

(1996) 04 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition 26306 to 26315/90

Maruthi Khandasari and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Essential Commodities Act, 1955 — Section 2 (e), 2 (g), 3

Citation : (1996) ILR (Kar) 2391 : (1996) 5 KarLJ 517

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : D.L.N. Rao, for the Appellant; S. Uday Shankar, Addl. Advocate for R-1 to 5 and Geeta Menon, for M.N. Pramilla, for R-7, for the Respondent

Judgement

P. Vishwanatha Shetty, J.—The petitioners in these petitions are all industries manufacturing Khandasari sugar located at Bidar District, Karnataka State. It is the case of the petitioners that their industrial units were established several years back and the licence for manufacture of Khandasari sugar or rab for conversion into Khandasari sugar were issued to them by the State Government in exercise of the delegated power as provided under the provisions of Karnataka Khandasari Sugar Manufacturers Licensing Order, 1980. The licences issued to the petitioners for the period commencing from 17.12.1990 to 16.03.91 have been produced as Annexures-"A1 to A9".

2. In these petitions, the petitioners have prayed for : (1) "quashing condition No. 14 provided in Licences Annexures 1 to 9 issued to them; (2) direction to respondents 1 to 6 not to impose any condition in the licences for manufacture of Khandasari regarding each petitioner without following the procedure prescribed; (3) and also for a further direction to the respondents No. 1 to 6 not to insist on the petitioners to pay cane price at Rs. 360/- per metric tonne prescribed in Clause 14 of Licences Annexures 1 to 9.

3. Sri D.L.N. Rao, the learned Counsel appearing for petitioners submitted that the condition imposed under Clause 14 of Licences Annexures 1 to 9 issued to

the petitioners are without the authority of law in as much as the respondent-2 has not been conferred with any power either under the provisions of Sugar Cane Control Order, 1966 (hereinafter referred to as "Control Order") or under the provisions of Karnataka Khandasari Sugar Manufacturers Licencing Order, 1980 (hereinafter referred to as "Licencing Order"). Elaborating his contention, learned Counsel for the petitioners submitted that the price of sugarcane payable by producers of Khandasari Sugar can be fixed either by the Central Government or by the State Government only after complying with the procedure prescribed under Clause 4 of the Control Order; and in the present case the State Government has not fixed the minimum price of the sugarcane to be paid by the petitioners to the sugarcane growers with the concurrence of the Central Government and as such it is not permissible for the respondent-2 to impose a condition in the licences issued to the petitioners directing them to pay minimum of Rs. 360/- per tonne of sugarcane to the growers of sugar cane. According to learned Counsel, the Licencing order only empowers licensing authority i.e., respondent-2 to impose such conditions as may be necessary to regulate the manufacture of sugar in the Khandasari unit, and it does not empower the respondent-2 to impose any condition prescribing or restricting the price of the sugar cane to be purchased by the Khandasari unit by the sugarcane growers. He further submitted that when there is a specific provision provided under the Control order providing for the fixation of the price of the sugarcane by the State Government with the concurrence of the Central Government by means of a notification issued on that behalf in the official gazette, it is not permissible for the respondents-1 to 6 to overcome the said provision of law by imposing a condition in the licences issued to the petitioners by fixing the price of the sugarcane to be purchased by them; the Circular dated 28.07.90, the copy of which has been produced as Annexure-"C" also cannot be relied upon by the respondents either to sustain the condition incorporated in Clause 14 of the licences impugned in these petitions or in support of their plea that the petitioners are liable to pay minimum of Rs. 360/- per tonne of sugarcane to be purchased by them from the sugarcane growers; and the Annexure-"C" is only a Circular and it does not even refer to the concurrence of the Central Government and therefore, the same cannot be relied upon by the respondents to sustain Clause 14 of the licences impugned in these petitions. It is further submitted that Annexure-"C" would show that the decision was taken to fix the price of sugarcane only in respect of sugar factories and not in respect of Khandasari sugar units and therefore, the price fixed in Annexure-"C" cannot be made as the basis for fixing the purchase price as part of conditions of licences issued to the petitioners.

4. Sri Uday Shankar, the learned Additional Government Advocate appearing for Respondent Nos. 1 to 5 submitted that the sugarcane price has been incorporated as a condition of licences issued to the petitioners on the basis of the decision taken as per Annexure-"C" by the State Government which in turn had been relied upon on the advice given by the State Advisory Committee

constituted for that purpose. He further submitted that State Advisory Committee after convening the Joint Meeting of the representatives of all Khandasari Units in Bidar District including the petitioners and sugarcane growers, Members of the Legislative Assembly and Members of Parliament and after considering several relevant factors had recommended for fixation of sugarcane price at Rs. 360/- per tonne of sugar purchased by Khandasari sugar units throughout the State for the year 1990-91. In this connection he brought to my notice the proceedings of the Deputy Commissioner, Bidar District, wherein he had recommended for fixation of the price of sugarcane per tonne of sugar to be purchased by Khandasari sugar units in Bidar District at Rs. 360/- per tonne and relying upon the same Sri Uday Shankar further submitted that the Deputy Commissioner after discussing the matter with representatives of the Khandasari sugar units including the petitioners had recommended the price of the sugarcane; and the petitioners having accepted the price of the sugarcane at Rs. 360/- per tonne and on that basis they having prevented the State Government from proceeding to pass order as provided under Clause 4 of the Control Order should not now be permitted to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India to challenge the condition imposed to the licences impugned. He contended that in the entire State only the petitioners who have their units located at Bidar District have challenged the price fixed. According to the learned Additional Government Advocate, the conduct of the petitioners disentitles them for any equitable relief at the hands of this Court. He further submitted that if at this stage, the condition 14 imposed in the licences impugned is declared as illegal or struck down it would seriously affects the interest of sugarcane growers and Sub-clause 10 of Clause 3 of licensing order empowers the licensing authority to impose such conditions as he may in his discretion deem fit, and in the present case the licensing authority on the basis of the order Annexure-"C" passed by the Government incorporated the condition in the licences issued to the petitioners fixing the price of the sugarcane to be purchased by the petitioners. According to the learned Government Advocate Sub-clause 7 of Clause 3 of the Licensing Order casts an obligation on the Licensee to pay not less than the minimum price for the cane purchased by him if so fixed by the Government; and therefore is not permissible for petitioners to challenge the price fixed which is made as condition of the licence issued to the petitioners. Mr. Uday Shankar further submitted that for any reason if this Court is to take the view that it was not permissible for the respondents to fix the price as has now been done, the respondents may be given liberty to refix the price after complying with the procedure prescribed or otherwise the sugar cane growers would be put to irreparable injury and hardship.

5. Miss Geeta Menon appearing for respondent-7 while supporting the contention of learned Additional Government Advocate further submitted that Clause 8 of the Control Order empowers Central Government to issue such directions as it may deem fit to any producer of Khandasari sugar or owner of power crushers,

Khandasari units, crushers and co-operative society etc., regarding purchase of sugarcane or sugarcane juice, production, maintenance of stocks, storage, price, packing, payment, disposal, delivery and distribution of sugarcane, gur, gul, jaggery and rab or Khandasari sugar or the period or hours to be worked. According to Miss. Menon that the power conferred on the Central Government under Clause 8 has been delegated to the State Government as provided under Clause 11 of the Control Order, and in exercise of that power the State Government had fixed the price in Annexure-"C" and the fixation of the said price made by State Government in Annexure-"C" has been incorporated by the Licensing Authority as a condition of licence and therefore there is no infirmity either in the order Annexure-"C" or the condition incorporated in the licences impugned. Miss. Menon further contended that the price fixed is highly fair and reasonable and on account of that the petitioners cannot have any grievance. According to the learned Counsel, if at this stage the conditions imposed in the licence incorporating the price fixed is quashed by this Court, it would result in irreparable injury to sugarcane growers who are all farmers and as it is they have been deprived of their fair price for the sugarcane sold by them for the last over five years.

6. In reply to the submissions made by the learned Additional Government Advocate and Miss Menon, Sri Rao submitted that since there is a specific provision provided under Clause 4 of the Control Order it is not permissible for the respondents to rely upon Clause 8 of the Control Order; and since there is no fixation of price made as provided under Clause 4 of the Control Order, liberty should not be reserved to the respondents to fix the price of the sugarcane.

7. In view of the rival contentions advanced by the learned Counsel for the parties, the questions that would arise for my consideration are :

(i) Whether the Clause 14 incorporated in the licenses impugned are liable to be quashed/struck down as one without authority of law;

(ii) In the event of this Court taking the view that the conditions imposed are liable to be quashed or struck down, whether liberty should be reserved to the respondents 1 to 6 to pass fresh orders fixing the price of the sugarcane already delivered to the unit of the petitioners;

8. Before proceeding to consider the contentions advanced on behalf of the parties, it would be useful to refer to some of the provisions of the Control Order and also the licensing order.

9. The Control Order has been issued by the Central Government in exercise of the power conferred on it u/s 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the "Act").

10. Clause (d) of Section 2 of the Act defines Khandasari sugar as the sugar produced by open pan process; Clause (e) of Section 2 defines "Khandasari Unit" as a unit engaged or ordinarily engaged in the manufacture of Khandasari sugar

from sugarcane juice or rab; Clause (g) of Section 2 defines "Price" as the price or the minimum price fixed by the Central Government from time to time for sugarcane delivered -

(i) to a sugar factory at the gate of the factory or at a sugarcane purchasing centre; or

(ii) to a Khandasari unit;

Clause (h) defines "producer of Khandasari sugar" as a person carrying on the business of manufacturing sugar by open pan process;

Clause (i) defines "producer of sugar" as a person carrying on the business of manufacturing sugar by vacuum pan process.

Clause 3 of the Control Order provides for the fixation of minimum price of sugar cane payable by producer of sugar.

Clause 4 of the Control Order provides for minimum price of sugar cane payable by producers of Khandasari sugar. The said provision reads as follows :

"The Central Government or State Government, with the concurrence of the Central Government, may, by notification in the official Gazette, from time to time, fix the minimum price or the price of sugarcane to be paid by producers of khandasari sugar or their agents for the sugarcane purchased by them:

Provided that the price or the price of sugarcane so fixed shall not exceed the minimum price of sugarcane fixed for payment by producers of sugar in the region:

(Provided further that no person shall sell or agree to sell sugarcane to a producer of khandasari sugar or his agent, and no such producer or his agent shall purchase or agree to purchase sugarcane, at the price lower than that fixed under Clause 4;

(Provided also that the Central Government or with the approval of the Central Government, the State Government, may, in such circumstances and subject to such conditions as specified in Clause 4-A, allow a suitable rebate in the price so fixed.)....."

Clause 8 of the Control order which empowers the Central Government to issue direction to producers of Khandasari sugar and others reads as follows:

"The Central Government may, from time to time by general or special order, issue directions to any producer of Khandasari sugar or owner of a power crusher, khandasari unit or the agent of such producer or owner or 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, gur, gul, jaggery and rab or khandasari sugar or the period or hours to be worked."

Clause 11 of the Control Order which provides for "Delegation of Powers" reads as follows:

"(1) The Central Government may, by notification in the Official Gazette, direct that all or any of the powers conferred upon it by this Order shall, subject to such restrictions, exceptions and conditions, if any, as may be specified in the direction, be exercisable also by;

(a) any officer or authority of the Central Government;

(b) a State Government or any officer or authority of a State Government.

(2) Where all or any of the powers conferred upon the Central Government by this Order have been delegated in pursuance of Sub-clause (1)(b) to any officer or any authority of a State Government, every order or direction issued by such officer or authority in exercise of that power may be amended, varied or rescinded by the State Government to whom the officer or authority is subordinate either suo motu, or on application made within a period of thirty days from the date of the order or direction;

Provided that no order revoking a licence or a permit issued to a person shall be made without giving such person an opportunity to make representation.

11. Licensing order has been issued by the State Government in exercise of the power conferred by Clauses 7, 8 and 9 read with Clause 11 of the Control order for the purpose of regulating the manufacture of Khandasari sugar by open pan process including bels. Under Clause (e) of Clause 2 of the Licensing Order, the Director of Sugar in Karnataka, Bangalore, has been made as the Licensing Authority for the purpose of issue of Licences. Clause 3 of the Licensing order provides that no manufacturer without obtaining licence from the licensing authority in the prescribed form undertake to carry on any process concerned with the manufacture of Khandasari sugar by means of power crusher, bel or centrifugal. Sub-clause 2 of Clause 3 of the Licensing order provides for procedure to be followed for grant of licence etc. Sub Clause 7 of Clause 3 of the Licensing order provides that the licensee shall not pay less than minimum price for the cane purchased by him if so fixed by Government. Sub-clause 10 of Clause 3 of the Licensing, order provides that the licence shall be subject to such conditions as may be specified in the licence and such other conditions as may be imposed by Licensing Authority from time to time. Sub-clause 7 and Sub-clause 10 of Clause 3 of the Licensing Order read as follows:

"Sub-clause 7: The licensee shall not pay less than the minimum price for the cane purchased by him if so fixed by Government."

"Sub-clause 10: The licence shall be subject to such conditions as may be specified in the licence and such other conditions as may be imposed by the licensing authority from time to time.

12. Now let me examine the questions that would arise for consideration. Clause

4 of the Control order provides for the fixation of minimum price of sugar cane payable by producers of Khandasari sugar to the growers. Under Clause 4 the power of fixation of minimum price of sugarcane is conferred both on the Central and also on the State Government. If the State Government decides to fix the price, it can do so by means of notification published in the official gazette after obtaining concurrence of the Central Government with regard to the price which the State Government intends to fix. The second proviso given to Clause 4 of the Control Order provides that no person shall sell or agree to sell sugarcane to producer of Khandasari sugar or his agent, and no such producer or his agent shall purchase or agree to purchase sugarcane; at a price lower than that fixed under Clause 4. Therefore, it is clear that fixation of the minimum price of sugarcane payable by purchaser of Khandasari sugar is governed by provisions of Clause 4 of the Control Order. In the instant case even according to the stand taken by Respondent-1 to 5 there is no notification issued by the Respondent-1 with the concurrence of the Central Government fixing the minimum price. On the other hand in paragraph 2 of the statement of objections it is admitted that the State Government has not fixed cane price payable by Khandasari units but only has been insisting upon the units to pay not less than "State advised price". The relevant portion of such statement of objection reads as follows:

"It is submitted, the State Government, though has not fixed cane price payable by khandasari units but is only insisting the units to pay not less than the State advised price of Rs. 360/-per tonne. The State Government is advising all the sugar mills to pay uniform minimum cane price as announced by it which is irrespective of the recovery position in sugar factories. The State Government has announced its State Advised Price every year after announcement of statutory minimum cane price by Government of India and the State Advised price for 1989-90 is at Rs. 360/- per tonne (minimum).

13. However, Sri Uday Shankar, learned Additional Government Advocate submitted that the publication of the price fixed in the official gazette is not mandatory and it is only directory in nature. I find it difficult to accept this submission of the learned Government Advocate. Firstly, for the reason that the price fixed has to be notified to the Management of Khandasari sugar units. There is no other mode of publication of price fixed as provided under Clause 4 of the Control Order. Secondly, proviso to Clause 4 of the Control Order makes it obligatory both on the part of the Khandasari sugar units and also the sugar cane growers to purchase and sell sugar cane at a price not less than the minimum price fixed by the State Government. Thirdly Sub-clause 7 of Clause 3 of the Licensing order provides that the Licensee shall not pay less than the minimum price for the cane purchased by him if so fixed by the Government. Sub-clause 15 of Clause 3 of the Licensing Order provides that if any person contravenes any of the provisions of the order or condition of the licence, he shall be liable for prosecution in accordance with the provisions of the "Essential Commodities Act, 1955". Therefore, a licensee of a Khandasari unit is made liable for prosecution if he does not pay the price fixed by the State Government. Therefore, I am of the

view that Clause 4 of the Control Order which provides for publication of the price fixed in Official Gazette is mandatory and not directory as contended by learned Additional Government Advocate. Further, admittedly there is also no concurrence of Central Government obtained for fixing the price. However, the stand taken by State is that though there is no minimum price fixed as provided under Clause 4 of the Control Order since Clause 14 of conditions of licence provides that the licensee should not pay less than the "State Advised cane price of Rs. 360/- per tonne;" the petitioners are bound to comply with the conditions of licences, and Clause 14 has been incorporated in the licence in exercise of the power conferred on the licensing authority under Sub-clause 10 of the Licensing order. I am also unable to accept this submission of learned Additional Government Advocate. No doubt Clause 10 of the Licensing order makes it obligatory on the part of the licensee to comply with such conditions as may be specified in the licence and such other conditions as may be imposed by the Licensing Authority from time to time. So far as fixing of minimum price is concerned, Clause 4 of the licensing order governs the field. Sub-clause 10 of the Clause 3 of Licensing Order has to be read along with Sub-clause 7 of Clause 3 of the Licensing Order. Sub-clause 7 of Clause 3 of Licensing order mandates the licensee to pay not less than the minimum price for the cane purchased by him if so fixed by the Government. It is only under Clause 4 of the Licensing Order that the Central and the State Government are empowered to fix the minimum price of sugar cane to be purchased by the khandasari units. Therefore, the conditions that could be imposed by the Licensing Authority in exercise of the power conferred on it under Sub-clause 10 of Clause 3 of the Licensing order cannot relate or pertain to the conditions providing for fixation of minimum price of the purchase of the sugarcane by the khandasari units which is required to be fixed after complying with the procedure fixed under Clause 4 of the Control Order. Further, the provisions regarding Control Order and the Licensing Order has to be understood and appreciated in the background for which the same have been passed. The Licensing Order provides for the procedure and terms and conditions of the licence to be issued for manufacture of sugar by khandasari sugar unit etc. So far as Controlling Order is concerned it relates to fixation of price of sugarcane and other related matters. Therefore, it is not possible to accept the contentions of the respondents that the minimum price of sugar cane fixed and made payable as condition of licence is valid in law.

14. I am also unable to accept the contention of Miss. Geeta Menon that the condition in the licences came to be incorporated by the State Government in view of the provisions contained in Order 8 of the Control Order which empowered the State Government to exercise the power of Central Government in view of the delegation made to it by the Central Government. No doubt, Clause 8 of the Control Order empowers the Government to give directions to any producer of khandasari sugar and several others referred to in the order. However, it is difficult to accept the contention of Miss. Menon that order Annexure-C is in the nature of direction given to khandasari sugar units to pay

the minimum sugarcane price, especially in view of the stand taken by the State that the State has not fixed the minimum price and it has been only insisting on the khandasari sugar units to pay the price in question. Therefore, I am of the opinion that the condition imposed in the impugned licences under Clause 14 of the licences directing the petitioners to pay not less than Rs. 360/- per tonne of sugarcane purchased by them is illegal and unsustainable.

15. However, it is also relevant to refer to the submission of Sri Uday Shankar, that the petitioner having participated in the Meeting convened by the Deputy Commissioner of the District and agreed to pay the price to be recommended by the Deputy Commissioner, cannot now be permitted to challenge the fixation of the price made which has been incorporated as condition of licences. According to learned Additional Government Advocate, since the petitioners had agreed to pay the minimum price of sugarcane at Rs. 360/-, further steps were not taken to issue notification as provided under Clause 4 of the Control Order. He submitted by non-issue of notification and fixation of the price as required under Clause 4 of the Order has not prejudiced the petitioner in any manner and therefore this Court should refuse to give relief to the petitioners as the conduct of the petitioner totally disentitles them for any equitable relief from this Court. I am also unable to accept this submission of the learned Government Advocate. No doubt the proceedings of Deputy Commissioner placed before me refers to the petitioners. However, it does not indicate that the petitioners have participated in the proceedings and have agreed to pay minimum price of Rs. 360/- per tonne of sugar cane purchased by them. The Deputy Commissioner has only recommended for payment of price at Rs. 360/- per tonne. Therefore, it is not possible to refuse to give relief to the petitioners on the ground that they have agreed to pay the minimum price at Rs. 360/- per tonne of sugar cane to be purchased by them and the same came to be incorporated as condition of the licence issued to each of the petitioners.

16. In view of my conclusion reached above the condition of the licences that the petitioners should pay at least Rs. 360/- per tonne of sugarcane purchased by them requires to be struck down as illegal and without the authority of law.

17. Now, the next question that would arise for my consideration is as to whether liberty should be reserved to State as contended by learned Additional Government Advocate to notify the price of sugar cane which the petitioners had purchased from sugar cane growers during the year 1990-91. I am of the view that having regard to the facts and circumstances of the case, the said request made by the learned Government Advocate is fair and reasonable. If the said request is not accepted the sugarcane growers would be put to irreparable injury and hardship. Admittedly, the State Government had constituted a Committee to advise the Government in the matter of fixation of minimum sugar cane price for the year in question. The Deputy Commissioner also had convened a Meeting of the Management of the Khandasari sugar units. The materials on record discloses that the notices of Meeting were sent to the Management of Khandasari sugar

units. Thereafter order Annexure-C came to be passed. The Licensing Authority while issuing the licences had incorporated Clause 14 referred to above making it as a condition of the licence that the licenses should pay minimum of Rs. 360/- per tonne of sugarcane purchased by them. Further undisputedly under Clause 4 of the Control Order the State has power to fix the minimum sugarcane price to be purchased by the khandasari sugar units. The object of the Control Order is to protect the interest of the sugarcane growers and to guarantee them the minimum price of the sugarcane produced by them. In this background, if the petitioners were at all point of time made known that they are required to pay the minimum price of Rs. 360/- per tonne of sugar cane they are required to purchase from the sugarcane growers and sugar cane growers were also made to believe that they would get Rs. 360/- per tonne of sugarcane they sell, it would result in irreparable injury and hardship to the sugarcane growers, if liberty is not reserved to the 1st respondent to fix the minimum price of sugar cane purchased by the khandasari sugar units during the year 1990-91. As a matter of fact, I would say it is obligatory on the part of the State to do so as provided under Clause 4 of the Control order. The procedural error committed by the State should not harm the interest of sugarcane growers, especially when the price in question was accepted by the sugar cane growers of other parts of the State. Further since the matter has been pending consideration ever since the year 1990, it is just and proper to direct the State to fix the minimum price of sugar cane in the light of the observations made in this order and in accordance with law as early as possible and at any event of the matter not later than four months from the date of the receipt of this order.

18. Therefore, I make the following:

ORDER

(1) Clause 14 of Licenses issued to the petitioners which have been produced as Annexure 1 to 9 which directs the petitioners to pay minimum sugarcane price of Rs. 360/- per tonne for the year 1990-91 is hereby quashed in so far as the petitioners are concerned.

(2) The 1st respondent is directed to fix the minimum price of sugar cane purchased by the petitioners for the year 1991 from the sugar cane growers in accordance with law as expeditiously as possible and at any rate not later than four months from the date of receipt of this order.

(3) No order is made as to costs.

19. In the terms stated above these writ petitions are disposed of.

20. Sri Uday Shankar, Additional Government Advocate to file memo of appearance.