumstances, we see no reason to depart from the date July 1, 1976 as the date from which the U.P. Pattern in its entirety

should be brought into force in all the four sugar factories.

18. As regards payment of dearness allowance, it is true that according to the decisions of the Supreme Court, neutralisation of the rise in the cost

of living according to the Second Wage Board recommendations is 100 per cent (Vide page 122 paragraph 283 of the Second Wage Board

Report). However, it was contended before us that neutralisation at present is given upto 125 per cent of the rise in the cost of living. Mr. Patel for

the three sugar factories of Madhi, Bardoli and Gandevi urged that, taking into consideration the Graduated Dearness Allowance and Variable

Dearness Allowance, the total dearness allowance paid to each workman would be in excess of the actual rise in the cost of living. This argument is

untenable because the whole scheme of Graduated Dearness Allowance and Variable Dearness Allowance has been so devised as to protect

workmen upto a particular stage from the rise in the cost of living which had already taken place and thereafter to protect them further from future

rise in the cost of living as reflected in the All India Average Consumers Price Index Number. Hence, this argument of Mr. Pate must fail and is

rejected.

19. It may be pointed out that in view of the awards in the cases of Kodinar factory and Chalthan factory, there is no substance in the argument

based on industry-cum-region formula.:

It is because of these reasons that, by our order dated October 18, 1978, we pronounced the order, namely, that the impugned award should be quashed and set aside in each of the four cases and we pointed out that there was no justification for the phasing awarded by the learned President of the Industrial Court and hence phasing should be quashed and set aside. As the same time, we directed that retrospective effect given from the date mentioned in the impugned award, namely, July 1, 1976, in each of that four cases should not be departed from as it would not be proper for us to interfere with that retrospectively of the award given by the Industrial Court. That result was that that U.P. Pattera should be given full effect with retrospective effect from July 1, 1976, which was the date mentioned in the award, and the respective cooperative societies were directed to pay that costs of that other side and was therefore made the rule absolute accordingly in the Special Civil application filed by the workmen and the Special Civil Applications filed by the cooperative sugar societies in each of the cases were dismissed. Note: The Supreme Court has modified a part of this decision.